NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Affiliated with the International Association of Machinists & Aerospace Workers, AFL-CIO

May 25, 2016

Dear Senator:

On behalf of the National Federation of Federal Employees (NFFE) and the 110,000 federal employees we represent throughout the United States and abroad, including the nurses, doctors, and other healthcare professionals at 17 Department of Veterans' Affairs (VA) hospitals and outpatient facilities across the country, I am writing to urge your opposition to S. 2921, the Veterans First Act. This legislation is a misguided attempt at reform that will not improve veterans' care; in fact, it will do the opposite.

In recent years, some lawmakers have continually advanced the idea of needed "accountability measures" for VA employees. While these new standards come in many shapes and sizes, the ultimate goal is clear: erode the constitutional protections afforded to VA employees undergoing discipline procedures related to misconduct or performance. Additionally, many proposals advanced in S. 2921 would undermine the integrity of services available to our nation's veterans by eviscerating important safeguards protecting VA employees from undue political influence.

Two important factors must be considered in the discussion of VA reform: First, the "accountability measures" in this legislation would not have prevented the falsifying of patient waiting lists that ignited calls for reform. Second, the rank-and-file VA medical professionals—those providing direct care for our nation's cherished veterans—were not responsible for the recent scandals at the VA. The VA employees NFFE represents, many of them veterans themselves, are among the most dedicated employees in the federal workforce. They are fully committed to the mission of providing veterans with the highest quality care, and treating each patient with dignity and respect. The measures put forth by S. 2921 are punitive in nature, and will ultimately fail to achieve the desired reforms while simultaneously inviting a culture of fear among our veterans' caregivers.

Specifically, sections 117, 121 and 123 of S. 2921 inflict the most damage to the VA's workforce:

Section 117 and Extended Probationary Periods. As written, the legislation would effectively increase probationary periods for two months unless action is taken by an employee's supervisor. There is a profound difference between probationary status and permanent status. Probationary employees are incredibly vulnerable to retaliation, discrimination, and other prohibited personnel practices, all the while maintaining no appeal rights or right to advance notice of termination. The extension of probationary periods would serve no purpose other than to silence potential whistleblowers of any protections necessary to expose abuse early in their careers.

Section 121 and Removal of VA Employees. Section 121 applies to all VA employees other than senior executives and imposes a minimal notice, response, and appeal timetable on employees subject to removal charges. Limiting the periods of notice and response to ten days apiece would severely restrict any meaningful opportunity by the employee to respond to charges and would limit the time available to the agency to meaningfully consider the employee's response to charges. Depriving employees of an adequate opportunity to understand charges or prepare a defense threatens constitutionally-guaranteed due

process protections. Besides this significant loss, there is relatively little the Department itself would gain by these unreasonably expeditious time constraints. The VA would still be required to prove its charges before these bodies, and appellants would still be able to assert affirmative defenses.

In a hearing in 2015 on the subject of expedited employee appeals adjudication timelines, VA Deputy Assistant Secretary for the Office of Resource Management Human Resources and Administration, Cathy Mitrano, said [the expedited appeals process of H.R. 1994] may go too far and prevent employees from adequately defending themselves. Susan Grundmann, Chair of the U.S. Merit Systems Protection Board (MSPB), questioned the very constitutionality of such measures when discussing similar language enacted for Senior Executive Service VA employees in 2014.

Reducing the MSPB's appeal and processing timeline would negatively impacts both the employee and the Agency. Currently, an employee must file an appeal within 30 days of the action and the MSPB Administrative Judge processes the case and issues an initial decision within 120 days. Under the Act, the appeal must be filed within 10 business days and must be processed and a final decision issued by the Board within 90 days. Reducing the processing time puts unreasonable and unnecessary restrictions on the Agency, Appellant, and Administrative Judges. There is insufficient time to engage is discovery, motions practice, or to secure the availability of witnesses. Additionally, even though the timelines are reduced, the Agency must still prove the charges against the employees. Under the reduced timelines of the 2014 Veterans Choice and Accountability Act applicable to SES employees, the Agency has been unable to meet its burdens and comply with discovery and other requirements resulting in the inability to prove certain charges in some cases at the MSPB. These unreasonable timelines could lead to less accountability, not more.

Further, one of the most significant misconceptions about VA employee discipline is that the VA is unable to eliminate poor-performers. In fact, the VA fired 2,247 employees for disciplinary or performance reasons in FY 2013 alone, more than any other Cabinet-level agency, according to data from the Office of Personnel Management. In FY 2014, the VA fired nearly 2,600 employees for cause. The assertion that the VA is incapable of operating within the current structure to handle, discipline and terminate poor-performers is simply a poorly-disguised attack on the VA workforce.

Section 123 and Retention of Admonishments and Reprimands in Employee Files. NFFE opposes the retention of admonishments and reprimands in employee records beyond the current practice of removing them after two and three years respectively. Holding a reprimand or admonishment in an employee's permanent record beyond these timeframes unfairly punishes those employees who appropriately correct their behavior.

Again, I strongly urge you to vote 'NO' on S. 2921, the Veterans Rights Act. If you have any questions, please contact NFFE Legislative Director Drew Halunen at (202) 716-2204 or dhalunen@nffe.org.

Thank you for your consideration.

Sincerely,

William R. Dougan
National President