

Who Should Do the Federal Government's Work?

John W. York, PhD

KEY TAKEAWAYS

Federal agencies should compare the expense of outsourcing functions to contractors as opposed to tasking full-time civil servants with the work.

The federal government should decrease reliance on state and local governments to carry out federal policies.

Political appointees must be sufficient in number and power to effectively direct and discipline an increasingly sophisticated career bureaucracy.

The largely clerical federal workforce of the mid-20th century has been replaced by a blended federal workforce comprised, increasingly, of white-collar career civil servants and armies of contractors augmented by state and local bureaucrats. While the number of full-time federal civil servants has not grown significantly in 60 years, the number of contractors has exploded—as has the number of non-federal public-sector employees.¹ Although the size and structure of the federal government has evolved dramatically since 1978 when Congress structured the modern bureaucracy with the Civil Service Reform Act (CSRA), the statute remains largely unchanged. Congress should update the law to account for the way the federal government works—and who works for the federal government—in the 21st century.

The negative consequences of our outdated civil service system are becoming clear. While it is

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sometimes more cost-effective, outsourcing to contractors and nonprofits puts essential government functions in the hands of private citizens rather than public officials. It also allows politicians to distance themselves from divisive or disastrous policy implementation. Relying on state and local governments to carry out federal law is problematic as well; when the federal government is unable to carry out its constitutional duties alone, state and local government can effectively nullify federal law by not cooperating with enforcement efforts. Lastly, a federal workforce composed of lawyers, economists, and program analysts demands different modes of accountability than a federal workforce composed of postal clerks and typists. Congress should ensure sufficient numbers and expeditious approval of political appointees to ensure that the increasingly sophisticated and empowered career bureaucracy follows policy rather than makes it.

Addressing the ill effects of our aging civil service system can be done on a bipartisan basis, though it will be challenging. Republicans will have to recognize that holding the number of full-time federal bureaucrats constant since the middle of the 20th century has not resulted in a less intrusive government; instead, it has led to a mass outsourcing of federal work to contractors, nonprofits, and university faculties. Sometimes this division of labor is more efficient and effective, but not in every case. As for Democrats, they will have to accept a higher degree of oversight from political appointees and cut funds to controversial nonprofits as a condition of bringing more government functions in-house and potentially increasing the number of federal employees in certain areas. These modest concessions would allow for reforms that are long overdue.

How Government Has Changed Since the Civil Service Reform Act

Though the federal workforce has changed dramatically, the civil service system has not. The Civil Service Reform Act of 1978 was the last major update to personnel policy. Lawmakers need to update this body of law in light of three fundamental evolutions that have reshaped the federal workforce since the CSRA took effect 40 years ago.

Explosive Growth of Government Contractors. The number of nonprofit employees and contractors who work primarily for the federal government has exploded. Though the number of full-time federal employees has remained relatively stable over the past 60 years, the number of people who make their living executing federal policy has grown. According to Paul Light, a professor of public service at New York University and

Senior Fellow at the Brookings Institution, when taking into consideration contractors and nonprofit employees who draw their salary from the federal government, the true size of the federal government is now somewhere between *7 million and 9 million people*. Thus, the true size of the federal workforce, measured as a percentage of the population, has roughly doubled since the midpoint of the last century.²

The largest portion of the blended federal workforce consists of federal contractors. At last count, the number of federal contractors was around 3.7 million—about 1.5 million more than the number of federal civil servants (2.1 million).³ Though defense contractors are the largest segment of this workforce, federal contract laborers fill a wide range of functions across the government.⁴ They provide statistical analyses, janitorial services, management consulting, security in war zones, and nearly everything in between. Federal funds have become an important source of revenue for many nonprofits as well. In fact, roughly *one-third* of all nonprofit-sector revenues come from the federal government.⁵ This stream of federal dollars is the primary source of income for an estimated 1.6 million workers at nonprofit organizations.⁶

Though the federal government was already leaning heavily on contract labor when lawmakers last overhauled the federal civil service system, this trend has continued apace.⁷ In 1978, the year the CSRA became law, the federal government spent \$348 billion (in 2018 dollars) on government contracts.⁸ Last year, the federal government spent about \$508 billion.⁹ This difference in expenditures may belie a still starker difference in the number of contractors on the federal government's ledger.

In 1978, most contracts funded the development and procurement of new technology to win the arms race and the space race against the U.S.S.R. But that changed in the 1990s. As the Cold War ended, the Department of Defense (DOD) responded to military personnel cuts by contracting out many of its noncombat functions, such as facilities management and custodial services.¹⁰ To illustrate this point, political science professor John DiIulio notes that during the first Gulf War in 1991, there were 60 times as many soldiers as private contractors in Iraq. By contrast, at the outbreak of the second Gulf War, there were 100,000 contractors and 140,000 troops in theater.¹¹

The range of domestic activities that the federal government outsources to contractors and nonprofits also began to expand around the middle of the 20th century. To advance President Lyndon Johnson's "War on Poverty," Congress began funding community mental health centers and community action agencies.¹² Under President Ronald Reagan, Great Society-era grant

programs were consolidated and cut back, but they remain a significant expenditure. At last count, the federal government lays out about \$235 billion a year to nonprofits.¹³ This money funds everything from Head Start programs and foster care to health clinics and financial literacy programs.

