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TEMPORARY EMPLOYEE PRACTICES: HOW LONG DOES TEMPORARY LAST?

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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CONTENTS

	Page
Hearing held on June 30, 2010	1
Statement of:	
Dougan, William R., national president, National Federation of Federal Employees; Colleen M. Kelley, national president, National Treasury Employees Union; Philip W. Glover, legislative coordinator, Council of Prison Locals, American Federation of Government Employees, AFL–CIO; Patricia Barts, member, Cherry Hill, New Jersey Chapter, National Active and Retired Federal Employees	36
Barts, Patricia	74
Dougan, William R.	36
Glover, Philip W.	60
Kelley, Colleen M.	51
Simpson, Jerry, Associate Director for Workforce Management, U.S. National Park Service; Hank Kashdan, Associate Chief, U.S. Forest Service; and Angela Bailey, Deputy Associate Director for Recruitment and Diversity, U.S. Office of Personnel Management	7
Bailey, Angela	20
Kashdan, Hank	13
Simpson, Jerry	7
Letters, statements, etc., submitted for the record by:	
Bailey, Angela, Deputy Associate Director for Recruitment and Diversity, U.S. Office of Personnel Management, prepared statement of	22
Barts, Patricia, member, Cherry Hill, New Jersey Chapter, National Active and Retired Federal Employees, prepared statement of	76
Dougan, William R., national president, National Federation of Federal Employees, prepared statement of	39
Glover, Philip W., legislative coordinator, Council of Prison Locals, American Federation of Government Employees, AFL–CIO, prepared statement of	62
Kashdan, Hank, Associate Chief, U.S. Forest Service, prepared statement of	15
Kelley, Colleen M., national president, National Treasury Employees Union, prepared statement of	53
Lynch, Hon. Stephen F., a Representative in Congress from the State of Massachusetts, prepared statement of	3
Simpson, Jerry, Associate Director for Workforce Management, U.S. National Park Service, prepared statement of	9

TEMPORARY EMPLOYEE PRACTICES: HOW LONG DOES TEMPORARY LAST?

WEDNESDAY, JUNE 30, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:15 p.m., in room 2154, Rayburn House Office Building, Hon. Stephen F. Lynch (chairman of the subcommittee) presiding.

Present: Representatives Lynch, Norton, Connolly, Chaffetz, and Bilbray.

Staff present: Jill Crissman, professional staff; Aisha Elkheshin, clerk/legislative assistant; William Miles, staff director; Rohan Siddhanti and Ian Kapuza, interns; Dan Zeidman, deputy clerk/legislative assistant; Justin LoFranco, minority press assistant/clerk; Marvin Kaplan, minority counsel; and James Robertson, minority professional staff member.

Mr. LYNCH. Good afternoon. And I apologize for the slight delay. A little traffic on the way in.

The Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia will come to order.

I welcome my friend, the ranking member, Mr. Chaffetz of Utah, members of the subcommittee, hearing witnesses, and all those in attendance.

The purpose of today's hearing is to review the existing temporary hiring authorities and current regulations and the resulting impact on temporary employees' status and benefit offerings.

The chair, the ranking member, and the subcommittee members will each have 5 minutes within which to make an opening statement. And all Members will have 3 days to submit statements for the record.

Hearing no objection, so ordered.

Ladies and gentlemen, it is the duty of this subcommittee to look after every single Federal employee, no matter the level of pay or what type of schedule or seniority they may have. I have called today's hearing to discuss issues relating to temporary employees, who represent about 9 percent of the total Federal work force.

We know that seasonal temporary employees play a critical role in helping an agency accomplish its mission and carry out its mandates, yet these employees are operating largely under the radar screen.

Given the fact that in certain Federal entities, namely the National Park Service and the Forest Service, seasonal temporary employees can comprise approximately 40 percent of the work force at any given time, it is important that we take time to seriously consider issues and concerns currently confronting this particular employee population.

Oftentimes, seasonal temporary employees have worked in the same capacity year after year, decade after decade. However, they receive no health care, retirement insurance, or other regular benefits accrued by otherwise permanent or term employees of the Federal Government.

While in the early 1990's regulatory changes were made to reduce temporary employees' assignment time from 4 years to a maximum total of 2, thereby eliminating the possibility of temporary employee abuses, it is clear that renewed oversight on this issue is needed.

As we explore existing temporary hiring authorities and current regulations, I believe it is important that we consider whether a path to permanency can be established for our temporary employees, many of whom have worked for multiple years and are fully cognizant of the merit principles in our hiring. Additionally, we need to look at how we can harness the sizable talent and information acquired by these temporary employees.

Today's hearing will also provide us the chance to hear from the employer as well as the employee side of the temporary hiring issue. My intent is for this afternoon's hearing to provide all of us with an opportunity to further the dialog on various ideas and suggestions on how we can best reach a middle ground on some of these issues so that our employees are properly taken care of without agency budgets being overly stretched.

It is my hope that the testimony and feedback we receive from today's witnesses will provide the subcommittee with precise guidance and direction. Again, I thank each of you for being with us this afternoon, and I look forward to your participation.

[The prepared statement of Hon. Stephen F. Lynch follows:]

STATEMENT OF CHAIRMAN STEPHEN F. LYNCH

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA HEARING ON

"Temporary Employee Practices: How Long Does Temporary Last?"

Wednesday June 30th, 2010

Ladies and gentleman, it is the duty of this Subcommittee to look after every single federal employee, no matter the level of pay, or what type of schedule or seniority they have. I have called today's hearing to discuss issues relating to temporary employees, who represent about nine percent of the total federal workforce. We know that seasonal temporary employees play a critical role in helping an agency accomplish its mission and carry out its mandates, yet, these employees operate largely under the radar screen.

Given the fact that in certain federal entities, namely the National Park Service and the Forest Service, seasonal temporary employees can comprise approximately 40% of the workforce at any given time, it is important that we take the time to seriously consider issues and concerns currently confronting this particular employee population. Often times, seasonal temporary employees have worked in the same capacity year after year, decade after decade. However, they receive no health care, retirement insurance, or other regular benefits accrued by permanent or term employees of the federal government.

While in the early 1990s, regulatory changes were made to reduce temporary employees' assignment time from four years to a maximum total of two possible years, thereby limiting the possibility of temporary employee abuses, it is clear that renewed oversight on this issue is needed.

As we explore existing temporary hiring authorities and current regulations, I believe it is important that we consider whether a path to permanency can be established for our temporary workers - many of whom have worked for multiple years and are fully cognizant of the merit principles in our hiring. Additionally, we need to look at how we can harness the sizeable talent and information acquired by the temporary employees.

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It is my hope that the testimony and feedback we receive from today's witnesses will provide the Subcommittee with precise guidance and direction. Again, I thank each of you for being with us this afternoon, and I look forward to your participation.

Mr. LYNCH. I now yield to the ranking member, Mr. Chaffetz, for 5 minutes for an opening statement.

Mr. CHAFFETZ. Thank you, Mr. Chairman.

And thank you to our witnesses for being here and the preparation you put forward. This testimony is important, as we dive into this issue.

Temporary employees provide Federal agencies with flexibility needed to handle temporary increases in workload, such as seasonal work and short-term projects, or to hire people to fill in behind permanent employees during an extended leave of absence, such as parental leave.

These positions are not intended to be used as tryouts or as substitutes to buffer the full-time work force. Congress and the Office of Personnel Management must continue to work diligently to ensure that agencies comply with the statutory and regulatory framework and limitations on the use of temporary workers. At the same time, any statutory or regulatory change must be approached with caution to ensure there is an effective work force, while limiting spending and maintaining the flexibility the system is intended to provide.

In 1998, the last time the Office of Personnel Management estimated the cost of extending health and pension benefits to temporary workers, it estimated the total cost of providing these benefits to the 102,000-plus temporary employees would be in excess of $784 million.

Today, there is something like in the ballpark of 183,000 temporary workers. And, like all Federal employees, their salaries have grown significantly since 1998. In a year when the Federal deficit is projected to exceed last year's record high of $1.4 trillion and unemployment is in the range of 9.7 percent across the country, a billion-dollar increase in spending would be, obviously, irresponsible.

I look forward to hearing suggestions from today's witnesses on how the Office of Personnel Management and Congress can work together to ensure agencies use temporary workers in accordance with standing regulations and statutes. I look forward to the interaction, and, again, I thank you for being here.

I yield back, Mr. Chairman.

Mr. LYNCH. I thank the gentleman.

The chair now recognizes the gentlelady from the District of Columbia, Ms. Eleanor Holmes Norton, for 5 minutes for an opening statement.

Ms. NORTON. Thank you very much, Mr. Chairman. And I thank you for this hearing and regret that this hearing is necessary, because this issue came up not shortly after I came to Congress almost 20 years ago, and I wonder if we are seeing progress.

I note that the number of temporary employees has gone up. That doesn't, in and of itself, bother me, because there are increasing numbers of temporary employees and it is a very satisfactory status to many people. But I think, at this hearing, we need to find out whether temporary status is being abused or if it simply doesn't work the way we are implementing it.

I am particularly concerned, Mr. Chairman, that, in the year in which we have just passed a monumentally historic health care re-

form bill, these workers apparently still cannot get access to health care unless they pay for it entirely. I cannot understand how anybody working for the Federal Government would be put in that position for any period of time. And I would be very interested to know whether or not the health care bill we just passed makes any difference with respect to that status.

Very concerning, too, is the lack of any retirement benefits. Now, a time limit was put on the number of years you could serve as a temporary employee, and I don't have objections to that. The reason I don't have objections to it, at least as it stands now, is that we want to preserve the merit system as the way to hire employees.

On the other hand, I am troubled by reports of temporary employees who are working far longer than the 2-year limit because that can be waived. And I think the reason probably is that their experience is needed. I do join the ranking member in understanding the need for flexibility here, but flexibility should not come with abuse.

The case that first led to reforms involved a man from the District of Columbia who worked three shifts over July 4th and dropped dead from it. He had a wife and five or six children, and nothing to show for it.

I went to the floor with a bill. And a bill for a single individual is very rare in this House, but the House and the Senate saw this as not only a signal that there was reform needed but that something had to be done for this man, and we were able to get some funds for him.

I regret to see now that perhaps too little was done, and hope to learn more from this hearing about what more needs to be done consistent with maintaining the flexibility of temporary employment, which is employment that is not only to the benefit of the Federal Government but many others who work in part-time positions as well.

Thank you again, Mr. Chairman.

Mr. LYNCH. I thank the gentlelady.

The chair now recognizes the gentleman from Virginia, Mr. Connolly, for 5 minutes for an opening statement.

Mr. CONNOLLY. Thank you very much, Mr. Chairman, for continuing to tackle one of the more intractable challenges facing our Federal work force.

Widespread agency abuse of temporary employee hiring practices is both the symptom of a broken hiring system and an ongoing impediment to the long-range recruitment and retention of the high-caliber employees we need in the Federal Government. The Office of Personnel Management needs to use its administrative authority to the maximum extent possible to crack down on agencies' abuse of temporary hiring as a logical accompaniment to the implementation of the President's recently announced hiring reforms, which I, for one, welcome.

One reform OPM could implement would be to close the loophole allowing repeated temporary hires of seasonal employees who work less than 6 months in a year. Temporary hiring has all too frequently been abused as a de facto means of retaining long-term

employees to save money in the short run, at the expense of both the Federal employee and Federal efficiency in the long run.

It is not surprising that agencies use temporary hiring authorities, including the misnamed Federal Career Internship Program, to fill employment positions since the current hiring process is so inefficient. Fortunately, President Obama and OPM Director Berry are taking aggressive steps to reform that process by eliminating KSA essay requirements and streamlining hiring on USAJobs. These reforms will allow agencies to fill job positions more readily with permanent employees hired under merit principles.

For their part, agencies must take advantage of the opportunity and begin making progress to reverse the 25,000-position growth in temporary employment that occurred between 1992 and 2009.

I look forward to hearing the Forest Service's plans for reforming abuse of temporary hiring authority. An extraordinary 53 percent of Forest Service employees who responded to a National Federation of Federal Employees survey said that they had been temporarily hired for five or more seasons, even though the Merit Systems Protection Board advised that temporary employment policies should be based on the assumption that the employment will normally be on a one-time, short-duration basis.

Many of these temporary employees are, in fact, long-term, dedicated public servants. For example, Forest Service fire crews who have served year after year from June to October, or longer, may be seasonal but they surely are not temporary.

Many of these Forest Service positions involve hard, dangerous labor. It is morally repugnant to exploit temporary hiring authority to avoid providing Forest Service employees the benefits that, in fact, they have earned through what is frequently long-term service and certainly dangerous.

This is not principally an issue of workers' rights, however, but rather Federal efficiency and productivity. We must remain focused on recruiting and retaining the best employees in what is frequently a very competitive job market. In order to recruit and retain the best employees who will serve our constituents, we must ensure that agencies are offering basic benefits rather than long-term temporary employment that does an injustice to both Federal employees and, in the long run, the taxpayers themselves.

I yield back.

Mr. LYNCH. I thank the gentleman.

Again, I want to welcome our witnesses.

It is the custom before this committee that all witnesses are sworn in. Could I ask you to please rise and raise your right hands?

[Witnesses sworn.]

Mr. LYNCH. Let the record indicate that all of the witnesses have answered in the affirmative.

What I will do is offer a brief introduction of the witnesses, and then each will be afforded 5 minutes for an opening statement.

Just for the beginning, the small boxes in front of you on the table will indicate green while your time is proceeding, then yellow when it is time to wrap up, and then red when you should stop testifying.

And let me begin.

Mr. Jerry Simpson began his Federal career with the National Aeronautics and Space Administration in 1967. In 2006, he left NASA to join the National Park Service. Mr. Simpson currently serves as the associate director of work force management for the National Park Service, where his duties include ensuring effective utilization of Federal employees, concession employees, co-operators, contractors, and volunteers.

Mr. Hank Kashdan has served the National Forest Service for 35 years and is currently the Forest Service's associate chief. During his tenure with the Forest Service, Mr. Kashdan has served in a variety of roles, including his appointment as deputy chief of business operations.

Ms. Angela Bailey was selected for the Senior Executive Service in October 2007 after 26 years of public service. She currently serves as deputy associate director for recruitment and diversity at the Office of Personnel Management. Prior to joining the Office of Personnel Management, Ms. Bailey worked for the Social Security Administration and the Department of Defense.

Mr. Simpson, you are now recognized for 5 minutes for an opening statement.

STATEMENTS OF JERRY SIMPSON, ASSOCIATE DIRECTOR FOR WORKFORCE MANAGEMENT, U.S. NATIONAL PARK SERVICE; HANK KASHDAN, ASSOCIATE CHIEF, U.S. FOREST SERVICE; AND ANGELA BAILEY, DEPUTY ASSOCIATE DIRECTOR FOR RECRUITMENT AND DIVERSITY, U.S. OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF JERRY SIMPSON

Mr. SIMPSON. Mr. Chairman, thank you for the opportunity to appear today to discuss issues facing temporary employees. In the interest of time, I will summarize my written testimony and then answer questions you may have.

For many years, the Park Service has relied heavily on a seasonal work force to augment its permanent staff. Today, we hire approximately 10,000 seasonal employees every year to provide critical services, especially during peak summer visitation. The variety of positions that we hire includes maintenance workers; rangers, both law enforcement protection and interpretation; fee collectors; biological technicians; landscape architects; firefighters; and lifeguards, just to name a few.

Seasonal positions in the Park Service are very competitive, and the number of applicants usually far exceeds the number of available positions. We use temporary hiring authorities to fill many of these positions, often through open, competitive examination procedures. However, we may also give temporary appointments noncompetitively to certain individuals, and we do make use of the Student Educational Employment Program to noncompetitively fill positions performing seasonal work.

The Park Service is concerned about the morale and the equitable treatment of our seasonal work force. Because the Employee Viewpoint Survey conducted by OPM is only distributed to permanent employees, we recently completed a comparable internal sur-

vey distributed to approximately 6,000 of our employees who were hired after June 2009, including seasonal employees.

According to the survey, our seasonal employees, like their permanent coworkers, derive very high satisfaction from their belief that the work they do is important and that they like the work that they do. Their greatest dissatisfiers, however, are with the lack of health and retirement benefits, the lack of job security, and the lack of equity with permanent staff, particularly where promotions and within-grade pay increases are at stake.

Approximately 43 percent of those survey respondents indicated they were considering leaving the Park Service within the next year.

We have formed an internal work group to help address these issues, and we will actively be working on those in the coming year, within existing regulatory and budgetary constraints.

Though seasonal employees are not eligible for participation in the Federal Employees Health Benefits program, we do make available to all of our seasonal employees when they first start work, information about private health insurance that is available to them through the Association for National Park Rangers, which is a nonprofit employee organization.

We are vigilant in monitoring our use of temporaries. We conduct multiple audits annually to ensure compliance with the temporary hiring laws, regulations, and the time limits imposed on these appointments by OPM guidelines. Over the past 3 years, the Park Service has conducted between 15 and 20 of these reviews with an OPM staff member as a member of each review team, and we have found no major compliance issues in these areas.

So, in summary, the use of temporary hiring authorities is critical to the Park Service. They play a role in our seasonal recruitment efforts, and they allow us to meet our NPS mission. We strive to ensure that our use of authorities is in compliance with Civil Service laws and regulations, but we would welcome the opportunity to work with the committee and other agencies and departments to explore potential solutions to the issues that will be discussed today.

So, Mr. Chairman, this concludes my prepared remarks, and I would be happy to answer questions.

[The prepared statement of Mr. Simpson follows:]

STATEMENT OF JERRY SIMPSON, ASSOCIATE DIRECTOR, WORKFORCE MANAGEMENT, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA OF THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT AFFAIRS CONCERNING TEMPORARY EMPLOYEE ISSUES.

JUNE 30, 2010

Mr. Chairman, thank you for the opportunity to appear before you today to discuss issues facing temporary employees. My remarks will focus on the use of temporary hiring authorities by the National Park Service (NPS) and the resulting impact on temporary employees' status and benefits offerings.

While carrying out its mission to protect park resources and provide for public enjoyment, the NPS has always relied heavily upon a seasonal workforce to augment its permanent staff. Today, the NPS hires approximately 10,000 seasonal employees every year to provide critical services, especially during peak summer visitation. The Park Service's current workforce includes approximately permanent 21,900 FTE. The variety of positions include campground rangers, fee collectors, tour guides, naturalists, biological technicians, landscape architects, firefighters, laborers, law enforcement rangers, lifeguards, clerk typists, carpenters, and historians.

Seasonal positions with the NPS are very competitive and the number of applicants usually far exceeds the number of positions available. The NPS uses temporary hiring authorities to fill many of these positions and some positions are filled by experienced temporary employees who have previously worked for the NPS. The NPS uses temporary hiring authorities to fill short-term positions that are not expected to last longer than one year; to meet employment needs that are scheduled to be terminated within 24 months for such reasons as abolishment, reorganization, contracting of the function, anticipated reduction in funding, or completion of a specific project or peak workload; and to fill positions that involve intermittent (irregular) or seasonal (recurring annually) work schedules. The NPS also utilizes the regulations governing the Student Educational Employment Program (5 CFR 213.3202) to fill seasonal positions non-competitively.

Seasonal employees are entitled to the same benefits as temporary employees, wherein they are eligible to earn annual and sick leave, if they work a full-time or part-time schedule. Employees are not eligible for coverage under the Federal Employees Group Life Insurance program or the Federal Employees Retirement System, but are covered by Social Security and unemployment compensation. Current law allows temporary employees to purchase health insurance after they have one year of temporary service, but employees must pay the full cost with no Government contribution. Employees hired under the Student Temporary Employment Program are considered temporary employees and are generally not entitled to these benefits. However, once students have been continuously employed for a year without a break in service exceeding five

days, they may enroll in the Federal Employee Health Benefits Program, but they would have to pay 100 percent of the premium (i.e., both the employee and government share).

Under Office of Personnel Management (OPM) regulations, agencies can appoint and extend employees in seasonal positions without regard to the two year general time limit for temporary appointments as long as the time the employee worked annually was less than six months, or 1,040 hours. It is difficult to track the hiring authorities used for every seasonal hire, due to the limitations of the Federal Personnel Payroll System (FPPS) used by the Department. The NPS has recently made modifications to its position numbering system to address this issue.

