



December 22, 2023

U.S. Office of Personnel Management
Executive Secretariat
1900 E Street NW
Washington, DC 20415
OPMExecSec@opm.gov

Re: Petition for rulemaking to amend civil service regulations in 5 CFR Part 250, Subpart B to ensure government agencies that are considering relocating follow best practices for effective agency reform and strategic human capital management.

Democracy Forward Foundation respectfully petitions the Office of Personnel Management (OPM), pursuant to 5 U.S.C. § 553(e), to promulgate a regulation that would establish uniform practices for evaluating and implementing decisions to relocate agencies, bureaus, divisions, sections, services, or other units of any department of the executive branch (herein “agencies”) outside the National Capital Region (NCR) so that the government’s human capital is strategically managed.

The people of this nation depend on federal government agencies to work efficiently and productively, which requires full staffing with experienced and well-qualified professionals. A strong corps of civil servants – career employees, not political appointees, who serve the federal government and the public across presidential administrations – are foundational to American democracy. These nonpartisan experts are responsible not just to the President but have responsibilities to the Constitution, the law, Congress, and, ultimately, the public.

Strategic planning for government agencies is mandated by Congress and framed in multi-year commitments¹ that are not tied to any particular administration. Such planning is essential to maintaining agency continuity and effectiveness *across* administrations.² Strategic workforce planning, moreover, has been recognized by Congress and OPM as a key component of every agency’s strategic and performance plans.³

¹ U.S. Gov’t Accountability Off. (GAO), *Managing for Results in Government*, <https://www.gao.gov/managing-results-government> (last visited Dec. 20, 2023).

² See U.S. Dep’t of Agric. (USDA), *Strategic Plan FY 2014 - 2018* (July 10, 2013), <https://www.usda.gov/sites/default/files/documents/usda-strategic-plan-fy-2014-2018.pdf>; USDA, *USDA Strategic Plan FY 2018 - 2022* (May 2018), <https://www.usda.gov/sites/default/files/documents/usda-strategic-plan-2018-2022.pdf>; USDA, *USDA Strategic Plan Fiscal Years 2022 - 2026* (Mar. 2022), <https://www.usda.gov/sites/default/files/documents/usda-fy-2022-2026-strategic-plan.pdf>.

³ See 5 U.S.C.A. § 1103, *amended by* Homeland Security Act of 2002, Pub. L. No. 107-296; OPM, *2018 Federal Workforce Priorities Report (FWPR)* (Feb. 2018),

The Government Accountability Office (“GAO”) has studied and published several reports setting forth the best practices (referred to as “leading practices”) in agency reform⁴ and strategic workforce planning and management.⁵ From this existing body of guidance, GAO has identified specific practices – some relating to agency reform and some relating to strategic human capital management – that should be followed by agencies contemplating and undertaking relocations.⁶

Relocations of agencies by the Departments of Agriculture and Interior in 2019 and 2020 demonstrated how the failure to follow best management practices can incapacitate government agencies, cause a long-term loss of institutional knowledge and experience, and result in a significant loss of expertise and workforce diversity. In the wake of those experiments, GAO has identified and publicized the leading practices that should be followed when evaluating a relocation proposal and when implementing any decision to relocate.⁷ Given the substantial implications for federal agencies’ human capital during agency relocations, OPM should ensure that federal agencies follow best practices and apply a rigorous human capital lens to relocation planning, building on OPM’s existing coordinating role in managing the federal workforce.⁸

Democracy Forward Foundation respectfully asks OPM to promulgate regulations that set clear standards for the executive branch to follow when contemplating and implementing an agency relocation. Standardized requirements will preserve continuity in the executive branch, increase the likelihood of productivity and efficiency through periods of change, and prevent decision-making that might incapacitate federal agencies or undermine the statutes and personnel regulations that encourage government service and protect civil servants.

<https://www.opm.gov/policy-data-oversight/human-capital-management/federal-workforce-priorities-report/2018-federal-workforce-priorities-report.pdf>.

⁴ GAO, GAO-18-427, *Key Questions to Assess Agency Reform Efforts*, at 2 (June 2018), <https://www.gao.gov/assets/gao-18-427.pdf> (noting, “In this report, we use the term “reforms” to broadly include any organizational changes—such as major transformations, mergers, consolidations, and other reorganizations—and efforts to streamline and improve the efficiency and effectiveness of government operations.”).

