WORKERS FIRST AGENDA

Federal Employees

BEFORE INAUGURATION DAY

THE BIDEN-HARRIS TRANSITION TEAM should meet with labor union leaders to restore federal agencies to their missions. In order to determine the scope of the problem at each federal agency, the Biden-Harris transition team should meet with employees' unions at each of the federal government's agencies. Career civil servants can provide the most accurate perspective of how the Trump administration has undermined agency missions and the damage it has caused to the necessary functioning of each individual agency and department. These civil servants are the best source of information to ensure that the Biden-Harris team has the details necessary to correct the course at each agency.

FIRST DAY

- President Biden should immediately withdraw Executive Orders (EO) 13836, 13837 and 13839. In May 2018, the president issued three EOs that negatively affect federal employees and their unions. These EOs have multiple negative effects, including: (1) expediting the process for removing federal employees in performance-based adverse actions; (2) reducing the use of union representational official time governmentwide; (3) reducing the subjects that agencies and unions can negotiate; and (4) reducing the time it takes to negotiate a collective bargaining agreement, as well as the costs contained within them.
    - **Due process protections for federal workers (EOs 13836 and 13839):** These EOs signed by President Trump on May 25, 2018, direct agencies to reopen collective bargaining agreements and impose unfavorable terms on federal workers while encouraging agencies to adopt policies that erode fairness concepts such as progressive discipline, performance improvement plans, seniority and grievance filings for performance appraisals. The EOs' results have frustrated the ability of labor and management to collaborate to the benefit of the employees and taxpayers, and have instead fostered a work environment ripe for distrust and inefficiency.
    - **Official time (EO 13837):** By law, federal employee unions are required to provide representation for all employees in units that have elected union representation, even those who choose not to pay dues. Federal employee unions are also forbidden from collecting any fair-share payments or fees from nonmembers for services, which the union must provide by law. In exchange for the legal obligation to provide the same services to all employees regardless of whether they pay dues, the Civil Service Reform Act of 1978 established a right to use official time to perform these official mandated representational duties, with agencies and unions instructed to negotiate over the appropriate use of official time. Under this law, federal employees who serve as union

representatives are permitted to use official time to engage in negotiations and perform other representational activities on duty status on behalf of the employees they represent in an effort to increase the efficiency and effectiveness of the federal workforce. Indeed, the law provides that the amount of official time that may be used is limited to that which the labor organization and employing agency agree is reasonable, necessary and in the public interest. As pointed out in a Congressional Research Service report, "(a)ny activities performed by an employee relating to the internal business of the labor organization must be performed while in a non-duty status." Thus, the argument that official time is taxpayer-funded union time is false and malicious, designed to deceive the public. EO 13837 guts the use of official time, is intended to make it all but impossible for federal unions to represent their members and should be rescinded.

  - Further, President Biden should authorize unions, at their election, to reopen negotiated agreements, whether voluntarily entered into or imposed by the Federal Services Impasses Panel (FSIP) or other process during the effective period of these EOs. He also should order agencies to reopen agreements upon request. Further, once a union has elected to reopen negotiations, the agency shall be directed to reinstitute the status quo ante collective bargaining agreement, which shall be in immediate effect. The president has the authority to order agencies to participate in permissive bargaining under the law (bargaining that is permitted but not mandated by Chapter 71) and to voluntarily agree to comply with the terms of the last signed collective bargaining agreement.

- Rescind EO 13843, which politicizes the hiring of administrative law judges. This EO shifts the impartial and rigorous selection of federal administrative law judges (ALJ) from the Office of Personnel Management (OPM) to the agencies themselves, thereby opening the door for political appointees to hire ALJs based on their political leanings rather than their qualifications. The American public that appears before federal ALJs deserve an impartial decision from an independent adjudicator, not an ALJ chosen because of their political position. EO 13843 should be rescinded on Day One, and the ALJ selection process should revert to the objective OPM process under a rigorous timetable of no more than six months.
- Rescind the executive order issued on Oct. 21, 2020, titled "Executive Order on Creating Schedule F in the Excepted Service." This EO will negatively impact tens of thousands of federal workers, as it allows for political appointees to be embedded into the career federal civil service; opens the door for the dismantling of collective bargaining units, thus affecting tens of thousands of federal workers; and renders tens of thousands of federal workers at-will employees.
- Remove Federal Service Impasses Panel (FSIP) members. The current FSIP has taken extraordinary measures to weaken bargaining rights and employee protections by ordering agencies and unions to adopt antiunion provisions in their collective bargaining agreements. The president should immediately remove all members of the FSIP, leaving the positions vacant until new members may be appointed. The president is free to remove and appoint new FSIP members at any time without Senate confirmation (5 U.S.C. §§ 7119(c)(2) and (3)).

