

# ISSUE BRIEF

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## How Three Executive Orders Could Affect Federal Employees

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Inefficient policies and procedures, as well as underperforming colleagues, are common complaints from federal workers—and an overwhelming majority of federal workers do not feel that pay raises, promotions, and awards are based on merit.<sup>1</sup> President Donald Trump signed three executive orders that could help change this situation by moving toward a more efficient, effective, and accountable federal government. Those executive orders seek to enforce the civil service’s merit-system principles to ensure that federal employees demonstrate “high standards of integrity, conduct, and concern for the public interest,” to prevent wasteful, counterproductive, and inefficient collective-bargaining practices, and to apply a more accountable, transparent, and efficient use of taxpayer-funded union time.<sup>2</sup>

While these executive orders mark a step in the right direction toward those goals, neither these orders nor any steps the Administration can take on its own will generate the kind of comprehensive transformation necessary to make the federal government more efficient and effective, or the civil service more fair and competitive. That will require congressional legislation. Despite the relatively mild nature of these executive orders, federal employ-

ees’ unions responded dramatically, characterizing the orders as an “assault on federal employees,”<sup>3</sup> “democracy busting,”<sup>4</sup> and seeking to institute “a culture of fear.”<sup>5</sup> In reality, however, the overwhelming majority of federal workers have nothing to fear from these executive orders. Instead, they could create a more constructive and gratifying work culture. These orders should also help agencies operate more efficiently and effectively, making the federal government a better steward of taxpayers’ dollars.

### Impact on Federal Employees

A small minority of federal employees found consistently lacking in their performance may have to show improvement within a more reasonable time period. They will still be entitled to the same excessive system of appeals for dismissals, but will probably not have access to that unnecessarily lengthy appeals process for more mundane grievances, such as performance ratings and incentive pay.

Federal employees who spend a lot of their time—between 25 percent and 100 percent—performing union activities will have to spend more of their time doing the job they were hired to perform instead of tending to union business. Moreover, a small minority of federal employees who benefit from inefficiencies and conflicts of interest in the collective-bargaining process may experience changes meant to better protect taxpayer resources.

On the other hand, those changes could have a positive impact on many workers as they seek to make it easier for agencies to “reward high performers, hold low-performers accountable, [and] flexibly respond to operational needs.”<sup>6</sup> For example, if an agency faces a reduction in force and has to lay off

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some workers, it will be able to make layoffs based on employees' performance and the agency's need, instead of basing those decisions on subjective measures such as employees' tenure on the job. This means that instead of being at a disadvantage compared to their older or more senior colleagues, younger and more junior federal employees will be on equal footing with all other federal employees—assessed on merit instead of age and tenure. This change could help attract younger and mid-level workers who otherwise may have been discouraged from taking a federal job knowing they would be the first laid off if the agency's mission called for layoffs.

### Effect on Taxpayers

These orders will not transform the civil service or generate massive savings—that would require congressional legislation—but they will move the ball forward in creating a more rational and accountable civil service. According to the Administration, the orders will save taxpayers about \$100 million per year in subsidies to federal employee unions. That is just the direct and immediate savings from ending federal unions' free use of office space and other taxpayer resources, however. Longer term, the changes

that come as a result of these executive orders should bring about more substantial savings through a more efficient use of taxpayer dollars.

The Heritage Foundation estimated that a comprehensive reform of federal-employee compensation alone—bringing it more in line with the private sector—could save taxpayers \$330 billion over 10 years.<sup>7</sup>

### Goals and Likely Outcomes of the Executive Orders

The President signed three different executive orders addressing (1) accountability and the removal process for federal employees; (2) efficiency and cost reductions in bargaining with public-sector unions; (3) and more transparency, accountability, and efficiency in federal employees' use of taxpayer-funded union time. Some of the highlights of these orders include:

**1. Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles.**<sup>8</sup> The Administration's purpose for this order states that: "Merit system principles call for holding Federal employees