⁵ *Id.*; GAO, GAO-04-39, *Key Principles for Effective Strategic Workforce Planning* (Dec. 2003), <https://www.gao.gov/assets/gao-04-39.pdf>; GAO, GAO-03-450, *Opportunities to Improve Executive Agencies’ Hiring Processes* (May 2003), <https://www.gao.gov/assets/gao-03-450.pdf>; GAO, GAO-04-546G, *A Guide for Assessing Strategic Training and Development Efforts in the Federal Government* (Mar. 2004), <https://www.gao.gov/assets/gao-04-546g.pdf>; GAO, GAO-04-797, *Additional Collaboration Between OPM and Agencies Is Key to Improved Federal Hiring* (June 2004), <https://www.gao.gov/assets/gao-04-797.pdf>.

⁶ *See, e.g.*, GAO, GAO-23-104709, *Following Leading Practices Will Better Position USDA to Mitigate the Ongoing Impacts on Its Workforce*, at 22 (Dec. 2022), <https://www.gao.gov/assets/gao-23-104709.pdf> (herein “GAO USDA Leading Practices Report”).

⁷ *Id.* at 22-24, 29-31.

⁸ *See, e.g.*, 5 C.F.R. pt. 250, subpart B (Strategic Human Capital Management); 5 C.F.R. pt. 351, subpart C (Transfer of Function); 5 C.F.R. pt. 575, subpart B (Relocation Incentives).

I. Background: Ill-Considered Efforts to Move Agencies Outside of Washington, D.C.

Recent years have seen unadvisable efforts to relocate agencies outside of the nation's capital, including at the Departments of Agriculture and Interior.

A. The Departments of Agriculture and Interior Rush to Relocate Agencies to Kansas City and Colorado.

Secretary of Agriculture Sonny Perdue announced in August of 2018 the relocation of the Economic Research Service (ERS) and National Institute of Food and Agriculture (NIFA), two agencies within USDA, outside of the nation's capital.⁹ After conducting a search of potential locations and undertaking some form of cost/benefit analysis,¹⁰ Secretary Perdue announced in June 2019 that these two agencies would be relocated to the Kansas City Region with an effective date of the relocation of September 30th of that year.¹¹

According to the Secretary's plan, 294 of NIFA's 315 positions were designated for relocation and only 21 would stay in the National Capital Region. Of the 329 ERS positions, 253 were designated for relocation while 76 would stay in the Washington, D.C. area.¹² The affected employees had roughly four months (the time in between the Secretary's announcement and September 30th) to decide whether to follow their jobs from Washington D.C. to Kansas City.¹³

In July 2019, the Secretary of the Interior David Bernhardt "announced that the majority of Bureau of Land Management (BLM) employees assigned to the agency's headquarters in Washington, D.C., would be transferred to BLM offices in western states and that a new BLM headquarters would be established in Grand Junction, Colorado."¹⁴ Under this reorganization scheme, 60 career positions would remain in Washington, D.C. while 311 would be relocated to the West, including to the new headquarters in Grand Junction.¹⁵ Approximately three months later, on September 18, 2019, the Bureau alerted staff affected by the decision that their

⁹ USDA, *USDA to Realign ERS with Chief Economist, Relocate ERS & NIFA Outside DC* (Aug. 9, 2018), <https://www.usda.gov/media/press-releases/2018/08/09/usda-realign-ers-chief-economist-relocate-ers-nifa-outside-dc>.

¹⁰ USDA, *NIFA and ERS Relocation: Cost Benefit Analysis* (June 13, 2019), <https://www.usda.gov/sites/default/files/documents/062819-CBA.pdf>.

¹¹ USDA, *Secretary Perdue Announces Kansas City Region as Location for ERS and NIFA* (June 13, 2019), <https://www.usda.gov/media/press-releases/2019/06/13/secretary-perdue-announces-kansas-city-region-location-ers-and-nifa>; GAO USDA Leading Practices Report, *supra* note 6, at 1.

¹² USDA, *Secretary Perdue Announces*, *supra* note 11.