FIRST 100 DAYS

APPOINT MEMBERS TO IMPORTANT LABOR RELATIONS AND EMPLOYEE DUE PROCESS INDEPENDENT AGENCIES

- The general counsel (GC) of the Federal Labor Relations Authority (FLRA) is an important position that requires Senate confirmation, one that serves at the president's pleasure. Should the Senate confirm

the nominee from the Trump administration, President Biden should remove the GC of the FLRA on Day One and immediately move a nomination for the position. While awaiting Senate confirmation of a Biden-nominated FLRA GC, the president should immediately move the current deputy general counsel, Charlotte Dye, to acting FLRA GC for a period of 120 days. Labor has submitted the name of Cathie McQuiston for consideration for the position, as she is an extremely qualified individual.

- Renominate member Ernie DuBester and appoint him as FLRA chair. Member DuBester's term expired during summer 2019. He is in what is known as holdover status and will remain on the FLRA until summer 2021 unless he is reconfirmed. Even in the absence of a majority, the president may appoint the chair. He should NOT reappoint member Abbott, an antiunion ideologue. Abbott also is on holdover status through early 2022 and should be replaced immediately, and for cause if necessary. We are submitting Susan Tsui Grundmann for *the second FLRA member seat* being held by Abbott. Grundmann is a former chair of the Merit Systems Protection Board (MSPB) under President Obama. Chairperson Colleen Duffy Kiko's term expires in 2022, and she should NOT be reappointed.
- The *MSPB* does not have any members. Members must be appointed quickly to address the backlog of cases of adverse actions (suspensions of longer than 14 days and removals) of federal employees. We have submitted names for consideration for these positions.

DIRECT AGENCIES TO AVAIL THEMSELVES OF INTEREST ARBITRATION

- The president should order all agency heads to agree, if mutually agreed to by the union, to bypass the FSIP and instead proceed to binding interest arbitration when there is an impasse in contract negotiations. This is permitted pursuant to 5 U.S.C. § 7119(b)(2). This will expedite and streamline the impasse resolution process and allow agencies and unions to avoid what many characterize as cumbersome, outdated processes at the FSIP.

CANCEL PRESIDENTIAL MEMORANDUM TO THE DEPARTMENT OF DEFENSE (DOD) THAT COULD ELIMINATE COLLECTIVE BARGAINING RIGHTS FOR DOD WORKERS

- President Biden should cancel the presidential memorandum issued on Jan. 29, 2020, authorizing the secretary of defense to issue orders excluding DOD agencies or subdivisions from the FLRA's statute. Under the memorandum, the secretary is further authorized to delegate the authority to any DOD official who has been appointed by the president with the Senate's advice and consent. This newly delegated authority could, with the stroke of a pen, terminate union members' right to union representation entirely, as well as eliminate their collective bargaining agreements (CBA) and all of their rights included therein.

INSTRUCT THE U.S. DEPARTMENT OF VETERANS AFFAIRS (VA) TO UTILIZE CHAPTERS 75 AND 43 INSTEAD OF THE ALTERNATIVE FRAMEWORK CREATED BY THE VA ACCOUNTABILITY ACT

- The VA Accountability Act (VAAA) has failed to meet its stated goals of improving the VA workforce. The VAAA created an alternative framework for the VA to deal with employees facing adverse actions or performance issues. However, the act gives the agency a choice, and the incoming administration should direct the VA to pursue adverse actions under Chapter 75 and performance actions under Chapter 43—as is the protocol for the majority of government Title 5 employees.

