

AFGE 2018 Issue Papers
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Federal Pay – General Schedule

Introduction

General Schedule (GS) pay is governed by the Federal Pay Comparability Act, which provides for annual salary adjustments tied to market rates in the private sector and state and local government. Congress and the president almost always alter the adjustments provided for under the law. GS pay levels are also affected by many administrative decisions involving the boundaries that define local pay areas and how market comparability is calculated.

Federal wages and salaries continue to lag those in the private sector and state and local government. Although federal pay adjustments are, by law, supposed to reflect changes in the cost of labor rather than the cost of living, it is important to note how much the purchasing power of federal pay has declined as federal employees have become an all-purpose ATM for budget austerity. Since 2011, federal pay has been adjusted by a total of 7.3 percent, leaving the inflation-adjusted value of federal wages and salaries 4.7 percent lower than it was seven years ago.

Congress should recognize that federal employees, more than any other group of Americans, bore the brunt of budget austerity that followed the Great Recession and were forced to suffer \$182 billion in compensation cuts as a result. The small pay adjustments in 2017 and 2018, coupled with the administration's proposed pay freeze for 2019, takes that number up to at least \$246 billion over ten years. The first step in reversing the substantial decline in living standards should be to restore the purchasing power of federal wages and salaries by providing for substantial real, inflation-adjusted, increases in each of the next four years. For 2019, AFGE is asking Congress to support a 3.0 percent overall adjustment, to be divided between across-the-board and locality components. In fact, Rep. Gerry Connolly (D-Va.) and Sen. Brian Schatz (D-Hawaii) have again introduced the Federal Adjustment of Income Rates Act (FAIR Act), to increase federal employee pay by 3 percent in 2019. AFGE fully supports this bill and urges both the House and Senate to pass this legislation.

Leaked documents from the Office of Management and Budget and the Department of Homeland Security indicate that the Trump administration will seek a 2019 federal pay freeze, in part to fund the erection of a wall of separation along the U.S.-Mexico border. It is unlikely, however, that the separation wall is the only or even primary reason behind the administration's pay proposal. The most recent President's Pay Agent report, published in late December 2017, included a statement of support from the administration for "fundamental reforms of the white-collar federal pay system" and went on to endorse a "performance-sensitive compensation system." The report also tries to make the case that wage and salary comparisons that do not include the cost of non-wage benefits are problematic. The illogical implication being that a proper comparison between federal salaries and salaries in the private sector should include factors other than salaries.

The right-wing Cato Institute's Chris Edwards recently laid out the conservative case for reducing federal pay in a September 2017 article.¹ Mr. Edwards argues that average wages and salaries in the federal government are higher than private averages, that the federal pay system has distorted returns to educational attainment relative to the private sector, that the political power of federal unions has produced higher-than-market annual adjustments, and that federal salaries should be lower than those for similar jobs in the private sector to make up for federal employees' superior job security. He offers an additional argument not encountered elsewhere: the government should not seek "the best and brightest" for government work because the best minds should be employed in the private sector where they can be exploited for maximum economic benefit. In other words, excellence in government costs the private sector and the government should therefore pursue mediocrity.

Pay Adjustments for General Schedule: The Market Comparability Standard

Under the Federal Employees Pay Comparability Act (FEPCA), federal employees who are paid under the General Schedule are supposed to receive salaries that are 95 percent of "market comparability." This bipartisan law, enacted in 1990, established the principle that federal pay should be governed by the market, and salaries set at levels just five percent less than those in the private sector and state and local government.

FEPCA requires that the government produce a measure of market comparability on a regional basis, and provide annual adjustments that simultaneously close any measured gaps and make certain that no existing gap becomes larger. This was to be accomplished by providing federal employees with annual pay adjustments that had two components: one nationwide adjustment, and one locality-based gap-closing adjustment. The nationwide adjustments are based on the Bureau of Labor Statistics (BLS) Employment Cost Index (ECI), a broad measure of changes in private sector wages and salaries from across all industries and regions (the FEPCA formula is ECI minus 0.5 percent). The locality adjustments are based on measures of pay gaps that use Bureau of Labor Statistics (BLS) data from surveys that compare, on a job-by-job basis, salaries in the federal government and those in the private sector and state and local government. But FEPCA has loopholes, allowing alternatives in times of "economic emergency" which, according to three successive administrations (1995-2016) is apparently a permanent condition in the United States.

