

August 8, 2018

Dear Member of Congress,

On behalf of the managers and supervisors in the federal government whose interests are represented by the Federal Managers Association (FMA), I write to express our concern with the Modern Employment Reform, Improvement, and Transformation (MERIT) Act of 2017 (H.R. 559), as reported from the House Oversight and Government Reform Committee. While FMA supports several provisions in this bill, we cannot support the underlying legislation due to our concerns with Section 3.

Section 3 would reduce the time to appeal removal decisions to seven days. Without question, managers must be able to address both misconduct and poor performance, and many managers currently feel it is easier to keep a poor performer and deal with their subpar performance than take the steps to document and convince the agency to remove. A clear, straight-forward process should be available to every manager to remove confusion and frustration from the termination process. FMA argues arbitrarily reducing the time for appeal does not accomplish the intended goal.

It is necessary to have protections and due process in place to prevent members of the civil service from being terminated on a whim or in response to outside pressures. The current system, as written in statute, is not broken. However, it is not always being used as it was intended. Current statute requires a minimum 30-day notice period from the date the proposal to remove or demote is issued to the employee until the effective date of action. This is not an unreasonable period of time to decide whether or not to terminate an individual's employment. Preventing an employee from understanding charges against them or preparing a meaningful defense undermines an employee's due process and is wrong. At the same time, limiting the number of days to process an action may result in findings of legal insufficiency and no action being taken, rather than taking the necessary time to resolve any documentary issues.

As noted above, there is much in the bill FMA concurs with and supports. Specifically, we have been vocal for many years in supporting extension of the probationary period, to give managers adequate time to evaluate an employee or manager and determine whether they are suited, not just for the initial position, but for federal service in general. In occupations where training takes substantial time, supervisors may only have a few months of work to judge employees' performance. An extended period would allow supervisors to fully assess employees' abilities. Not only does this affect managers, but also puts an unfair burden on the employee. These jobs are difficult and complex and it takes some people additional time to learn the job. Managers are placed in the difficult position of having to decide whether or not to keep employees when they may not have had sufficient time to evaluate them. There is an incentive to dismiss the employee prior to the expiration of the one-year window even though the employee may not have had sufficient time to show that they could master the job.

Further, many of our members support the provisions that would reduce the defined benefit annuity of a federal worker who is convicted of a felony and fired and giving agencies the authority to recoup bonuses or other awards paid to employees engaged in misconduct or unsatisfactory performance.

Regrettably, the reduced appeal time federal employees would have outweighs our support for other provisions in this bill, and FMA respectfully opposes H.R. 559. Thank you for your consideration of FMA's perspective. Should you have any questions or concerns, please contact FMA's Government Affairs Director, Greg Stanford, at [gstanford@fedmanagers.org](mailto:gstanford@fedmanagers.org) or (703) 683-8700, ext. 104.

Sincerely,



Renee M. Johnson

National President