¹³ GAO USDA Leading Practices Report, *supra* note 6, at 1.

¹⁴ GAO, GAO-20-397R, *BUREAU OF LAND MANAGEMENT: Agency's Reorganization Efforts Did Not Substantially Address Key Practices for Effective Reforms*, at 1 (Mar. 2020), <https://www.gao.gov/assets/gao-20-397r.pdf> ("GAO BLM Key Practices Report").

¹⁵ *Id.* at 3.

positions were in the process of being relocated.¹⁶ In November 2019, the staff were given 30 days to “accept or decline their reassignment.”¹⁷

B. Official Statements About the Relocations Reflect Unfounded Optimism Rather than Well-Researched and Planned Management of Government Assets.

The Secretaries of Agriculture and Interior expressed great optimism at the time that these relocations would make the federal government more efficient and capable of serving the American people.

On June 13, 2019, Secretary Perdue stated: “The Kansas City Region will allow ERS and NIFA to increase efficiencies and effectiveness and bring important resources and manpower closer to all of our customers.”¹⁸

On August 10, 2020, Secretary Bernhardt stated: “This relocation strengthens our relationship with communities in the West by ensuring decisionmakers are living and working closer to the lands they manage for the American people. This effort will also save a great deal of money that can be reinvested in our field operations.”¹⁹

Subsequent review of these relocation decisions, however, failed to uncover hard data supporting these assertions.²⁰

II. Justification for Rulemaking: Relocations that Do Not Follow Leading Practices Can Incapacitate Agencies.

Notwithstanding the improvements in government service promised by Secretaries Perdue and Bernhardt, the relocations significantly incapacitated the agencies. The relocation at BLM caused 77 percent of the employees slated for relocation to separate from their positions,²¹ and the relocation of ERS and NIFA caused both agencies to lose more than 50 percent of their staff as of July 2020.²² Although some of this attrition was temporary, as discussed below, the GAO found that these losses led to measurable decreases in productivity, efficiency, competence, and capacity.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ USDA, *Secretary Purdue Announces*, *supra* note 11.

¹⁹ BLM, *The Bureau of Land Management’s Headquarters Officially Established in Grand Junction, Colorado* (Aug. 10, 2020), <https://www.blm.gov/press-release/The-Bureau-of-Land-Management-Headquarters-Officially-Established-in-Grand-Junction-Colorado>.

²⁰ GAO USDA Leading Practices Report, *supra* note 6, at 6-7; GAO BLM Key Practices Report, *supra* note 14, at 4-5.

²¹ GAO, GAO-22-104247, *Better Workforce Planning and Data Would Help Mitigate the Effects of Recent Staff Vacancies*, at 15 (Nov. 2021), <https://www.gao.gov/assets/gao-22-104247.pdf>.

²² GAO USDA Leading Practices Report, *supra* note 6, at 13.

A. The Government Accountability Office investigated and found that ERS, NIFA, and BLM did not follow leading practices in making these relocations.

The GAO was asked by Congress to review these relocations and found that the departments' actions related to these moves did not follow a number of important leading practices for effective agency reforms and strategic human capital management, either initially during the process of making the decision to relocate or during the actual implementation of that decision.

Regarding the relocation of ERS and NIFA, a 2022 GAO study determined that although USDA did follow some leading practices,²³ others were only partially followed or generally not followed.²⁴ Notably, USDA only “minimally involved” key stakeholders, including its own employees, in its development of the relocation and did not engage with Congress before deciding to relocate ERS and NIFA.²⁵ Furthermore, USDA “did not formally document a process to strategically plan for long-term staffing needs and goals. USDA also did not consider potential staff attrition or how the choice of location might affect current and future staff levels.”²⁶ And neither ERS or NIFA had “formal diversity plans or strategies in place” either before or after these relocations.²⁷

A 2020 GAO study determined that the Department of Interior “did not substantially address key practices for effective agency reform in reorganizing” when planning the relocation of BLM.²⁸ Interior failed to significantly involve key BLM stakeholders, including its own employees, in its reorganization and relocation plans.²⁹ Interior also did not study how the relocation could affect attrition, but “assumed that attrition would mirror historical retirement rates.”³⁰