The relevant nationwide measure for January 2019 is the 12-month period ending September 30, 2017, during which time the ECI rose by 2.6 percent. The law governing the General Schedule pay system calls for an annual across-the-board adjustment to base salaries equal to the ECI measure minus 0.5 percentage points. Thus, the January 2019 ECI adjustment should be 2.1 percent.

¹<https://www.downsizinggovernment.org/federal-worker-pay>

2019 General Schedule Adjustment

AFGE is calling for a 3.0 percent adjustment for 2019. This increase, divided equally between nationwide and locality adjustments, would represent a small advance toward restoring the living standards of the working- and middle-class Americans who make up the federal workforce. Although it would not restore the losses suffered during the pay freeze and subsequent perfunctory adjustments, 3.0 percent would be a sign that Congress and the President are serious about addressing the decline in living standards of middle class Americans.

Locality adjustments are meant to close gaps between federal and non-federal pay on a regional basis. The Federal Salary Council, the advisory body established in law to make recommendations to the President's Pay Agent on locality pay, uses a weighted average of the locality pay gaps, based on a BLS model using data from both the National Compensation Survey (NCS) and the Occupational Employment Statistics (OES) to measure the average disparity between federal and non-federal salaries for the jobs federal employees perform. As of March 2016, the overall remaining pay gap was 34.02 percent, based on the BLS model.

Had the schedule for closing the pay gaps put forth in FEPCA been followed, comparability would have been realized more than a decade ago in 2002. But in each year since 1995, Congress and successive presidents have found reason to reduce or freeze the size of both the nationwide (ECI-based) and locality adjustments dictated by the law, variously citing economic emergency and deficit-cutting as rationales. The most recent data from BLS show the 2016 average remaining pay gap is 34.02 percent, compared to 34.92 percent for 2015 (the relevant year for the January 2018 adjustments). In spite of the repeated use of alternatives to the terms of FEPCA, there has been strong, consistent and broad bipartisan support for the goal of paying federal salaries that are comparable to those paid by private firms and state and local governments that employ people for the same kinds of jobs. AFGE will work to maintain support for the principle of pay comparability that uses job-by-job salary comparisons for all federal pay systems. Further, in light of the administration's indication that it would seek to replace the current market-based pay system with a subjective and allegedly "performance" based system, we will work to preserve a pay system that protects federal pay from discrimination and politicization.

The Federal Salary Council's Recommendations

In addition to measuring regional pay gaps and calculating the annual nationwide (ECI-based) adjustments under FEPCA, the Federal Salary Council makes recommendations regarding data, and changes to the boundaries of existing pay localities and the establishment of new localities. These changes reflect new data from the decennial census and focus on changes in commuting patterns and rates, the most important criteria in defining a local labor market. In each of the past five years, the Federal Salary Council has recommended the following:

- Drop from the criteria for establishment or maintenance of a GS locality any reference to the number of GS employees, since concentration of GS employment does not define a local labor market or indicate economic linkage among counties in a commuting area.
- Restore full funding for the BLS National Compensation Survey (NCS), particularly the wage survey portion that was specifically designed to match private sector and state and local government jobs to federal jobs.
- Use all commuting pattern data collected under the American Community Survey in determining areas for inclusion in locality pay areas.
- Use new criteria for evaluating counties adjacent to Core Based Statistical Areas (CBSAs) (7.5 percent employment interchange) and adjacent single counties (20 percent).
- Use micropolitan areas if they are part of any Combined Statistical Area, whether or not of a Metropolitan Statistical Area was included, and recognize multi-county micropolitan areas for locality pay.

The President's Pay Agent has not implemented these recommendations. AFGE urges adoption of all of these Council recommendations, as they will improve the market sensitivity of the pay system, and align the boundaries of pay localities with contemporary commuting patterns. In addition, responding positively to the recommendations of the Federal Salary Council would demonstrate respect for the law governing federal pay, a law intended to de-politicize federal pay setting.