AFFIRM THE RIGHTS OF TITLE 38 EMPLOYEES TO JOIN AND SERVE THEIR LOCAL UNIONS

- Since 2016, the Trump administration has applied the Title 38 collective bargaining law to refuse to bargain over almost all routine workplace matters. In November 2018, the VA invoked the Title 38 law to unilaterally repudiate contract provisions that give VA doctors, registered nurses (RN) and other medical professionals facing termination or discipline the right to union representation at agency appeal boards. The VA prohibited doctors, RNs and other medical professionals from serving as union representatives to address workplace issues during the workday even after VA leadership bargained and agreed to such time. VA medical professionals are treated as less than their Title 5 counterparts and face discrimination for exercising their statutory right to participate in their union. The VA must restore collective bargaining to these employees and agree to bargain with its affected unions to restore the rights of Title 38 employees. It also must further be instructed to settle the lawsuit brought by the unions to enforce these employees' rights.

TSA TRANSITION ISSUES

- Under a special footnote in the law, the Transportation Security Administration (TSA) administrator has unique unlimited authority to *determine* all of the conditions of employment for TSA officers (screeners). Current and past administrators have set some of those conditions of employment in a memo signed by the administrator called the *determination.* In order to correct the substandard treatment relative to other federal employees, the president should immediately direct the TSA administrator to issue a new determination covering the rights of TSA officers to implement the following changes:
  - Adopt Title 5 rights for dispute resolution, including provisions for full access to the MSPB; independent third-party arbitration of all grievances, discipline and adverse actions; Back Pay Act equivalency for back pay and attorney fees; and elimination of the table of penalties.
  - Grant full collective bargaining rights equivalent to those enjoyed by federal employees generally, eliminating prior restrictions on topics of bargaining.
  - Extend full union rights equivalent to the best provisions in place at other Department of Homeland Security agencies, including official time, union office space, etc.
  - Update TSA pay by placing the transportation security officer (TSO) D, TSO E and TSO F pay bands under the General Schedule (GS) system, with regular step and grade increases to provide for career ladder progression.
  - Reverse changes made in connection with presidential EOs 13836, 13837 and 13839.
  - Reopen the CBA with AFGE for renegotiation.
  - Eliminate the footnote in the Aviation and Transportation Security Act (ATSA) authorizing the TSA administrator to develop a separate personnel management system and pay system (49 U.S.C., Sec. 114(n)). To permanently address this loophole and substandard treatment, the administration should also support congressional initiatives to enact above points in statute.

SIGN AN EO ON LABOR MANAGEMENT PARTNERSHIPS AND FORUMS

- President Biden should follow the leads of former Presidents Clinton and Obama by issuing an EO promoting the creation of labor management partnerships and forums. Taking the best points from those two EOs and the experiences will lead to more effective government. By engaging the unions and the frontline employees through their union, considerable progress can be made at finding improvements in everyday operations, which will lead to a more effective government. Employee

engagement is recognized as the most important principle of high-performing organizations. Engagement starts with respecting the employees' collective voice and engaging them to use their voices and front-line wisdom in processes supported by the employee union representatives. When managers are willing to recognize the joint partnership required to deliver on the mission in the most effective way, high-performing organizations are the result. Approximately 60% to 70% of the federal employees are represented by unions. Engaging the unions and the employees is fundamental to success. The EO must have the full operational support of the president and the White House. For it to work, agency heads must comply. Managers must be oriented to the changed approach and hold their agency managers accountable. It will not work if managers are free to ignore the policy requirement. Combined with collective bargaining, these engagement policies can provide for better workplaces and more effective government.

SIGN EO TO PROTECT RETIREMENT BENEFITS FOR WORKERS WITH DISABILITIES

- President Biden should issue an EO to permit certain duty-related disabled federal employees—including law enforcement officers, Customs and Border Protection officers, firefighters, air traffic controllers, nuclear materials couriers, Capitol Police members, Supreme Court Police members, Central Intelligence Agency employees performing intelligence activities abroad or having specialized security requirements, and diplomatic security special agents of the Department of State—to receive retirement benefits in the same manner as if they had not been disabled and to reinstate without penalty retirement benefits for formerly covered employees who were involuntarily transferred after incurring a duty-related disability to a noncovered position resulting in a loss or forfeiture of covered retirement benefits.