Importantly, the GAO studies also found that although each of these agencies created a series of goals and objectives for the three respective relocations, none established performance

²³ *Id.* at 3-4 (noting that GAO “selected specific leading practices relevant to relocations from the list of leading practices for effective agency reforms” and “from strategic workforce planning principles identified in our prior work.”) (citing GAO, *Key Questions*, *supra* note 4; GAO, GAO-04-39, *Key Principles for Effective Strategic Workforce Planning* (Dec. 2003), <https://www.gao.gov/assets/gao-04-39.pdf>; GAO, GAO-03-450, *Opportunities to Improve Executive Agencies' Hiring Processes* (May 2003), <https://www.gao.gov/assets/gao-03-450.pdf>; GAO, GAO-04-546G, *A Guide for Assessing Strategic Training and Development Efforts in the Federal Government* (Mar. 2004), <https://www.gao.gov/assets/gao-04-546g.pdf>; GAO, GAO-04-797, *Additional Collaboration Between OPM and Agencies Is Key to Improved Federal Hiring* (June 2004), <https://www.gao.gov/assets/gao-04-797.pdf>).

²⁴ GAO USDA Leading Practices Report, *supra* note 6, at 22, 29.

²⁵ *Id.* at GAO Highlights.

²⁶ *Id.* at 24.

²⁷ *Id.* at 31.

²⁸ GAO BLM Key Practices Report, *supra* note 14, at 2 (noting that GAO “assessed BLM’s reorganization efforts against relevant key reform practices compiled in our June 2018 report that identified key practices for developing and implementing agency reforms.”) (citing GAO, *Key Questions*, *supra* note 4).

²⁹ *Id.* at 4 fig. 1.

³⁰ *Id.* at 11.

measures that would allow an assessment of the effectiveness of the respective reorganizations.³¹ This was a clear deviation from “best practices.”³²

- B. The Government Accountability Office found that the USDA-ERS, USDA-NIFA, and BLM relocations significantly undermined the effectiveness of the agencies across a range of core metrics.

As a result of the failure of these departments to follow the best practices for effective agency reform and strategic human capital management, either initially during the process of making the decision to relocate or during the actual implementation of that decision, they experienced significant shortfalls according to important metrics.

1. The agencies experienced an immediate drop in efficiency and productivity measured in less service to constituents and work not completed or timely completed.

ERS, the statistical agency whose mission includes performing “high-quality, objective economic research to inform and enhance public and private decisionmaking,”³³ published fewer journal articles and research reports in the two years after the move than in previous years.³⁴ According to agency officials, this decreased productivity was a result of the attrition due to the relocation.³⁵

NIFA, the institute whose mission “includes investing in and advancing agricultural research and education” and which has awarded billions of dollars in grants,³⁶ suffered delays in processing grants in fiscal year 2020.³⁷ Furthermore, fiscal year 2019 saw the lowest number and percentage of competitive grants funded at NIFA in any year since fiscal year 2015.³⁸

No similar GAO study has been conducted on the effect of the temporary relocation and reorganization within BLM. However, a 2021 GAO report on BLM noted that “[b]ureau staff said that the vacancies caused problems with completing their duties. For example, because key decision makers at headquarters left, there were delays in creating or clarifying guidance and policy.”³⁹ Furthermore, according to Washington Post reporting in 2021, “several experts, including former high-ranking Interior officials, said the shake-up has . . . disrupted its

³¹ GAO USDA Leading Practices Report, *supra* note 6, at 23 tbl. 3; GAO BLM Key Practices Report, *supra* note 14, at 4.

³² GAO, GAO-04-39, *Key Principles for Effective Strategic Workforce Planning*, at 20 (Dec. 2003), <https://www.gao.gov/assets/gao-04-39.pdf>.

³³ GAO USDA Leading Practices Report, *supra* note 6, at 1.

³⁴ *Id.* at 19.

³⁵ *Id.*

³⁶ *Id.* at 1.

³⁷ *Id.* at 19.

³⁸ *Id.* at 20.