Past, Present, and Future: Pay Freezes and their Aftermath

How did freezing wages and salaries of federal employees – and threats of continued freezes and outright pay reductions – become our nation's response to the collapse of the housing bubble, the financial crisis caused by this collapse, the bailout of large banks, insurance companies, and Wall Street firms and other dangers identified by the administration? When considering fiscal issues outside the realm of tax cut, many politicians have coalesced around the notion of budget austerity, the illogical and thoroughly discredited idea that reducing government spending in the face of recessions and inadequate private investment would prompt increases in private sector investment. The Budget Control Act of 2011 enshrined the principles of austerity into a ten-year law, and it has only worsened the living standards of 90 percent of the population and depressed economic growth. It is hoped that the false economies of austerity will be acknowledged, and a more productive set of macroeconomic policies will be embraced. Lowering federal employee living standards by freezing pay and shifting the costs of retirement onto federal workers needs to come to an end. Such policies do not improve the economy; they only impose harm on the civilian employees who serve our nation and make it more difficult for federal agencies to hire and retain the workforce necessary to carry out the mission of federal agencies and programs.

Nobel Laureate in Economics and Princeton University Professor Paul Krugman once referred to the freeze as “cynical deficit reduction theater” that was “a literally cheap trick that only sounds

impressive.” He also confirmed that “federal salaries are, on average, somewhat less than those of private-sector workers with equivalent qualifications.” But none of these facts stopped the Obama administration or Congress from voting repeatedly for the freeze, followed by five years of miniscule 1-2 percent increases. This has been an unsurprising response to a well-orchestrated campaign by certain media outlets and the Heritage Foundation, the Cato Institute, and Booz Allen that uses a combination of sophistry and outright lies to make a case that federal employees are overpaid relative to their private-sector counterparts.

The Federal Salary Council (FSC), a statutory body responsible for examining objective data that compares what private-sector and state and local government employers pay for the jobs federal employees perform to what the federal government pays, has found consistently that federal employees are underpaid. The Federal Prevailing Rate Advisory Committee (FPRAC), which performs a similar function for the blue-collar FWS system, finds the same result. The amounts of underpayment vary by locality and other factors, but the wage and salary advantage in all places goes to the private sector.

Distorting the Truth on Federal Pay

In the past several years, propagandists have published “studies” that twist the facts surrounding federal pay to pretend that federal employees are overcompensated. The propaganda compares gross averages in the private sector to average salaries of the current federal workforce, uses manufactured data on the dollar value of private-sector fringe benefits and distorts data on the cost of federal benefits, and sensationalizes the fact that a growing number of federal salaries have exceeded \$100,000 per year. The Washington Post helped to promote the myth of overpayment by commissioning a poll that asked Americans whether they believed that federal employees were underpaid or overpaid, implicitly giving support to the notion that such issues are a matter of opinion rather than fact. The results of the poll reflected only how well the misinformation campaign had worked.

To bolster the false impression of federal employee overcompensation even more, the Heritage Foundation’s James Sherk (who now serves as the labor liaison for the White House) published a deeply flawed econometric study (<http://www.heritage.org/research/reports/2010/07/comparing-pay-in-the-federal-government-and-the-private-sector>) with a headline-grabbing claim that the government “overtaxes all Americans” by providing federal employee pay and benefits “on the order of 30 percent to 40 percent above similarly skilled private sector workers.” Heritage claimed that federal salaries are “22 percent above private sector workers.” In an odd coincidence, Heritage’s numbers are the mirror opposite of the calculations performed by the economists and pay experts from the Bureau of Labor Statistics (BLS) and the Office of Personnel Management (OPM), whose data for the same year showed federal pay lagging behind the private sector by 22 percent.

Why do Heritage and OPM/BLS come up with opposite numbers? The simple answer is that the Heritage study has highly politicized assumptions, and is based on data that are entirely

inappropriate for use in salary comparisons. The BLS and OPM results derive from objective calculations and high-quality data from the BLS's National Compensation Survey (NCS), a survey designed specifically for use by private and public employers to gauge salary rates and differences by occupation and location. Heritage used Current Population Survey (CPS) data from interviews with random individuals who were asked how much they made, how much their employer spent on their benefits, and what their occupation was. Another source of data used by purveyors of the myth of the overpaid federal employee is the Bureau of Economic Analysis (BEA), part of the Commerce Department. The BEA itself warns the public not to use its data for comparing federal and non-federal salaries, noting on its website that "federal compensation estimates include sizable payments for unfunded liabilities that distort comparisons with private-sector compensation." Further, both these data and Heritage's are "bounded" at the top and bottom and exclude private salaries lower than \$21,544 and higher than \$190,119. Thus, even though salary and bonuses for those working in Wall Street securities and financial industries routinely run into the millions, the BEA dataset artificially caps salaries at under \$200,000.