The NPS is concerned about the morale and equitable treatment of our seasonal workforce. Because the Employee Viewpoint Survey conducted by OPM is not distributed to temporary employees, we recently completed a comparable internal survey distributed to approximately 6,000 workers hired after June of 2009. According to the survey, seasonal employees, like their permanent co-workers, derive very high satisfaction from their belief that the work they do is important and that they like the work they do. Their greatest dissatisfaction, however, is with the lack of health and retirement benefits, job security, equity with permanent staff, especially when promotions or within-grade pay increases are given to the latter group. Approximately 43% indicated that they were considering leaving the NPS within the next year. The NPS has formed an internal workgroup to help address these and other employee welfare and morale issues. This group will actively address these concerns within existing regulatory and budget constraints, but it should be noted that adding benefits for term employees could result in a reduction in hiring of temporary employees.

Temporary employees in the competitive service are hired under regulations outlined in 5 CFR 316.401 and 5 CFR 316.402. Temporary appointments do not provide employees with competitive status or reinstatement eligibility. Since temporary employees do not have status, they may not apply for permanent positions through internal merit promotion procedures. However, qualifying experience gained from temporary appointments is considered when the employee with temporary experience applies for a permanent position. Agencies may make a temporary appointment for a specified period not to exceed one year. The appointment may be extended up to a maximum of one additional year. Appointments involved with intermittent or seasonal work may be extended indefinitely if extensions are made in increments of one year or less and the employment totals less than six months (1,040 hours) in a service year.

Temporary positions are filled most often through open competitive examination procedures. However, agencies may give a temporary appointment noncompetitively to certain individuals, e.g., a reinstatement eligible person, certain present and former Peace Corps employees, a 30% disabled veteran, and veterans eligible for a veterans recruitment appointment. The NPS also uses the rehire authority in 5 CFR 316.402 to reappoint an individual based on his or her former status as a temporary employee who was originally appointed through open competitive examination procedures. A former temporary employee may not be reappointed if the individual has already served the maximum time allowed (1,040 hours in a service year) or if the position has been filled under temporary appointment for the maximum time allowed (two years in a three year period). Rehires must be to the same position or another position appropriate for temporary appointment with the same series, title and grade.

Because of the flexibility provided by these hiring authorities, it is possible for an individual to hold multiple temporary appointments, sometimes in a single year, and create a situation in which, by moving from temporary job to temporary job, she or he is essentially working 'full time' and 'year round', but not receiving the benefits of permanent federal employment. It is similarly possible for an employee to be readily rehired year after year, into the same seasonal job, if they so desire. Though the work may be truly seasonal in nature, the temporary employee, can in effect become a 'long-term' employee without long-term benefits.

This situation is not new. Beginning in 1991, several hearings were held before subcommittees of the House Committee on Post Office and Civil Service to receive complaints by temporary employees or about temporary employment. The hearings confirmed that federal agencies were retaining employees in an ongoing series of temporary appointments for long periods (eight to ten years) without benefits or tenure. As an example, an NPS employee, James A. Hudson, who had worked in a series of ongoing temporary appointments for eight years, died after suffering a fatal heart attack after working three shifts over a two day period during the July 4 weekend. Mr. Hudson, who was a Vietnam War veteran, was a full-time temporary employee whose survivors were not entitled to a pension or government-subsidized health or life insurance benefits. In response to his death, the Congress, as part of the Department of the Interior and Related Agencies Appropriations Act of 1994 gave Mr. Hudson's widow a lump sum payment of $38,400, the amount his family would have received as life insurance benefits had he been a permanent federal employee.

Responding to these hearings and information from other sources, in 1994 OPM revised its regulations governing agencies' use of temporary appointments by reducing the time limit from a maximum of four years to two years and made the requirements uniform for temporary appointments in both the competitive and excepted service. For extensions beyond two years, agency officials must request and obtain approval from OPM. The intent of these revisions was to ensure that temporary employees were used to meet true short-term needs and were not serving for years under a series of temporary appointments without many of the benefits afforded long-term employees.

NPS hiring officials are now responsible for ensuring and documenting that the needs for individual temporary appointments are short-term in nature. The NPS conducts multiple audits annually to ensure compliance with temporary hiring authorities, laws, and regulations and ensures the time limits imposed on these appointments are within OPM guidelines. Using a standard audit procedure, the NPS selects a sample of appointments for review. If problems are identified with specific types of appointments, audit teams are required to emphasize these types of appointments in future audits. Over the past three years, NPS has conducted 15 – 20 of these reviews and has found no significant findings in this area.

In summary, the use of temporary hiring authorities is critical to the NPS. These hiring authorities enable us to meet short-term employment needs and allow us to address peak workload periods. Temporary hiring authorities play a critical role in our seasonal recruitment efforts and serve as an effective and efficient method to meet NPS needs. Through our hiring practices, we ensure the use of these authorities is in compliance with personnel laws and

regulations. We would welcome the opportunity to work with the committee and other agencies and departments to further explore potential solutions to the issues discussed today.

Mr. Chairman, this concludes my prepared remarks. I would be happy to answer any questions you or the other members of the Subcommittee have.

Mr. LYNCH. Thank you, Mr. Simpson.

Mr. Kashdan, welcome. You are now recognized for 5 minutes for an opening statement.

STATEMENT OF HANK KASHDAN

Mr. KASHDAN. Thank you, Chairman lynch, Mr. Bilbray, Ms. Norton, Mr. Connolly. I appreciate the opportunity to be here today to talk about a very critical segment of the work force that delivers the Forest Service mission, that being the temporary seasonal work force.

In addressing the subcommittee's concerns about temporary hiring authorities and benefits, legislative issues, and qualification for permanent jobs, I think it is important to just lay out an employment profile for the agency.

At any given time in the Forest Service, we will have up to about 30,000 career employees. At this time of the year, the end of June, early July, we will increase that number to almost 45,000, adding 15,000 temporary seasonals to the work force. And that typically hits its height right about this time of the year. These employees are primarily field employees. They will work in wildlife habitat management, watershed restoration, recreation management, forest products, and the big employer being wildfire suppression.

Our field seasons vary. In the southern tier of the United States, that field season may last all year. In the Northeast and the Northwest, as well as Alaska, that field season can be fairly short, 3 or 4 months. So, in addressing the question of how long does a temporary last, I would like to address it from a strictly plain and simple business-model standpoint, as well as an empathetic standpoint, trying to put myself in the shoes of a temporary employee.

From the business-model standpoint, I think there are some basic attributes that we have to consider. Most of the Forest Service field work is, in fact, seasonal. Winter-type or non-season office work is different than seasonal field work.

As an executive in the agency that manages the work force, I think there is an important aspect of the budget profile that necessitates having a reasonable level of discretionary costs compared to fixed costs. As an executive, I look at 20 to 30 percent of our budget profile being discretionary as a reasonable level to achieve.

Seasonal employees are in the discretionary category, along with grants, agreements, contracts, and procurement. Permanent employees would be in the fixed-cost category, along with infrastructure. Now, that is the very plain and simple budget profile.

In the work force profile, it is very important for the agency's employment profile to represent a variety of sources from which employees are derived. This includes veterans, interns in college, placements from Job Corps, Presidential Management Fellows, returning Peace Corps volunteers, and from the ranks of seasonal work force. And let me just add that seasonal work force provides about 44 percent of our current career work force in the agency. So it is the single largest component.

Now, that is the business model that I think it is important to pay attention to.

From the empathy standpoint, I do identify with seasonal employees who want career jobs. I started as a seasonal. The chief of

the Forest Service, Tom Tidwell, was a seasonal. We both moved into the career ranks and achieved the positions we have today. Many seasonals desire career positions. We want seasonals to fill career jobs.

But it is also important to note that some seasonal employees do not look for a career in the Forest Service. There is a good percentage of employees that are attending school; they work in the summertime. There are teachers who teach during the school year and work in the summertime. And then there are others who have other pursuits that is complementary to a seasonal work force.

Now, back to the employees that do want a job, I do have a personal empathy. My son is a 5-year seasonal. He is very frustrated with the process of trying to become a career employee. He told me just last week he is sick of filling out job applications. So I can identify with that.

We have had some tough-love conversations about this very issue, and what I tell him are the four things that I tell anybody who asks me about getting a career job: You have to go where the jobs are. You may have to do a job you don't want in order to get your foot in the career employment category. You should consider serving your country in the military and getting veterans' preference or joining the Peace Corps and coming back with a noncompetitive placement authority. Or consider going back to school. If you can't do one or more of these things, the reality is that you do limit yourself in pursuing a career position.

So, in closing, Mr. Chairman, let me just acknowledge that the union, particularly, and I have discussed the issue of a pathway to permanence. Right now, we don't have the authority to do that. Should the administration and Congress consider those types of incentives for long-term seasonals, we are happy to provide our input and take part in that dialog.

So that concludes my remarks, Mr. Chairman. Thank you.

[The prepared statement of Mr. Kashdan follows:]

Testimony

Hank Kashdan

Associate Chief

Forest Service

United State Department of Agriculture

Before the

United States House of Representatives

Committee on Oversight and Government Reform

Subcommittee on Federal Workforce, Postal Service, and the District of Columbia

June 30, 2010

Concerning

Temporary Employee Practices: How Long Does Temporary Last?

Mr. Chairman and members of the Committee, thank you for the opportunity to testify before you today on "Temporary Employee Practices: How Long Does Temporary Last?"

Introduction

I am Hank Kashdan, Associate Chief of the Forest Service.

The current workforce of the Forest Service is approximately 33,000 employees. Each year, our staff grows to almost 50,000 employees when we hire up to 15,000 temporary employees to assist in managing the various conservation and multiple use management programs. We hire temporary employees for forestry, wildlife, recreation, range, fire suppression, forestry research and other resource areas. A typical temporary employee may be a college student who is getting valuable hands-on experience related to his/her major; or it may be a teacher who is a fire fighter during the fire season, and may make up to $30,000 during his/her temporary employment.

The Code of Federal Regulations (CFR 316.401) provides the Forest Service with the governing regulations for temporary employment authorities. This is where the temporary hiring authority is derived.

The Temporary Not to Exceed (NTE) one year appointments are utilized to fill short-term needs or to meet an employment need that is not expected to last more than one year. The NTE appointments may be extended up to a maximum of one additional year, for an aggregate of two years within the preceding three years. Within the NTE authority, an exception to the time limitation is provided when positions have been identified as temporary and seasonal in nature or that provide flexibility during an exigency of business such as a heavy fire season.

Employees may not exceed 1039 hours in a service year when utilizing this exception. Managers have the discretion based on the organizations' needs, to indefinitely rehire those employees who have not reached their 1039 hours in a service year. If an employee exceeds 1039 hours in a service year, he or she may only be extended up to a maximum of two years.

The NTE and the 1039 appointees:

- Do not acquire eligibility to be noncompetitively converted to a career conditional appointment
- Do not serve a probationary period
- Are **not** eligible for a promotion, reassignment, or transfer. However, they may be detailed to another position in the agency that is subject to the same time limits and documentation as details for permanent employees. For 1039 appointments, the hours in the detail count toward the 1039 hour limitation
- Are **not** eligible for Federal Employees Retirement System or the Federal Employees Group Life Insurance Program
- Will be eligible for coverage under the Federal Employee Health Benefits (FEHB) Program after the employee has completed at least one year of current, continuous service. However, the employee must pay the full

premium which includes both the employee and government shares of the premium

- Are **not** eligible for within-grade increases when serving in a General Schedule position
- Earn sick leave immediately
- Earn annual leave if the appointment is expected to last more than 90 days

The Forest Service conducts internal audits to ensure proper hiring processes are used in filling positions. These audits are conducted on an annual basis by an audit liaison team and serve as preparation for an external formal audit that is conducted by KPMG.

Employees who have served in a temporary capacity can and often do compete for permanent positions with the Forest Service, and other federal agencies. Our records show that as of December 2009, 12817 of 28,756 permanent employees started as temporary and/or excepted employees, that's 44% of our permanent workforce The Chief of the Forest Service, as well as myself each started our careers as temporary employees. Typically, if a temporary employee is asked to return, it is because the individual succeeded in the position. When similar permanent positions become available, these temporary employees compete well

and generally rank in the top group due to their proven track record. However, under current regulations, these candidates are not permanent federal employees, and cannot compete with other permanent federal employees. They must compete under the Forest Service permanent demonstration hiring authority (Demo Authority). It is under this authority that we are able to honor our qualified veterans for their military service by providing a higher priority ranking on our referral lists. Additionally, some of the permanent positions are filled non-competitively with eligible returning Peace Corps volunteers and through student programs such as the Student Career Educational Program (SCEP).

Forest Service appropriated funding fluctuates yearly. Having temporary workers provides needed flexibility to manage our workload and our employees – both temporary and permanent.

To my knowledge, there is currently no active legislation that allows current federal employees to receive retirement credit for their earlier temporary service. We look forward to working with the committee on this issue. Mr. Chairman and members of the committee this concludes my prepared statement. I would be happy to answer any questions that you or members of the committee may have.

Mr. LYNCH. Thank you, Mr. Kashdan.

Ms. Bailey, you are now recognized for 5 minutes for an opening statement.

STATEMENT OF ANGELA BAILEY

Ms. BAILEY. Thank you, Mr. Chairman and members of the subcommittee, for the opportunity to testify on behalf of the Office of Personnel Management regarding temporary employment in the Federal Government.

Federal agencies use temporary appointments when they do not need an employee's services permanently. These appointments are used in a variety of circumstances, including when an office is scheduled to be reorganized or abolished, to complete a specific short-term project or to meet peak workload demand.

Some employees serving under temporary appointments are employed seasonally—that is, they work during certain times of the year on a reoccurring basis. The term "seasonal" refers to the employees' work schedules and not their appointment type. Some seasonal workers are temporary while others serve under permanent appointments. I will elaborate on that in a moment.

Temporary appointments are limited to 1 year or less. They can be extended for a maximum of 1 additional year. Generally, an agency may not fill a position by temporary appointment if that position has been filled by temporary appointment for an aggregate of 24 months with the preceding 3-year period.

OPM regulations require that the supervisor of each position filled by temporary appointment must certify that the need for the position is truly temporary and that the appointment meets the regulatory time limits. The certification must include the specific reason for using a temporary appointment.

Let me review why these limitations were imposed. Until 1985, temporary appointments were much like they are today. Appointments were limited to 1 year, with a maximum 1-year extension. In 1985, OPM made several policy changes to give agencies greater flexibility to meet mission and budgetary challenges. From 1985 through 1994, temporary appointments could be extended for up to 4 years in 1-year increments. There was no limit on the number of times the position could be filled using temporary appointments.

One of the consequences of this situation was that many temporary employees developed an expectation of continuing employment because agencies could appoint them to successive temporary appointments, sometimes for decades.

One example of this was the tragic case of James Hudson, an employee of the National Park Service, who died on the job. Because he was a temporary employee, albeit with more than 8 years of service, his family was not eligible for certain benefits they would have received had he been serving under a permanent appointment at the time of his death.

OPM reexamined the use of temporary appointments and, in 1994, revised the rules governing them. We prescribed the limitations I outlined in order to ensure that temporary appointments will be used for truly short-term hiring needs and to avoid the perception by employees that temporary employment could last indefinitely.

Our regulations provide for limited exceptions from the time limits. Agencies can ask OPM for exceptions on a case-by-case basis only when required by major reorganizations, base closings, or other unusual circumstances. OPM requires agencies to submit a work-related justification for each request.

In addition, OPM regulations provide an exception to the time limits for work that is expected to last less than 6 months each year. The reason for this exception is that some agencies need to be able to bring back some employees on a seasonal basis. In contrast to seasonal employees who work more than 6 months in a year, and who therefore must be employed under permanent appointments, those who work less than 6 months a year may be given temporary appointments that may be renewed multiple times. This exception allows agencies to limit the number of permanent employees they hire while retaining the flexibility to employ seasonal workers whose services are needed for less than 6 months each year.

A concern that is often raised with respect to employees serving under temporary appointments is that they are excluded from coverage under the retirement programs for Federal employees. Retirement coverage is generally not in the interest of either these employees or the agencies they work for. This is true because of the requirement that an individual must work for at least 5 years in the covered employment in order to become entitled to an annuity. Most temporary employees never fulfill this 5-year requirement, so it does not make sense for them to have contributions to the retirement system withheld from their pay.

As is the case with the retirement coverage, the laws governing the Federal Employees Health Benefits and Federal Employees Group Life Insurance programs authorize OPM to exclude certain categories of employees from coverage based on the nature and type of their employment. Consequently, employees serving under temporary appointments are generally excluded from coverage under the health and life insurance programs.

Thank you again for the opportunity to discuss with you how temporary employment is used in the Federal Government and how and why it affects employee benefits. I would be happy to respond to any questions you may have.

[The prepared statement of Ms. Bailey follows:]

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF
ANGELA BAILEY
DEPUTY ASSOCIATE DIRECTOR FOR RECRUITMENT AND DIVERSITY
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

on

"TEMPORARY EMPLOYEE PRACTICES: HOW LONG DOES TEMPORARY LAST?"

June 30, 2010

Chairman Lynch, Ranking Member Chaffetz, and Members of the Subcommittee:

Thank you for the opportunity to testify on behalf of the Office of Personnel Management (OPM) to discuss temporary employment in the Federal Government.

Distinctions between Temporary, Seasonal, and Intermittent Employees

Temporary appointments are used to fill positions when there is no permanent need for an employee's services. For example, a temporary appointment can be used to fill a position that is not expected to last more than one year, or to meet an employment need that is scheduled to be terminated within one or two years for reasons such as an agency's reorganization or abolishment, or the completion of a specific project or peak workload.

Temporary employees are eligible to earn leave and are covered by Social Security and unemployment compensation, but do not receive the other benefits provided to career civil service employees. As discussed later in my testimony, temporary employees can purchase health insurance after they have completed one year of temporary service; however, the employee must pay for the full cost of the health insurance with no Government contribution. Furthermore, these employees are generally ineligible for coverage under the Federal Employees' Group Life Insurance Program (FEGLI) or the Federal employees' retirement systems.

Statement of Angela Bailey
Deputy Associate Director for Recruitment and Diversity
U.S. Office of Personnel Management

June 30, 2010

The terms "seasonal" and "intermittent" relate to employees' work schedules and not the appointment type used to hire them. Seasonal and intermittent employees can therefore be either permanent employees or temporary employees. Seasonal temporary employees receive the same benefits as other temporary employees. Permanent seasonal employees allow agencies to develop an experienced cadre of employees utilizing permanent appointment authorities. These seasonal employees perform their duties on a recurring basis every year. Seasonal employment is appropriate when the work is expected to last at least six months or more during a calendar year. Recurring work that lasts less than six months is best performed by temporary employees. Consistent with the career nature of their appointments, permanent seasonal employees receive the same benefits offered to the rest of the Federal civil service.

Intermittent employees are best suited for work that is sporadic and unpredictable, allowing agencies to utilize them in emergencies or when a work schedule is difficult to define. Temporary intermittent employees are generally ineligible for participation in most Federal employee benefit programs. In contrast, permanent intermittent employees are eligible for participation in Federal employees' retirement systems.

Limitations on Temporary Employment

Under OPM regulations, Federal agencies may make temporary appointments when they do not need an employee's services on a permanent basis. Agencies do not have authority to convert employees serving under temporary appointments to permanent appointments.

Temporary appointments are limited to one year or less although they may be extended for a second year. Generally, an agency may not fill a position using temporary appointments if that position was filled by temporary appointments for an aggregate of 24 months within the preceding 3-year period.

In order to utilize temporary hiring authority, OPM regulations require that the supervisor of each position filled by temporary appointment certify that the need for the position is truly temporary and that the appointment meets the regulatory time limits. The certification must include the specific reason for using a temporary appointment.

A brief explanation of the evolution of the rules governing temporary employees may be useful in understanding why these limitations were instituted. Until 1985, temporary appointments were much like they are today. Appointments were limited to one year with a maximum 1-year extension. In 1985, OPM made several policy changes to give agencies greater flexibility to meet mission and budgetary challenges. From 1985 through 1994, temporary appointments could be extended for up to four years, in 1-year increments. There was no limit on the number of times the same position could be filled using temporary appointments.

One consequence of this situation was that many temporary employees developed an expectation of continuing employment because agencies could appoint them to successive temporary appointments, sometimes for decades. An example of this was the tragic case of James Hudson,

an employee of the Department of the Interior's National Park Service, who died on the job. Because he was a temporary employee, albeit with more than eight years of service, his family was not eligible for certain benefits that they would have received had he been serving under a permanent appointment at the time of his death.