³⁹ GAO, GAO-22-104247, *Better Workforce Planning and Data Would Help Mitigate the Effects of Recent Staff Vacancies* (Nov. 16, 2021), <https://www.gao.gov/products/gao-22-104247>.

operations.”⁴⁰ Given that BLM’s mission and responsibilities are so expansive – to manage the nation’s federal lands (almost 250 million acres of land),⁴¹ – the fact that the relocation caused such significant attrition almost certainly undermined the bureau’s effectiveness.

2. The agencies suffered a long-term loss of institutional knowledge because experienced employees retired or resigned rather than moved.

Despite the fact that the relocation of ERS and NIFA caused significant attrition, both of these workforces returned to pre-relocation levels by June of 2022 due to an increase in hiring, in part due to “remote work and location flexibility,” and a decrease in staff departures.⁴² Although the drop in the absolute number of staff at both of these agencies was temporary,⁴³ ERS and NIFA nevertheless suffered a significant long-term loss of institutional knowledge and experience.

Before the relocation, more than 80 percent of the permanent employees at the agencies had been there for more than 2 years.⁴⁴ Importantly, according to data from the Bureau of Labor Statistics, the median tenure for federal government employees is 7.5 years.⁴⁵ Therefore, it is reasonable to conclude that the employees who had been at ERS and NIFA for more than 2 years had likely been there for much longer than that.⁴⁶ By the end of fiscal year 2021, most of the employees at both agencies were recent hires.⁴⁷ By the time the workforce returned to pre-relocation levels in mid-2022, “the majority of ERS (66 percent) and NIFA (79 percent) permanent full-time staff had worked there for 2 years or less.”⁴⁸

The turnover at these agencies represents a significant drop in cumulative experience, expertise, and institutional knowledge that could take ERS and NIFA many years to recover. Indeed, after the relocation, Laura Dodson, an economist at ERS who was serving as acting vice president of the agency's employees union, stated “‘We've lost hundreds, if not thousands of staff years of expertise.’”⁴⁹

⁴⁰ Juliet Eilperin, *Trump officials moved most Bureau of Land Management positions out of D.C. More than 87 percent quit instead*, Wash. Post (Jan. 28, 2021), <https://www.washingtonpost.com/climate-environment/2021/01/28/trump-blm-reorganization/>.

⁴¹ BLM, *Quick Facts*, <https://www.blm.gov/> (last visited Dec. 20, 2023).

⁴² GAO USDA Leading Practices Report, *supra* note 6, at 14-15.

⁴³ *Id.* at 13.

⁴⁴ *Id.*

⁴⁵ U.S. Bureau of Lab. Stats., *Employee Tenure Summary* (Sept. 22, 2022), <https://www.bls.gov/news.release/tenure.nro.htm>.

⁴⁶ *See, e.g.*, GAO, *Better Workforce Planning*, *supra* note 21, at 18-19 (noting that between January 2016 and January 2021, “the percentage of BLM staff with at least 25 years of federal service within Interior declined from 24 percent to 17 percent (from 2,071 to 1,486) during this time period.”).

⁴⁷ *Id.* at 15.

⁴⁸ *Id.*

⁴⁹ Frank Morris, *USDA Research Agencies 'Decimated' By Forced Move. Undoing The Damage Won't Be Easy*, NPR (Feb. 2, 2021), <https://www.npr.org/2021/02/02/963207129/usda-research-agencies-decimated-by-forced-move-undoing-the-damage-wont-be-easy>.

Regarding BLM, by January of 2021, the bureau’s headquarters had recovered some of its workforce, but it was still 18 percent smaller than it was in July 2019.⁵⁰ And according to Washington Post reporting at that time, the relocation “has deprived the agency of needed expertise.”⁵¹ The ultimate effect of the BLM relocation on the long-term loss of institutional knowledge and experience at the agency is less clear because the Biden administration announced plans to move BLM headquarters back to Washington, D.C.⁵² and has said it would try to rehire some of the career staff who left the agency.⁵³ However, at least in the short term, the loss in experience was “significant,” as the Department of Interior stated in a 2022 report.⁵⁴

3. The agencies suffered declines in diversity.

The workforces at ERS and NIFA not only suffered a long-term loss of institutional knowledge and experience, but they also experienced some noticeable declines in diversity.

