The Honorable James Lankford  
Chairman  
Subcommittee on Regulatory Affairs  
and Federal Management  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
340 Dirksen Senate Office Building  
Washington, DC 20510  

The Honorable Heidi Heitkamp  
Ranking Member  
Subcommittee on Regulatory Affairs  
and Federal Management  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
605 Hart Senate Office Building  
Washington, DC 20510

October 26, 2018

Dear Chairman Lankford and Ranking Member Heitkamp:


OPM consistently believed the U.S. Congress' intent was to provide the greatest legal flexibility for expedited hiring authorities for college graduates and post-secondary students within the applicable Title 5 authorities. This desire has also been expressed in public forums by members of Congress themselves. Congress included in the FY19 NDAA language that created a new 5 U.S.C. § 3115 (Expedited hiring authority for college graduates; competitive service) and 5 U.S.C. § 3116 (Expedited hiring authority for post-secondary students; competitive service).¹

The final language of 5 U.S.C. § 3116(d)(1), however, includes language that limits its application. Specifically, the paragraph states, "(1) IN GENERAL.—Except as provided in paragraph (2), the total number of students that the head of an agency may appoint under this section during a fiscal year may not exceed the number equal to 15 percent of the number of students that the agency head appointed during the previous fiscal year to a position in the competitive service at the GS–11 level, or an equivalent level, or below." (emphasis added).

Students currently come into Federal service by appointment to internships in the excepted service. This poses a problem for the formula in the new 5 U.S.C. § 3116(d)(1), which instructs the number of students an agency may appoint should be based on the number of competitive service student appointments by the agency in the previous fiscal year. Under the new law's formula, there may be no base of students appointed to the competitive service in the previous fiscal year by an agency, and zero students may be hired using the new authority.

OPM can only surmise in the technical drafting process, a decision was made to have the
3116 mirror one another. While the insertion of “competitive service” in 5 U.S.C. § 3115(c)(1)
did not affect the paragraph, the same insertion in 5 U.S.C. § 3116(d)(1) meaningfully impacted
that paragraph’s effectiveness. OPM does not believe the U.S. Congress intended this result.
While such consistency is typically desired, here it is misplaced.

In order to realize what OPM believes may have been the U.S. Congress’s true intent, OPM
recommends the simple removal of the words, “to a position in the competitive service” from 5
U.S.C. § 3116(d)(1). With this correction, agencies would be able to count the number of
students appointed to excepted service positions for application of the new law’s formula in
addressing their expedited hiring needs. The technical fix would also remove from the statute
unnecessary language that may invite agency confusion.

OPM appreciates the opportunity to have worked with your offices on this language in the past
and welcomes your consideration of the technical correction outlined above. If you have any
additional questions or concerns, please do not hesitate to contact Jonathan J. Blyth, Director,
Congressional, Legislative, and Intergovernmental Affairs at (202) 606-1300.

Sincerely,

Margaret M. Weichert
Acting Director