In response to this tragic loss, and following a thorough review, OPM revised the rules governing these appointments. In 1994, OPM prescribed the 2-year maximum continuous employment limit, as well as the 24-months-out-of-the-last-3-years limitation for the same position, in order to ensure that temporary appointments will be used for truly short-term hiring needs and to avoid the perception by employees that temporary employment could last indefinitely.

OPM's regulations provide for limited exceptions from the 2-year maximum continuous employment time limits. Agencies can apply to OPM for an exception on a case-by-case basis, but only when required by major reorganizations, base closings, or other unusual circumstances. The agencies must submit a work-related justification for each request.

In addition, OPM regulations provide an exception to the 2-year maximum continuous employment time limits for work that is expected to last less than six months each year. This exception allows for multiple renewals of the temporary appointment authority, as long as the appointment is expected to last less than six months each year. This exception allows agencies that invest a significant amount of training in their temporary employees to re-appoint them on a seasonal basis. The exception also allows agencies to limit the number of permanent employees that they hire and provides them with the flexibility that they need to hire seasonal employees who need to work for fewer than six months.

As mentioned above, appointing temporary employees under the aforementioned exception differs from appointing seasonal employees. Seasonal employees work more than six months in a year and therefore must be employed under permanent appointments. Permanent seasonal employees are eligible for Federal benefits designed to attract and retain a stable workforce, even while in a non-pay status during the off-season.

Temporary Employees and Retirement Coverage

A concern that is often raised with respect to employees serving under temporary appointments is that they are excluded from coverage under the retirement programs for Federal employees. Retirement coverage is not in the interest of an employing agency. Due to the requirements under both the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS), an individual must work for at least five years in creditable civilian employment in order to become entitled to an annuity. Most temporary employees never fulfill this 5-year requirement. Therefore it does not make sense to require their employing agencies to make the requisite employer contributions on their behalf because such contributions would remain in the Civil Service Retirement Fund (Retirement Fund). This would increase the agency's cost of employing the individual. Moreover, with respect to employees covered under FERS and the

Thrift Savings Plan (TSP), when the vesting requirements are not met, the employer contributions to the TSP revert to the TSP and are not returned to the employing agency.

Retirement Credit for Earlier Temporary Service

Under CSRS, even if employment is not "covered employment" it still may be available for credit later, if the individual has subsequent service that is currently covered by the retirement system. With this in mind, the kinds of positions that were excluded from CSRS coverage by regulation were relatively broad in scope. On the other hand, when FERS was established, there was no provision for obtaining credit for non-covered service later.

Health, Life, and Other Insurance Programs

As is the case with retirement coverage, the laws governing the Federal Employees Health Benefits Program (FEHB) and FEGLI authorize OPM to exclude certain categories of employees from coverage. Specifically, the relevant statutes permit OPM, by regulation, to exclude employees based upon the nature and type of their employment or conditions pertaining to it, such as short-term, seasonal, or intermittent employment. Consequently, with a few exceptions, employees serving under appointments limited to a year or less are excluded from coverage under the health and life insurance programs. Also, the regulations exclude employees who are expected to work less than six months in each year, as well as those with intermittent work schedules.

Although temporary employees are generally excluded from FEHB coverage, there is a special provision in the health benefits law that allows such employees to obtain FEHB coverage once they have completed a year of continuous service. In other words, if an employee is serving under an appointment limited to one year and has his or her appointment renewed at the end of that year, the individual can elect FEHB coverage at that point. However, as previously mentioned, the employee must pay both the employee and the Government share of the premium.

Once employees are eligible to participate in FEHB, they may also participate in other programs such as the Federal Employee Dental and Vision Insurance Program and the Federal Long Term Care Insurance Program.

Conclusion

Thank you again for the opportunity to discuss with you how temporary employment is used in the Federal Government, and how and why it affects employee benefits. I would be happy to respond to any questions you may have.

Mr. LYNCH. Thank you, Ms. Bailey.

I want to welcome Mr. Bilbray to this hearing.

Let me start with you, Mr. Simpson. I understand from your testimony that a substantial number of your employees serve on a temporary basis. I do have to note the oxymoron, I guess, of "career temporary employee." You know, you have folks who are doing career-related jobs but on a temporary basis. You have a general policy that was articulated by Ms. Bailey that says a person can work for a year with 1 additional year and that's it, except that we allow a waiver, and now it is perpetual, apparently, for some of these employees.

But I am just wondering, the impact on the employees, the morale of the employees, productivity, how they approach the job, and the impact on their families and the workers, and the peace of mind in terms of, you know, the management and the work force there, given the fact that a lot of these people are in limbo, they are continually reemployed as temporary workers without any benefits.

How is that impacting the work force, and how is that impacting the conduct of your responsibilities in the workplace?

Mr. SIMPSON. Well, Mr. Chairman, I think it is pretty clear that there are employees that are impacted by that. As Mr. Kashdan mentioned, similar to the Forest Service, we have a wide variety of circumstances represented in our seasonal work force, and those issues are not true for all of our seasonals. But for those that it is true, it certainly can't be denied, it has an impact on morale.

Mr. LYNCH. You mentioned earlier you are oversubscribed for these temporary positions. So is it just too bad, if you don't like it, we have somebody else who wants that job? Is that how we look at it?

Mr. SIMPSON. I wouldn't say that we would look at it that way, no. Every manager makes their own decisions about who they hire. And there are a lot of individuals that are hired back because they want to come back and their manager that they worked for the previous season wants to have them back. That is one of the reasons why we have far more applications than we have available slots for the competitively advertised positions that we fill.

Mr. LYNCH. Mr. Kashdan, in your closing remarks, you said that if the administration were willing to, you know, look at this rule again and change its policy, you would be happy to participate. Well, this committee is doing just that.

You know, we have a lot of complaints from workers that, you know, they have been in this limbo for a long time. They get rehired. They look at other folks that are doing the same jobs that they are doing, albeit they are full-time, full-year, but these folks are doing it over and over and over again multiple years.

And, at the end of the day, you have the situation that was illustrated earlier about an employee who, you know, for all intents and purposes, was continually reemployed but was denied all these benefits because he fell in a different class.

How do you feel—I mean, you are saying that 44 percent of your career positions are being occupied by temporary employees. Is that just a result of the seasonal nature? Or are we looking at a strategy employed by management to really try to reduce their costs,

and so if we can keep 44 percent of the people with no benefits, you know, no health insurance, no retirement, no annuity, then, you know, we can manage our budget a lot better?

Mr. KASHDAN. Mr. Chairman, let me clarify. I guess I didn't state that fact very well. What I meant to state was that, of our career work force, those who have career status, in other words permanent employees, 44 percent of that career work force came from the ranks——

Mr. LYNCH. Ah, OK.

Mr. KASHDAN [continuing]. Of employees who previously were temporary seasonals.

Mr. LYNCH. OK. So there is a path to——

Mr. KASHDAN. Yes. And it is the largest single segment. I do think it is critical to have a variety of employment sources. Temporary seasonal employees are a very, very large part of the current career profile. That is where they came from. It is a very important source.

Mr. LYNCH. And that is not withstanding the fact that, as in your testimony, you said earlier, you have veterans groups that you give priority to, you have folks coming in from the Peace Corps, so they have other, I guess, noncompetitive status, you know, right to appointments as well, and you are still getting 44 percent from the temporary work force into career status?

Mr. KASHDAN. That's correct, Mr. Chairman. In fact, if you appreciate that a certain segment of our career work force is administrative in nature, say, 5,000 or 6,000 employees that don't have seasonal counterparts, those positions that are natural-resource-related, actually, their number is up in the 55 to 56 percent range.

Mr. LYNCH. OK. I have exhausted my time. I am going to yield for 5 minutes to Mr. Bilbray.

Mr. BILBRAY. Thank you.

On the average, how many individuals do we have who apply for permanent positions? Anybody know? In your department.

I would like to see a comparison between the permanent applications and the temporary applications. Can you give me some kind of reference? Do you have any idea of that?

Ms. BAILEY. Well, each year, we fill approximately 350,000 positions. Of those, 150,000 are permanent. At any one given time, we are averaging around 450 people per job announcement. And I know that, on average, we have somewhere around 2 million people apply for our jobs each year. That is across the board, government-wide.

Mr. BILBRAY. I mean, this discussion, sort of, sparked my interest. I spent 6 years as a seasonal worker. Of course, it is scary to think that somebody, when I started off in 1970, and he was an elderly person, almost 30 years old, was lifeguarding, that they are still out—the same people that I worked with in 1970, a lot of them are still seasonal workers doing the same thing.

I guess the discussion is, one thing we don't think about, many seasonal workers, this is not their only employment—a lot of teachers, a lot of different types of seasonal professions—and they mix and match.

Do you have any numbers at all of what portion of our seasonal work force this is a second income?

Ms. BAILEY. No, I do not.

Mr. KASHDAN. I don't have any specific data.

From my experience in working in the work force, I would estimate that about half or more of our seasonals would ultimately desire a career job in the Forest Service. There are, certainly, those who don't that I described in my testimony. There is even the one or two I run into now and then who look forward to working for 6 months and going to Mexico for 2 months. And I start to wonder where I went wrong in that.

But, for the most part, there is a sizable number that ultimately want to achieve a career appointment in the Forest Service.

Mr. BILBRAY. Every time I go down to Latin America, I agree with them, OK?

Yeah, I think there is legitimate concern here, the fact that this is not just a situation where people are living off of a few months of work. I just know that there are real estate agents who do this type of thing, there are people who are teaching. There is a whole lot of different professions that find that ability. People who are in property management can get into this. So I just think that a lot of this discussion is somehow focused on a perception that may not be reality.

But the other issue is, with this 44 percent, you know, I am just wondering how much of the complaints are people who think that, if they get seasonal and work for a few years, that puts them in the pecking order to basically be moved up—which should be true if they are employees who we want to participate. But seeing that we have—how many applications do we have for temporary service in your department? What was the number that you gave out?

Ms. BAILEY. Well, I was just saying that, of the 350,000 that we fill each year, 200,000 of those are temporary or seasonal.

Mr. BILBRAY. But you don't know how many applications you have for those——

Ms. BAILEY. No. On average, though, today, we get around 450 applications for every job that we announce.

Mr. BILBRAY. OK. So, in other words, the market out there is very large. It is an employer's market, when it comes to working for the government, even if it is seasonal, right?

Ms. BAILEY. Correct.

Mr. BILBRAY. OK. So there is enough people on the outside of the system who really think this is a really good deal, even though there may be those in the system, once they are in, feeling that it is not a very good deal.Is that fair to say?

What is the turnover with our seasonal?

Mr. KASHDAN. Overall, in the Forest Service, in the career ranks, we are looking at around a 5 or 6 percent attrition rate.

Mr. BILBRAY. That is extraordinary.

Mr. KASHDAN. It is fairly small.

In the seasonal ranks, it is very hard to put your finger on because you are bringing in the factor of those who are not looking at it as continuous, long-term, season-after-season approach. So I don't really have any data on——

Mr. BILBRAY. OK. Just for the record, I find it extraordinary that we would want to limit seasonal workers, for some reason, to how many years. I'm sorry, I still think the old guys that are there, that

have been there for 30 years, are probably still the best lifeguards on that beach. And, frankly, just because they keep coming back indicates that they do enjoy it, and that we keep hiring means they are doing a good job.

And I worry about this attitude that basically says that, you know, we don't expect seasonals to be around long. I think we wouldn't do that with our full-time employees; I hope we never do that with our seasonals.

Thank you very much, Mr. Chairman.

Mr. LYNCH. Thank you, Mr. Bilbray.

The chair now recognizes—we have been called for votes, so Members will be leaving and coming back in. And I am going to ask Ms. Eleanor Holmes Norton to chair in my absence.

But I now recognize the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. I thank the chairman.

Let me ask Ms. Bailey, is it your testimony today that abuses have, in fact, occurred using temporary hires?

Ms. BAILEY. No, it is not my testimony today that——

Mr. CONNOLLY. So, then, no abuses have occurred?

Ms. BAILEY. No, we do not believe that abuses have occurred using this temporary appointment authority. Given our oversight and accountability role in this and working with the agencies, we do not believe that there have been abuses.

Mr. CONNOLLY. No abuses?

Ms. BAILEY. Correct.

Mr. CONNOLLY. OK.

Let me ask you a hypothetical question. We do the census every 10 years. I would ask it of the panel. Now, clearly, hiring temporary census workers for a period of a few months to undertake the initial data collection and/or to followup on that data collection because it was inadequate or incomplete somehow goes on every 10 years. And that, I think we would all agree, is clearly a temporary position.

Would you consider it temporary, however, if we did a census every year and we hired that person for 6 months every year? Is that a temporary hire, as far as you are concerned, perfectly legitimate and could go on until that person retires? Is that a correct use in the Federal workplace of this category, temporary hire?

Mr. Kashdan.

Mr. KASHDAN. I'm sorry, Mr. Connolly, I thought that was a question for Ms. Bailey there.

Mr. CONNOLLY. I'm sorry, I was just opening it up to any of you.

Mr. KASHDAN. OK. We use an appointment, we call it a 1039. I think the correct term is a—less than 1,040 hours. It is a type of temporary authority we use that is specifically used for work that is seasonal and temporary in nature.

Sometimes I think we overlay the issue of benefits with that. We do not use this authority for the purpose of denying benefits. If benefits were part of that, we would still use the authority.

We use this authority because it is particularly the one that is geared for work that is temporary and seasonal in nature. And we have quite a few of our seasonal employees that do work almost that—right up to that 1,040 hours.

Mr. CONNOLLY. But——

Mr. KASHDAN. And that's not to say it is not something that many of them are frustrated with.

Mr. CONNOLLY. I am just asking a different question, though. I'm glad you told us about the practice, but at what point do we have to agree we are sort of doing an end run on the system in calling somebody "temporary?"

And what is the time limit for somebody to be in that status? I thought Federal regulations—you went through, Mr. Bailey, in your testimony, you know, changes in the law going back to the 1980's. But is the current practice or the current law, as you understand it, literally ad infinitum? There is no limit?

Ms. BAILEY. Actually, if I could address your initial question with regard to the census takers and, if we hire them back each year, is that really, truly temporary. In that particular case, what the current law and what our regulations allow for is, an agency could make a decision to hire them either as temporary employees or as permanent employees, and either one could carry what we would call a seasonal work schedule.

So, in other words, if something is reoccurring every year, we would probably suggest to an agency that, rather than use temporary employment, that you would make those permanent seasonal employees or permanent because it is reoccurring.

Mr. CONNOLLY. Does the Forest Service do that?

Mr. KASHDAN. In certain areas. Actually, particularly California is an example where we have career seasonals for exactly the reason that we are talking about here. The fire season could go very long, could go 6 months, it could go longer than that. And, also, for other reasons of trying to have a work force that we have been able to retain over a longer period of time, provide retention incentives. So there are areas where we do have career seasonals.

Now, along those northern-tier States where the work is primarily field, you will find less of a profile that are career seasonal and more temporary seasonals. So it really varies with the work and the fluctuation in the work. You know, in the forest products area, that work may fluctuate from year to year and we don't know how many seasonals we will need. In fire, it is fairly predictable.

Mr. CONNOLLY. My time is almost up, but, Mr. Simpson, I want to give you a chance to respond.

Mr. SIMPSON. I would echo what Mr. Kashdan said. We also have a mixture of seasonals who are on career appointments as well as seasonals who are temporaries, for the same reasons.

Mr. CONNOLLY. My time is up, Madam Chairman, and I thank you.

I just want to say, I am stunned by Ms. Bailey's testimony that they have never found, are not aware of any abuse of the use of temporary hires. That is an extraordinary statement for a work force as large as the Federal Government. Even a work force as normally perfect as ours, there has to be abuse now and then. And I think that is a challenge, frankly, for this committee.

Thank you.

Ms. NORTON [presiding]. Thank you very much.

Ms. Bailey, would you like to revise your statement in any way? I mean, you have just—my colleague says that you have just come up with a perfect system.

Ms. BAILEY. Well, yes. Thank you, ma'am.

I think it is safe to say that we do have—through our oversight role, if we do find a situation where there is an abuse that is occurring, we will absolutely go in and work with that agency in an informal manner. We can do all kinds of things, from training the hiring managers to training the HR specialists——

Ms. NORTON. Do you keep records of where you have found abuses?

Ms. BAILEY. Actually, yes. As part of our oversight and accountability, we keep records of all agencies where we have found a finding of a violation. And then we make a record of that for both the agency and for OPM.

Ms. NORTON. Well, Ms. Bailey, it would be very helpful if you would submit to the subcommittee within the last, let's say, 2 years to give us some sense of what kinds of——

Mr. CONNOLLY. Madam Chairwoman.

Ms. NORTON. Yes, Mr. Connolly?

Mr. CONNOLLY. Would you yield just for one point?

Ms. NORTON. Indeed.

Mr. CONNOLLY. I thought Ms. Bailey's testimony, in answer directly to my question was, we have found no such examples, none. And now I am hearing Ms. Bailey say, well, actually, when we find them, we do take corrective action.

And if you wanted to correct your statement, please feel free to do so. But I am leaving here with your answer under oath to my question that you have found no examples of the abuse of the use of temporary positions in the Federal work force.

Ms. BAILEY. And that, sir, I do not want to change. That is correct. We have not found one instance of an abuse under this authority.

Ms. NORTON. Apparently, GAO data showed that 11 percent of the temporary employees had worked more than 5 years. Would you consider that an abuse?

Ms. BAILEY. Well, it really depends on exactly under what conditions these folks are working.

Ms. NORTON. Well, they got a waiver. They keep getting a waiver. Wouldn't automatic waivers constitute an abuse?

Ms. BAILEY. I am not aware of any instance where an agency has abused the automatic waiver situation. They have applied it appropriately. Wherever we have actually used our oversight authority, they have applied it appropriately in accordance with the OPM regulations.

Ms. NORTON. Well, then you are back to Mr. Connolly's point, that if they have applied it appropriately, you wouldn't have to go in and retrain and otherwise correct the abuse. That is the problem we have with your testimony.

Ms. BAILEY. OK——

Ms. NORTON. But I think it will be clarified if you just do what I asked you to do. For the last 2 years, would you submit for the record—I understand we may have a definitional problem, you may regard what an employee has—what a manager has done as a mis-

take. Whatever it is, we are not trying to play any "gotcha" here. We are just trying to see how the system works.

So if you would provide for the chairman within 30 days a record of those instances where you, OPM, have gone in to assist managers or employees with respect to temporary hires, that would assist our record.

Now, as I see it, this hearing is really about two things. One is benefits, and the other is the merit system.

We see temporary employees as valuable, in fact, in some places, as indispensable, as in the National Park Service, for example, or Forest Service.

I would be interested to know, though, Ms. Bailey, because we here have before us managers from more typical temporary service agencies, I would like to know what percentage of temporary employees are outside of the seasonal area that we have just heard about and where we see the critical need in order to function.

Ms. BAILEY. I am not sure of the exact percentage, but——

Ms. NORTON. We understand that they are in virtually every category, that agencies far from just the National Park Service or the Forest Service, the IRS and you name it, all feel free to use temporary employees.

It would benefit our record to know what percentage come outside of these seasonal employees and yet are temporary employees that are used across the government.

Within 30 days, would you submit that information to the record?

Mr. Kashdan, I was interested in your testimony. Seems reasonable that there were a fair number of people, even yourself, who came into the government first as seasonal employees and then became full employees.

Now, our concern, of course, is, how does this key with the merit system? Could you tell us, in your case, how you were able to become a merit system employee while beginning as a temporary seasonal employee? How were you able to compete?

Mr. KASHDAN. Sure, Ms. Norton. Let me just clarify that, even in the 6-month seasonal, there is an initial period where there is a competition, and you do have to go through a process where you consider such things as veterans' preference, that kind of thing. But your probability of getting into the seasonal work force is much more enhanced. And then, after that, you can be recurringly appointed if you are not exceeding the 1,040 hours.

In my particular case, I applied—I don't even know if they have these anymore, but back in my time I applied for what we called OPM rosters, and I was on a recurring list for civil engineering technicians. And, at the point that the forest that I had, in fact, moved to in order to enhance my chances of getting a career job, they decided to fill the career job, went to the roster, and I was available. So I was able to be picked up off that roster.