FEDERAL ADVISORY COMMITTEES ON FEDERAL PAY: CHAIR POSITIONS

- There are two statutory advisory committees that make recommendations regarding federal pay: the Federal Prevailing Rate Advisory Committee (FPRAC), authorized under 5 U.S.C. § 5347, and the Federal Salary Council (FSC), authorized under 5 U.S.C. § 5304(e)(1). The FPRAC is concerned with the Federal Wage System (FWS), the pay system for federal employees in the skilled trades who are paid on an hourly basis. The FSC is concerned with the General Schedule (GS) and the locality pay system for federal employees who are paid annual salaries.

  The chair position for each of these advisory committees is crucially important to federal employees. Although the advisory committees do not address annual pay adjustments, they do make recommendations involving the calculation of benchmark pay rates and the boundaries that determine local pay differentials. The recommendations arising from FPRAC go to the director of OPM for approval and ultimate issuance as regulations. The recommendations arising from the FSC go for approval to the president's pay agent, which consists of the director of the Office of Personnel Management, the director of the Office of Management and Budget (OMB) and the secretary of labor.

  The highest-priority issue before FPRAC is a proposed rule that would limit each non-Rest of U.S. GS pay locality to one FWS wage area. The goal of this rule is to harmonize the government's two locality-based pay systems so that federal workers who work in the exact same location are paid in such a way that recognizes that they work as such.

  For decades, Congress has provided all salaried and hourly workers the same annual pay

adjustment. That is, they have extended the pay *adjustment* for GS employees to all hourly employees for purposes of equity. The annual GS pay adjustment usually consists of an across-the-board increase based on the Bureau of Labor Statistics (BLS) measure of changes in private sector wages and salaries, the Employment Cost Index and an adjustment that varies by metropolitan area that is based on the BLS's Occupational Employment Statistics, which records data on a city-by-city basis.

The FPRAC proposal would provide all hourly employees who work within the boundaries of a given GS locality the same *base* hourly wages. The proposed rule we support would ensure that, both for purposes of annual pay adjustments and for base pay, the federal government would treat all workers in a given location equitably. In other words, all salaried and hourly workers in a given location would receive both base pay and annual pay adjustments on the same locality pay basis. Of note, the FPRAC chair position is a noncareer Senior Executive Service appointment.

The most important issues facing the FSC involve calculating the federal-nonfederal pay gap and drawing the boundaries for GS pay localities. The Trump administration has so far followed precedent in calculating the pay gap, even though the current FSC chair has argued strenuously to change the factors that go into the calculation in order to pretend that there is no pay gap. The administration has, however, succeeded in deviating from past practice regarding drawing locality boundaries such that federal employees in counties throughout the country will have their pay lowered as a result.

The position of FSC chair is appointed by the president in accordance with EO 12764 but is neither full-time nor salaried. 5 U.S.C. § 5304(e)(1)(A) and (B) specify that appointments to the FSC include three seats for experts in labor relations and pay policy and six seats for "employee organizations representing large numbers of General Schedule employees." Historically, the employee organizations have been labor unions representing federal employees, as was the intention of Congress.

DIRECT OPM TO RESCIND NEW RULES UNDERMINING BACK PAY AND ATTORNEY FEES

- We have just learned of the notice of proposed rulemaking by OPM that will likely take effect just prior to the inauguration of the next president in January 2021. The president must direct OPM to rescind the new rule if it is in place or withdraw it from rulemaking if it is not finalized. The first part, narrowing coverage to removals, suspensions, demotions, etc., would effectively eliminate back pay for overtime disputes. Significant cases such as the VA on Saturday premium pay, from which VA workers received approximately $200 million in back pay, most likely no longer would be possible if these changes were adopted. The second primary change is aimed directly at union legal departments and other attorneys representing federal workers, even regarding removals, suspensions, demotions, etc. These proposed rules would impose an outright exclusion of unions from eligibility for attorneys' fees. The changes would change the definition of "personal representative" to the narrowest possible interpretation: only executors or other representatives of a deceased employee's estate.