Increased Reliance on State and Local Government. State and local governments are an auxiliary to the federal bureaucracy. The federal government has another auxiliary workforce that helps it carry out programs and policies: state and municipal government employees. State and local governments increasingly work at the behest of the federal government. “Congress loves action,” as University of Virginia political science professor Martha Derthick wrote, “but it hates bureaucracy and taxes, which are the instruments of action. Overwhelmingly, it has resolved this dilemma by turning over the bulk of administration to the state governments.”¹⁴

For their part, cash-strapped state and municipal governments typically embrace this arrangement because directives from Washington usually flow down to them on streams of new grant money. In fact, the amount of inflation-adjusted federal funding handed to state and local governments has increased tenfold since the 1960s.¹⁵ This wellspring of cash has fed the incredible growth of state and local government workforces. While the number of federal employees plateaued around 1960, the number of full-time (or full-time-equivalent) state and local employees has nearly tripled—from 5.5 million to 15 million—over the past six decades.¹⁶

Today many federal programs are operated by proxy.¹⁷ This arrangement allows a relatively small number of federal employees to administer massive programs. For instance, Medicare, Medicaid, and the Children’s Health Insurance Program make up about a quarter of the federal budget and are managed by a mere 5,000 federal employees working at the Centers for Medicare and Medicaid Services.¹⁸ Of course, state and local governments do much more than carry out federal programs. Though federalism is certainly attenuated, states and localities still have significant leeway to craft policies of their own and direct employees as they choose. Nonetheless, ballooning public-sector employment at these levels of government has certainly helped the federal bureaucracy extend its power despite a static number of federal employees.

More Regulators and Fewer Clerks. Even without the expansion of the contractor workforce and the rapid expansion of state and local governments, changes in the composition of the federal government workforce allow it to execute the law more autonomously and effectively. Today’s federal bureaucrat has a far different skill set and job description than the civil servants of the 1960s and 1970s. As late as the 1970s, the federal

civilian workforce was largely clerical in nature.¹⁹ It was composed primarily of secretaries and typists, general clerks, and nurses' assistants. Before the Digital Revolution, armies of federal employees manually catalogued patent applications, itemized receipts, typed correspondence, and took dictation. Technology has either eliminated these tasks or made them far less time intensive.

Many other blue-collar jobs have been contracted out.²⁰ Today, lawyers, economists, management analysts, and compliance specialists fill the desks that once made up the typist pool.²¹ Of a 2.1 million federal employee workforce, only 81,000 clerical positions remain.²² In 1978, there were nearly 389,000 such jobs.²³ Likewise, while about one-third of federal employees held a college degree and only 7 percent held advanced degrees in 1975, over half of civil servants are college graduates today, and one-quarter have earned advanced degrees.²⁴

The changing composition of the federal workforce means far more civil servants are doing the substantive work of bureaucratic governance—that is, drafting and implementing rules. The largely clerical workforce of the mid-20th century could not churn out, much less enforce, new rules and regulations with anything like the ferocity of the modern bureaucracy. The result of the compositional shift of the federal workforce—in concert with the increased number of contractors, nonprofits funded by federal dollars, and state and local bureaucrats executing federal policy—has resulted in a hub-and-spoke model of bureaucratic government. A new cadre of well-schooled federal administrators sits in the center of this blended workforce, steering its activities from Washington.

How Policymakers Should Respond

An update of our civil service system, which was designed 40 years ago, is long overdue. Congress and President Trump should change the way federal work is allocated and performed, taking account of the increased reliance on contract labor, nonprofits, bureaucrats at other levels of government, and the changing skill set of federal career civil servants. Policymakers should consider the following.

Better Evaluation of the Relative Efficiency of Outsourcing to Contractors. Some functions can and should be handled by contractors and nonprofits. It is often more efficient to outsource a function to the private sector rather than leave it to the career civil service to perform. For one, career civil servants are generally compensated better for comparable work when compared to private-sector employees. According to the

Congressional Budget Office (CBO), public-sector employees are about 17 percent more expensive than private-sector workers overall: On average, they receive a 3 percent wage premium and a 47 percent benefit premium.²⁵ In fact, this may be an underestimate, as the CBO did not consider several costly federal employee benefits in its analysis.²⁶

While federal workers are, on average, more expensive than a similarly qualified private-sector employee, contractor labor is not always a financial windfall.²⁷ For instance, the DOD found that it saved money by contracting with private-sector health technicians and social workers but lost money outsourcing for psychologists and physician contractors.²⁸

Congress and the Trump Administration should ask each department to compare the expense of outsourcing functions to contractors as opposed to tasking full-time civil servants with the work. Such an analysis could drive decisions about the division of labor between private companies and public-sector employees. The DOD is already required to conduct this sort of analysis, though its analyses do not capture all the costs of either federal employment or contractor labor according to the Government Accountability Office.²⁹ Other agencies should go beyond the DOD and estimate *all* costs pertaining to career civil servants and contractors.³⁰

Lawmakers should also address the non-monetary incentives that prompt some agencies to outsource their work. Given how difficult it is to discipline, lay off, or fire federal employees, relying on private-sector employees can be more attractive than hiring additional civil servants, even if outsourcing costs more money.³¹ The process of disciplining federal employees for misconduct or poor performance is painfully slow, often taking years in the most cut-and-dry cases.³²

This is due, in part, to a complicated process of appeals that can involve four agencies—the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), the Federal Labor Relations Authority (FLRA), and the Office of Special Counsel (OSC).³³ Faced with high procedural hurdles, federal managers are likely to look the other way when poor performance and misconduct occur.³⁴ The data bear this out. Only about 0.5 percent of the federal workforce are removed from the civil service in a given year.³⁵ Unsurprisingly, a recent poll conducted by the MSPB found that only half of federal managers believed they would be able to fire an employee for “serious misconduct.”³⁶ Contractors, on the other hand, can be terminated by their employer at will. And, if an agency is unhappy with a company’s work, it can choose not to renew a contract.

Increased Use of Temporary and Term Employees. Federal contractors might not always be cheaper, but they are always less permanent and

more easily shifted from project to project. Once a project is complete and a contract expires, contractors move on to other work and off an agency's ledgers. This is not the case for the vast majority of federal civil servants. While permanent federal employees can be removed from the civil service if there is no longer enough work to occupy them, the reduction in force (RIF) process is extraordinarily onerous.³⁷ But there is a relatively small number of federal workers—temporary and term employees—that can be easily removed from the payroll when they are not needed.