So the merit process was going through the OPM roster, being ranked, and being entered on the roster. And that is how I got in. It is the same way that our chief, Tom Tidwell, got in too.

Ms. NORTON. So you were competing with people who had no experience.

Mr. KASHDAN. I was competing——

Ms. NORTON. I shouldn't say who had no experience. Who knows? Some of them may have had certain kinds experience outside of the government. But you were competing with people who would have not had experience in the agency you wished to work for.

Mr. KASHDAN. Yes. Ms. Norton, I was competing—at that point in time, I believe I was a GS–5, and, in fact, I was on a GS–4 roster. So I had some years, it didn't matter where those years were, they were experience that credited me and qualified me for——

Ms. NORTON. So that's what I want to get at. When you are competing on the merit side—and perhaps this is a question relevant for Ms. Bailey, as well—to what extent does experience received on the seasonal or temporary side count or help an employee to obtain permanent employment through the merit system?

Ms. BAILEY. Experience is something that counts regardless of how it's acquired. So if it's acquired under a seasonal appointment or a temporary appointment or if it's acquired outside the Federal Government—so let's take a Federal firefighter that happens to be working on a seasonal basis. Not only would that experience count, if then, in the wintertime, they're also a firefighter with the city of New York, that experience, combined experience, would count and then give them creditable experience toward whatever position that they are applying for.

So we don't make distinctions based on an appointment type or a work schedule. Experience is experience, no matter how it's gained.

Ms. NORTON. Let me ask you, Ms. Bailey, at the time of the death of James Hudson—and the whole city was moved by this hardworking man who just kept working, because he obviously needed to work, with a family—so far as I can tell, all that happened was there was a cap put on the number of years a temporary employee could work consecutively. Is that right?

Ms. BAILEY. Yes. As part of our review of that particular case and then in consultation with the agencies in discussing how best to balance both the mission accomplishment with what is in the best interest of the employees, that is correct, that we did put in—our temporary employment regulations allow for 1 year of employment and then a 1-year extension.

And the whole intent of this was to——

Ms. NORTON. Although I've just quoted you numbers that show a healthy number who work 5 years. When they work 5 years, is that because there is a shortage? Or is it because these employees are regarded as—the workplace usually regards employees, they're looking for experienced people, and so they keep picking these people up?

Ms. BAILEY. It may depend, ma'am, on which kind of appointment that they're actually using. Some of the agencies are able to, given the other exception that is in our temporary employment rules, is that if they are working 6 months or less, which is the 1,040 or less, if they're working that, then we do allow for indefinite 1-year extensions at a time. And that's how someone could work up to 5 years.

Ms. NORTON. Uh-huh, I see. So you think they may be in that category?

Ms. BAILEY. Yes. I mean, given the situation that you described, I do.

Ms. NORTON. I think James Hudson's death raised rather definitively the notion of benefits, however, so much so that Congress, in fact, gave Mr. Hudson's wife and children benefits, $34,000—retirement benefits, in effect.

Ms. BAILEY. Uh-huh.

Ms. NORTON. That's one man. There have never been retirement benefits given for any other person, has there?

Ms. BAILEY. Not that I'm aware of.

Ms. NORTON. That was a remedy for a man who dropped dead on the job.

Now, let me ask you, in light of the health care legislation that just passed, has OPM looked at health care for temporary workers? Or are they to be considered outside of the penumbra of a bill that claimed to cover 95 percent of the American people?

Ms. BAILEY. We have actually discussed this. When President Obama's administration first came in, we had the Recovery Act. And, at that point in time, we had issued a Schedule A authority for agencies to use to hire temporary workers to come in and to assist with the Recovery Act. And, at that time, the question did come up with regard to health benefits.

And so we took a very good, close look at both our regulations and the law. And the way the law is currently written, it is written in such a way that it excludes temporary employees from receiving health benefits.

Ms. NORTON. Private and public sector, you're saying?

Ms. BAILEY. Oh, I'm only speaking to Federal sector. I cannot speak to private sector.

Ms. NORTON. In testimony before us, one or all of you have indicated that, after a while, perhaps a year, you can get health insurance if you, the worker, are willing to pay for it. You can get in the FEHBP, Federal Employees Health Benefits Plan, if you are willing to pay for it. Is that right?

Ms. BAILEY. Yes. After 1 year, even temporary employees are eligible to apply for health benefits as long as they pay the 100 percent contribution of that. So, in other words——

Ms. NORTON. Why would there not be a shared benefit for these employees? Why would the Federal Government employ people and pick up—well, first, let me ask you, what percentage of people in these temporary jobs, which are not your highest-paid job in the Federal Government, in fact take on coverage, 100 percent of the health care cost? How many? What percentage do that?

Ms. BAILEY. I don't have the answer to that.

Ms. NORTON. I would think you would want to know after Mr. Hudson's death. It may be a quite empty promise.

What is the policy reason behind the notion of "coverage if you want it, but don't ask us to contribute anything to it?" What's the justification for that?

Ms. BAILEY. In this particular instance, we are not unsympathetic to this issue. And we would be more than willing to work with the subcommittee with regard to health benefits for these Federal employees.

Ms. NORTON. I appreciate that, Ms. Bailey.

We understand the difficulty raised here. Episodic employees will always present issues when it comes to benefits of various kinds. One can even understand the retirement notions and how difficult that would be, but then there is Social Security.

I understand that seasonals, however, don't receive any access to the Federal Employment Health Benefit Plan. Is that right?

Ms. BAILEY. If they're a permanent seasonal employee——

Ms. NORTON. What is that?

Ms. BAILEY. Permanent seasonal would be a permanent employee who works seasonal, meaning more than 6 months or more.

Ms. NORTON. I see. But there are over 1,000 less-than–6-month seasonal employees, the number we have.

Mr. Kashdan, Mr. Simpson, those less-than–6-month employees have no access to health care?

Mr. KASHDAN. Let me clarify. Again, there are career seasonals, and there are temporary seasonals. Career seasonals do get health benefits. If they have career status in the Federal work force, they do get health benefits, life insurance. Those under temporary employment, non-career status, as Ms. Bailey mentioned, if they are in an appointment where they work less than a year, they don't get health benefits.

So the large amount of our temporary seasonal work force is, in fact, a 6-month-or-less-type category, the 1,040 hours, and they do not qualify for benefits under the regulations.

Ms. NORTON. Now, I recognize—I think it was you, Mr. Kashdan, who said that you could have teachers who are seasonally out of work for themselves and so they pick up seasonal work; they may, in fact, have health care.

We do need to understand, in light of the health care bill, how many people we're talking about that simply don't have health care that were carried on the rolls of the Federal Government. This would be a terrible embarrassment, it would seem to be, to have another James Hudson-type incident—I don't mean death, I mean someone becomes seriously ill on the job and happens to be a Federal employee, a seasonal employee, and has no access to health care, despite the fact that we've touted the health care bill as covering almost everybody.

We have to understand that this is a very different work force. The work force of pensioners who work full-time—I'm sure that may have been the case for the Federal Government at some point, or something close to it—that's a work force of the past. And I'm not sure, Ms. Bailey, that OPM has looked at this new work force in light of benefits and in light of status.

It's going to be important for us to know how many of these seasonals, these less-than–6-month seasonals, have health care. Now, we know they don't have health care from the Federal Government, but they may have health care. So we need to have an accurate picture. I don't even know if we have a problem. We may. And if we do, it does seem to me that the first work force that would have to take account of it would be the Federal work force. We probably have this problem throughout the United States.

We have sought, in the health care bill, to correct this problem for seasonal workers in some parts of the country, I might add. But

then if we're sitting on such an issue ourselves, it would be an embarrassment and worse for the Federal Government.

I would like to dismiss this panel. Thank you for very helpful testimony on an issue that we are confronting anew, and you have enriched our record. Thank you very much.

Thank you, panel two. We want to proceed until the other Members get back.

The panelists are William Dougan, national president of the National Federation of Federal Employees, a role which he assumed in 2009. Mr. Dougan began his Federal career in 1976 with the National Park Service as a firefighter and tree planter. He is a 30-year member of the National Federation of Federal Employees and has served in a variety of positions at local council and national levels.

Colleen Kelley is the president of the National Treasury Employees Union, which is the Nation's largest independent Federal-sector union and represents employees in 31 different government agencies. Ms. Kelley was first elected to the union's top post in August 2009.

Phillip Glover has served as the national legislative coordinator for the Council of Prison Locals of the American Federation of Government Employees since 2005. Mr. Glover is also a senior office specialist for the Bureau of Prisons in Laredo, Pennsylvania, where he has served for 20 years. Prior to his time at the Bureau of Prisons, Mr. Glover served in the U.S. Army.

Patricia Barts worked for the Internal Revenue Service for over 30 years, where she served as a lead examiner in the IRS's Correspondence Examination Group. Since retiring from the IRS, Ms. Barts now serves as a vocal member of the National Active and Retired Federal Employees Association.

Welcome, panel two. We will begin with Mr. Dougan.

Oh, I would like to swear in the panel.

[Witnesses sworn.]

Ms. NORTON. Let the record show that all the witnesses have replied in the affirmative.

Now Mr. Dougan.

STATEMENTS OF WILLIAM R. DOUGAN, NATIONAL PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES; COLLEEN M. KELLEY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION; PHILIP W. GLOVER, LEGISLATIVE COORDINATOR, COUNCIL OF PRISON LOCALS, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO; PATRICIA BARTS, MEMBER, CHERRY HILL, NEW JERSEY CHAPTER, NATIONAL ACTIVE AND RETIRED FEDERAL EMPLOYEES

STATEMENT OF WILLIAM R. DOUGAN

Mr. DOUGAN. Ms. Norton, on behalf of the National Federation of Federal Employees [NFFE], and the 110,000 Federal employees that we represent, I thank the subcommittee for holding this hearing.

This critical issue has gone unaddressed since 1994 when James Hudson, a veteran and U.S. Park Service employee, died at the

Lincoln Memorial, leaving his widow and seven children destitute. He had no life insurance because of his temporary status. After legislation was introduced to remedy this, Hudson's widow commented, "Something good has come out of the death of my husband. This legislation means no one else will have to go through what this family went through." The bill subsequently died in committee.

Since then, we have seen MSPB's 1994 prediction come true, that continued use of long-term temporary employment has created a permanent underclass in the Federal work force. How long does temporary last in the Federal Government? For some employees of the U.S. Forest Service, temporary has lasted more than 30 years.

We all would like to think that the Federal Government is a model employer, as well it should be, but thousands of employees hired into temporary positions receive no health insurance benefits, no life insurance benefits, no retirement benefits, no step increases, and no competitive standing for internal placement into career jobs.

Federal land management agencies, in particular, overuse temporary employment. Even though land management work occurs every year, a loophole in the regulations allows agencies to use an unlimited number of successive temporary appointments. Some agencies are using this loophole to the maximum extent. Roughly 35 to 40 percent of the work forces of the Forest Service and National Park Service are hired as temps each season.

I brought with me today Joe Katz of Dover, ID, who is sitting here. Joe has worked as a temporary employee of the Forest Service almost every year since 1975; however, he remains a temporary worker to this day. He has been hired and terminated each year under a string of temporary appointments. Joe is a Marine who served his country honorably in Vietnam. He has held his current position in Trails and Recreation for 21 of the past 22 seasons, yet he still has no career position.

I've also brought Lisa McKinney from California, who is sitting there. She began working for the Forest Service as a firefighter in 1978 and has worked for the agency almost every season since then. She has performed the same regular and recurring work as a certified timber cruiser since 1995, yet she, too, has never received a career position.

Joe and Lisa exemplify the boots on the ground that actually get the agency's work done. Temporary employees like Joe and Lisa make invaluable contributions to the mission of the Forest Service. Many work for years, even decades, and never get a career seasonal appointment. Thousands of long-term temps work for five or more seasons. This is simply outrageous.

Long-term temps are only part of the story. Most temps move on to other employment within a few years, taking their experience and training with them. Because they are misclassified as temps, this huge retention problem goes unnoticed and unaddressed.

With high turnover, safety suffers. Recently, a long-term temporary employee who serves on a fire crew told me that eight of the members on her 11-person crew were rookies. I can tell you from my personal experience as a firefighter, that is a recipe for disaster.

This is a tough problem. There is no way under current laws and regulations to redesignate jobs held for decades by long-term temps as the permanent seasonal career jobs they really are. A career job with exactly the same duties as the long-term temporary job is considered a new job. And as MSPB noted in 1994, legal and procedural barriers prevent the consideration of many temporary employees for career positions regardless of how well they have performed.

To avoid a purge, a pathway to permanence for long-term temps must be the first step in reform. It would be unjust and unwise to discard these dedicated public servants and their knowledge and experience after their many years of service. If I only get one point across at this hearing, I hope it will be this: to make clear to this subcommittee and Federal agencies that a pathway to permanence must be put in place before reform can begin.

In closing, we would propose enactment of legislation to: grant competitive standing to long-term temporary employees so they can compete for any career job just like other Federal employees may do; afford priority consideration to any long-term temporary employee whose job is converted to career status; and give long-term temporary employees creditable service time for their temporary service for certain purposes.

This proposal has no price tag, it has no mandate. It is consistent with the 1994 recommendation of OPM and the National Partnership Council. It would simply provide agencies with the tools to allow reform to begin. With this done, NFFE will commit to working with the agencies, OPM, MSPB, and Congress on the appropriate use of available employment authorities.

This concludes my remarks.

[The prepared statement of Mr. Dougan follows:]

STATEMENT OF

WILLIAM R. DOUGAN

NATIONAL PRESIDENT
OF
THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES

BEFORE

THE HOUSE SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

REGARDING

TEMPORARY EMPLOYEE PRACTICES: HOW LONG DOES TEMPORARY LAST?

JUNE 30, 2010

Introduction

On behalf of the National Federation of Federal Employees (NFFE) and the 110,000 federal employees our union represents throughout the United States and abroad, at more than 30 federal agencies and departments throughout the federal government, I thank the Subcommittee for holding this hearing and for giving me the opportunity to submit testimony on temporary employee practices in the federal government.

Background

How long does temporary last in the federal government? For some of the federal workers we represent in the U.S. Forest Service, temporary *has lasted* more than thirty years. Many of us like to think that the federal government is a model employer, as well it should be. But, for many thousands of employees hired under the temporary appointment authority at 5 CFR, Part 316, Subpart D, their conditions of employment are as bad as those provided by *any* employer. They receive no health insurance benefits, no life insurance benefits, no retirement benefits, no step increases, and no competitive standing for internal placement into career jobs.

The problem is particularly pervasive in federal land management agencies because of the seasonal nature of the work. Even though land management work is regular and recurring work that occurs every year, a loophole in temporary employment regulations allows agencies to use an unlimited number of successive temporary appointments as long as the work season is limited to six months or less. This is how Joe Katz, of Dover, Idaho, came to be a "temporary" federal employee who has served for 30 seasons, but has no service credit to show for it.

Joe is a Marine who served his country honorably in Vietnam, yet he has never been given the dignity of a permanent position with the Forest Service even after three decades of dedicated service. He began working for the Forest Service Youth Conservation Corps program in 1975, and has worked for the agency ever since, except for 2007 and five years in the mid-1980s. He has planted trees, performed targeted forest thinning, been a heavy equipment inspecting officer, been in fire (where he led crews, did initial attack, fought large fires throughout the Northwest, did broadcast burns, etc.). In addition to his position of record, he has performed a variety of other duties, such as working on timber crews, building fish ladders, working at tree nurseries, etc. His current position is in trails and recreation, a position he has held for 21 of the past 22 seasons – under a string of temporary appointments.

Joe is here with us today, as is Lisa McKinney, who began working for the Forest Service as a firefighter in 1978. For three years, she worked for the agency through a private contract; for the other 30 seasons, under a series of temporary appointments. She has been performing the same regular and recurring work on a timber crew since 1995, for the last 14 years as a certified timber cruiser.

Joe and Lisa exemplify the "boots on the ground" that actually get the agency's work done. However, throughout their careers with the Forest Service, they have received no health insurance benefits, no life insurance benefits, no retirement benefits, no step increases, and no competitive standing for internal placement into career jobs. Adding insult to injury, temporary employees like Lisa and Joe often take on duties above their official grade and function as work leaders because of their skills and experience, but because of their temporary status are not officially placed into the positions. This negatively affects not only the pay to which they should be entitled, but also the work history they can claim in applying for career

jobs. Joe and Lisa will be available to answer any questions you may have about their experiences after the hearing.

Joe and Lisa's stories may be extreme, but they are not atypical. Many dedicated seasonal employees work for years, or even decades, and *never* get a career seasonal appointment. Of the 914 temporary employees who responded to our 2009 survey on temporary employment practices, over half had worked under temporary appointments for five or more seasons. We refer to these employees as "long-term temps." On average, the long-term temps who responded to our survey had worked for 12 seasons as temporaries. While we acknowledge that our survey may not be representative of the workforce as a whole, even agency length of service data indicates that that the number of long-term temps numbers in the thousands.

Use of the temporary employment authority is clearly unjust when examined through the prism of its effects on long-term temps, who keep coming back because of ties to family, the community, love of the work, and other personal reasons. However, the work performed by a majority of short-term temps is regular and recurring as well.

The Forest Service hires approximately 15,000 temporary employees each season. During the field season, this represents 35-40% of the total workforce. The National Park System employs a similar percentage of seasonal temps. Although the long-term temps performing this work number in the thousands, most of it is performed by short-term temps, who leave the agency after just a few seasons. The false categorization of this regular and recurring seasonal work as temporary masks a huge and expensive retention problem, caused in large part by the lack of benefits afforded those who perform it. In the Forest Service,

approximately 70% of the competitively appointed "temporary" workforce leaves the agency after three or fewer years.

Effects on Workforce Morale, Safety, and Capacity

The poor morale of the land management workforce has been documented by employee satisfaction surveys conducted by OPM. In the most recent "Best Places in Government to Work" rankings, the Forest Service and National Park Service scored 206th and 160th, respectively, out of 216 federal agencies surveyed. While there are potentially several reasons for these poor rankings, the fact that so many of the agencies' employees serve under temporary appointments is certainly among the most significant. Temporary employees work side by side with permanent employees, often performing the same duties, and in some cases even effectively supervising them. Yet, they are denied a wide range of rights and benefits because of their temporary status.

Poor morale and a lack of access to critical benefits, like health care, are a drag on the efficiency and productivity of agencies. Fire suppression and other field-going jobs are physically challenging, and often dangerous. Without health care, many injuries sustained by temporary employees go unreported and untreated. Over time, they can develop into chronic conditions. This is a great burden on the temporary seasonal workforce. Not only does this adversely impact employees' long-term health, which is a great injustice to them, but it also limits their productivity.

Other inefficiencies are associated with the extremely high turnover rate of temporary seasonal employees. Because temporary workers have little security and stability, they very often move on to other employment, and they take their experience and training with them, all

of which is costly for agencies to replace. Workforce planning is very difficult when an agency has no idea how many employees with the know-how to do the job are going to return from year to year. Project continuity suffers.

Even within a season, the temporary authority creates huge inefficiencies for seasonal work, which by its very nature is variable and unpredictable. If agencies are to maintain a given temporary position on the books for next year's season, the employee in that position must be terminated prior to working 1040 hours (6 months) in any given year. Often, it is this regulatory limit that drives the termination, not the need for the work. This results in the termination of employees when their work is still needed, which in turn requires costly and inefficient contingency plans to be put into effect. For example, last season Lisa McKinney, who is here with us today, was terminated (along with the other seasonal temps on her crew) before the timber marking was completed on a sale they had worked on since its inception. While they sat at home and collected unemployment insurance, an out-of-state marking crew unfamiliar with the sale was brought in to finish the job. Similar stories were common in our survey.

The effects of a large temporary workforce on safety are profound. For example, current efforts by the Forest Service to improve safety are undercut by the difficulty of inculcating a culture of safety into a field workforce that consists of a large percentage of transient employees. A culture of safety is not promulgated by policy documents; it is promulgated by the passage of wisdom from old-timers to newcomers, out in the field. In preparing for this testimony, I spoke with a long-term temporary employee who serves on a fire crew. She told me that eight of the members on her 11-person crew were rookies. This is a recipe for disaster, and it is happening far too often because of high turnover.