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1. An Office of Personnel Management report found that 47 percent of federal workers said that "pay raises depend on how well employees perform their jobs," 36 percent said that "promotions in my work unit are based on merit," and 31 percent reported that "awards in my work unit depend on how well employees perform their jobs." Office of Personnel Management, "2017 Federal Employee Viewpoint Survey," Governmentwide Management Report, <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-management-report/governmentwide-report/2017/2017-governmentwide-management-report.pdf> (accessed June 11, 2018).
  2. Executive Order Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles, May 25, 2018, <https://www.whitehouse.gov/presidential-actions/executive-order-promoting-accountability-streamlining-removal-procedures-consistent-merit-system-principles/> (accessed June 12, 2018).
  3. Lisa Rein, "Trump Takes Aim at Federal Bureaucracy with New Executive Orders Rolling Back Civil-Service Protections," *The Washington Post*, May 25, 2018, [https://www.washingtonpost.com/politics/trump-takes-aim-at-federal-bureaucracy-with-new-executive-orders-altering-civil-service-protections/2018/05/25/3ed8bf84-6055-11e8-9ee3-49d6d4814c4c\\_story.html?noredirect=on&utm\\_term=.a62e55f148b4](https://www.washingtonpost.com/politics/trump-takes-aim-at-federal-bureaucracy-with-new-executive-orders-altering-civil-service-protections/2018/05/25/3ed8bf84-6055-11e8-9ee3-49d6d4814c4c_story.html?noredirect=on&utm_term=.a62e55f148b4) (accessed June 12, 2018).
  4. Darlene Superville, "Trump Makes Firing Federal Workers for Misconduct Easier," *The Philadelphia Tribune*, May 29, 2018, [http://www.phillytrib.com/news/trump-makes-firing-federal-workers-for-misconduct-easier/article\\_cec5a7be-fdd7-5afd-8e38-259a65ddab15.html](http://www.phillytrib.com/news/trump-makes-firing-federal-workers-for-misconduct-easier/article_cec5a7be-fdd7-5afd-8e38-259a65ddab15.html) (accessed June 12, 2018).
  5. Jory Heckman, "Trump Signs Executive Orders Making it Easier to Fire Feds, Overhaul Official Time," Federal News Radio, May 25, 2018, <https://federalnewsradio.com/management/2018/05/trump-to-sign-executive-orders-making-it-easier-to-fire-feds-overhaul-official-time/> (accessed June 4, 2018).
  6. The White House, "Executive Order Developing Efficient, Effective and Cost-Reducing Approaches to Federal Sector Collective Bargaining," May 25, 2018, <https://www.whitehouse.gov/presidential-actions/executive-order-developing-efficient-effective-cost-reducing-approaches-federal-sector-collective-bargaining/> (accessed June 12, 2018).
  7. Rachel Greszler and James Sherk, "Why It Is Time to Reform Compensation for Federal Employees," Heritage Foundation *Backgrounder* No. 3139, July 27, 2016, <https://www.heritage.org/jobs-and-labor/report/why-it-time-reform-compensation-federal-employees>.
  8. The White House, "Executive Order Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles," May 25, 2018, <https://www.whitehouse.gov/presidential-actions/executive-order-promoting-accountability-streamlining-removal-procedures-consistent-merit-system-principles/> (accessed June 12, 2018).
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accountable for performance and conduct. Failure to address unacceptable performance and misconduct undermines morale, burdens good performers with subpar colleagues, and inhibits the ability of executive agencies...to accomplish their missions. This order advances the ability of supervisors in agencies to promote civil servant accountability consistent with merit system principles while simultaneously recognizing employees' procedural rights and protections."

This order includes some of the following directives:

- **Flexibility for managers in disciplining and removing federal employees.** Managers will not be required to use progressive discipline nor to suspend an employee before removing him. Managers will also be able to consider the whole of an employee's record when determining his discipline or removal. For example, if one employee was not fired for failing to comply with a particular procedure, that should not preclude the manager from firing another employee who fails to follow the same procedure after also failing to comply with multiple other policies and demonstrating routine poor performance.
- **Limited time for improvement.** While still allowing agencies the discretion to provide up to 120 days to demonstrate improvement, the order limits the typical time for improvement to 30 days. In general, if an employee cannot demonstrate any improvement within 30 days, it is unlikely that he will improve in 120 days. With average federal employee compensation at \$135,000 a year, this change could save taxpayers up to \$33,000 per employee who fails to demonstrate improvement.
- **Prohibition of record-erasing.** Federal agencies will no longer be allowed to erase, alter, or withhold from other federal agencies an employee's official performance and conduct information.

- **Prioritization of performance over tenure.** When agencies must pursue a reduction in force, they shall prioritize performance over tenure when deciding which employees to retain and which to let go.

**2. Developing Efficient, Effective, and Cost-Reducing Approaches to Federal-Sector Collective Bargaining.**<sup>9</sup> The Administration's rationale for this order includes the argument: "CBAs, and other agency agreements with collective bargaining representatives, often make it harder for agencies to reward high performers, hold low-performers accountable, or flexibly respond to operational needs. Many agencies and collective bargaining representatives spend years renegotiating CBAs, with taxpayers paying for both sides' negotiators. Agencies must also engage in prolonged negotiations before making even minor operational changes, like relocating office space."

This order includes some of the following directives:

- **Establishment of an interagency labor-relations working group.** Chaired by the Office of Personnel Management (OPM) Director, and including representatives from agencies with at least 1,000 unionized employees, the newly formed group will assist the OPM Director on labor-relations issues and deliver a report to the President with recommendations "for improving the organization, structure, and functioning of labor relations programs across agencies." The group will also help oversee the renegotiation of agencies' bargaining agreements.
- **Examination of collective-bargaining agreements.** Directs the head of each agency that engages in collective-bargaining agreements to examine their agreements in light of this order and prepare a report—one year before the expiration of its agreement—with recommended changes to be implemented in their next agreements.

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9. The White House, "Executive Order Developing Efficient, Effective and Cost-Reducing Approaches to Federal Sector Collective Bargaining."

- **Time limits on negotiations.** Establishes guidance on more reasonable time periods, such as a goal of four to six months for a collective-bargaining agreement.