These federal employees are hired for a fixed duration (for temporary employees, no more than two years, and between one and four years for term employees) to fill short-term personnel needs.³⁸ Like contractors, once the predetermined period of employment ends, temporary or term employment automatically expires. Agencies that have seasonal or periodically recurring human capital needs—the Forestry Service or the National Park Service, for instance—also make use of seasonal employees.³⁹ A final category, intermittent employment, is designed for agencies that need short-term labor on an unpredictable timeline and for an unpredictable duration, such as the Federal Emergency Management Agency.⁴⁰

While the federal employment status of some seasonal and intermittent employees ceases once they stop working, some maintain their government employee status (though not their paycheck) during periods of inactivity.⁴¹ Unlike temporary and term employees, these permanent seasonal and permanent intermittent employees are eligible for federal employee health care coverage and accumulate time toward retirement and a pension.

Most agencies do not take advantage of these hiring authorities, preferring instead to rely on contractors. While there are roughly 3.7 million federal contractors currently working for the federal government, there are only about 47,000 temporary, term, intermittent, and seasonal federal employees.⁴² Most of these employees serve at a relatively low rank (GS-7 or below) in one of a few departments. In fact, the Forest Service, National Park Service, and Army Corps of Engineers employ more than half of all federal temporary, term, seasonal, and intermittent employees.⁴³ Agencies that need white-collar professionals or high-skilled technicians for short-term projects typically turn to the vast pool of contracting firms that exist to serve the federal government.

More should be done to make temporary, term, and intermittent employment more appealing to both agencies and job seekers. Currently, term employees are as difficult to fire as permanent federal employees.⁴⁴ After a one-year probationary period, during which they are accorded minimal protection against removal, term employees receive all the procedural and

appeal rights that make it nearly impossible to remove under-performing or misconduct-prone federal employees.⁴⁵ To make term employees more comparable to contractors, they should remain in a probationary status for the duration of their term. It is very important that agencies with looming project deadlines, for which they are critically understaffed, be able to quickly remove unproductive employees and rehire for the same position.

To that end, the Trump Administration should also ease the procedural burdens that currently exist for hiring term and temporary employees. On average, it takes 106 days to complete the arcane federal hiring process.⁴⁶ The process, which is primarily managed by the Office of Personnel Management (OPM), is designed to assure that merit—not graft, personal relationships, partisan allegiance, or pernicious biases—determines who joins the civil service. The imposition of a third party, OPM, into nearly every stage of the hiring process, from advertising a job to collecting and sifting through resumes, is one of the primary reasons hiring a new civil servant takes so long.

Nonetheless, OPM's role is indispensable. OPM's superintendence of the hiring process is a critical safeguard against ideological or partisan homogeneity in the ranks of the civil service. Implicitly or explicitly, employers tend to prefer job seekers with whom they have much in common. While always un-meritocratic, this tendency is particular problematic vis-à-vis the federal government, as it could lead to an ideologically uniform and essentially permanent cadre of federal bureaucrats.

Some may argue that OPM has largely failed to keep ideological bias at bay. Indeed, 95 percent of the political contributions made by federal employees in the 2016 presidential election went to Hillary Clinton.⁴⁷ But, a very small number of federal workers make political donations, and this statistic likely gives a skewed picture of the federal workforce's partisan composition. According to a survey conducted by the Government Business Council in 2015, there are only 4 percent more Democrat-leaning federal employees than Republican-leaning employees.⁴⁸ However, the partisan gap does widen to 9 percent at the top of the federal pay scale.⁴⁹ Thus, if managers were allowed to make hiring decisions without OPM oversight, the federal workforce could shift still further to the left.

The downside of the federal government's hiring procedures is a laboriously slow process that demands unbelievable patience on the part of job seekers and a preternatural ability to anticipate the need for human capital on the part of agencies. However, given the potentially grave consequences, this trade-off may be justified when it comes to selecting career civil servants. But, since term and temporary employees are not being integrated

into the permanent civil service, some of these safeguards can be relaxed without raising the specter of a permanent and partisan bureaucratic class. In recognition of this fact, policymakers are allowed to bypass the intermediate role of OPM and, according to the Code of Federal Regulations (CFR), “make a term appointment...under competitive procedures, or...by using direct-hiring procedures, as appropriate.”⁵⁰ This is a wise provision, but it could be improved.

The Trump Administration should strike “as appropriate” from this section of the CFR to clarify that agencies are always free to hire term and temporary employees expeditiously. This ambiguous phrase may cause legal problems for agencies in the future if it remains on the books. To date, term and temporary employment is uncommon enough that no agency has faced a serious legal challenge over the hiring procedures used to bring such an employee into the federal workforce. But if agencies begin to transition away from full-time, permanent employees, public-sector unions would fight back and exploit any statutory or regulatory ambiguity they could find. The Trump Administration should pre-empt these challenges where possible.

To make non-permanent federal employment more appealing to job seekers, the federal government should offer portable retirement packages that are comparable with private-sector plans. The Trump Administration’s 2020 budget contains a provision to do just that by significantly increasing federal contributions to the 401(k)-style Thrift Savings Plans that term employees now receive.⁵¹ Congress should enact this provision of the Administration’s budget and consider extending this improved retirement package to temporary employees as well. Additionally, Congress should ensure that all time spent in the civil service accrues toward pay raises and eligibility for promotion. People should not be penalized for serving their country when they are needed most and moving on to other work thereafter. A year of government service at the same step and grade, in the same office, agency, and location, should be compensated equally regardless of the term of employment.