The 2016 Pay Agent Report for Locality Pay in 2018 (Published in December 2017)

The Trump administration's first Pay Agent Report included the following policy statement:

Under prior administrations, the Pay Agent has expressed "major methodological concerns" about the underlying model used to estimate the pay gaps cited in this report, which are largely driven by the terms of the Federal Employee Pay Comparability Act. We share those concerns. The value of employee benefits is completely excluded from the pay comparisons, which take into account only wages and salaries. Also, the comparisons of Federal vs. non-Federal wages and salaries fail to reflect the reality of labor market shortages and excesses. They also require the calculation of a single average pay gap in each locality area, without regard to the differing labor markets for major occupational groups or the performance of individual employees.

An April 2017 Congressional Budget Office (CBO) report echoes the findings of many academic economists in identifying a significant overall compensation gap in favor of Federal employees. CBO identifies a 17-percent average compensation premium for Federal workers – with Federal employees receiving on average 47-percent higher benefits and 3-percent higher wages than counterparts in the private sector.

Ultimately, we believe in the need for fundamental reforms of the white-collar Federal pay system.²

As discussed below, "studies" that claim federal salary comparisons must include comparisons of the average employer cost for non-salary benefits are illogical. The law requires federal

² <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/pay-agent-reports/2016report.pdf>

salaries to be comparable to *salaries* private employers and state and local governments pay. Nowhere in the law is the federal government instructed to include the cost of non-salary benefits in the definition of salary. The implications of these “studies” is dire.

In the private sector, it is not uncommon for employers to provide zero retirement benefit and zero health insurance benefit to non-professional employees. Because the federal government provides both retirement and healthcare benefits irrespective of the occupation or educational attainment of the members of its workforce, the non-salary costs in the federal government for employees who perform jobs such as housekeeper in a VA hospital, IT worker in the Department of Defense, or administrative assistant in the Department of Homeland Security will always exceed those of private employers who pay little or nothing.

To achieve compensation comparability with private employers who provide no non-salary benefits would require many federal employees to receive no salary, and perhaps owe the government for some of the costs it incurs in providing benefits.

Some common examples illustrate this: Many private accounting firms pay entry level auditors from \$40,000 to \$60,000 per year in salary and provide no employer-paid health insurance or retirement benefit. Many private accounting firms pay entry level auditors from \$40,000 to \$60,000 per year in salary and provide comprehensive employer-paid health insurance and retirement benefits similar to those in the federal government.

The federal government currently advertises for entry level auditors at a GS-7-01, with salaries ranging from \$41,365 (Rest of U.S.) to \$49,937 (San Jose-San Francisco). While the federal government pays salaries that are lower than private employers, the cost of the government’s annual FEHBP premium if the worker chooses to participate would range from \$5,960 for self-only to \$13,560 for family coverage in the most popular plan, Blue Cross/Blue Shield Standard Option. With retirement benefits, the government’s cost for this auditor would be a minimum of 15.2 percent of salary: 14.2 percent for the FERS defined benefit, and one percent automatic government contribution to the Thrift Savings Plan. If the auditor took full advantage of the government’s TSP match, the cost to the government would rise to 18.2 percent of salary. Thus the cost of health insurance and retirement benefits for our RUS auditor rises to a minimum of \$47,238 (no FEHBP and minimum TSP match) to a maximum of \$60,798 per year if he has the audacity to purchase health insurance for himself and his family.

The pay gap can be erased if a private employer pays no benefits at all, as the above example describes. But not all private employers of auditors provide zero benefits. The Bureau of Labor Statistics (BLS) data on Employer Costs for Employee Benefits describe average employer costs for those employing workers like auditors was \$9,796 for health care and \$6,843 for retirement benefits.³ (There is a category of supplemental pay which is not included in the pay gaps measured by the Federal Salary Council that, for auditors, averages \$10,878 per year as of 2017). These data suggest that the compensation of a private auditor with benefits exceeds the

³ <https://www.bls.gov/news.release/ecec.t11.htm>

costs of a federal government auditor by a minimum of more than \$9,401 and a maximum of \$15,841.