History of the Issue

I am not here today to point fingers or denigrate agency leadership on this issue. I served proudly under some of the same Forest Service leaders who are still in positions of leadership today, and I have the utmost respect for them and the difficult problem they face here. The temporary employment problem has existed for many decades, much longer than the tenure of any current agency leader. I hope to work collaboratively with the Forest Service and other land management agencies in addressing this problem. However, the sad fact is that the agencies lack the necessary statutory/regulatory tools to transition their long-term temps into appropriate career positions. This is because statutory reforms supported by the Office of Personnel Management (OPM) and the Merit System Protection Board (MSPB) in 1994 fell by the wayside. We will need the help of Congress to move forward without doing untold damage, both to our long-term temps who have already suffered enough, and to the agencies that depend on their expertise on the ground. Here is a brief summary of earlier reform efforts:

- In 1992, an OPM report [OPM, "Temporary Employment within Land Management Agencies of the Federal Government," (July, 1992)] concluded that "in practice [temporary employment] has expanded to become quasi-permanent employment for many. In contravention of OPM rules, temporary employees are being utilized to perform ongoing work." OPM concluded that land management agencies were using temporary employees to perform permanent work in order to avoid the cost of providing benefits.
- A series of Congressional hearings culminated in a June 23, 1993 hearing before the House Civil Service Subcommittee, at which Chair Frank McCloskey observed, "The

blatant abuse of temporary employees in Federal agencies is one of the most disturbing occurrences I have encountered during my time in Government... OPM regulations leave endless possibilities for the manipulation of temporary workers. Agencies can easily circumvent OPM's regulations... The fact that a temporary worker has been employed for 20 years without any rights is heinous and must not be allowed to continue... There is a dire need for reform."

- In September, 1994, a MSPB report [MSPB, "Temporary Federal Employment: In Search of Flexibility and Fairness," (Sept. 1994)] concluded that "temporary employment policy should be based on the assumption that the employment will normally be on a one-time, short-duration basis. To proceed on any other basis would serve to create a permanent underclass in the federal workforce..." Noting that "legal and procedural barriers... often preclude the consideration of many temporary employees for permanent positions regardless of how well they have performed," MSPB endorsed the concept of converting temporary employees to permanent status.
- On November 14, 1994, OPM promulgated new regulations on temporary employment. The duration of a temporary appointment was reduced from four to two years. However, seasonal work of less than six months' duration was exempted from these requirements, meaning that for seasonal work there is "no limit on the number of extensions or noncompetitive reappointments, as long as the employees [are] paid for less than 1,040 hours each year," *i.e.*, 130 eight-hour work days. Previously, seasonal work had been limited to 180 work days per season, so this represented a significant reduction. The intent of the reduction was to force agencies that had been using the temporary hiring authority for seasonal work of 8-10 months' duration to convert

these jobs to career seasonal jobs. It did not achieve this effect, and in fact, left temporary seasonal employees worse off than before. In promulgating these regulations, OPM noted they were "an interim measure… pending more comprehensive reform" and expressed support for legislation under which long-term temporaries who have demonstrated their abilities on the job would not have to compete with the public for permanent vacancies, *i.e.*, competitive status for long-term temps.

- In March, 2002, the General Accounting Office (GAO) reported (GAO-02-296) substantial inappropriate use of the temporary employment authority had persisted, especially the seasonal/intermittent authorities, and recommended regulatory reform. No reform occurred. The report noted that federal employers are prohibited from using temporary employees to avoid the costs of employee benefits or ceilings on permanent employment levels and from using temporary employment as a trial period prior to permanent employment.

Unfortunately, the legislation anticipated by MSPB and OPM to enact the needed comprehensive reform never materialized. Reform is long-overdue and much-needed.

Laying the Groundwork for Reform

Over-use of the temporary employment authority in federal agencies is not only unjust to long-term temporary employees, it is wasteful in many ways. Appropriate use of the career seasonal employment authority at 5 CFR, Part 340, Subpart D would not only be more fair and just to the employees involved, it would also in the long run result in a more capable and

efficient workforce. On a seasonal basis, tours can be extended to meet unpredictable work demands. More significantly, as noted in the CFR, "Seasonal employment allows an agency to develop an experienced cadre of employees under career appointment to perform work which recurs predictably year-to-year. Consistent with the career nature of the appointments, seasonal employees receive the full benefits authorized to attract and retain a stable workforce."

We believe much of the work currently performed under the Part 316 temporary employment authority would be more appropriately performed under the Part 340 career seasonal employment authority. However, agencies face significant statutory and regulatory barriers to transitioning their workforce to this appointment authority.

Accordingly, reform must be undertaken with care. Addressing these barriers by putting a "pathway to permanence" in place for long-term temporary employees must be our first order of business. Without a pathway to permanence, conversion of temporary jobs to permanent seasonal jobs would lead to a purge of many long-term temporary employees. This is because there is no way under current regulations to convert their temporary job into a career status job. In fact, current regulations even deny them competitive status and creditable service time for their years of work. As noted in the 1994 MSPB report cited above, "legal and procedural barriers… often preclude the consideration of many temporary employees for permanent positions regardless of how well they have performed." Thus, to abruptly convert the temporary positions in which long-term temps have worked for years to permanent seasonal positions would be to discard them – and their knowledge and experience – after their many years of service. This would be unjust and unwise. A less obvious but no less real barrier is the pervasive culture that assigns temporary employees to a second-class

status, unworthy of a career appointment in many managers' minds. Reform must begin with a pathway to permanence for these long-term temps.

The situation in which federal land management agencies – and their employees' unions – currently find themselves is like driving down the interstate at 70 mph and realizing the roadway is covered with ice. Slamming on the brakes is the wrong move. Similarly, an abrupt abolishment of temporary positions would land many employees, and the agencies that depend on their expertise, into the ditch as well.

In 1994, a well-meaning reform effort was begun without first putting the right tool in place. Many were harmed instead of helped. This is not acceptable. We cannot abandon employees who have given so many years of service to this agency. One thing I hope this hearing will achieve is to make clear to this Subcommittee and the federal land management agencies that we need to establish a "pathway to permanence" before we begin to scale back or abolish the use of temporary positions. With this necessary tool in place, our organization will commit to working with the agencies, OPM, MSPB, and Congress on the appropriate use of available employment authorities.

To close, consistent with recommendations put forth by MSPB and OPM in 1994, we propose enactment of legislation to:

- grant competitive standing to long-term temporary employees (those with a more than eighteen months of aggregated service, *i.e.*, those entering their fourth season of temporary employment) so they can compete for career jobs like any other federal employee
- afford priority consideration to long-term temporary employees for their job if it is converted to permanent status (this follows MSPB's recommendation on limiting

conversions of temporary employees to career positions closely related in their duties and organizational location to those held by the employees under temporary appointment)

- give long-term temporary employees creditable service time for their "temporary" service (note that creditable service is calculated independently from any annuity obligations; our proposal is to decouple the two and address the former)

Our proposal has no price tag. It has no mandate. It would simply provide management with a necessary tool to allow reform to begin. With this tool in place, we look forward to working with all parties for reform with justice.

Ms. NORTON. Thank you, Mr. Dougan.

Ms. Kelley.

STATEMENT OF COLLEEN M. KELLEY

Ms. KELLEY. Thank you very much, Chairman Norton.

On behalf of the 160,000 Federal employees represented by NTEU, I want to thank you for this hearing today to talk about the important issue, the use of temporary employees by the government.

As you've heard, there are too many stories out there, very real stories that are happening today. And while temporary employment status we all recognize can be useful to an agency when it is properly applied, it is also a status that lends itself to abuse, and it can be an unfair working condition for an employee.

Temporary employees do not participate in FERS or in the right to family and medical leave or in leave for military service. And these policies might be defensible for a true temporary employee of 1 year or less, but it becomes a severe denial of rights when the status is abused.

Regulations are very clear that agencies are prohibited from using temporary status to avoid the costs of employee benefits, to extend the probationary period, or to avoid competitive hiring. However, we are concerned that these regulations are too often ignored.

Today, I would like to highlight a particularly unfair situation that confronts current and former employees of the FDIC who performed temporary service early in their careers. But this issue I'm going to describe would impact every temporary employee who is currently under that status today.

The FDIC hired thousands of temporary employees during the 1980's, and they were known as LG employees, or liquidation grade employees. Their duties included managing and liquidating the assets of failed banks and savings and loans. However, they were excluded from any credit for retirement under FERS. They continued to serve in 1-year appointments, with thousands of them serving longer than 5 years, and many renewed for over 15 years in those appointments. These employees were clearly temporary only in name.

The FDIC hired them under special authority it had acquired in 1938 and had never surrendered that authority. However, that authority had only been used to hire temporary bank-specific teams of liquidation personnel. In the early 1980's, the FDIC adopted a new policy of establishing regional offices dealing with multiple bank liquidations. It is this action that NTEU considered an abuse, as such work had historically been viewed as permanent.

In 1993, OPM moved to take away this authority from the FDIC. Over the objections of employees and NTEU, OPM agreed to a compromise with the FDIC that allowed them to phase it out in their misuse of this temporary classification and phase it out over 2½ years, from January 1994 to June 1996, continuing the denial of retirement credit during that time.

With the passage of the FERS Act in 1986, Federal employees without retirement credit because they had years as temporary employees were able to buy back credit for the years prior to 1989 by

paying for the retirement deductions that were not taken. But former LG employees were not allowed to buy back their credit for temporary service after 1989. The result is that valuable service time from January 1, 1989, until the date they actually became eligible to participate in FERS and have made deductions was essentially lost or forfeited.

Now, we understand that the intent of Congress in the 1986 FERS legislation was to encourage agencies to cease overusing temporary employees and abusing the classification. Congress allowed a 2-year window as agencies transitioned. But it was not expected that the FDIC, a government corporation with considerable administrative autonomy, would continue to abuse the temporary service early in their careers.

The NTEU had long argued that Congress needed to act to correct this grave injustice that was suffered by LG employees. NTEU, along with many Members of Congress and FDIC management, have voiced support for legislation to allow LG employees to buy back their missed retirement credit.

We would ask that Congress move to allow former FDIC LG employees to get credit for years of service they performed between 1989 and when they were given permanent status, so long as they are willing to make a payment for these years of credit equal to the retirement deductions they would have contributed if they had been allowed.

We propose this credit would only be available to those who were victims of the unfair FDIC policy. We are not asking that it be extended to those who never accepted or acquired permanent Federal positions.

We believe that allowing these misclassified LG employees the opportunity to buy back their lost retirement credit would be an equitable and just resolution to the unfairness that they faced by being misclassified for so many years as temporary workers.

In a few days, we expect the President will be signing the Dodd-Frank Wall Street Reform and Consumer Protection Act. And I would like to thank you, Chairman Lynch, for your efforts on that bill, especially in crafting the aspects dealing with Federal personnel policies.

This groundbreaking consumer protection legislation is witness to the importance of the work of the frontline employees at the FDIC and other financial regulatory agencies. I don't think it is too much to ask that those men and women who are working so hard as bank examiners, liquidation specialists, and credit union consumer compliance specialists be given retirement credit for all of their years of service in the Federal Government.

Thank you again for this hearing, and I would welcome any questions you might have.

[The prepared statement of Ms. Kelley follows:]

STATEMENT OF COLLEEN M. KELLEY

NATIONAL PRESIDENT

NATIONAL TREASURY EMPLOYEES UNION

Before the

SUBCOMMITTE ON THE FEDERAL WORKFORCE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE OF REPRESENTATIVES

June 30, 2010

Chairman Lynch, on behalf of the 150,000 federal workers represented by the National Treasury Employees Union (NTEU), I would like to thank you for holding this hearing and for inviting me to testify on the important issue of the use of temporary employees by the federal government. While temporary employment status can be of great use to an agency when properly applied, it is also a status that lends itself to abuse and can be an unfair working condition for an employee. Properly, temporary status is for work that is not envisioned to last more than a year. Employees and their collective bargaining representative have few rights in challenging an agency's judgment that work would last no more than a year and agencies have the right to extend temporary status for a second year if they have underestimated the duration of the work. Temporary employees generally are not allowed retirement benefits other than participation in Social Security Old Age, Survivors and Disability Insurance. They lack the right to family and medical leave as well as leave for military service. This might be a defensible policy for a true temporary employee of a one year or less duration, but becomes a severe denial of rights when the status is abused. Regulations are very clear that agencies are prohibited from using temporary employee status to avoid the costs of employee benefits or to extend the one or two year probationary period already present in permanent positions. Temporary status also is not to be used to avoid competitive hiring. However, we are concerned that these regulations are often ignored. Vigilance on this matter is very important. Mr. Chairman, with today's hearing, you are doing your part and I commend you for it. Where temporary employees have representation by NTEU, we do all that we can under the limitations of law federal sector unions are subject to. The Office of Personnel Management and federal Departmental leaders must also be committed to seeing that temporary status is not abused.

Today, I wish to particularly speak about a grave situation confronting current and former employees of the Federal Deposit Insurance Corporation (FDIC) who performed temporary service early in their careers. NTEU is the exclusive bargaining representative for FDIC employees. The FDIC hired thousands of temporary employees during the 1980s known as LG's or liquidation grade employees. Their duties included managing and liquidating the assets of failed banks and savings and loans. These employees were allowed to participate in the FDIC's health care plan (at that time, FDIC had it own health care plan, separate from the Federal Employees Health Benefit Program). However, they were excluded from any credit for retirement under the federal system. They served in continuous one year appointments with thousands of them serving longer than five years and many renewed yearly for over fifteen years. NTEU strongly protested the status of these employees who were clearly temporary only in name. Working with Congress and the Office of Personnel Management (OPM) new policies were implemented that limited FDIC's use of temporary employees in order to halt widespread abuses. In 1993, OPM informed FDIC management that their special authority to use temporary employees for extended periods would be revoked come 1994 unless FDIC could provide a justification.

I would note, Mr. Chairman, that the special authority did not originate during the Savings and Loan crisis of the 1980s but was acquired by FDIC in 1938 during the Great Depression and never surrendered. However, even during the Great Depression and afterwards, it had only been used to hire temporary bank-specific teams of liquidation personnel. In the early 1980's FDIC adopted a new policy of establishing regional offices dealing with multiple bank liquidations. It is this action that NTEU considered an abuse as such work had historically

been viewed as permanent. In fact, the classification of regional office liquidation personnel as temporary was questionable enough that NTEU was able to litigate over the legal permissibility of this action. While, in the end, the federal Appeals Court ruled against NTEU and these employees, giving great deference to the agency's personnel decisions, we believe the five years of litigation over this matter shows that there were real legal questions as well as the obvious unfairness of the misuse of the LG classification. Further, FDIC management's principal defense of the use of this special authority was that it allowed them to fill urgent positions immediately once a bank closed without having to wait to conduct competitive examinations, rather than any connection to the length of the appointment.

Over the objection of NTEU, FDIC demanded a continuation of it special authority beyond the January 1, 1994 date OPM had planned to terminate the authority. FDIC argued for this special authority by stating it needed continuity in the LG workforce and that these employees clearly have specific knowledge of bank and thrift cases needed to bring about a timely resolution. NTEU argued that it was exactly for these reasons these workers should have been given permanent status. In fact, FDIC management came to understand the importance of LG employee retention to its work. While denying them federal retirement credit, they worked to retain these employees and responded to NTEU's objection to their classification by offering them the dental, vision and life insurance offered to permanent full time FDIC employees. Once OPM objected in 1993 to their abuse of the temporary classification and threatened to take away their special authority, FDIC extended to these LG employees the benefit of participating in FDIC's supplemental 401(k) retirement plan with the same employer match as permanent employees. That is right, Mr. Chairman, they were given the FDIC's supplementary retirement

benefit but not the basic federal retirement benefit. They worked hard and earned their dinner. But management withheld the roast beef, only throwing them a cupcake.

Nevertheless, OPM agreed to allow FDIC to phase out its on-going misuse of the temporary classification over two and a half years, from January 1994 to June of 1996, after which it would be required to follow a new government wide standard issued by OPM that full time temporary employment was limited to one year with the option of a renewal of one additional year. Employees hired for more than a year would then be classified as term employees. While term employees lack many of the job protections that permanent federal employees have, they are eligible to earn leave and generally have the same benefits as permanent employees including health and life insurance, within-grade increases and Federal Employees Retirement System and Thrift Savings Plan coverage. Term appointments are not to extend for more than four years.

For many years, NTEU has urged Congress to act to correct the grave injustice suffered by LG employees. With the passage of the Federal Employees Retirement System Act in 1986 [Public Law 99-335 – 5 U.S.C. Section 8411, Subsection (b)(3)], federal employees without retirement credit because they had years in temporary status were able to buy back credit for the years prior to 1989 by paying for the retirement deductions that were not taken. But former LG employees were not allowed to buy back credit for temporary service after 1989. The result is that valuable service time from January 1, 1989 until the date that they actually became eligible to participate in FERS and have deductions made was essentially lost or forfeited. We understand the intent of Congress in the 1986 FERS legislation was to encourage agencies to

cease overusing temporary employees and abusing the classification. Congress allowed a two year window as agencies transitioned. It was not expected that FDIC, a government corporation with considerable administrative autonomy, would continue to abuse the temporary classification beyond this period.

Legislation would be required to fix this injustice to FDIC LG employees. Bills have been introduced periodically, including by your colleague Representative Paul Kanjorski (D-PA), who ably serves on the Oversight and Government Reform Committee as well as the Financial Services Committee that has jurisdiction over the FDIC. FDIC management has also voiced support for legislation to correct this past injustice. I want to be clear the proposal that NTEU supports would not simply give former FDIC LG employees credit for years of service they performed between 1989 and when they were given permanent status, but would require them to make a payment for these years of credit equal to the retirement deductions they would have contributed if they had been allowed, plus interest. In all cases, this credit would only be available to those who were victims of the unfair policy in which they were renewed annually for many years as temporary employees until the late 1990s when management finally changed its policy and gave these employees permanent or term status. We are not asking for this to be extended to those who never acquired permanent federal positions. What this would require is a simple amendment to Chapter 83 of Title V, U.S.C. and NTEU would be happy to work with the Subcommittee in developing appropriate legislative language. We believe that allowing these misclassified LG employees the opportunity to buy back their missed retirement credit would be an equitable and just way to compensate them for their long standing and on-going service to the federal government.

The employees impacted by denial of credit for these years are not a large group. We estimate that there are 150 former LG employees with missing service credit still working at FDIC and approximately 500 other such individuals who are working in other parts of the federal government, mostly in other financial regulatory agencies such as the NTEU represented National Credit Union Administration.

In a few days, Mr. Chairman, we expect President Obama will be signing the very important Dodd-Frank Consumer Protection and Financial Reform bill. I know you and your staff were very helpful to the authors of this legislation in crafting the aspects dealing with personnel policies at federal financial regulatory agencies. This ground breaking consumer protection legislation is witness to the importance of the work of the front line employees at the FDIC and other financial regulatory agencies. I don't think it is too much to ask that those very men and women who are working so hard as bank examiners and liquidation specialists and credit union consumer compliance specialists be given retirement credit for all of their service years in federal employment.

Chairman Lynch, thank you again for this opportunity to discuss the situation of federal workers with temporary service. I would be pleased to answer any questions you or other members of the Committee have. Thank you.

Mr. LYNCH [presiding]. Thank you, President Kelley.

Mr. Glover, you are now recognized for 5 minutes for an opening statement.

STATEMENT OF PHILIP W. GLOVER

Mr. GLOVER. Chairman Lynch, Congresswoman Norton, members of the subcommittee, my name is Phil Glover. I am the national legislative coordinator for the Council of Prison Locals, American Federation of Government Employees. We represent 28,000 correctional workers nationwide serving in 114 Federal prisons.

I have served as a representative of the union since 1991 and have been involved in many representational and legislative issues throughout my service. This issue was brought to us by members at our local who, as they started to look at retirement, this service credit issue arose.

I want to thank you for the opportunity to testify today at the hearing on existing temporary employee authorities and their adverse impact on temporary employee status and benefits.

Our problem at Bureau of Prisons is the fact that many Federal correctional workers who are participants in the Federal Employees Retirement System are unable to make a service credit deposit into FERS for temporary civilian service performed after January 1, 1989.

Federal correctional workers, as well as other Federal law enforcement officers, are covered by special retirement rules. Under 5 C.F.R. Section 842.208, an employee working in law enforcement can retire after 25 years of service at any age and at 50 years of age after 20 years of Federal service.

We have mandatory retirement at age 57. It has been determined that working with violent offenders requires a youthful and vigorous work force. This has been in effect for correctional officers and Federal correctional workers since 1956. The mandatory retirement age was changed in 1990 from 55 to 57 years of age.