Normalizing short-term employment may draw in a new, younger, more entrepreneurial cohort into the civil service. Today, those under 30 years old make up only about 6 percent of the career civil service.⁵² This is not surprising. The millennial generation came into the job market in the midst of the “gig economy.” With little expectation of a lifetime’s work with one employer and no desire to wait in line for slow promotions, the civil service may be an unappealing option for this cohort of job seekers. Employees looking to work in the public sector for a time, learn a valuable skill set,

and return to the job market should be encouraged to view the federal government as a way of propelling their career—a waypoint they are always welcome to return to—not necessarily a final destination.

Lastly, promoting term and temporary employment could lessen perverse incentives to keep projects and programs going well beyond their usefulness. When a program or agency is created to deal with a pressing problem, too often both become a permanent feature of government. This is due, in part, to the vested interest permanent civil servants have in the programs they manage. Shifting to another office, learning a new skill set, or even moving to another part of the country is a jarring prospect when perpetual employment and static responsibilities are the norm.

Facilitating Greater Transparency of Federal Contracts. Outsourcing federal functions to contractors or nonprofits risks obscuring responsibility for government action. When government contractors fail, it is easy for lawmakers and bureaucrats to dodge blame. Throughout the war in Iraq, for instance, Blackwater security contractors were blamed for collateral damage, civilian casualties, and public relations disasters.⁵³ Blackwater provided elected officials critical distance from accountability, which they did not enjoy when regular military personnel were the cause of controversy. After the Abu Ghraib prisoner abuse scandal, for instance, blame was firmly pinned on senior Bush Administration officials.⁵⁴

Holding the execution of policy at arm's length also allows the federal government to fund controversial activities without an individual agency, office, or bureaucrat becoming a lightning rod. By and large, this model works as planned. While protestors regularly gather outside Planned Parenthood clinics, they rarely harass the Department of Health and Human Services, the agency that administers the Title X family planning grants that help fund that nonprofit's activities.

To prevent federal officials from obscuring responsibility and shifting blame by outsourcing government functions, watchdogs must be able to readily trace contracts and grant money from their point of origin to their destination. To that end, the federal government should provide easily attainable and regularly reported data on the activities federal grant money and contracts are funding. USAspending.gov, the public website that reports federal spending, does not adequately fulfill this purpose. According to a 2014 report by the Government Accountability Office (GAO), only 2 percent to 7 percent of grant and contract awards on the website contained information that was fully consistent with agency records.⁵⁵ Congress should task the GAO with assessing the problems with USAspending.gov and should then propose legislation to fix this broken system. The public

cannot adequately hold public officials accountable for how they spend money if federal contracts and grant award information is wholly opaque.

Decreasing Reliance on States and Localities. Reliance by the federal government on state and local governments to carry out its policies is a troubling perversion of federalism, albeit one state governments are complicit in. State governments have become increasingly reliant on grant money from the federal government, which gives federal lawmakers tremendous leverage over them. Many federal policies that go well beyond the scope of Congress's enumerated powers have been established voluntarily by the states in order to secure federal funds. For instance, the nationwide drinking age of 21 was adopted by states in exchange for federal highway funds. More recently, many states expanded Medicaid eligibility in order to secure grant money.⁵⁶

This arrangement has two main ill effects. First, it undermines constitutional federalism. The Founders reserved to the states broad powers extending to “all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.”⁵⁷ The subordination of the states is a departure from the Founders' vision of federalism—regardless of whether state governments are forcibly compelled or financially coerced to accede to federal overreach.

Federal reliance on the states to enforce its policies poses a second danger—one which has become abundantly evident in the Trump era. While the federal government's extraordinary amount of capital gives it great leverage over state governments, the states can push back with tremendous force, so long as they are willing to place in jeopardy their continued receipt of federal grant money. When and if states choose not to assist federal law enforcement or regulatory agencies, the relatively small federal civil service is often powerless to carry out its policies alone.

The Trump Administration discovered firsthand how difficult state non-compliance can make federal law enforcement when states like California and Oregon adopted sanctuary state policies. When state and local governments direct their law enforcement agents not to inquire about individuals' immigration status, the federal government must independently identify and detain all those who are here illegally—by itself. That is an impossible task for Immigration and Customs Enforcement, an agency of fewer than 20,000 total employees.

Congress should decrease reliance on state and municipal governments to enforce federal policy and, conversely, state and local governments should break their dependence on federal grant money. There is no single

policy proposal that will force federal and state governments to re-establish a stricter separation of power. Constitutional conservatives must fight the battle against federal overreach bill by bill, issue by issue. But there are several proposals that could lead state legislators to consider more critically the trade-offs associated with accepting federal funds.

Model legislation developed by the American Legislative Exchange Council (ALEC) would require state and local governments applying for or renewing grant agreements to conduct a rigorous cost-benefit analysis before accepting the federal money—and the conditions that come along with it.⁵⁸ Often, the tantalizing prospect of immediate capital blinds states to the long-term and often unknown costs of complying with the new federal mandates attached to those funds. Many states may still choose short-term gains over long-term regulatory costs, but if ALEC's legislation were to pass, at least state lawmakers would be confronted with—and forced to justify—the true cost of their complicity.

At the same time, the federal government may have to increase the manpower of select agencies in order to carry out its constitutional responsibilities without relying on state and local governments. For instance, building up agencies like Immigration and Customs Enforcement and the U.S. Border Patrol may be a necessary and appropriate response to state and local non-cooperation with federal law enforcement efforts. It is certainly impossible to match the combined capacity of every state and local police force, nor will federal law enforcement officers be as effective acting alone. Nonetheless, dedicating more federal manpower to fulfilling key constitutional obligations like border enforcement will assure that federal laws are not wholly ignored even when states and localities choose not to aid enforcement.

