

**Congress of the United States**  
**Washington, DC 20515**

February 23, 2016

**CALL FOR ORIGINAL COSPONSORS**

**Safeguard our Nation's Merit-Based Civil Service  
Against Discrimination**

***Join as an Original Cosponsor of the Clarification of Federal  
Employment Protections Act***

Dear Colleague:

We invite you to join as an original cosponsor of the forthcoming Clarification of Federal Employment Protections Act. This straightforward, good government legislation strengthens our country's merit-based civil service system by modestly amending Federal law to clearly align with current, and long-standing, Federal policy and practice that deems discrimination against a Federal employee on the basis of sexual orientation or gender identity as constituting a prohibited personnel practice under the Civil Service Reform Act of 1978.

Our Nation's bipartisan commitment to establishing a merit-based civil service system dates back to enactment of the seminal Pendleton Act of 1883. Since 1980, the U.S. Office of Personnel Management has interpreted the tenth Prohibited Personnel Practice, which prohibits discrimination against a Federal employee based on conduct that does not adversely affect job performance, to include sexual orientation. This policy was later expanded to include gender identity as well.

The U.S. Department of Justice has issued similar legal guidance. For example, in 1983, a Reagan Administration appointee, Theodore Olson, then-Assistant Attorney General in the Office of Legal Counsel, issued a memorandum opinion for the associate attorney general that found, "...a Federal employee in the "excepted" service, may not be terminated solely on the basis of his homosexuality, in the absence of a reasonable showing that his homosexuality has adversely affected his job performance."

However, despite long-standing Federal policy and practice prohibiting discrimination in the civil service against LGBT Federal employees, recent public statements by certain Presidential candidates raise concern that a future Administration could take advantage of a lack of clarity in Federal statute to dramatically reinterpret the law and reverse Federal civil service policies and practices that prohibit discrimination on the basis of sexual orientation or gender identity.

The U.S. Merit Systems Protection Board both affirmed this problem and identified a potential solution in a May 2014 report to the President and Congress, noting, “Any ambiguity in the longstanding policy prohibiting sexual orientation discrimination in the Federal workplace would be resolved by legislation making that prohibition explicit. Such legislation could grant Federal employees who allege they are victims of sexual orientation discrimination access to the same remedies as those who allege discrimination on other bases.”

**Our legislation is similar to bipartisan legislation that was introduced in the House of Representatives during the 109th Congress and favorably reported out of committee by voice vote (H.R. 3128, which the Congressional Budget Office determined would be deficit neutral).** This prior version of the Clarification of Federal Employment Protections Act was introduced in response to controversial testimony by a former head of the Office of Special Counsel who asserted that Federal law did not explicitly prohibit discrimination against a Federal employee on the basis of sexual orientation.

Congress should proactively prevent such discriminatory policy by clarifying and reaffirming that discriminating against a Federal employee based on sexual orientation or gender identity constitutes a prohibited personnel practice under Federal law. The Clarification of Federal Employment Protections Act would achieve this goal.

If you have any questions about the Clarification of Federal Employment Protections Act, or wish to join as an original cosponsor, please contact Benjamin Rhodeside with Congresswoman Tammy Duckworth (IL-08) at [Benjamin.Rhodeside@mail.house.gov](mailto:Benjamin.Rhodeside@mail.house.gov).

Sincerely,

  
Tammy Duckworth  
Member of Congress

  
Elijah Cummings  
Member of Congress