Our members perform dangerous work inside Federal BOP correctional institutions. We supervise murderers, gang members, terrorists, and other dangerous inmates. Since the brutal stabbing murder of a correctional officer in June 2008 by two prison inmates at USP Atwater, we have had at least 380 vicious inmate-on-worker assaults in the BOP system.

After 20 to 25 years working in these facilities under such stressful conditions, most people are ready to leave. Once our employees attain the retirement age, it is normal, depending on their individual circumstances, to retire. This is where the problem arises regarding service credit for temporary civilian service. 5 C.F.R. Sections 304 and 305 do not allow a deposit for temporary civilian service after January 1, 1989.

Many bargaining unit employees in the BOP have been hired using temporary employment rules. This is done for many reasons, such as to get a specialist onboard quickly or to hire large groups of correctional officers to startup an existing prison, a new facility.

Between 1989 and 1991, the BOP went on a large hiring spree due to identified understaffing problems in the systems. As many as 6,000 employees were hired, and many of them were hired as temporary employees. Records from the Department of Justice indi-

cate that, between 1989 and 1993, there were 3,569 employees initially hired by the Bureau of Prisons as temporary employees and then, after short periods of time, were transitioned into permanent employee status.

Similarly, DOJ and the National Finance Center records show that, between 1989 and 2010, there were over 6,200 employees initially hired by BOP as temporary employees and then again, after short periods of time, were transitioned into permanent employee status.

Many of those BOP employees are now approaching retirement age. Many of them didn't realize they were hired in a temporary employment status. We had a situation recently where one employee was hired before the January 1, 1989, date and, thus, could make a deposit for service credit, while another employee hired 1 month later was informed he could not. This is clearly unfair.

Another situation that confuses the issue is the employee service date for seniority purposes is the date they began receiving paychecks in BOP. However, their requirement date could be a year to 3 years later, depending on the date they gained permanent employment status. It is also unclear why this regulation was changed in the first place.

In the change from the Civil Service Retirement System to FERS, which passed in 1986, the ability to make a deposit for service credit was maintained. It wasn't until 1989 that credible service was denied to employees who were willing to make the deposit.

We have identified employees who have as much as 3 years' temporary employment time in the Bureau of Prisons. These employees have worked alongside full-time employees who can retire at the appropriate age and time-in-service requirements. The employee with temporary service time is used in the same manner as those with full-time service. They respond to emergencies, they handle difficult inmates, and may have been on the Voluntary Disturbance Control Team or other emergency operations. They must pass a full 15-year background check, pass basic correctional training in Glynco, GA, and handle a firearm. Temporary employees in the BOP also have arrest authority pursuant to 18 U.S.C. 3050.

If Congress would change the provision back to the 1988 language, we believe it should include all current employees.

In closing, all law enforcement officers, including BOP correctional workers, should be able to make the service credit deposit into FERS for temporary civilian service performed after January 1, 1989.

And I will be happy to answer any questions I can. Thank you.

[The prepared statement of Mr. Glover follows:]

STATEMENT OF

PHILIP W. GLOVER
LEGISLATIVE COORDINATOR
OF THE
COUNCIL OF PRISON LOCALS
AMERICAN FEDERAL OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE

SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

ON

"TEMPORARY EMPLOYEE PRACTICES:
HOW LONG DOES TEMPORARY LAST?"

JUNE 30, 2010

Chairman Lynch, Ranking Member Chaffetz, and Members of the Subcommittee -

My name is Phil Glover. I am the National Legislative Coordinator for the Council of Prison Locals, American Federation of Government Employees. I have been a Correctional Officer in the Federal Bureau of Prisons (BOP) since September of 1990. I have served as a representative of our union since 1991, and have been involved in many representational and legislative issues throughout my service.

I want to thank you for the opportunity to testify today at this hearing on existing temporary employee authorities and their adverse impact on temporary employees' status and benefits. Our problem at BOP is the fact that many federal correctional workers who are participants in the Federal Employees Retirement System (FERS) are unable to make a "service credit" deposit into FERS for temporary civilian service performed after January 1, 1989.

Federal correctional workers, as well as other federal law enforcement officers, are covered by special retirement rules. Under 5 CFR Section 842.208, an employee working in law enforcement can retire after 25 years of service at any age, and at 50 years of age after 20 years of service. We have mandatory retirement at age 57. It has been determined that working with violent offenders requires a youthful and vigorous workforce. This has been in effect for correctional officers since Public Law 80-879 (July 2, 1948). Non-correctional officers were added in Public Law 84-854 (Jul 31, 1956). The mandatory retirement age was changed in 1990 from 55 to 57 years of age.

Our members perform dangerous work inside BOP correctional institutions. We maintain security at 114 federal prisons across the United States and in Puerto Rico. We supervise murderers, gang members, terrorists, and other dangerous inmates. Since the brutal stabbing murder of Correctional Officer Jose Rivera on June 20, 2008, by two prison inmates at USP Atwater, we have had at least 380 vicious inmate-on-worker assaults in the BOP system. After 20 to 25 years working in these facilities under such difficult and stressful conditions, most people are ready to leave. Once our employees attain their retirement age, it is normal, depending on their individual circumstances, to retire.

This is where the problem arises regarding service credit for temporary civilian service. 5 CFR Sections 304 and 305 do not allow a deposit for temporary civilian service after January 1, 1989 (see attached).

Many bargaining unit employees in the BOP have been hired using temporary employment rules. This is done for many reasons, such as to get a specialist on board quickly, or to hire large groups of employees while waiting for appropriate paperwork to be completed.

Between 1989 and 1991, the BOP went on a large hiring spree due to identified understaffing problems in the system. As many as 6,000 employees were hired and many of them were hired as temporary employees. Records from the Department of Justice (DOJ) indicate that between 1989 and 1993 there were 3,569 employees initially hired by the BOP as temporary employees and then – after short time periods – were transitioned into permanent employee status. Similarly, DOJ and National Finance Center (NFC) records show that between 1989 and 2010 there were over 6,200 employees initially hired by BOP as temporary employees and then again – after short time periods – were transitioned into permanent employee status.

Many of those BOP employees are now approaching retirement age. Many of them didn't even realize they were hired in a temporary employee situation. Many did not know of these regulations. We had a situation recently where one employee was hired before the January 1, 1989 date and thus could make a deposit for service credit while another employee hired one month later was informed he could not. This is clearly unfair. Another situation that confuses the issue is the employee's service date for seniority purposes is the date they began receiving paychecks in the BOP. However, their retirement date could be a year to three years later depending on the date they gain permanent employee status.

It is also unclear why this regulation was changed. In the change from the Civil Service Retirement System (CSRS) to the FERS, which passed in 1986, the ability to make a deposit for service credit was maintained. It wasn't until 1989 that creditable service was denied to employees who were willing to make a deposit.

We have identified employees who have as much as three years temporary employment time in the BOP. These employees have worked along side full time employees who can retire at the appropriate age and time in service requirements. The employee with temporary service time is used in the same manner as those with full time service. They respond to emergencies, handle difficult inmates, and may have been on our voluntary Disturbance Control Teams or other emergency operations. They must pass a full 15-year background check, pass Basic Correctional Training in Glynco, GA and handle a firearm. Temporary employees in the BOP also have arrest authority pursuant to 18 U.S.C. 3050.

If Congress would change the provision back to the 1988 language, we believe it should include all current employees.

In closing, all law enforcement officers – including BOP correctional workers - should be able to make a "service credit" deposit into FERS for temporary civilian service performed after January 1, 1989, and therefore be able to retire at the date they started working in these hazardous prison conditions. After 20 or 25 years of service to the country, buying this small amount of time back should be allowed. We respectfully request Congress address this matter and return

the language to the 1988 service credit language. For men and women working together side by side with full time equivalent employees doing the same job it is only fair.

Again, thank you for inviting us today and I would be happy to answer any questions you may have.

5 C.F.R.

Sec. 842.208 Firefighters, law enforcement officers, and nuclear materials couriers.

(a) An employee who separates from service, except by removal for cause on charges of delinquency or misconduct, is entitled to an annuity--

(1) After completing any combination of service as a firefighter,law enforcement officer or nuclear materials courier totaling 25 years; or

(2) After becoming age 50 and completing any combination of service as a firefighter, law enforcement officer or nuclear materials courier totaling 20 years.

[[Page 294]]

(b) An annuity payable under paragraph (a) of this section commences on the first day of the month following separation.

[52 FR 4473, Feb. 11, 1987, as amended at 65 FR 2524, Jan. 18, 2000]

Sec. 842.304 Civilian service.

(a) Except as otherwise provided under title III of the Federal Employees' Retirement System Act of 1986, an employee or Member is entitled to credit for all purposes under FERS for a period of civilian service with the Government or the U.S. Postal Service--

(1) Performed after December 31, 1986, which is covered service under subpart A of this part and for which deductions required under 5 U.S.C. 8422(a) have not been refunded;

(2) That, other than service under paragraph (a)(1) of this section--

(i) Was performed before 1989;

(ii) Would have been creditable under 5 U.S.C. 8332 if the employee or Member were subject to subchapter III of chapter 83 of title 5, United States Code, without regard to any deposit, redeposit, or coverage requirement under that subchapter; and

(iii) Is covered by deductions or a deposit required by Sec. 842.305 and the deductions or deposit have not been refunded after the employee or Member first became subject to FERS;

(3) That was creditable under subchapter II of chapter 8 of title 1 of the Foreign Service Act of 1980 (Foreign Service Pension System), provided--

(i) The employee or Member waives credit for the service under the Foreign Service Pension System; and

(ii) The employee or Member makes the deposit required by Sec. 842.305, and the deposit is not refunded;

(4) While on leave of absence without pay, subject to a limit of 6 months per calendar year, except that the 6-month limit does not apply while--

(i) Performing military service; or

(ii) Receiving benefits under subchapter I of chapter 81 of title 5, United States Code;

(5) While on approved leave without pay granted to serve as a full-time officer or employee of an organization composed primarily of employees, as defined by section 8331(1) or 8401(11) of title 5, United States Code, provided--

(i) The employee elects, within 60 days after the commencing date of leave without pay, to pay to the employing agency the retirement deductions and agency contributions that would be applicable if the employee were in a pay status;

(ii) Payments of the deductions and contributions begin on a regular basis within 60 days after the commencing date of leave without pay; and

(iii) Payments of the required deductions and contributions are completed and not refunded; and

(6) While assigned on detail or leave without pay to a State or local government under 5 U.S.C. 3373, provided--

(i) The normal cost percentage (under subpart D of part 841 of this chapter) for the employee (who is deemed to continue in the same normal cost percentage category as applicable on the date of the assignment) is remitted to OPM for each pay period during the assignment; and

[[Page 299]]

(ii) The employee, or, if he or she dies without making an election, his or her survivor, does not elect to receive benefits under any State or local government retirement law or program, which OPM determines to be similar to FERS.

(b) Cadet Nurse Corps. (1) Service credit is allowed under Pub. L. 99-638 for a period of service performed with the Cadet Nurse Corps provided--

(i) The service totaled 2 years or more;

(ii) The individual submits an application for service credit to OPM no later than January 10, 1988;

(iii) The individual is employed by the Federal Government in a position subject to subchapter III of chapter 83 of title 5, United States Code (other than 5 U.S.C. 8344) or chapter 84 of that title (other than 5 U.S.C. 8468) at the time he or she applies to OPM for service credit under this provision; and

(iv) The individual makes a deposit for the service in accordance with Sec. 842.305(g) before the date of separation from service on which the individual's entitlement to annuity is based.

(c) National Guard technician service before January 1, 1969--(1) Definition. In this section, service as a National Guard technician is service performed under section 709 of title 32, United States Code (or under a prior corresponding provision of law) before January 1, 1969.

(2) Employees on or after November 6, 1990. Employees, subject to FERS retirement deductions, whose only service as a National Guard technician was performed prior to January 1, 1969, are entitled to credit under FERS if they--

(i) Submit to OPM an application for service credit in a form prescribed by OPM;

(ii) Are employed by the Federal Government in a position subject to FERS retirement deductions after November 5, 1990; and

(iii) Complete the deposit for the service through normal service credit channels before final adjudication of their application for retirement or have the deposit deemed made when they elect the alternative form of annuity.

(3) Former Federal employees. Former Federal employees who were subject to FERS retirement deductions and separated after December 31, 1968, but before November 6, 1990, with title to a deferred annuity, may make a deposit for pre-1969 National Guard technician service provided they--

(i) Submit a written application for the pre-1969 National Guard

technician service to OPM before November 6, 1991; and

(ii) Complete a deposit for the additional service in a lump sum or in installment payments of $50 or more. Payments must be completed before their retirement claim is finally adjudicated, unless the deposit is deemed made when they elect an alternative form of annuity.

(4) Annuitants and survivors. (i) Individuals who were entitled to receive an immediate annuity (or survivor annuity benefits) as of November 6, 1990, may make a deposit for pre-1969 National Guard technician service provided they--

(A) Submit a written application for service credit to OPM before November 6, 1991; and

(B) Complete a deposit for the additional service in a lump sum or in equal monthly annuity installments to be completed within 24 months of the date of the written application.

(ii) To determine the commencing date of the deposit installment payment period for annuitants and survivors, the ``date of application'' will be considered to be the first day of the second month beginning after OPM receives a complete written application from the individual.

(iii) To be a complete application, the individual's written request for pre-1969 National Guard technician service credit must also include a certification of the dates of employment and the rates of pay received by the individual during the employment period. The individual may obtain certification of service from the Adjutant General of the State in which the service was performed.

(d) Credit for service performed as an employee of a nonappropriated fund instrumentality. (1) Credit for service with a nonappropriated fund instrumentality is allowed in accordance with an election under 5 CFR part 847, subpart D or H.

[[Page 300]]

(2) Service under FERS for which the employee withdrew all deductions is creditable in accordance with an election made under 5 CFR part 847, subpart D.

(3) An annuity that includes credit for service with a nonappropriated fund instrumentality under 5 CFR part 847, subpart D, or refunded service under paragraph (d)(2) of this section is computed under 5 CFR part 847, subpart F.

(4) An annuity that includes credit for service with a nonappropriated fund instrumentality under 5 CFR part 847, subpart H, is computed under 5 CFR part 847, subpart I.

(e) Certain Government service performed abroad after December 31, 1988, and before May 24, 1998--(1) Definition. In this section, certain Government service performed abroad is service performed at a United States diplomatic mission, consular post (other than a consular agency), or other Foreign Service post abroad under a temporary appointment pursuant to sections 309 and 311 of the Foreign Service Act of 1980 (22 U.S.C. 3949 and 3951).

(2) Conditions for Creditability. Service credit is allowed under section 321 of Pub. L. 107-228 for certain Government service performed abroad after December 31, 1988, and before May 24, 1998, provided--

(i) The service in the aggregate totaled 90 days or more;

(ii) The individual performing the service would have satisfied all eligibility requirements under regulations of the Department of State (as in effect on September 30, 2002) for a family member limited noncareer appointment (within the meaning of such regulations, as in effect on September 30, 2002) at the time the service was performed,

except that, in applying this paragraph, an individual not employed by the Department of State while performing the service shall be treated as if then so employed;

(iii) The service would have been creditable under FERS had it been performed before 1989 and had the deposit requirements of Sec. 842.305 been met;

(iv) The service is not otherwise creditable under FERS or any other retirement system for employees of the U.S. Government (disregarding title II of the Social Security Act);

(v) The individual applying for the service credit submits a written application to make a deposit with the department or agency where the service was performed, and completes the deposit, in accordance with Sec. 842.305(j); and

(vi) The department or agency where the service was performed remits Government contributions for the service to OPM in accordance with Sec. 842.305(j).

(3) Departments or agencies no longer in existence. If the department or agency where the individual performed certain Government service abroad no longer exists, the Department of State must process applications for service credit under this section. Government contributions for the service will not need to be remitted to OPM.

[52 FR 18193, May 14, 1987, as amended at 56 FR 6554, Feb. 19, 1991; 56 FR 55596, Oct. 29, 1991; 61 FR 41720, Aug. 9, 1996; 68 FR 2178, Jan. 16, 2003; 70 FR 50953, Aug. 29, 2005]

Sec. 842.305 Deposits for civilian service.

(a) Eligibility--current and former employees or Members. An employee or Member subject to FERS and a former employee or Member who is entitled to an annuity may make a deposit for civilian service described under paragraphs (a)(2) and (a)(3) of Sec. 842.304 upon application to OPM in a form prescribed by OPM. A deposit for civilian service cannot be made later than 30 days after the first regular monthly payment as defined in Sec. 842.602.

(b) Eligibility--survivors. If an employee or Member was, at the time of death, eligible to make a deposit, the employee's survivor may make the deposit for civilian service. A deposit under this paragraph cannot be made after adjudication of the survivor's application for benefits becomes final, which is 30 days after the date of OPM's notice to the survivor of the annuity rates with and without making the deposit.

(c) Distinct period of service. A deposit is not considered to have been made for any distinct period of service unless the total amount due for the period is paid in full. A distinct period of civilian service for this purpose is a period of civilian service that is not interrupted by a break in service of more than 3 days.

[[Page 301]]

(d) Amount of deposits. The amount of a deposit for a period of service under Sec. 842.304(a)(2) equals 1.3 percent of the basic pay for the service, plus interest. The amount of a deposit for a period of service under Sec. 842.304(a)(3) equals the amount that would have been deducted from pay under 5 U.S.C. 8422(a) had the employee been subject to FERS during the service, plus interest.

(e) Interest. (1) Interest is charged at the rate of 4 percent a year through December 31, 1947; 3 percent a year beginning January 1, 1948, through December 31, 1984; and thereafter at a rate as determined by the Secretary of the Treasury for each calendar year that equals the overall average yield to the Civil Service Retirement and Disability Fund (the Fund) during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under 5 U.S.C. 8348 (c), (d), and (e).

(2) The computation of interest is on the basis of 30 days to the month. Interest is computed for the actual calendar time involved in each case; but, whenever applicable, the rule of average applies.

(3) Interest is computed from the midpoint of each service period included in the computation. The interest accrues annually on the outstanding portion, and is compounded annually, until the portion is deposited. Interest is not charged after the commencing date of annuity or for a period of separation from the service that began before October 1, 1956.

(f) Forms of deposit. Deposits may be made in a single lump sum or in installments not smaller than $50 each.

(g) Cadet Nurse Corps. (1) Upon receiving an application for service credit with the Cadet Nurse Corps, OPM will determine whether all the conditions for creditability (Sec. 842.304(b)) have been met; compute the deposit, including interest; and advise the employing agency and the employee of the total amount of the deposit due. The rate of basic pay for this purpose is deemed to be $15 per month for the first 9 months of study; $20 per month for the 10th through the 21st months of study; and $30 per month for any month in excess of 21 months. Interest is computed in accordance with paragraph (e) of this section.

(2) The employing agency must establish a deposit account showing the total amount due and a payment schedule (unless deposit is made in one lump sum) to record the date and amount of each payment.

(3) If the individual cannot make payment in one lump sum, the employing agency must accept installment payments (by allotments or otherwise). The employing agency, however, is not required to accept individual checks in amounts less than $50.

(4) Payments received by the employing agency must be remitted to OPM immediately for deposit to the Civil Service Retirement and Disability Fund.

(5) Once the employee's deposit has been paid in full or closed out, the employing agency must submit the documentation pertaining to the deposit to OPM in accordance with instructions issued by OPM.

(h) Processing applications for pre-1969 National Guard technician service credit for employees subject to FERS retirement deductions after November 5, 1990--(1) OPM determines creditable service. OPM will determine whether all conditions for crediting the additional service have been met, compute the deposit, and notify the employee of the amount of and the procedures for submitting the deposit payments to OPM to obtain credit for the service.

(2) Computing the deposit. (i) For individuals who will not have a CSRS component, the deposit will be computed based on--

(A) One and three tenths percent of basic pay at the time the service was performed; and

(B) Interest at the rate of 3 percent per year computed as specified by section 8334(e)(2) of title 5, United States Code, until the date the deposit is paid.

(ii) For individuals who will have a CSRS component, the deposit will be computed as specified in 5 CFR 831.306(c).

(i) Processing applications for pre-1969 National Guard technician service credit for annuitants (and survivors) and for former employees who separated after December 31, 1968, and before November 6,

[[Page 302]]

1990--(1) OPM determines creditable service. OPM will determine whether all conditions for crediting the additional service have been met, compute the amount of the deposit, and notify the individual.