CBO Study of Federal vs. Private Sector Pay Compensation

The Congressional Budget Office published a report in 2012 that it updated in 2017 and which has an extremely misleading title. “Comparing the Compensation of Federal and Private Sector Employees” does not tell us whether federal salaries are too high or too low. It answers the highly peculiar question: If the current federal workforce were replaced with a new one with the same demographic profile as the current one, and the new one were paid average private-sector rates for this group’s demographic profile, how much would it cost?

From this question came an answer that was a foregone conclusion. If taken one at a time and categorized by race, gender, education, and other “demographic traits,” of course some of them will appear “overpaid” compared to private sector averages. Why? Because the private sector wage data show large variations by “demographic trait” and for the most part, federal pay systems avoid this kind of discrimination.

The CBO study used what’s called a “human capital model”; basically a “capital asset pricing model” that applies the logic of finance to human beings. Wages, salaries, and benefits are the “price” and the worker is the “asset.” The “asset” has attributes upon which the market places a value, either negative or positive. In such a model, being white, male, and/or highly educated are positive sources of value, while the absence of these attributes means a relatively lower value.

When CBO assessed the accuracy of the “capital asset pricing” of the conglomeration of human capital known as the federal workforce, it was clear that they would find the price too high. This is because, on average, the private sector pays men more than women, whites more than blacks, old more than young, and higher rates in big cities than in rural areas. But the federal government does not reproduce all of these differentials, because in its pay systems, demographic traits are irrelevant. Federal pay is an attribute of the job, not of the demographic traits of the individual holding the job. As a result, men and women with the same federal job are paid roughly the same amount. The demographic traits that comprise a human capital model’s independent variables are completely irrelevant to the salary and benefit package the federal government applies to any given federal job.

Had CBO used the proper method for making the comparison, the one used by the Federal Salary Council, its conclusions would have lined up with the Council’s findings, that federal employees are underpaid whether they are top professionals like doctors or lawyers, technical experts like engineers and scientists, health care providers like VA nursing assistants and dieticians, or administrative workers who handle claims for Social Security or veterans’ benefits.

The Federal Salary Council is required by law to measure the gap between federal salaries and salaries in the private sector as well as state and local government, together referred to as the

“non-federal sector.” On average, the Council’s method finds the nationwide gap between federal and non-federal pay remains about 35 percent in favor of the non-federal sector, but varies by locality. This is largely because the job comparison methodology used by the Council requires finding comparable positions before making pay comparisons, and many jobs found in the federal government are uniquely governmental. Useful pay comparability measures require data from job matches. The Federal Salary Council/BLS/OPM approach actually matches jobs and level of work.

The CBO study is flawed not only because it relies so heavily on “demographic traits,” but also because it uses broad occupational categories and industrial categories as proxies for job matches. And that error compounds the noxious comparison by race, gender, and age. Indeed, the headlines describing the findings of the CBO study emphasized pay differences by education, and the most attention was given to the claim that the federal government allegedly overpays those whose highest level of education is a high school diploma. But consider some of the numerous federal jobs that have similar educational requirements, and are in similar broad industrial categories as those in the private sector, but which do not have nearly the same level of responsibility, or day to day duties or risks.

- A federal Correctional Officer might be compared with someone who works in the broadly defined, private-sector “security services industry.” But a “mall cop” does not perform the same function as an officer guarding convicted felons/dangerous inmates in our federal prisons. Same industry, same education, different job.
- A VA Nursing Assistant caring for a wounded warrior suffering a Traumatic Brain Injury might be compared with someone who works in a doctor’s office, calling prescriptions into pharmacies. Same industry, same education, different job.
- An electrician working at an Army Depot who builds and repairs sophisticated electronic weaponry might be compared with an electrician running wires at a construction site. Same industry, same education, different job.

CBO calls its own benefits comparisons “uncertain.” That is an understatement, because not only are their data shaky, as they acknowledge, but their human capital methodology is spectacularly inappropriate for assessing health and retirement benefits. The federal government provides health insurance and retirement benefits to all its employees on the same terms – regardless of education, race, pay system, occupation, or tenure. And a huge part of the alleged benefits gap the CBO calculated derives from the employer cost for the defined benefit pension. As is well known, many of America’s largest and most profitable corporations (such as Walmart) do not provide defined benefit pensions at all. It was inappropriate for CBO to include data from such corporations, as they are not the standard to which the government should be compared. If CBO had restricted its comparison to federal and private sector workers performing similar jobs (e.g. aerospace engineers at NASA compared to aerospace engineers at Boeing), they would have found no gap.