### 3. Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use.<sup>10</sup>

The Administration's purpose for this order maintains that Congress has instructed the executive branch to interpret the law that allows for taxpayer-funded public union time in "a manner consistent with the requirements of an effective and efficient government.... To that end, agencies should ensure that taxpayer-funded union time is used efficiently and authorized in amounts that are reasonable, necessary, and in the public interest. Federal employees should spend the clear majority of their duty hours working for the public. No agency should pay for Federal labor organizations' expenses, except where required by law."

This order includes some of the following directives:

- **Limits individual employees' taxpayer-funded union time to 25 percent.** Federal employees must spend at least three-quarters of their paid time on agency business or training and no more than one-quarter on taxpayer-funded union activities. (They can, however, use unpaid leave for additional union activities.)
- **Prohibits lobbying at taxpayers' expense.** Federal employees may not use their taxpayer-funded union time to engage in lobbying activities (except in their official capacities as employees).
- **Limits total taxpayer-funded union time.** Agencies shall commit to limiting their union-

time rate to one hour or less per employee. For an agency such as the Department of Justice, this would be the equivalent of having as many as 55 full-time employees working exclusively on union matters.

- **Cracks down on unauthorized union time.** Unauthorized use of taxpayer-funded union time will be treated as leave without pay.
- **Prohibits unions from receiving free office space.** Agencies cannot provide highly sought-after and expensive federal office space (as well as other government resources) for free unless they make them generally available for free for other non-agency work. Federal employee unions' sizeable budgets—\$75 million for the American Federation of Government Employees alone—demonstrate that this change will not drive federal unions out of business.<sup>11</sup>
- **Requires public availability.** Collective-bargaining agreements will become accessible first to OPM personnel and then the public.

### Potential Benefits of Executive Orders

Far from hurting federal employees or "dismantling the merit system," these executive orders could help make federal employees' jobs easier and more productive.<sup>12</sup> Only four in 10 federal employees believe the federal government deals effectively with poor performers who cannot or will not improve.<sup>13</sup> Removing some of the unjust barriers that managers face when attempting to discipline or remove federal employees will likely improve employee morale and contribute to a more productive workforce.

Moreover, prioritizing performance over other non-objective measures—such as when an agency's mission calls for a reduction in employment—is fully in line with the merit principles of the civil service. Federal workers should not be disciplined, denied opportunities, or removed for political reasons, nor

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10. The White House, "Executive Order Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use," May 25, 2018, <https://www.whitehouse.gov/presidential-actions/executive-order-ensuring-transparency-accountability-efficiency-taxpayer-funded-union-time-use/> (accessed June 12, 2018).

11. Influence Watch, "American Federation of Government Employees (AFGE)," <https://www.influencewatch.org/labor-union/american-federation-of-government-employees/> (accessed June 12, 2018).

12. Heckman, "Trump Signs Executive Orders Making it Easier to Fire Feds, Overhaul Official Time."

13. Office of Personnel Management, "2017 Federal Employee Viewpoint Survey."

should they face unmerited consequences because of non-objective measures imposed through the collective-bargaining process. Currently, fewer than half of federal employees feel that pay raises are tied to performance, and only 36 percent believe that promotions are based on merit. These executive orders will help to prevent productive employees who do their jobs well from losing out on opportunities, rewards, or even their jobs in favor of less-productive workers.

A true “war” on federal employees or “assault on American ideals” would require stripping federal workers of the same rights, procedures, and merit principles afforded to private-sector workers in the U.S.<sup>14</sup> That is not the case here. In fact, *even with* these executive orders, federal employees will have far greater job security, and the civil service will still be far more costly and less effective than the private sector. Achieving more substantial change to reform and modernizing the civil service requires congressional legislation.

Nevertheless, these executive orders demonstrate the Administration’s resolve to make the federal government a more efficient and effective steward of taxpayer dollars, and to help create a more accountable and objective workplace for federal employees.

Congress should build on these orders with statutory changes—consistent with merit-system principles—that would help the government compete with the private sector and that would improve agencies’ abilities to effectively carry out their missions.

Given Congress’s inability to accomplish even minor and bipartisan reorganization in the past, the best pathway to success may be a congressionally created, independent BRAC-type commission with fast-track authority to implement the commission’s recommendations in their entirety through an up-or-down vote.<sup>15</sup> A commission operating outside the Administration would help defuse partisan mistrust, and requiring an up-or-down vote on the entire package would thwart committee-quashing and reduce single-issue opposition.

Government reorganization is a bipartisan objective that will benefit taxpayers and federal workers alike. The Administration has expressed its commitment to a more efficient, effective, and accountable federal government; now it is time for Congress to step up to the plate.

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14. National Federation of Federal Employees, “Trump Signs Executive Order Declaring War Against America’s Civil Servants,” May 25, 2018, <http://www.nffe.org/ht/display/ReleaseDetails/i/151316> (accessed June 4, 2018).

15. John York and Rachel Greszler, “A Model for Executive Reorganization,” Heritage Foundation *Issue Brief* No. 4782, November 3, 2017, <https://www.heritage.org/sites/default/files/2017-11/IB4782.pdf>.