



# NATIONAL FEDERATION OF FEDERAL EMPLOYEES

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

March 14, 2016

President Barack Obama  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. President,

I write to make you aware that you have even more problems at the Office of Personnel Management (OPM) than those of which you are aware.

First, let me thank you for your personal involvement in 2012 to make federal wildland firefighters – and other seasonal workers whose contributions are also vital to managing our public lands – eligible for the same health insurance program in which other federal employees may participate. Following up on your leadership and with the support of your previous OPM Directors and Beth Cobert (then a Deputy Director at the Office of Management and Budget), the National Federation of Federal Employees (NFFE) continued to push reform. We worked with both sides of the aisle in Congress to pass a common-sense regulatory fix to provide them with the same opportunities to advance their careers that other federal employees have. We are proud that, in this age of gridlock, the Land Management Workforce Flexibility Act (LMWFA) passed Congress without a single dissenting vote.

Unfortunately, these dedicated public servants are still the victims of gridlock – this time caused by OPM. OPM has issued guidance that, in flagrant disregard for the will of Congress, seriously undermines the reform put in place by the LMWFA. Insofar as wildland firefighters are concerned, the guidance effectively rebuilds the walls that the Act tore down. For them, it is as if it had never been passed.

It is hard to conclude that the actions by OPM staff on this matter are not part of an intentional effort by some within the agency to undermine reform. You see, Mr. President, while their current act may be the most egregious, it is far from the first act with the effect of blocking reform.

To give a brief summary of OPM's long history of blocking reform, many such seasonal employees are, regardless of the number of seasons they have served, designated as temporary employees. In 1994 OPM promulgated regulations "intended to ensure that temporary appointments are used to meet truly short-term needs." With respect to seasonal employment, they failed. A 2002 Government Accountability Office (GAO) review revealed that these regulations failed to prevent long-term employment in temporary positions, specifically in the case of temporary seasonal employees.

In response to a GAO recommendation, OPM reported back to GAO that regulations had been modified to address the problem. They lied. The regulation change cited as responsive to the recommendation had no bearing on the duration of temporary employment. The relevant regulations are unchanged to this day.

To address the issue of long-term employment in temporary positions, OPM also committed to GAO to include a sampling of work histories of temporary employees as part of its oversight of agencies. However, in 2010 Congressional testimony and a 2013 report to Congress on precisely that issue, OPM made no mention of such data in denying the existence of long-term temporary

employment. It would be unreasonable to assume the problem had magically vanished in the absence of regulatory change, and indeed we had provided OPM with hundreds of examples – examples whose existence they subsequently denied to Congress. More lies.

This brings me, Mr. President, to the matter with which these long-abused employees need your help: implementation of the LMWFA. It provides long-serving and successful temporary employees with, to quote from the Congressional Record, “the same career advancement opportunities available to all other Federal employees.” This is an important reform for many employees stuck in dead-end jobs not because they lack the right stuff, but because of flawed regulations.

We have provided OPM with a detailed analysis of how their guidance is inconsistent with legislative history. Responding, OPM staff told us their interpretation comports with legislative intent in that it treats temporary employees the same except when it does not. This argument holds Congress to the same standard to which Dr. Seuss held Sam-I-Am in “Green Eggs and Ham;” namely, that Congressional failure to specify “the same” under “all conditions” – whether in a house, with a mouse, in a box, or with a fox – leaves OPM with the discretion to decide “the same” actually means, under certain circumstances, “differently.” The argument would be laughable were it not tragic for the thousands of employees affected. Our attempts to discuss the matter further have been rebuffed. Apparently the wagons are circled, the heels dug in.

Mr. President, this gridlock is within your authority to solve. It took your personal involvement to move OPM staff off the dime and make these dedicated public servants eligible for federal health insurance coverage. We ask you to personally intervene once again on this matter. I stand ready to assist in any way I can.

Sincerely,

A handwritten signature in black ink that reads "William R. Dougan". The signature is written in a cursive, flowing style.

William R. Dougan  
National President