Ensuring Sufficient Political Appointees. The 2-million-man career civil service of 1960 was likely far easier to supervise and direct than the equally-sized career civil service of today. Today's cohort of political appointees monitors a far larger number of program analysts and attorneys, subject matter experts and regulators. Left to their own devices, the typists, general clerks, and nurses that made up the bulk of the bureaucracy of the mid-20th century could not cause very much trouble. Environmental Protection Agency Program Managers, Securities and Exchange Commission regulators, and Department of Justice lawyers demand significantly closer monitoring.

Given their overwhelming number and superior expertise, career civil servants will always be at an enormous advantage in their interactions with political appointees. In many cases, they have decades of experience

working on programs or interpreting bodies of law with which political appointees are barely acquainted. If they are so inclined, career civil servants can easily stymie the efforts of a new Administration. By slow-walking new policy initiatives, presenting biased accounts of program performance, or simply not following instructions, bureaucrats can bog down a new administration's agenda in favor of their own preferences.

Much hinges on how these highly-trained civil servants use the significant discretion Congress often grants them, and it is more important than ever to have a sufficient number of non-career civil servants spread throughout the executive branch. Appointed by the President, often confirmed by the Senate, and serving at the President's pleasure, political appointees are a critical link between elected officials and the bureaucracy. Without an adequate number of non-career civil servants embedded within the administrative state, public policy may come to reflect the preferences of the career civil service—rather than the preferences of duly-elected officeholders.

This President and subsequent presidents should utilize every appointment available to them under the law. Early on in his tenure, President Trump signaled that he may not hire all the political appointees to which he is entitled. "I look at some of those jobs and it's people over people," President Trump said. "I say, 'What do all these people do?'" Indeed, this President has yet to nominate candidates for 157 of the 716 top positions in his Administration (all of which require Senate confirmation).⁵⁹ Evidence that some career civil servants have expressed a desire to thwart presidential leadership has hopefully demonstrated to President Trump the indispensable nature of political appointees.

Not only should the President work to ensure that all currently vacant political appointee slots are filled, he should consider adding several to the list. Though they add layers of bureaucracy to a top-heavy executive branch, the overall number of political appointees—approximately 4,000—is very small in comparison to the overall size of the federal bureaucracy. This is true at every level of government, from top to bottom. In fact, political appointees made up only 10 percent of the Senior Executive Service, the top strata of the federal bureaucracy, as of 2016.⁶⁰ Increasing the number of political appointees is especially important where agencies have reputations for serious ideological bias or writing regulations that depart from governing statutory authority. The Environmental Protection Agency and the Consumer Financial Protection Bureau are examples of such agencies.⁶¹

Assuring Civil Service Works for Elected Leadership. Increasing the number of political appointees will only enhance the civil services'

accountability to a presidential Administration if appointees are given the tools to steer their offices and agencies. Assuring faithful execution and interpretation of the law demands complete transparency and full cooperation from career civil servants. In order to assure that the federal bureaucracy is responsive to political leadership, presidential appointees must be able to take appropriate adverse actions in a timely manner. This is not the case today.

Firing a federal employee can take many months or even years. Before a civil servant is fired, a manager is required to document specific instances of poor performance and misconduct over a lengthy period of time.⁶² In the case of an employee who is chronically underperforming, managers must provide a detailed Performance Improvement Plan and give that individual time to work on his or her deficiencies. In many cases, delivering a pink slip is only the beginning of the removal process. Depending on the circumstances of an employee's removal, he or she can appeal to the Merit Systems Protection Board, the Equal Employment Opportunity Commission, enlist the support of the Office of Special Counsel, or contact a union representative and go through arbitration. In some cases, an employee can pursue several of these channels.⁶³ Given the short tenure of the typical political appointee and the length of the removal process, career civil servants can often survive a clash of wills.⁶⁴

When the Civil Service Reform Act created the process for adverse actions, faith in presidential leadership was at a low ebb. Watergate was a very recent wound. With over 40 years of hindsight, it is clear that Congress's response to this crisis of legitimacy went too far. By adding thick layers of insulation between career civil servants and political appointees, the Civil Service Reform Act hoped to check the threat that an Administration would coerce career employees to break or ignore the law. But in effect, they have hindered a President's ability to lawfully direct the execution of federal policy.

Congress and the Trump Administration should reaffirm that the president, not the career civil service, is ultimately responsible for executing the law. While the training and expertise of the modern civil service is indispensable, their role is to facilitate the policy agenda of elected officials to the best of their ability, even if they disagree with that agenda. When it becomes clear to political appointees that their authority is being undermined, they should be able to expeditiously remove any individual they believe is supplanting the Administration's agenda with their own. As James Madison understood, the president's removal power is not just an assurance of coherent executive branch policy; it is a critical feature of

democratic self-government. “If the president alone should possess the power of removal from office, those who are employed in the execution of the law will be in their proper situation, and the chain of dependence be preserved,” Madison wrote. “The chain of dependence therefore terminates in the supreme body, namely, in the people.”⁶⁵

To reify the president’s removal power, Congress should create a fast track by which political appointees can remove employees from the civil service. Removing some of the procedural hurdles—for instance, waiving the Performance Improvement Plan requirement and shortening the timeline for appeals—could be a useful first step. These small correctives will assure that career civil servants cannot wage a war of attrition against political appointees.

Fighting for Limited Government

If implemented, many of the suggestions above would result in more full-time federal employees, which is anathema to conservatives who have successfully fought to cap the number of civil servants for decades. Holding down the number of full-time civil servants, however, did not effectively constrain the growth of the federal government’s power, nor did it constrain the growth of the blended federal workforce. A large auxiliary workforce of contractors, nonprofits, and non-federal public-sector employees directed by an increasingly white-collar federal civil service has facilitated the growth of government.