LEGISLATIVE PROPOSALS

- Submit a budget proposal that protects and extends federal employee benefits. In recent years, the Trump administration outlined attacks on federal employees' pay and benefits as part of its annual fiscal year (FY) budget proposal. Prior Congresses have proposed and passed some of these policy

proposals as part of the annual congressional budget resolution. Although budget resolutions do not have the force of law, they lay the groundwork for the appropriations committees to allocate government funding.

The president's FY 2021 budget proposal includes each of the following attacks on federal employee wage and benefits, as well as attacks on labor unions generally (some of which have been endorsed by the House of Representatives and Senate leaders during the current administration):

The following are Trump-proposed retirement benefits that need to be deleted from the budget:

- Proposal to increase federal employee contributions to the Federal Employees Retirement System (FERS) to be phased in over several years, with individuals contributing an additional 1% of their salary each year until those payments reach 50% of the cost.
- Proposal to eliminate the FERS cost-of-living adjustment (COLA), and also to reduce the civil service retirement system COLA by 0.5%.
- Proposal to eliminate the Social Security annuity supplement, which would negatively affect law enforcement officers, firefighters, and air traffic controllers who are subject to mandatory retirement before reaching Social Security age.
- Proposal to change retirement annuity calculation from high three years to high five years.
- Proposal to reduce the Thrift Savings Plan (TSP) G Fund interest rate.

- Federal Employee Health Benefits Program:
  - This proposal would reduce the government contribution rate and increase employee contributions across all plans.
- The following is regarding the Trump leave budget proposal, which needs to be deleted:
  - Currently, all federal employees receive 10 paid holidays and up to 13 sick days annually, as well as 13 to 26 vacation days, depending on federal government tenure. This budget proposal would transition the existing civilian leave system to paid time off, which lumps all time off (sick and vacation) under one category in an attempt to reduce the total number of leave days.

RESTORE TITLE 5 RIGHTS TO DOD EMPLOYEES

- Over the past few years, Congress has passed a series of provisions that have greatly reduced Title 5 protections for DOD employees compared with other federal employees. These changes have been ill-advised and harmful to those employees supporting America's military. Legislation restoring full Title 5 rights for these employees should be enacted, including a return to the one-year probationary period from the recently increased two-year period. Second, the DOD reduction-in-force rules, which essentially eliminate experience as a retention factor, should be repealed. Under the current rules, an employee who has been with their agency for only one year and been given an outstanding rating could be retained over a 30-year employee with a current excellent rating. Finally, the official time restrictions for DOD employees should be repealed. Unlike other Title 5 employees, DOD employees cannot lobby on official time, as provided in the National Defense Authorization Act.

WORK WITH CONGRESS TO REFORM THE FSIP

- Support and sign into law legislation that includes reforms to the FSIP to improve collective bargaining and the resolution of impasses, including greater use of outside arbitration.

RESTORE THE FERS

- Since 2011, federal workers have had roughly $195 billion taken away from their compensation and benefits for deficit reduction, including an unprecedented three-year pay freeze, a mandatory increase in employee pension contributions to 2.3% of salary for employees hired in 2013 and 3.6% of salary for employees hired after 2013. Increased mandatory pension contributions for federal employees hired after 2013 makes it increasingly difficult for many to take full advantage of matching funds for their TSP (401(k)-equivalent) accounts, resulting in a potentially serious shortfall in their retirement income security and a substantial decline in their standard of living. Using federal retirement to facilitate budget deals must not happen again, and the ongoing salary reductions imposed during those years should be repealed.

PROTECT OPM

- In 2018, the Trump administration outlined in its government reorganization plan a proposal to eliminate the OPM and merge most of the agency's operational functions into the General Services Administration (GSA) while sending policymaking to the OMB, where a new Office of Federal Workforce Policy would be established. While Congress soundly rejected the initial phases of this plan, many efforts still are underway to merge OPM with various other federal agencies, eliminating its core function as the central merit-based civil service department of the government. President Biden should reject all proposals and plans to eliminate or merge OPM with other agencies, and ensure that the office has adequate staffing, funding and technological infrastructure to maintain its key role for protecting and ensuring a high-quality professional federal civil service.