At ERS, the percentage of African American employees declined from 22 percent in 2018 to 9 percent in 2021.⁵⁵ At NIFA, the percentage of African American employees declined from 47 percent in 2018 to 19 percent in 2021.⁵⁶ Similarly, at BLM, before the relocation, African American employees comprised 21 percent of the headquarters staff, but by January 2021, African American employees only comprised 12 percent of the headquarters staff.⁵⁷

C. A Robust Civil Service Is Essential to Good Government.

The failure of these relocations to follow best practices, either initially to make the decision to relocate or during the actual implementation of that decision, is particularly problematic because such rash moves seriously undermine the federal civil service, which is essential to good government.

Beginning with its rejection of the spoils system more than 150 years ago, Congress has consistently acted to establish and protect the federal civil service as nonpartisan experts dedicated to public service, holding a public trust, and shielded from political instability.⁵⁸ And

⁵⁰ GAO, *Better Workforce Planning*, *supra* note 21, at 15.

⁵¹ Eilperin, *supra* note 40.

⁵² Scott Streater, *BLM details plans for HQ move*, E&E News: Greenwire (Sept. 8, 2022), <https://www.eenews.net/articles/blm-details-plans-for-hq-move/>.

⁵³ Scott Streater, *With 287 staffers gone, should Biden return BLM to D.C.?*, E&E News: Greenwire (Jan. 29, 2021), <https://www.eenews.net/articles/with-287-staffers-gone-should-biden-return-blm-to-d-c/>.

⁵⁴ BLM, *FY 2022 Interior Budget in Brief, Bureau of Land Management*, BH-7, BH-12, <https://www.doi.gov/sites/doi.gov/files/fy2022-bib-bh007.pdf>.

⁵⁵ GAO USDA Leading Practices Report, *supra* note 6, at 17.

⁵⁶ *Id.*

⁵⁷ GAO, GAO-22-104247, *Better Workforce Planning and Data Would Help Mitigate the Effects of Recent Staff Vacancies*, at 22 (Nov. 2021), <https://www.gao.gov/assets/gao-22-104247.pdf>.

⁵⁸ See J. Select Comm., *Civil Service of the United States*, J. Rep. No. 8, 39th Cong. (1866), reprinted in Thomas Allen Jenckes, *Civil Service of the United States*, Ticknor & Fields, (1867), [https://www.google.com/books/edition/_/UQovAAAAYAAJ?hl=en&gbpv=1&pg=PA1{JSC.](https://www.google.com/books/edition/_/UQovAAAAYAAJ?hl=en&gbpv=1&pg=PA1{JSC.;); Pendleton Act, S. 133, 47th Cong. 22 Stat. 4032, Ch. 27, §§ 2, 13 (1883); 37 Stat. 539 at 555 (Aug. 24, 1912); S. Rep. No. 95-989, at 748 (1978) (Conf. Rep.) (report of the Senate Committee on Governmental Affairs to accompany S. 2640).

the American people have come to depend upon this strong, independent, and highly capable civil service that Congress has set up to provide fair, legitimate, and high-quality government services. Relocations of entire agencies, involving hundreds or thousands of employees, can disrupt the stability and expertise that are fundamental to the proper functioning of the civil service.

1. The interrelationship between the stability and expertise of the civil service.

The turnover among senior civil servants that ERS, NIFA, and BLM experienced imposes substantial costs on agencies and the public, and extensive academic literature has examined the benefits of institutional memory on organizational performance.⁵⁹ One study of U.S. federal agencies found that previous experience within an agency’s bureau, and prior length of tenure, had significant positive impacts on program performance.⁶⁰ This correlation between managerial experience and program performance is perhaps because experienced managers’ “knowledge of programs, processes, structures, and personnel facilitates monitoring, reduces the start-up costs associated with a new management position, and helps them know better how to measure and manage performance.”⁶¹

Furthermore, various stakeholders noted to GAO during its study on the impact of a Schedule F category of federal positions that increased staff turnover due to Schedule F could lead to “a lack of continuity and a potential degradation in the overall subject matter expertise held within the civil service,” endangering the civil service’s ability to “preserv[e] institutional memory, knowledge, and competence across administrations.”⁶² Similar consequences have already been seen in the staff turnover that followed these agency relocations.