Conservative lawmakers should continue to roll back regulations and reform failing social programs while recognizing that our blended federal workforce demands immediate improvement. In some cases, when it is less costly or more efficient to do so, it may make sense to shift some federal functions from contractors to civil servants.

The federal government should also ease its reliance on state and local governments to execute federal policies. Using grant money to coerce state and local governments to manage federal programs and enforce regulations is out of step with constitutional federalism. Overreliance on state and local law enforcement has also left the federal government unable to fulfill core constitutional responsibilities, such as guarding the border. The federal government should have the manpower to conduct such critical missions with or without the help of cities and states.

Lastly, it is more important than ever to assure that career civil servants are working at the behest of elected political leadership. Political appointees should be numerous enough in each department to assure that the law is

being executed in accordance with the wishes of the President, Congress, and, by extension, the American people.

John W. York, PhD, is a Policy Analyst in the B. Kenneth Simon Center for Principles and Politics, of the Institute for Constitutional Government, at The Heritage Foundation.

Endnotes

1. Over the past 40 years, the number of full-time federal employees has dropped as low as 1.75 million and climbed as high as 2.17 million. These fluctuations, while sizeable, tend to be short-lived. For most of the late 20th and early 21st century, the number of federal employees has held steady at around 2 million, plus or minus 200,000. See Paul Light, "The True Size of Government: Tracking Washington's Blended Workforce, 1984–2015," The Volcker Alliance, September 29, 2017, <https://volckeralliance.org/true-size-government> (accessed May 25, 2019).
2. Ibid.
3. Ibid.
4. About 65 percent of that money went to the Department of Defense. The next three biggest spenders—the Department of Energy, Veterans Affairs, and Health and Human Services—only account for about 15 percent of total contract spending *combined*. These non defense–related funds flow to for-profit companies, research universities, and nonprofits, funding everything from the procurement of new weapons systems to medical research.
5. Federal dollars flowing to nonprofits fall into two broad categories: fees for services and goods and grants. The former makes up 24.5 percent of all nonprofit income. Government grants make up 8 percent. See Brice McKeever, *The Nonprofit Sector in Brief 2015: Public Charities, Giving, and Volunteering*, Urban Institute, October 29, 2015, <https://www.urban.org/research/publication/nonprofit-sector-brief-2015-public-charities-giving-and-volunteering> (accessed May 25, 2019).
6. Ibid.
7. It is difficult to say precisely how much smaller the blended federal workforce was when Congress last authored a fundamental civil service reform. As a rough estimate, John Dilulio of the University of Pennsylvania claims there may have been as many as 2 million federal contractors and nonprofit workers essentially employed by the federal government in 1960. If this rough estimate is close to reality, the total number of civilians working on behalf of the federal government in some capacity has grown by around 3 million over the past 60 years. See John J. Dilulio, "10 Questions and Answers About America's 'Big Government,'" Brookings Institute, February 13, 2017, <https://www.brookings.edu/blog/fixgov/2017/02/13/ten-questions-and-answers-about-americas-big-government/> (accessed May 25, 2019).
8. Comptroller General of the United States, *Recommendations of the Commission on Government Procurement: A Final Assessment*, PSAD-79-80, May 31, 1979, <https://www.gao.gov/assets/130/126976.pdf> (accessed May 25, 2019).
9. Data Lab, "The Federal Government Spends About \$500 Billion Each Year on Contracts—That's Roughly the Size of Sweden's Economy," <https://datalab.usaspending.gov/contract-explorer.html> (accessed November 29, 2018).
10. Christopher Kinsey and Malcolm Hugh Patterson, in Christopher Kinsey and Malcolm Hugh Patterson, eds., *Contractors and War: The Transformation of Expeditionary Operations* (Stanford, CA: Stanford University Press, 2012), p. 2.
11. Dilulio, "10 Questions and Answers."
12. The Community Action Program was initially funded by the 1964 Economic Opportunity Act. In 1981, Congress consolidated community action grants and began funding them via the Community Services Block Grant. That year, Congress also authorized the Social Services Block Grant under Title XX of the Social Security Act. See Social Services Block Grant, Public Law No. 88–452.
13. Government Accountability Office, *Nonprofit Sector: Significant Federal Funds Reach the Sector through Various Mechanisms, but More Complete and Reliable Funding Data are Needed*, GAO-09–193, February 2009, <https://www.gao.gov/new.items/d09193.pdf> (accessed May 25, 2019).
14. Martha Derthick, "Preserving Federalism: Congress, the States, and the Supreme Court," *The Brookings Review*, Vol. 4, No. 2 (Winter–Spring 1986), pp. 32–37.
15. Dilulio, "10 Questions and Answers."
16. Federal Reserve Bank of St. Louis, "All Employees: Government," <https://fred.stlouisfed.org/series/USGOVT> (accessed May 25, 2019).
17. Ibid.
18. Center on Budget and Policy Priorities, "Policy Basics: Where Do Our Federal Taxpayer Dollars Go?" October 4, 2017, <https://www.cbpp.org/research/federal-budget/policy-basics-where-do-our-federal-tax-dollars-go> (accessed May 28, 2019).
19. Merit Systems Protection Board, Office of Policy and Evaluation, "The CSRA, 40 Years Later," *Issues of Merit*, August 2018, <https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1540524&version=1546183&application=ACROBAT> (accessed May 28, 2019).
20. Carten Cordell, "5 Shifts That Transformed Federal Service," *Federal Times*, January 8, 2016, <https://www.federaltimes.com/management/2016/01/08/5-shifts-that-transformed-federal-service/> (accessed May 25, 2019).
21. Ibid.
22. U.S. Office of Personnel Management, "Federal Workforce Data," June 2018, <https://www.fedscope.opm.gov/> (accessed May 25, 2019).
23. Nicole Ogrysko, "Bound by Constraints of 40-Year-Old Rules, Civil Service Ready for a Rebuild," Federal News Network, August 15, 2018, <https://federalnewsnetwork.com/workforce/2018/08/buttoned-in-40-year-old-rules-civil-service-bursting-at-seams-for-a-rebuild/> (accessed May 25, 2019).