(2) Computing the deposit for annuitants and survivors. (i) For individuals who do not have a CSRS component, the deposit will be computed based on--

(A) One and three tenths percent of basic pay at the time the service was performed; and

(B) Interest at the rate of 3 percent per year as specified by section 8334(e)(2) of title 5, United States Code, to the midpoint of the 24-month installment period, or if paid in a lump sum, the date the deposit is paid.

(ii) For individuals who will have a CSRS component, the deposit will be computed as specified in 5 CFR 831.306(e)(2)(i) and (ii)(A).

(iii)(A) OPM will notify annuitants and survivors of the amount of the deposit and give them a proposed installment schedule for paying the deposit from monthly annuity payments. The proposed installment payments will consist of equal monthly payments that will not exceed a period 24 months from the date a complete written application is received by OPM.

(B) The annuitant or survivor may allow the deposit installments to be deducted from his or her annuity as proposed or make payment in a lump sum within 30 days from the date of the notice.

(C) Increased annuity payments will begin to accrue the first day of the month after OPM receives the complete written application.

(iv) If an annuitant dies before completing the deposit installment payments, the remaining installments will be deducted as established for the annuitant from benefits payable to the survivor annuitant (but not if the only survivor benefit is payable to a child or children of the deceased), if any. If no survivor annuity is payable, OPM may collect the balance of the deposit from any lump sum benefits payable or from the decedent's estate, if any.

(3) Computing the deposit for former Federal employees separated after December 31, 1968 but before November 6, 1990. For former employees with title to a deferred annuity that commences after November 6, 1990, the deposit will be computed as provided in paragraph (i)(2) above, except that interest will be computed through the commencing date of annuity or the date the deposit is paid, whichever comes first.

(j) Certain Government service performed abroad after December 31, 1988, and before May 24, 1998--(1) Eligibility-current and former employees, and retirees. A current or former employee, or a retiree who performed certain Government service abroad described in Sec. 842.304(e) may make a deposit for such service, in a form prescribed by OPM.

(2) Eligibility-survivors. A survivor of a current employee, former employee, or a retiree eligible to make a deposit under paragraph (j)(1) of this section may make a deposit under this section if the current or former employee, or retiree is deceased and the survivor is eligible or would be eligible for a survivor annuity under FERS based on the service of the current or former employee, or retiree.

(3) Filing of deposit application. An individual eligible to make a deposit under paragraphs (j)(1) and (2) of this section for service

described in Sec. 842.304(e) must submit a written application to make a deposit for such service with the appropriate office in the department or agency where such service was performed. If the department or agency where the service was performed no longer exists, the individual must submit the written application to the appropriate office in the Department of State.

(4) Time limit for filing application. An application to make a deposit under this section must be submitted on or before August 29, 2008.

(5) Amount of deposit. (i) A deposit under this section must be computed using distinct periods of service. For the purpose of this section, a distinct period of service means a period of service not interrupted by a break in service of more than 3 days. A deposit may be made for any or all distinct periods of service.

(ii) The amount of deposit under this section equals the amount of deductions from basic pay that would have been required under section 8422 of title

[[Page 303]]

5, United States Code, if at the time the service was performed the service had been subject to FERS deductions under that section, plus interest.

(6) Forms of deposit. A deposit under this section must be made as a single lump sum within 180 days of being notified of the deposit amount.

(7) Processing deposit applications and payments. (i) The department or agency where the service described in Sec. 842.304(e) was performed must process the deposit applications and payments under this section. If the department or agency where the service was performed no longer exists, the Department of State must process the deposit applications and payments under this section.

(ii) Whenever requested, the Department of State must assist the department or agency responsible for processing deposit applications under this section determine whether the application meets the requirements of Sec. 842.304(e).

(iii) Upon receiving a deposit application under this section, the department or agency must determine whether the application meets the requirements of Sec. 842.304(e); compute the deposit, including interest; and advise the applicant of the total amount of deposit due.

(iv) The department or agency must establish a deposit account showing the total amount due.

(v) When it receives an individual's payment for the service, the department or agency must remit the payment to OPM immediately for deposit to the Civil Service Retirement and Disability Fund in accordance with instructions issued by OPM.

(vi) Once a deposit has been paid in full or otherwise closed out, the department or agency must submit the documentation pertaining to the deposit to OPM in accordance with instructions issued by OPM.

(8) Government contributions. (i) The department or agency where service described in Sec. 842.304(e) was performed must pay Government contributions for each period of service covered by a deposit under this section.

(ii) The amount of contributions under this section equals the amount of Government contributions which would have been required for the service under section 8423 of title 5, United States Code, if the service had been covered under chapter 84 of title 5, United States Code, plus interest.

(iii) The department or agency must remit the amount of Government contributions under this section to OPM at the same time it remits the employee deposit for this service to OPM in accordance with instructions issued by OPM.

(9) Interest. Interest must be computed as described under paragraphs (2) and (3) of 5 U.S.C. 8334(e). Interest must be computed for each distinct period of service from the midpoint of each distinct period of service. The interest accrues annually on the outstanding deposit and is compounded annually, until the deposit is paid.

(10) Effect of deposit. An individual completing a deposit under this section will receive retirement credit for the service covered by the deposit when OPM receives certification that the deposit has been paid in full, and the deposit payment and agency contributions are remitted to the Civil Service Retirement and Disability Fund.

(11) Appeal rights. When the department or agency processing an application for deposit under this section determines that the individual is not eligible to make a deposit for a period of service, it must provide the individual with a written decision explaining the reason for the decision and explaining the individual's right to appeal the decision to the Merit Systems Protection Board.

[52 FR 18193, May 14, 1987, as amended at 56 FR 55597, Oct. 29, 1991; 56 FR 65419, Dec. 17, 1991; 70 FR 50953, Aug. 29, 2005]

Sec. 842.405 Air traffic controllers, firefighters, law enforcement officers, and nuclear materials couriers.

The annuity of an air traffic controller retiring under Sec. 842.207 or a law enforcement officer, firefighter or nuclear materials courier retiring under Sec. 842.208 is--

(a) One and seven-tenths percent of average pay multiplied by 20 years; plus

(b) One percent of average pay multiplied by the years of service exceeding 20 years.

[52 FR 4475, Feb. 11, 1987, as amended at 65 FR 2524, Jan. 18, 2000]

Mr. LYNCH. Thank you very much, Mr. Glover.

Ms. Barts, you are now recognized for an opening statement for 5 minutes.

STATEMENT OF PATRICIA BARTS

Ms. BARTS. Chairman Lynch and members of the subcommittee, my name is Patricia Barts. I am from Atco, NJ. And I appreciate the opportunity to testify on behalf of the National Active and Retired Federal Employees Association about my experiences as a seasonal-status Federal worker.

I was employed with the Internal Revenue Service at the Philadelphia Service Center from January 1970, retiring on July 31st, 2001. From 1970 until 1986, I was a seasonal employee. In November 1969, I took the Civil Service test for Federal employment. Shortly after, I was called to take an 80-hour unpaid training course as a data transcriber.

In early January 1970, I was hired to work transcribing tax returns as a seasonal worker. I worked from January to June that first year. When I was called back the next filing season, I worked a similar period and additional months to work on the quarterly returns. Eventually, I was working 10 months each year.

One of those years, during my 14 seasonal years as a data transcriber, I worked every day except one, being furloughed on a Thursday and brought back on a Monday. This was done to break my time. If I had worked the extra day, I would have been made a permanent employee and entitled to all the rights and benefits that are accrued to that status.

During my time in data transcription, I was promoted to a lead data transcriber. My duties included instructing other employees and filling in for the supervisor. I enjoyed my work and only left the department because I could not become a permanent employee and advance to a higher grade.

In 1984, I was accepted as a seasonal tax examiner in the Correspondence Audit Department. I took this position because it offered a higher grade and a chance to become a permanent employee. After about a year and a half, I became a permanent worker.

During my career in the Examination Department, I was selected to be a lead tax examiner and instructor. My duties in this department included handling problem cases and telephone calls for other tax examiners, acting as a supervisor when the supervisor was not in the office, and holding yearly update classes in tax law changes each October.

When the Federal Employees Retirement System was introduced to the Federal employees in January 1987, the employees like me who were in the older Civil Service Retirement System were counseled to remain in CSRS. This turned out to be bad advice. At this time, the seasonal employees in FERS were credited with a full year's service time if they worked at least 4 months out of the year.

The CSRS employees contacted our bargaining unit, the National Treasury Employees Union, about receiving the same credit for their years of service before FERS was implemented. This request was denied by IRS management at the service center. Their deci-

sion not only affected our years of service, it also affected our time and grade for step raises in the General Schedule pay series.

The FERS employees were receiving a full year's service credit to their time and grade and years of service for retirement. It is my feeling that we should have been credited with our service the same as the FERS employees. If this had been the policy, I would have 31 years and 7 months of service instead of 26 years and 7 months. This policy greatly affected my retirement annuity and that of the other fellow CSRS workers.

I enjoyed working for the agency and always felt respected by my supervisors. Still, as a matter of equity, I believe I have been unfairly denied benefits which I should have been able to access.

I understand the subcommittee is interested in reviewing a proposal that would allow temporary employees who have extended years of service to qualify for permanent job status, as well as a plan to allow such workers to credit their temporary status toward retirement. NARFE welcomes this discussion, and we would like to participate in the development of these reasonable proposals.

Mr. Chairman, thank you for focusing attention on temporary and seasonal hiring authorities and on how such service affects our status and benefit offerings. I appreciate your allowing me to testify today on behalf of myself and other active and retired employees who work part of their public service careers as seasonal or temporary workers.

I would be happy to answer any questions you may have.

[The prepared statement of Ms. Barts follows:]

Margaret L. Baptiste
National President

Joseph A. Beaudoin
National Vice President

Nathaniel L. Brown
National Secretary

Richard C. Ostergren
National Treasurer

STATEMENT BY
PATRICIA BARTS
MEMBER
CHERRY HILL, NEW JERSEY CHAPTER #718
NATIONAL ACTIVE AND RETIRED FEDERAL EMPLOYEES ASSOCIATION

THE SUBCOMMITTEE ON THE FEDERAL WORKFORCE, THE POSTAL SERVICE AND THE DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON
"TEMPORARY EMPLOYEE PRATICES: HOW LONG DOES TEMPORARY LAST?"

JUNE 30, 2010

National Active and Retired Federal Employees Association
606 N. Washington Street, Alexandria, VA 22314
Phone: 703-838-7760 • Fax: 703-838-7785 • Web site: www.narfe.org

Chairman Lynch and members of the subcommittee:

My name is Patricia Barts, I am from Atco, New Jersey, and I appreciate the opportunity to testify on behalf of the National Active and Retired Federal Employees Association about my experience as a seasonal status federal worker.

I was employed with the Internal Revenue Service (IRS) at the Philadelphia Service Center from January 1970, retiring on July 31, 2001. From 1970 until 1986, I was a seasonal employee.

In November of 1969, I took the civil service test for federal employment. Shortly after, I was called to take an eighty hour unpaid training course as a data transcriber. In early January of 1970, I was hired to work transcribing tax returns as a seasonal worker. I worked from January to June that first year. When I was called back the next filing season, I worked a similar period and additional months to work on the quarterly returns. Eventually I was working ten months each year. One of those years, during my fourteen seasonal years as a data transcriber, I worked every day except one, being furloughed on a Thursday and brought back on Monday. This was done to break my time. If I had worked the extra day, I would have been made a permanent employee -- and entitled to all of the rights and benefits that would accrue to the status.

During my time in Data Transcription, I was promoted to lead data transcriber. My duties included instructing other employees and filling in for the supervisor. I enjoyed my work, and only left the department because I could not become a permanent employee and advance to a higher grade.

In 1984, I was accepted as a seasonal tax examiner in the Correspondence Audit Department. I took this position because it offered a higher grade and a chance to become a permanent employee. After about a year and a half, I became a permanent worker. During my career in the Examination Department, I was selected to be a lead tax examiner and instructor. My duties in this department included handling problem cases and telephone calls for other tax examiners, acting as supervisor when the supervisor was not in the office, and holding yearly update classes in tax law changes each October.

When the Federal Employees Retirement System (FERS) was introduced to federal employees in January 1987, the employees, like me, who were in the older Civil Service Retirement System (CSRS), were counseled to remain in CSRS. This turned out to be bad advice. At this time the seasonal employees in FERS were credited with a full year's service time if they worked at least four months out of the year. The CSRS employees contacted our bargaining unit – the National Treasury Employees Union (NTEU) -- about receiving the same credit for their years of service before FERS was implemented. This request was denied by IRS management at the Service Center. Their decision not only affected our years of service, it also affected our time in grade for step raises in the General Schedule pay series. The FERS employees were receiving a full year service credit to their time in grade and years of service for retirement.

It is my feeling that we should have been credited with our service the same as FERS employees. If this had been the policy, I would have 31 years and 7 months service instead of 26 years and 7 months. This policy greatly affected my retirement annuity and that of other fellow CSRS workers. I enjoyed working for the agency and always felt respected by my superiors.

Still, as a matter of equity, I believe I have been unfairly denied benefits which I should have been able to access.

I understand the subcommittee is interested in reviewing a proposal that would allow temporary employees who have extended years of service to qualify for permanent job status as well as a plan to allow such workers to credit their temporary status service towards retirement. NARFE welcomes this discussion and we would like to participate in the development of these reasonable proposals.

Mr. Chairman, thank you for focusing attention on temporary and seasonal hiring authorities and on how such service affects our status and benefit offerings. I appreciate your allowing me to testify today on behalf of myself and other active and retired employees who worked part of their public service careers as seasonal or temporary workers. I would be happy to answer any questions you have.

Mr. LYNCH. Thank you very much.

I now yield myself 5 minutes.

Thank you each for your willingness to come before the committee and testify and to help us with our work.

There are several different points at which temporary employees are treated far less favorably in the Federal system, especially recognizing that, in many instances, they are continuously temporarily employed, year after year. And it seems that the underlying basis of treating them differently is undermined by this continual employment.

One of the things that I think is fundamentally unfair here is that, in our scheme of preference, we've established a preference for veterans that I think is noble and right, we've established a preference in some jobs for prior service. The Peace Corps I think we talked about earlier with the folks from the National Forest Service.

But, unless I'm missing something, there is no preference for a person who has done that job as a temporary worker in becoming a career employee. In other words, what I'm saying is that they are treated basically the same as a person who comes off the street. So they're not getting any advantage. They're coming into the process as if they had never worked in their current job.

And I think that is wrong, and I think there has to be some way to acknowledge the albeit temporary service for that employee so that they aren't at the very back of the line, that they get some recognition and some type of preference in terms of filling those career positions.

I believe it was Mr. Simpson, who testified on the first panel, that said that, you know, roughly 40 percent, I think, of his eventual career employees were chosen from the temporary work force; however, when they were chosen, they were not given any greater advantage than someone just walking in off the street.

Is that a problem that you see, in terms of recognizing the status?

I know it doesn't address the point that you mention, Ms. Barts, about crediting temporary time toward your pension. But it might get you in the door faster, so that the ability of a temporary employee to get into a career position where they're earning pension credits is sooner than what otherwise might be.

Are there other solutions that you can see that would eliminate the difficulty that we are experiencing with these temporary employees?

Ms. Kelley.

Ms. KELLEY. Chairman Lynch, I would say to your specific question, that is something that would help, whether—and you could define it a number of ways, even if you just started by giving them first consideration so that they had to—you know, they were on the short list, at least, to be considered. Today, they have to literally apply through the outside process as if they never worked for the government.

And we went through this very recently up in your part of the country with the Andover Service Center. In that case, I would say the IRS had appropriately used some temporary hiring authority as they were ramping down the submission processing operation. But

then when new work was added to Andover and new positions were added, permanent positions were added, all of those temporary workers, many of whom had been there for 4 years, had no first-consideration rights to even be considered for those permanent jobs. So something like you described would be a giant step forward to fix that part of the problem.

I would suggest, though, that another part of the problem, just from things I've heard here today and from some situations that we've seen at NTEU, is the question to the agencies of how many of these temporary employees or temporary positions are really temporary positions. I mean, I don't know how you justify, in the FDIC, when we had employees hired year after year for 15 years, or how—and Mr. Dougan could speak better to this than I on those who have joined him today.

I mean, if people are doing the same job year after year, even if it's only for 6 months, then that is, in my view, a permanent seasonal position. It is still seasonal, it's not a full-time; it doesn't create work where it doesn't exist. But it's a permanent seasonal position, not a temporary seasonal position.

And that alone would change the status of those employees and their eligibility to retirement and contributions for health insurance and to FMLA and to all of the rights and benefits that a permanent career work force has in the Federal Government.

So I think that's as big a piece as figuring out how to be able to get them first consideration or some priority, is to really press hard on these agencies as to how they're designating these positions. Are there some that should be temporary? Probably. But the numbers that I heard today and the real-life examples that I've heard, it just doesn't sound right to me.

Mr. LYNCH. Thank you.

I notice my time has expired. I now yield 5 minutes to Ms. Eleanor Holmes Norton, the Congresswoman from the District of Columbia.

Ms. NORTON. Thank you, Mr. Chairman.

I guess I can understand, for example, that in the IRS, Ms. Barts, when you might have temporary employees because of the tax season and the way that goes. But I must say, with Ms. Kelley, I wonder about the use of temporary employees across the whole spectrum of the Federal Government, whether there has been the kind of oversight to assure us that there is not abuse.

Ms. Barts, I was drawn to the part of your testimony on page 1 where, not only did they break your time in order to keep you in the seasonal status, but somehow they managed to promote you. And I didn't quite understand that. "During my time at data transcription, I was promoted to lead data transcriber." You had supervisory duties.

Were others working under you also temporary employees?

Ms. BARTS. They were all seasonals, yes. The supervisor was a permanent employee, and she had what you would call the timekeeper for the groups was a permanent employee. Everybody else was a seasonal employee.

Ms. NORTON. Now, you say on the next page that, after about a year and a half, you became a permanent worker.

Ms. BARTS. Once I was picked up by Correspondence Audit, yes.

Ms. NORTON. After you were picked up by whom?

Ms. BARTS. The other department, the Correspondence Examination Department.

Ms. NORTON. So you got on that permanent registry or on that permanent list for that job?

Ms. BARTS. I applied for several jobs when I was in data over the 14-year period, and I was accepted for quite a few of them. But the department always said that they couldn't release me at that time, and that eliminated that job opportunity for me.

Ms. NORTON. The department wanted to maintain you for their own purposes.

Ms. BARTS. Right.

Ms. NORTON. They could do that even though you had an offer for a permanent job?

Ms. BARTS. Yes.

Ms. NORTON. Boy, that sounds like something close to slavery here.

Ms. BARTS. That's the way it was done back in the 1970's.

Ms. NORTON. Did your work as a seasonal employee help you in the process of applying for the permanent job?

Ms. BARTS. My evaluations that I received over the years was a great help to be picked up for the other department.

And I was on a roster, yes, for a permanent job. I was on a roster for a permanent job. But as I said, as the permanent jobs would come up and not just myself, other people would apply, if it was in the height of their filing season, they would not let you go.

Ms. NORTON. All right. I think that is really quite scandalous.

But I'm not sure—the chairman asked about whether or not such an employee, essentially, in competition was like anybody else coming off the street. It's rather counterintuitive to believe that I've gotten myself on a roster for a job like Ms. Barts, and I'm able to show that I was in precisely the same job, it's hard to believe that wouldn't help me in some way in the competition with others who may have indeed been doing similar work but not been doing it in the agency.

So it is just counterintuitive to me to think that person who has been doing that work in a Federal agency is precisely the same as somebody who may have been doing something in the private sector or have other kinds of credentials.

Don't you think it's helpful, at least, that person has been doing work of a very similar nature in the Federal sector once you're applying for a permanent job?

Ms. KELLEY. I would sure hope so, if the applications were looked at that closely.

Ms. NORTON. Well, perhaps we ought to say so. Perhaps we ought to say so when these employees are applying.

Ms. KELLEY. Exactly. If there were some kind of a process that said, "First consideration is given to those employees who are doing this work for this Federal agency in a temporary status."

Ms. NORTON. Well, it doesn't even say "consideration should be given," does it?

Ms. KELLEY. No. No, my words of "first consideration" would be a giant step forward from where we are today.