The CBO study on federal pay continues to do a great disservice to those who seek objective analysis on questions related to federal pay and benefits. Except for a brief footnote buried in

the middle of the report, the study neglected the work of the Federal Salary Council, which provides an accurate measure of difference between federal and non-federal pay using BLS data and adjusting for the specific characteristics of federal jobs, including the level of work required by the jobs federal employees actually perform. The demographic traits of the federal workforce are irrelevant to the adequacy of their pay, and irrelevant to any measure of pay comparability.

One Bright Spot for Federal Pay and a Threat to Extinguish It

In April 2014, the Office of Personnel Management (OPM) published a report entitled “Governmentwide Strategy on Advancing Pay Equality in the Federal Government.” It is the most informative, objective, and important examination of the federal pay system published by any entity in several years and deserves close attention, especially in light of the fanfare given over to the many extremely poorly performed “studies” of federal pay from conservative think tanks. The OPM report was prepared in response to the president’s request for a gender pay-equity analysis of federal pay systems that paid close attention to the General Schedule’s classification system and its transparency. The president also asked for recommendations for administrative or legislative action that would promote “best practices” that were found to minimize inequities.

Although the report focused on just one outcome of the federal pay system – its success in advancing gender pay equity – the study provides important insight into the General Schedule system’s strengths as a whole. Any pay and job classification system must be judged on attributes such as internal and external equity, as well as transparency and effectiveness.

External equity refers to whether a pay system meets market standards. We know that the General Schedule fails the external equity test, but not because of any kind of systemic flaw but rather because successive Congress’ and administrations have not funded it even before the pay freezes. We have the annual reports of the Federal Salary Council since 1995 to prove that. But this OPM report on one aspect of internal equity, gender equity, is extremely telling. It compares data on federal employment over the past two decades and finds great progress on the part of women in ascending to higher graded positions. But the most important finding was that there is no significant gender pay differences by grade level among GS workers. That is, at each pay grade, there was no real difference between the salaries paid to women and men doing the same jobs. This is a great virtue of the federal pay system.

The study showed that, depending on methodology used, from 76 to 93 percent of the observed pay gap between federally employed men and women is attributable to women being concentrated in lower graded occupations. Indeed, the only real observed inequities arose where managerial discretion operates, such as in the awarding of quality step increases, promotions, and starting salaries. While women are more frequent recipients of promotions and quality step increases, managers have exercised discretion in providing higher starting salaries to men. But even starting salaries were mostly equivalent; it was in just four occupational categories that male starting salaries exceeded those provided to women by more

than ten percent. Among members of the non-General Schedule Senior Executive Service, women's salaries were 99.2 percent of men's, a remarkable achievement.

These findings constitute a ringing endorsement of the current pay system, a system that assigns salaries to the position, not the individual. In the jargon of pay-setting, the General Schedule is oriented more toward a "rank-in-position" rather than a "rank-in-person." And that orientation is the secret to having a pay system that avoids discrimination.

The Threat to Revive the Discredited NSPS: Performance Pay and Force of the Future

The federal government's disastrous experience with the National Security Personnel System (NSPS) in the Department of Defense during the George W. Bush administration is a cautionary tale on the dangers of abandoning an objective "rank-in-position" system like the General Schedule for federal agencies. From 2006 to 2009, 225,000 civilian workers in DoD were subject to a system that based salaries and annual salary adjustments on supervisors' assessments of employee performance. NSPS also granted managers tremendous "flexibility" on classification of jobs, hiring, assignments, promotion, tenure, and "performance management." The system's only additional funding relative to the General Schedule payroll base was for outside consultants who had a large role in designing, implementing, and training DoD managers in their new system.

It was not surprising that even in its brief three-year reign, NSPS damaged the federal government's excellent record of internal equity on race and gender. Data on salaries, performance ratings, and bonuses showed marked advantages to being white and male, and working in close geographic proximity to the Pentagon. Those in the Office of the Secretary of Defense, the Defense Finance and Accounting Service, and Tricare were found to be higher performers, on average, than civilian employees in the Departments of the Army, Navy, or Air Force.