24. Congressional Budget Office, "Characteristics and Pay of Federal Civilian Employees," March 2007, https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/03-15-federal_personnel.pdf (accessed May 25, 2019), and U.S. Office of Personnel Management, "2017 Common Characteristics of the Government," April 2017, <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/common-characteristics-of-the-government/ccog2017.pdf> (accessed May 25, 2019).
25. Congressional Budget Office, "Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015," April 2017, <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf> (accessed May 25, 2019).
26. Rachel Greszler, "Costly, Concerning and Counterproductive: The Federal Government's Compensation Premium and How to Capitalize on the Private Sector's Platform," testimony before the Committee on Oversight and Government Reform, U.S. House of Representatives, May 18, 2017, <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Greszler-Heritage%20Statement%20Federal%20Compensation%205-18.pdf> (accessed May 28, 2019).
27. It is difficult to precisely estimate the relative cost of contractors and civil servants. Relevant points of comparison, how to account for pensions and benefits, and the labor costs of procurement and requisitions are contested. While the Project on Government Oversight (POGO) argues that nearly all contractors are overpaid relative to their civil servant counterparts, its methodology has been called into question. Government estimates are, unfortunately, uncommon. The DOD study, cited below, is one of the few available to the public. I rely on the DOD's analysis because of the care the researchers took finding clearly analogous contractor and civil service job titles to compare. For POGO's study, see Project on Government Oversight, "Bad Business: Billions of Taxpayer Dollars Wasted on Hiring Contractors," <https://www.pogo.org/report/2011/09/bad-business-billions-of-taxpayer-dollars-wasted-on-hiring-contractors/> (accessed May 25, 2019), and Light, *The True Size of Government*.
28. There are exceptions to the general rule that highly trained full-time civil servants are cheaper than contractors. According to the DOD, contract psychiatrists, for instance, are cheaper than their full-time civil servant counterparts. For a summary of the DOD's report to Congress as well as an account of its possible shortcomings, see Government Accountability Office, *Civilian and Contractor Workforces: DOD's Cost Comparisons Addressed Most Report Elements but Excluded Some Costs*, GAO-18-399, April 2018, <https://www.gao.gov/assets/700/691751.pdf> (accessed May 25, 2019).
29. According to a GAO report on the DOD's methodology for determining the cost effectiveness of relying on full-time federal employees or contract labor, the DOD does not adequately account for: (1) the direct non-labor costs of government-owned facilities and government-provided supplies; (2) the indirect costs of general and administrative overhead for civilians; and (3) the costs of managing federal contracts. *Ibid.*, p. 13.
30. Greszler, "Costly, Concerning and Counterproductive."
31. John W. York, "Strengthening the Federal Workforce through Increased Accountability," Heritage Foundation *Background* No. 3325, July 26, 2018, <https://www.heritage.org/sites/default/files/2018-07/BG3325.pdf>.
32. *Ibid.*
33. *Ibid.*
34. Along with the other proposals advanced in this paper, Congress should consider streamlining the adverse action process, making it easier for managers to hold their employees accountable for poor performance and misconduct. The most effective means of simplifying this process would be to create a single forum for employee appeals by consolidating certain functions of the MSPB, EEOC, FLRA, and OSC. This would eliminate many of the duplicative hearings, arbitrations, filings, and reviews that agencies must endure now in order to remove an employee from the civil service. For a fuller description of this and other ideas to simplify the adverse actions process, see York, "Strengthening the Federal Workforce."
35. U.S. Office of Personnel Management, "Enterprise Human Resources Integration-Statistical Data Mart (EHRI-SDM)," <https://www.fedscope.opm.gov/separations.asp> (accessed May 28, 2019).
36. U.S. Merit Systems Protection Board, "Building Blocks for Effective Performance Management," Office of Policy and Evaluation, October 2017, <https://www.mspb.gov/mspbsearch/viewdocs.aspx?docnumber=1453471&version=1458980&application=ACROBAT> (accessed May 25, 2019).
37. Agencies are required to create a rank-ordered "retention register" of all employees based on length of service, grade, performance ratings, and veteran's status. Employees with the lowest "retention factor" within their job category and commuting area are selected for removal from the civil service. Simply identifying the civil servants to be removed is very time- and labor-intensive. The more difficult part, however, is facing the myriad union grievances and Merit Systems Protection Board hearings that inevitably follow a RIF. See U.S. Office of Personnel Management, "Workforce Restructuring: Workforce Reductions in Force," <https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force/> (accessed May 25, 2019).
38. 5 Code of Federal Regulations § 316 (1968). OPM may offer extensions to agencies who wish to keep temporary or term employees onboard for more than one or four years, respectively. See 5 CFR § 316.301.b (2012).
39. 5 Code of Federal Regulations § 340.402 (2008).
40. 5 Code of Federal Regulations § 340.403 (2008).
41. For more on intermittent employment in the federal government, U.S. Department of the Interior, "Human Capital," U.S. Geological Survey, https://www2.usgs.gov/humancapital/hr/documents/Factsheet_Intermittent.pdf (accessed May 25, 2019).