VA

- Affirm the rights of Title 38 employees to join and serve their local unions. Congress enacted a Title 38 collective bargaining rights law in 1991 (Section 7422) to make clear that VA physicians and RNs and other Title 38 medical personnel have full collective bargaining rights like other VA employees and medical professionals at various federal agencies. The VA policy applying this law has been applied extremely unevenly depending on who is in the White House. In November 2018, the Trump administration utilized the Title 38 collective bargaining law to virtually eliminate the ability of VA clinicians to solve workplace problems during the working day through the use of official time. The Trump administration also used Section 7422 to refuse to bargain during contract renegotiations over more than a dozen longstanding contract provisions, including those that protect the safety of health care employees and patients in order to unilaterally impose a stripped-down, one-sided contract on the union. The VA must apply the law consistent with congressional intent in order to restore collective bargaining to these employees and agree to bargain with its affected unions to restore the rights of Title 38 employees. It must further be instructed to settle the lawsuit brought by the unions to enforce these employees' rights.
- Restore due process rights of VA employees. In 2017, in response to claims of widespread mismanagement at VA medical facilities and benefits offices, including manipulation of patient wait list data, payment of improper relocation bonuses and management retaliation of whistleblowers reporting management misconduct and poor performance, Congress enacted the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (P.L. 115-41) (Accountability

Act). This made it much easier to fire and discipline employees at the VA than at any other federal agency.

The Trump administration continues to tout this law as one of the most important pieces of veterans' legislation it secured. In reality, the law has failed to curb mismanagement or protect whistleblowers. Rather, it allowed the Trump administration to fire large numbers of low-wage employees, including a disproportionate number of disabled veterans and employees of color in the VA workforce, as well as health care employees who are in short supply, by eroding critical due process protections, lowering the evidentiary standard the agency must meet to carry out terminations and other adverse actions from preponderance of the evidence to substantial evidence, shortening the time frames that employees have to respond to proposed terminations and discipline, and prohibiting the MSPB from mitigating penalties regardless of the severity of the alleged misconduct or performance issue. The VA has refused to provide data indicating the impact of this law on the VA rank-and-file workforce, and its failure to carry out congressional intent to address the issue of bad managers.

President Biden should support legislation to restore the preponderance of evidence evidentiary standard that applies to other federal employees, and require the VA to provide comprehensive data on which employees have been fired and disciplined under this law.

- Repeal the AIR Act section of the VA MISSION Act. The new administration should support repeal of the Asset and Infrastructure Review (AIR) Commission established by the VA MISSION Act, which became law in 2018. This commission will use the Base Realignment and Closure (BRAC) process established for the DOD that has been widely criticized due to its high cost, lack of savings and extremely harmful outcomes for local communities. Despite the well-documented problems in DOD, this BRAC-style commission will be responsible for deciding the future of VA facilities nationwide. Every VA facility that provides health care and counseling to veterans would be subject to the commission's recommendations, including hospitals, clinics, nursing homes, domiciliaries for homeless veterans and veterans' centers that provide readjustment counseling. Also troubling in this section of the law is that, unlike with DOD base closures, the AIR Commission process offers little opportunity for congressional oversight and and/or vetoes. The AIR Commission must be repealed in order to protect veterans, their health care and benefit services, as well as VA facilities and the front-line staff.

LAW ENFORCEMENT OFFICERS (LEO)

- Expand LEO retirement benefits to officers of the VA, DOD, U.S. Mint and Federal Protective Police. Sign into law legislation amending Title 5 of the United States Code to include federal law enforcement professionals whose duties meet the current statutory definition of a federal LEO.