NSPS was a system conceived in a highly politicized context. The Department of Homeland Security (DHS) had been established two years earlier, in 2002, and its secretary was granted broad personnel authorities, construed by the agency to include the right to unilaterally abrogate provisions of collective bargaining agreements and replace them with agency directives. The rationale for DHS' grant of authority to create a new pay and personnel system was the war on terror and the administration's belief that union rights and national security were mutually exclusive. So in 2003, Defense Secretary Rumsfeld used the same rationale to seek personnel authorities similar to those granted to the Secretary of the Department of Homeland Security.

In recent years, the Defense Department has contemplated pursuing an NSPS 2.0 under the heading of Force of the Future. Some Force of the Future proposals for civilians included the notion of moving virtually all DoD civilians from Title 5 to Title 10. This was the original plan for NSPS. Title 10 governs the Department's uniformed personnel, but includes a few provisions for civilians in intelligence and Defense universities. A move from Title 5 to Title 10 would eliminate

most civil service protections, give the hiring authority complete discretion to set and adjust pay. *(Please see AFGE's Force of the Future Issue Paper for more details.)* AFGE strongly opposes any and all efforts to restore NSPS, whether under the guise of Force of the Future or by any other means. Its flaws were well-documented and there is certainty that a revival would reproduce all the discriminatory effects of its earlier incarnation.

The Department of Homeland Security's personnel system, named MaxHR, never really got off the ground, thanks to a lawsuit that successfully argued that its undermining of collective bargaining rights violated the law. But NSPS did move forward in part because its focus was not on eliminating the union per se, but rather on creating a pay system that allowed managers to reward themselves and their cronies, and punish others. NSPS could only have continued if Congress had been indifferent to its discriminatory outcomes. Fortunately, when faced with data that showed NSPS gave systemic advantages to white employees and other relatively powerful groups at the direct expense of other DoD civilians, and that the venerated merit system principles had been undermined, Congress voted to repeal the system in 2009.

But the architects of NSPS never give up on the dream of a subjective pay system for the federal government, one in which managers can decide each employee's salary and whether and by how much that salary will be adjusted each year. Prior to Force of the Future, the contractor Booz Allen Hamilton (\$5.8 billion in revenue in FY 2017, 98 percent of which is from the federal government) endowed the publication of a report under the imprimatur of the Partnership for Public Service.

The report trod the well-worn path of those seeking lucrative contracts to revamp the federal personnel system. It employs many of the hackneyed tropes that have become all too familiar among the enemies of fair pay for federal employees: the General Schedule is "stuck in the past," "broken," "rigid," and "fragmented." It conveniently neglects to acknowledge the fact that numerous flexibilities and modernizations have been enacted over the past few decades.

In the 1990s, the General Schedule went from having one nationwide annual cost-of-living adjustment to a city-by-city, labor market-by-labor market cost-of-labor salary adjustment system. Special rates were authorized as well. In the 2000s, Congress passed legislation that introduced broad new hiring authorities, managerial flexibilities in salary-setting, and a program for substantial bonuses for recruitment, relocation, and retention. Congress enacted legislation to allow student-loan repayment, new personnel system demonstration projects, and phased retirement. The list of new flexibilities is long, and in many cases, these new authorities have improved the General Schedule. In any case, the list stands as a refutation of the myth that the General Schedule is a relic, untouched by modernity or that Congress has failed to address needed changes in the civil service system for decades on end.

Congress has been careful, however, not to go so far as to undermine the merit system. Unlike a private firm, the federal government is spending the public's money in ways that are meant to promote the public interest. NSPS was an object lesson in what happens when the Booz Allen Hamilton plan is implemented in a federal agency. Despite good intentions, the merit system

principles are undermined, particularly the principles that promise “equal pay for work of substantially equal value,” and that “employees be protected against arbitrary action, personal favoritism, or coercion for partisan political purposes.” Veterans preference in hiring, retention and promotions is also inevitably undermined. These are the lessons of NSPS.

To make its plan sound less devastating to the majority of workers, Booz Allen Hamilton assumes dramatic increases in funding for federal pay so that no one would be any worse off than they would be with the protections of the General Schedule. As naïve and unrealistic as this assumption is, it is also based on a profound misunderstanding of the merit system principles. It is not enough to ensure that no one would be worse off. It remains wrong to distribute the system’s hoped-for additional monies in a way that favors some demographic groups over others on the flimsy grounds of a manager’s subjective assessment of performance. In the public sector, there is too much risk of political favoritism, and too much risk that unconscious bias will result in greater rewards for those with good connections or the preferred gender or skin color. And the General Schedule’s pay and classification system, as the most recent OPM report amply demonstrates, bests the private sector and any other type of split, “rank-in-person” system on equity time and again.