2. The importance of stability and expertise to legitimacy with the public.

Stability and expertise within the federal civil service aren’t just important to program performance. A professional and insulated civil service bolsters legitimacy and public trust in government. One study found that emphasizing the technocratic expertise of agency officials, including that they could not be hired for their political views or fired for disagreements with political leaders, resulted in a “statistically significant . . . [increase] in legitimacy scores.”⁶³ Furthermore, the study’s “participants were most likely to view decisions as more legitimate

⁵⁹ See Rodney Scott et al., *Public Sector Institutional Memory Through Storytelling* 14 (2019) (conference paper), <https://tinyurl.com/2hsryh3s>; Heidi Hardt, *NATO’s Lessons in Crisis: Institutional Memory in International Organizations* 7 (2018).

⁶⁰ David E. Lewis, *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance* 177-180 (2008).

⁶¹ *Id.* at 186.

⁶² GAO, GAO-22-105504, *Agency Responses and Perspectives on Former Executive Order to Create a New Schedule F Category of Federal Positions*, at 23 (Sept. 2022), <https://www.gao.gov/assets/gao-22-105504.pdf> (“GAO Schedule F Report”).

⁶³ Brian D. Feinstein, *Legitimizing Agencies*, U. Chi. L. Rev. 30 (forthcoming) (last revised Nov. 15, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4389050.

after they learned about the role of politically insulated, expert civil servants in formulating that decision.”⁶⁴ Indeed, the relocations of agencies that threaten both the stability and expertise of the civil service could very well undermine the public’s trust in government, particularly if the relocations in question were undertaken for political reasons.

D. Relocation efforts that do not follow best practices can incapacitate government agencies, reshape government without Congressional input or popular support, and deter government service.

As described above, the agency relocations for ERS, NIFA, and BLM caused drops in efficiency and productivity, resulted in a long-term loss of institutional knowledge and experience because senior employees retired or resigned, and led to significant losses of diversity in the workforce. While there may be circumstances where long-term benefits to an agency relocation outweigh short-term losses, these examples demonstrate that a rigorous and methodical planning process and broad stakeholder outreach are necessary as part of any decision-making process.

Recent relocation efforts underscore the risks of a rushed process that fails to build consensus. For example, the ERS and NIFA relocations were undertaken by the then-administration after Congress rejected that administration’s proposed budget cuts to USDA.⁶⁵ When two branches of government disagree on a proposal like agency relocation, significant controls should be in place to ensure that the executive branch exercises its authority only after following a process informed by best practices to serve long-term public interests.

Finally, agency relocations can deter government service because they send a message to prospective government employees that their positions could be moved across the country with very little notice. Without a better, data-driven process for reaching relocation decisions, there is no bar to repeated relocations of a single agency, depending on the preferences of the current administration. Historically, the stability of public service employment has allowed the government to compete with the private sector for workers despite paying lower salaries. That stability stems in part from the job security provided under the Civil Service Act of 1978. Relocations – whether implemented for reasons of productivity and efficiency or used to circumvent worker protections – undermine the stability of public employment.

E. Following leading practices can predict and prevent or mitigate the harm of disruptive relocations.

Following leading practices is not a performative exercise. It is essential to predict and prevent or mitigate the disruption and discontinuity that can result from agency reorganizations. For example:

⁶⁴ *Id.* at 60.

⁶⁵ Morris, *supra* note 49; see also Kim Soffen & Denise Lu, *What Trump cut in his agency budgets*, Wash. Post (May 23, 2017), <https://www.washingtonpost.com/graphics/politics/trump-presidential-budget-2018-proposal/>.

- In order for the agency to ensure that the relocation will not cause significant attrition, thereby disrupting its performance and productivity, the agency must ascertain the likelihood of attrition and then take action to reduce or correct attrition and long-term staffing challenges.
- In order to ensure the relocation will not cause a significant skills gap or reduction in highly skilled employees within the workforce, the agency must actually have a process to address any skills gap and strategies to recruit for highly skilled positions.
- In order to ensure the relocation is developed and implemented in a way that is least disruptive to the workforce, the agency must engage employees and other key stakeholders.