42. This is according to Fedscope, the Office of Personnel Management's public-facing website for federal human capital data. According to OPM's July 2018 data, there are 45,703 federal employees in the competitive civil service—that is, excluding political appointees and several other non-competitive service designations (i.e., Schedule A, B, and D)—in non-permanent status. There are an additional 1,314 *permanent* seasonal and intermittent employees in the competitive service. U.S. Office of Personnel Management, "Federal Workforce Data."
43. Ibid.
44. In regard to term employment, see 5 Code of Federal Regulations § 316.302(a) (2008). In regard to temporary employees, see 5 CFR § 316.402(a) [Revision year].
45. York, "Strengthening the Federal Workforce."
46. U.S. Office of Personnel Management, "Examining Federal Managers' Role in Hiring," statement of Mark Reinhold, Associate Director of Employee Services, before the Subcommittee on Regulatory Affairs and Federal Government, Committee on Homeland Security and Governmental Affairs, U.S. Senate, March 1, 2018, <https://www.hsgac.senate.gov/imo/media/doc/Mark%20Reinhold%20TESTIMONY1.pdf> (accessed May 25, 2019).
47. Jonathan Swan, "Government Workers Shun Trump, Give Big Money to Clinton," The Hill, October 26, 2016, <https://thehill.com/homenews/campaign/302817-government-workers-shun-trump-give-big-money-to-clinton-campaign> (accessed May 25, 2019).
48. Eric Katz, "There Are More Republicans in Federal Government Than You Might Think," Government Executive, August 14, 2015, <https://www.govexec.com/oversight/2015/08/there-are-more-republicans-federal-government-you-might-think/119138/> (accessed May 25, 2019).
49. Ibid.
50. 5 Code of Federal Regulations § 316.302(a) (2008).
51. The Trump Administration's proposal would increase the government's automatic contribution from 1 percent of base pay to 5 percent. The plan would also increase the dollar-for-dollar matching contribution from 4 percent of salary up to 5 percent. Under the Trump budget, a federal employee making \$80,000 would amass at least \$4,000 (and up to \$8,000) in government contributions, compared to the \$800 to \$4,000, respectively, that they receive today. Term employees in the public safety field receive an even bigger bump under the Administration's budget proposal. Employer contributions to their retirement could total as much as 14 percent of base pay.
52. U.S. Office of Personnel Management, "Federal Workforce Data."
53. For a synopsis of publicized crises involving Blackwater contractors, see Peter W. Singer, "The Dark Truth about Blackwater," Brookings Institute, October 2, 2007, <https://www.brookings.edu/articles/the-dark-truth-about-blackwater/> (accessed May 28, 2019).
54. "Resign, Rumsfeld," *The Economist*, May 6, 2004, <https://www.economist.com/printedition/2004-05-08> (accessed May 28, 2019), and "Rumsfeld Approved Iraqi Interrogation Methods: Report," Reuters, May 15, 2004, <https://www.abc.net.au/news/2004-05-16/rumsfeld-approved-iraqi-interrogation-methods-report/1976460> (accessed May 28, 2019).
55. U.S. Government Affairs Office, *Data Transparency: Oversight Needed to Address Underreporting and Inconsistencies on Federal Award Website*, GAO-14-476, June 2014, <https://www.gao.gov/products/GAO-14-476> (accessed May 25, 2019).
56. National Conference of State Legislatures, "Affordable Care Act Medicaid Expansion," <http://www.ncsl.org/research/health/affordable-care-act-expansion.aspx> (accessed May 25, 2019).
57. James Madison, *The Federalist* No. 45, January 26, 1788, <http://www.constitution.org/fed/federa45.htm> (accessed May 28, 2019).
58. American Legislative Exchange Council, "Reforming How Federal Grants Are Provided to the State," September 18, 2018, <https://www.alec.org/model-policy/draft-reforming-how-federal-grants-are-provided-to-the-state/> (accessed May 25, 2019).
59. Partnership for Public Service, "Presidential Appointee Tracker," <https://ourpublicservice.org/issues/presidential-transition/political-appointee-tracker.php> (accessed September 1, 2018).
60. United States Office of Personnel Management, "2016 Senior Executive Service Report," April 2017, <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/ses-summary-2016.pdf> (accessed May 25, 2019).
61. Ronald Rubin, "The Tragic Downfall of the Consumer Financial Protection Bureau," *National Review*, December 21, 2016, <https://www.nationalreview.com/2016/12/consumer-financial-protection-bureau-tragic-failures/> (accessed May 25, 2019); "EPA Gives Info for Free to Big Green Groups 92 Percent of Time; Denies 93 Percent of Fee Waiver Requests from Biggest Conservative Critics," Competitive Enterprise Institute, May 14, 2013, <https://cei.org/content/epa-gives-info-free-big-green-groups-92-time-denies-93-fee-waiver-requests-biggest> (accessed May 25, 2019); Daniel Press, "The Myth of Independence at the Consumer Financial Protection Bureau," Competitive Enterprise Institute, February 5, 2018, <https://cei.org/blog/myth-independence-consumer-financial-protection-bureau> (accessed May 25, 2019); and Susan E. Dudley and Marcus Peacock, "Improving Regulatory Science: A Case Study of the National Ambient Air Quality Standards," George Washington University Regulatory Studies Center *Working Paper*, June 30, 2017, https://regulatorystudies.columbian.gwu.edu/sites/g/files/zaxdzs1866/f/downloads/SDudley+MPeacock_Regulatory-Science-and-Policy-6-30-2017.pdf (accessed May 25, 2019).
62. York, "Strengthening the Federal Workforce."
63. Ibid.

64. Kelly Chang, David Lewis, and Nolan McCarty, "The Tenure of Political Appointees," paper prepared for the 2001 Annual Meetings of the Midwest Political Science Association, April 19–22, 2001, <https://www.princeton.edu/~nmccarty/turnover041201.pdf> (accessed May 25, 2019).
65. James Madison, "Removal Powers of the President," Founders Online, <https://founders.archives.gov/documents/Madison/01-12-02-0143> (accessed May 25, 2019).