  Under present law, the definition of a LEO does not include positions such as officers of the Federal Protective Service and police officers from the DOD, VA and U.S. Mint. Despite having duties similar to or identical to other LEOs, these law enforcement professionals do not have pay and benefits status equal to that of their occupational counterparts in other agencies. Specifically, they have lower rates of pay and are not eligible for full retirement benefits until years after their LEO peers. As a result of this disparity, the law enforcement agencies with lower pay and benefits are greatly disadvantaged when recruiting and retaining trained law enforcement professionals, and have far lower employee morale.

TRANSPORTATION SECURITY ADMINISTRATION

- TSOs do not have Title 5 rights providing them full collective bargaining rights, including full access to the MSPB and replacing the current pay band system with the GS pay system. As a result, they are among the lowest-paid federal employees and do not have due process rights to resolve workplace disputes. Congress must pass and the president sign into law legislation to provide Title 5 rights, including the GS pay scale for TSOs. Currently, TSOs do not have Title 5 collective bargaining rights because of a footnote in the ATSA providing the TSA administrator with unusually broad authority to develop a separate personnel management system. Congress must pass and the president sign into law legislation to eliminate the authority in the ATSA (49 U.S.C., Sec. 114(n)).

FEDERAL FIREFIGHTERS

- Support and sign into law legislation that adjusts the method of determining retirement benefits for federal firefighters to include any income earned through mandatory overtime. Current law excludes any income earned through mandatory overtime from being included in the calculation of federal firefighters' retirement benefits. These firefighters deserve to be fairly compensated, and every hour worked should be accounted for in their retirement benefits.

MEDIUM- AND LONG-TERM PRIORITIES

REVERSE FLRA RULEMAKING FROM 2020

- The FLRA recently reversed decades of precedent through rulemaking and policy on at least four separate occasions, without a case or controversy in each instance. These changes significantly affect the relationships between agencies and unions, as well as between unions and their members. Once a new FLRA is constituted, we ask that the administration support the following be revoked through rulemaking.
  - On July 9, 2020, the FLRA issued, through rulemaking, a change to the dues revocation process, allowing members to cancel dues at any time after their first year of membership. This reverses 40 years of precedent allowing unions and agencies to negotiate an annual window for dues revocation. It reduces agency efficiency and is intended to undermine the relationship between members and their union.
  - On Sept. 30, 2020, the FLRA issued through policy a change on a "Request for a General Statement of Policy or Guidance on Agency-Head Review of Agreements That Continue in Force Until New Agreements Are Reached" (85 *Fed. Reg.* 3858-59) (proposed Jan. 23, 2020).
  - On Sept. 30, 2020, the FLRA issued through policy a change based on a request from the National Right to Work Legal Defense Foundation ("Foundation") for a general statement of policy or guidance concerning whether 5 U.S.C. § 7131 ("the Statute") "permits parties to bargain over, or union representatives to use, official time for lobbying activities that are subject to Federal law" (85 *Fed. Reg.* 16915) (proposed March 25, 2020). For decades, FLRA precedent allowed unions to negotiate with agencies to allow representatives to lobby on official time.
  - On Sept. 30, 2020, the FLRA issued through policy a change based on a request from OPM for a general statement of policy or guidance "holding that 'zipper clauses'—which are provisions that would foreclose or limit mid-term bargaining during the term of a collective-bargaining agreement (CBA)—are a mandatory subject of bargaining" (85 *Fed. Reg.* 17767) (proposed March 31, 2020).

In the federal sector, in light of the covered by doctrine, zipper clauses should not be a mandatory subject of bargaining and are unnecessary.

KEY PERSONNEL

THE WHITE HOUSE
- Staff Position for Federal Labor Relations
- Office of Federal Procurement Policy

OFFICE OF MANAGEMENT AND BUDGET
- Deputy Director
- Deputy Director for Management and Chief Performance Officer of the United States

DEPARTMENT OF DEFENSE
- High-Level Labor Relations Advisor

FEDERAL LABOR RELATIONS AUTHORITY
- Chair
- Members
- General Counsel
- Members, Federal Service Impasses Panel

MERIT SYSTEMS PROTECTION BOARD
- Members

NASA
- Associate Administrator for Legislative and Intergovernmental Affairs

OFFICE OF PERSONNEL MANAGEMENT
- Director
- General Counsel

VETERANS AFFAIRS
- Secretary