As already discussed, ERS, NIFA, and BLM followed some of these practices, but did not follow others. Importantly, leading practices identified by GAO are not exclusively tied to the workforce. As already discussed, ERS, NIFA, and BLM embarked on their reorganizations without establishing performance measures to gauge the effectiveness of these moves. Future relocations should be assessed using a uniform approach that clearly articulates performance measures and fully considers the relocations' costs and benefits – and then proceeds in accordance with best human capital management practices. This is the only way to enable the agencies in question to make necessary adjustments to the relocation⁶⁶; to assess the effectiveness of the relocation⁶⁷; and to ensure that these relocations ultimately serve the public interest.

III. Rulemaking Request.

For the reasons set forth above, Democracy Forward Foundation respectfully asks OPM to promulgate a regulation that would establish uniform practices for effective agency reforms and strategic human capital management that a government agency must follow before and after announcing a decision to relocate.⁶⁸ Democracy Forward Foundation proposes that 5 CFR Part 250, Subpart B be amended to include an additional requirement under 5 CFR § 250.205 - Human Capital Operating Plan (HCOP) and an additional section, designated as 5 CFR § 250.209 (the existing section 5 CFR § 250.209 would become 5 CFR § 210) – Relocation Requirements for Agencies. Proposed additions are in italics below, with changes in strikethrough.

§ 250.205 Human Capital Operating Plan (HCOP).

Each agency must develop a Human Capital Operating Plan (HCOP) that aligns with an agency's Strategic Plan and Annual Performance Plan. The HCOP is to be reviewed and approved annually, and updated as needed. The HCOP must demonstrate how an

⁶⁶ GAO USDA Leading Practices Report, *supra* note 6, at 25.

⁶⁷ *Id.* at 22-24.

⁶⁸ *See id.* at 23-24, 30-31; GAO BLM Key Practices Report, *supra* note 14, at 4-11.

agency's human capital implementation strategies follow the principles and standards of the HCF while including an explanation of how human capital policies, initiatives, objectives, and resources will be used to achieve agencies' human capital goals. The HCOP will be made available to OPM upon request. The HCOP must—

- (a) Be established by the CHCO, in collaboration with the agency's senior management team;
- (b) Be used to support the execution of an agency's strategic plan, as an agency's human capital can affect whether or not a strategy or strategic goal is achieved;
- (c) Explicitly describe the agency-specific skill and competency gaps that must be closed through the use of agency selected human capital strategies;
- (d) Include annual human capital performance goals and measures that will support the evaluation of the agency's human capital strategies, through HRStat quarterly reviews, and that are aligned to support mission accomplishment;
- (e) Reflect the systems and standards defined in § 250.203 above, consistent with their agency strategic plan and annual performance plan, to address strategic human capital priorities and goals; ~~and~~
- (f) Address the government wide priorities identified in the Federal Workforce Strategic Priorities Report; *and*
- (g) *Include a relocation plan pursuant to 5 C.F.R. § 250.209 if the agency or any of its bureaus, divisions, sections, services, or other units is considering relocating or moving a significant number of its positions to a different local commuting area.*

§ 250.209 Relocation Requirements for Agencies.

- (a) *Each agency that is considering relocating or moving a significant number of its positions to a different local commuting area must include a relocation plan as set forth in this Section as part of its Human Capital Operating Plan (HCOP). The general requirements for an agency's relocation plan are that it:*
 - (1) *Be submitted by the agency to OPM for its approval as part of its Human Capital Review (HCR);*
 - (2) *Follow best practices for agency reform and strategic human capital management; and*
 - (3) *Include plans to document the evidence and data supporting the decision to relocate and the elements of the plan as set forth in this Section;*
- (b) *Each agency that is considering relocation as part of this Section must, as part of its relocation plan:*
 - (1) *Establish clear goals, rationales, and performance measures before the relocation to guide the relocation, and a process for assessing the accuracy of the agency's projections and its progress towards these goals;*
 - (2) *Engage relevant stakeholders in developing and implementing the relocation, including, but not limited to:*
 - (i) *Agency employees;*
 - (ii) *Relevant Congressional appropriations committees; and*

Democracy Forward Foundation welcomes the opportunity to discuss these proposals further, or answer additional questions OPM may have, and can be reached at vnugent@democracyforward.org.

Regards,

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