And I'm only using that as an example for those who would oppose some kind of a guaranteed selection, you know, to just try to, kind of, think of a process that would at least give that first consideration.

Mr. DOUGAN. I think that there are a couple of things here. Really, there is a question of what hiring process is being used. Because the agency is certainly free to use their internal hiring process, which, under the current regulations, a temporary employee is not even eligible to apply under the internal process.

So that avenue they are excluded from from the get-go. So they only have the external hiring process that the rest of the public has available to them. So they're competing with everybody else out on the street for those positions.

And, you know, I think it's fair to say that, certainly, their experience working as a temporary in an agency that they're applying for a permanent position in, it certainly doesn't hurt them. But it certainly is true that it does not give them, necessarily, a leg up on any other person that is applying for that job.

I think there are a couple of things we can do. I think, one, if we grant competitive standing to our long-term temporary work force, they will have the ability not only to apply through the external hiring process but also through the merit systems hiring process internally in the agency. So they will get a fair shake just like the rest of the permanent work force, in terms of applying for permanent jobs in that agency and doing that.

And I think the other thing that we could do would be, as you've described and as Colleen has talked about, is afford some sort of priority consideration to long-term temporary employees, particularly if the agency decides to make their current temporary position a permanent position.

It's my belief that if we have an employee that's been in a series of positions doing the same job 5, 6, 7 years, 10 years, 30 years, essentially those people are incumbents in those positions. And the fact of the matter is that the position was misclassified by the agency as a temporary position when, in fact, when you look at the recurring nature of the work, it's really a permanent position in reality.

And so it's my belief that those folks need to be given priority consideration for those positions for which they've been doing the work all along, once those positions are made permanent positions by the agency.

Ms. NORTON. Mr. Chairman, I see my time is up.

I was very concerned. I do not believe it was this roster of witnesses who testified about firefighters. And we know there are parts of the country where these firefighters are absolutely essential; you can understand the seasonal nature of the work. But here, experience can be lifesaving. And it does seem to me we've got to look at various categories of work here, as well.

I'm not sure—I think the testimony was that eight out of 10 was a rookie. Was that you, Mr. Dougan?

Mr. DOUGAN. Yes, ma'am.

Ms. NORTON. Eight out of 10 of these firefighters each year is a rookie, which means that you've got to, for one of the most dangerous jobs in America—indeed, it is considered the most dan-

gerous, usually, in Civil Service work—you've got a whole bunch of people who are new. People have reached their 2-year limit. And there you go retraining or training people for one of the most risky jobs in the work force.

Mr. Dougan, would you like to elaborate on that testimony? Because it does seem to me it requires some kind of priority attention from the subcommittee.

Mr. DOUGAN. Yeah, I mean, the situation with the wildland firefighting work force in the Federal Government, there are relatively few Federal agencies that have employees that have that expertise. There is the Forest Service, Bureau of Land Management, National Park Service, Fish and Wildlife Service, Bureau of Indian Affairs. Those are the five Federal agencies that primarily have a wildland firefighting work force.

These people are specially trained. The agencies have invested a lot of time and resources and money in terms of training these people. They have highly specialized training. They hold a variety of qualifications. It takes many years of training and experience out on these fires for people to work their way up into leadership positions in the fire organization.

And it is not uncommon to see on wildland fires temporary employees that are part of a fire crew that actually have more experience than the leaders of those crew or, in many cases, some of the other leaders that are in charge of and responsible for managing these wildfires.

And, to me, I mean, the risk that we run as a country and in these agencies if we fail to acknowledge the professional work, the experience, and the skills that these folks have and don't make an honest effort to retain these and we just let these people go, we really risk having a brain-drain in the area of wildland firefighting, which, as Ms. Norton pointed out, has some potential catastrophic safety implications if we have inexperienced people out there trying to lead these crews as well as put these fires out.

Ms. NORTON. Thank you very much.

And thank you, Mr. Chairman.

Mr. LYNCH. Thank you.

Mr. Dougan, if I could just stay on that issue for a minute. What do we see right now in terms of the wildfire firefighters? Are you seeing, you know, professional firefighters, city firefighters, volunteer firefighters that go into that line of work? Or is it across the board from every walk of life?

Mr. DOUGAN. The current work force of the Federal Government's wildland firefighting work force, there are really two pieces to it. One is, most of these agencies or all of these agencies have essentially permanent—they do have some permanent seasonal positions in their fire organizations. These folks work seasonally, but they're permanent employees. They typically work 6 to 9 months out of the year.

But the bulk of the firefighting work force that's hired in the Federal Government are temporary employees. And where the Federal Government gets their temporary wildland firefighting work force is really from a couple of different areas.

One is, there are a lot of college students that apply for these jobs. They're looking to make a lot of money. These guys work a

lot of hours, and they tend to get a lot of overtime, so it's a good way for college students that are, you know, out of school to earn some money to help them out, to pay their tuition and books.

The second group of folks that tend to be drawn into these kinds of positions is just, you know, average people out on the street. The Forest Service, for the most part, has a presence in more rural communities across America, particularly out in the western United States. These jobs, these firefighting jobs are highly coveted by people that live in small towns. The Forest Service is often the largest employer in the town and also pays, probably, for the most part, the highest wage. So these jobs are really sought after by local residents in these rural communities and really have a huge impact on those local economies.

But what we see with these temporary jobs is, you know, if these folks are expected to be hired year after year as a temporary and not afforded any benefits, not afforded retirement, not afforded health care, what we see in terms of retaining this work force is, after a certain amount of time, these folks leave and are wooed away by county fire departments, by city fire departments, by State forestry organizations who can often pay more than the Federal Government and offer these folks permanent jobs and better wages.

So we are losing a lot of our wildland firefighting work force because of those reasons. Particularly out in California we see that quite a bit.

Mr. LYNCH. Uh-huh.

Let me ask—and maybe Ms. Kelley—I explored this with the first panel, trying to figure out where the practices of prudent and optimum management separate from abuse.

You know, we in Congress, we hire young interns on a regular basis, and, you know, when we see one or two that might be especially bright, we snap them up, but generally it's understood that there aren't a lot of opportunities, so that's a rare occasion. But since they're only there for a learning experience and there is no expectation of hiring, I suppose it's fair. We very, very, very rarely get interns back twice.

But here you've got this repeat, year-after-year, decades-long relationship, where workers keep coming back. And some of them might be stuck—some of them just love their jobs, but some of them are relying on that, as anybody else would, over time.

And I'm just trying to find a way to determine when that, you know, repeat employment becomes abuse and how do we get at that.

Mr. Dougan, you described a situation; Ms. Barts, you've described another; Mr. Glover, as well, with the Bureau of Prisons; and President Kelley.

How do I devise a solution that's going to be able to, sort of, capture all those different situations and provide some type of—you know, you want to have some flexibility for management to bring in temporary employees when needed. But this type of abuse, you know, where people are in there for decades or, you know, 8 or 10 years, brought back and are denied retirement, they're denied annuity, they're denied health care benefits, I don't necessarily think that's the way that the Federal Government should be operating as an employer.

And so, you know, I think some of our Federal management agencies are adopting this strategy as a way of balancing their budgets, and they're doing it on the backs of these temporary employees. And that's as simple as that. And we're allowing it to happen. And we've got to figure out some way to push back, to say, "OK, you know, this person is coming back for the 4th consecutive year. If they come back for the 5th, they're going to have to earn something."

Or there needs to be some pathways to career employment made for these people, where, as you say, when a position becomes permanent, it goes from temporary to permanent, I think the assumption should be—or the priority should be to hire the people who were in that job and doing that job originally when it changes over.

But there also has to be some way of, not necessarily—not displacing a veteran going for a job, but next in line, so to speak. There should be an opportunity to put these temporary workers in line right behind them, ahead of the general public.

And I'm just trying to figure out a way to develop a system that would accommodate those realities.

Ms. KELLEY. Well, again, Chairman Lynch, I would probably take it in a couple of different directions. And NTEU would be glad to work with the committee, I'm sure we all would, on language to fix each of these problems.

When I was getting ready for this hearing, I was focused on the IRS and the FDIC, because the IRS hires a lot of seasonal employees. I did not come in here intending to say that I think the IRS is doing a great job, but I have to tell you, after listening to everything I heard today, they are doing a great job.

I don't know what happened back in the 1970's and 1980's, you know, in Ms. Barts's situation, and I'm sure those facts drive why she's here today. I can tell you that, today, the IRS employs tens of thousands of seasonals, and most of them are permanent seasonals with all the rights that go along with permanent employment, even though their schedule might only be a 4- or 6- or 9-month-a-year job. Seasonal defines their schedule, not what benefits they have.

And, as I said, they don't always hire as permanent, but I think, over the years, NTEU has helped them, perhaps, see the criteria that should be used, so that when they were doing the ramp-downs on submission processing, they used that.

But even though today the IRS seems to be doing at least as well, if not better, than most agencies, I think what we have also heard here today that there is a lot of harm that has been done in the past. And we're hoping we could have Congress help us to give employees who have been harmed by not being able to redeposit their FERS—the FDIC employees who got no credit for up to 15 years of work and now are Federal employees but don't have credit for that 15 years. So I think one piece of it is if we could figure out how to give them an opportunity to buy those years back.

Mr. LYNCH. Yeah.

Ms. KELLEY. And then, of course, to make sure, to your point, that it is happening correctly.

And maybe I was the only one who heard it this way on the first panel. I was a little surprised to hear OPM say that, if you're going to work 6 months or more, then you're a permanent seasonal; if you're going to work 6 months or less, it's up to the agency to decide whether you're a temporary seasonal or a permanent seasonal. And that they grant these waivers, that I think they that were questioned about these waivers.

I don't know how closely anybody's looking at those waivers, but it seems to me that, if they ask for it, they get it. And that's where I would like to see the agencies pushed pretty hard and held to a standard, as you're suggesting, you know, that they should be able to make a case that 40 percent of the work force is really temporary.

Mr. LYNCH. Right.

Ms. KELLEY. I mean, if they need employees in those jobs, in those parks, 6 months a year or 4 months a year or 7 months a year, they need them every year, I think that's a permanent seasonal job; it's not temporary. But there doesn't seem to be a process to hold them accountable for that designation.

Mr. LYNCH. Right.

Mr. Glover, if I could ask you about this opportunity to buy back time. Obviously, you know, we are facing extreme limitations on the Federal budget, and we've got a massive deficit. You know, I think rightly, Congress is sharpening its pencils and looking at every expenditure that we make.

However, I think there is a certain fairness that you bring out in your argument for those employees who, you know, because of the seemingly arbitrary application of a regulation against them, they've been taken out of a position that they originally had benefits in.

How would you envision giving an opportunity to the Bureau of Prisons folks that—I guess they were in the system back in 1989 and then now they're denied that opportunity. How do we reconcile that for the employees that you represent?

Mr. GLOVER. I think what happened, Mr. Chairman, is that when the regulation changed from 1988 when you could buy back into your service credit, we had employees being hired at that time in large numbers, so some were hired under the 1988 rule, some were hired under the 1989 rule. And so what happened is, if you were hired after January 1, 1989, you could not buy back your service—you could not buy back in for the service credit.

So we have employees—actually, one that was able to buy back 6 months of temporary service and one 1 month later that wasn't allowed to buy back 6 months of temporary service. And so that person has to work inside the Federal prison for another 6 months prior to his retirement. And at that point in your career, after working in the system for 20 to 25 years, you are tired and you are ready to go, generally.

What I want to at least add as part of this discussion is that time should count. If you are a temporary, you are hired temporary—and the way the Bureau of Prisons does it, they identify you as an employee that they want. For instance, Fort Devens. When Fort Devens in Massachusetts was converted from a military base to a Federal prison hospital, they were trying to get employees

onboard quickly to get that prison up. So you might hire 60 to 100 employees in a temporary status because they have already identified they want that employee. They have already had an interview. They are waiting on paperwork, they're waiting on a background check. And they want to get them onboard.

The thing is, though, you are in there working in the same circumstances as every full-term employee. You don't have any different work rules as far as responding to an emergency, handling a disruptive inmate, handling some of the situations that we handle on a daily basis.

And so, what our argument is is, once they make you permanent, you should be able to step back and recredit that service, the service that they have from when they started. Because they have been made permanent, and they should at least get to reach back and say, "This time should count. And I will redeposit." I mean, we are not talking about the government necessarily; we are talking about the employee being able to redeposit for their service credits.

Mr. LYNCH. Right, right.

Mr. GLOVER. So that is the piece that we are particularly interested in, because all the FERS employees now are hitting their 20-year marks, obviously, and now they are starting to realize what they did.

Mr. LYNCH. Right.

Mr. GLOVER. And it is now incumbent upon the union that represents them to go out and do something about it.

Mr. LYNCH. Right. And while there is still time, maybe, for those last 5 years, that they make those contributions that they would have made, so that they are actually making bad years into good years and creditable service.

Mr. GLOVER. Correct.

Mr. LYNCH. OK. We have to figure out that balance, because there is not a lot of extra resources out there. And so, you know——

Mr. GLOVER. If I could also say this: In a scoring of this, you would have numerous employees who may get back some of this temporary time and actually retire. The Bureau would then bring in employees at a much lower grade. GS–5 is what our correctional officers start at, GS–6. And so, on a score, I am not convinced that we would blow up any budget.

Mr. LYNCH. Right. That is a good point. That is a good point.

Ms. Barts, I wanted to ask you—you know, you described your situation extremely well. How many people do you think—I am way over my time, by the way—how many people are in your situation?

Ms. BARTS. How many people?

Mr. LYNCH. Do you think?

Ms. BARTS. Well, I would say, just from the people I know that I worked with, about 250, just that I know, of the people that I worked with all those years.

Mr. LYNCH. Yeah. And is that a national population or is that just——

Ms. BARTS. No, that is just the Philadelphia service center, the people that I know personally.

Mr. LYNCH. Yeah.

Maybe President Kelley, maybe you're the person that I should be asking about this. How many folks do you know that are in Ms. Barts's circumstance?

Ms. KELLEY. Actually, I don't have any—I was not surprised, but when I read Ms. Barts's testimony this morning was the first that I knew that she or others were facing that problem. That is not anything that I have any data on.

Mr. LYNCH. OK. You've got fairly discrete circumstances there that might be addressed if the population were small enough. If it is a big situation, then, obviously——

Ms. BARTS. Well, there were 10 service centers, so I don't know how many people would be involved.

Mr. LYNCH. Yeah.

OK, I have abused my time. I am going to yield—oh, no, I am not going to yield. Well, I think you have all suffered enough. I appreciate all the testimony you have offered us today.

I'm going to leave the record open, as we indicated at the beginning of the hearing, for 3 days in case other Members have some questions. I know that Mr. Connolly of Virginia has some questions, but not for this panel. And so I'll leave the record open to allow them to submit written testimony.

I want to thank you each for your work on behalf of Federal employees. I want to thank you for coming forward before this committee and offering your testimony to help us with our work.

This is a complicated situation, but I will make a commitment that we will work with you to try to figure out how to get at these inequities that are obviously out there and also try to diminish them going forward, so that we don't have these big gaps in time where we have these temporary employees out there; that we build a system that credits temporary employees so they can use that time to get into career positions, so that we don't have this big delta between the time they begin as a temporary employee and the time they get on as career employees; and also a way to recognize the value of that service in the hiring process, so that it is a priority and it is recognized as valuable service.

I mean, it is astounding that we recognize priorities for different reasons, but time in the job, you know, active, relevant, excellent service in the job is ignored or sidestepped, and, instead, we treat people as if they are just walking in the door and have never worked in the job before.

So I thank you for your willingness to testify and to help the committee with its work. I wish you all a good day. Thank you.

This meeting is now adjourned.

[Whereupon, at 4:45 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

Statement of Terence M. O'Sullivan
General President, Laborers' International Union of North America
Submitted to the House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia Regarding the June 30, 2010 Hearing on "Temporary Employee Practices: How Long Does Temporary Last?"

On behalf of the Laborers' International Union of North America (LIUNA) and the 500,000 men and women we represent, including more than 20,000 federal employees, I want to thank the Subcommittee for holding a hearing on the issue of the use – and misuse – of temporary and appointment for a specific term (term) workers in the federal government.

LIUNA has represented federal employees since 1967. We currently represent federal employees in 34 states at a wide variety of departments and agencies, including: Defense, HHS, VA, DOE, Transportation, and Interior.

The issue of the use and misuse of temporary workers is an important one – and one that negatively impacts many of the workers our Union represents. As you know, temporary and term workers are essentially "at-will" workers and lack most rights that other federal employees have, including the right to appeal their terminations. In addition to lacking the right to grieve a termination, the Merit Systems Protection Board (MSPB) also lacks jurisdiction over temporary and term workers' cases.

LIUNA understands that there are some legitimate uses for temporary and term employees. However, temporary and term workers are too often treated as a disposable workforce. Temporary workers lack access to most benefits, including health care and retirement. Term employees have some access to benefits, but it is very limited. The overuse – and abuse – of temporary and term workers not only harms employee morale, but government efficiency as well.

If these workers are eventually employed on a permanent appointment and then subsequently retire, their temporary employment does not count toward their annuity. While these workers can "buy back" their temporary service, that amount with interest is usually cost-prohibitive. For example, one LIUNA member who worked as a temporary federal employee in the 1970s for about 5 years was eligible to retire last year. That worker was told they would have had to pay over $9,000 for a retirement benefit worth only $3,500 – the interest was $5,900 – thousands more than their actual benefit.

The temporary worker problem has been especially problematic at two agencies at which LIUNA federal employees – the Indian Health Service (IHS) and the National Park Service (NPS).

LIUNA represents over 9,500 employees at IHS. Most IHS employees are enrolled Tribal members and take temporary or term appointments because of the lack of permanent jobs in their

areas. In late 2008, as part of our national contract negotiations, LIUNA requested data on the number of temporary and term employees at IHS. The information that IHS provided to us showed that over 2,100 employees – more than 20% of our bargaining unit – were either temporary or term employees. That means that a huge percentage of the workers we represent lack most rights and most benefits, which is an affront to the concept of union membership. This huge number contradicts OPM's claims that there are no abuses of temporary or term workers in the federal government.

The Union is aware of several IHS employees who have been on term or temporary appointments for more than 20 years. Supervisors often take advantage of the fact that these workers are on temporary or term appointments, harassing and threatening to fire them because of their vulnerable status for illegitimate reasons. Workers are frequently threatened with the end of their temporary or term appointments if they advocate for conversion of the position to permanent status.

Further, temporary and term employees are not afforded the right to notice when their position ends. Employees are sometimes given just minutes notice that their position has ended and are told to gather their things, turn in their keys, and leave the building immediately. This very situation just occurred to one of our bargaining unit employees at the Phoenix Indian Medical Center. This lack of notice puts these workers at great financial disadvantage.

Finally, the overuse of temporary and term workers harms morale at the agency. In the 2009 *Best Places to Work* survey, IHS employees scored in the top 10% in employee skills and mission match, while the Agency scored in the bottom 10% in strategic management – the category that measures employee satisfaction with the Agency's personnel decisions. The overuse of temporary and term workers – creating a large portion of the workforce – greatly contributes to this low ranking.

The overuse of temporary and term positions is also a problem at LIUNA's National Park Service bargaining units. At the Golden Gate National Cemetery in California, over 75% of the employees are either temporary or contract workers. The Coleman Fish Hatchery and the Presidio Trust – also in California – also have problems with overuse of temporary and term workers.

The Union requests the following reforms to ensure that temporary and term employees in the federal government are treated more fairly. First, provide access to health and other benefits through a buy-in program that allows these workers to pay a fair amount toward their insurance; 100% is not feasible for the vast majority of these workers. Second, allow these workers to accrue credits toward their five-year mark for retirement annuity benefits, and provide financial assistance to help workers buy-back their retirement credits for past temporary and term service. Third, provide appeal rights for temporary and term workers to challenge unjustifiable terminations. Fourth, require that a reasonable notice period – at least two weeks – be given to temporary and term employees prior to the termination of their position. Finally, require OPM to conduct annual reviews of the number of temporary and term workers at federal agencies and investigate any agency that has more than 5% of its workforce as term or temp appointments

(noting those agencies with a large number of seasonal hires); require OPM to notify the unions representing those workers in those agencies.

LIUNA believes that these reforms will go a long way to improve employee morale, protect employees' rights, and promote government efficiency and effectiveness. I thank you for investigating this important issue and look forward to working with you to solve this problem.

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