Neither the Partnership or the architects of Force of the Future advocates discrimination in pay. They undoubtedly had good intentions. But we also know that the road to hell is paved with good intentions, and federal employees have no desire to revisit the hell of NSPS. To be clear: Force of the Future and/or the Booz Allen Hamilton blueprint are not just cut from the same cloth as NSPS, they are NSPS redux.

While NSPS and its would-be successors fail the internal equity test, there is no question that when it comes to external equity, Congress and the Clinton, Bush, and Obama administrations have all failed to perform their role. It is preposterous to blame the current system for failing to produce external equity. External equity is a funding issue, and the General Schedule cannot fund itself. It relies on budget authority and appropriations. To pretend that Congress would magically provide billions more each year to fund a new civil service system identical to one it repealed in 2009 on the grounds that it was discriminatory is folly. After passage of the tax cuts taking effect in 2018, it is unrealistic to expect that Congress will allocate substantial new sums to finance a new federal pay system that leaves no one worse off.

Inequality, the Decline of the American Middle Class, and Wages and Salaries of Federal Employees

The decline in living standards for America’s middle class and the ongoing misery of the poor have been well documented. Even as the rate of unemployment has dropped, wages continue to stagnate as do household incomes. On one side are those who deny the numbers, attribute changes in the distribution of income and wealth to changes in educational attainment or willingness to exert effort. On another side are those who recognize that the decline of unions, the rise of outsourcing and global free trade agreements, and the deregulation of the 1990s and other factors are better explanations. Median incomes for middle class American families,

adjusted for inflation, are lower than they were in the 1970s and the very rich have benefited so disproportionately from economic growth over the decades that America is now more unequal than it was in the 1920s. Both middle incomes and the incomes of the poor are now higher in several European countries and Canada than they are in the U.S. After adjusting for inflation, median per capita income in the U.S. has not improved at all since 2000. In fact, for men, median per capita income has declined 1.1 percent since 2007 and 0.6 percent since 2000.

Federal employees are typical middle-class Americans. They work hard and have historically received modest, but fair pay from their employer. It has been recognized that the nation benefited from having an apolitical civil service governed by the merit system principles. The pay and benefits that derived from those principles were supposed to be adequate to recruit and retain a high-quality workforce, capable of carrying out important public sector functions, from law enforcement to guaranteeing care for wounded warriors to protecting public health. The government would not be a bottom-of-the-barrel employer, paying the lowest possible wages and forgoing health care and retirement benefits, like so many of today's most profitable corporations. Likewise, the government would not be a place where anybody went to get rich at taxpayer's expense (that role is assumed by government contractors like Booz Allen Hamilton). The government as an employer would be a model when it came to ideals of internal equity and non-discrimination, promoting both fairness and seeking employees devoted to the public interest. And on pay and benefits, it would aim at "comparability," defined in the pay law as no less than 95 percent of what private and state and local government pays on a locality basis.

We recognize the politics behind the pressure to constantly reduce federal spending. We understand the vast power of those who forced Congress to pass enormous tax cuts for corporations and wealthy individuals and who now will pressure lawmakers to cut deficits with spending reductions. Regardless of one's position on austerity and sequestration, both Force of the Future's pay proposals and the Booz Allen Hamilton plan deserve strong opposition because they introduce subjectivity and politicization into federal pay, undermine veterans' preference and violate the merit system principles. These plans are also objectionable because they would reallocate salary dollars away from the lower grades toward the top, increasing inequality and decreasing opportunity for advancement. Even if the direct attacks on federal employees' pensions were to stop and funding for salaries were enhanced, it would be important to reject Force of the Future and the Booz Allen Hamilton approach, because they quite explicitly advocate greater inequality between the top and the bottom of the federal pay scale.

The Force of the Future and the Booz Allen Hamilton plan ignore the federal government's hourly workforce altogether. The implied segmentation of the General Schedule or salaried workforce runs counter to experience. Employees in the lower grades, like hourly workers, are excluded entirely, again because, presumably, trying to measure their contribution to excellence would be a pointless exercise. But excluding the lowest paid federal workers is only one part of the inequality enhancement exercise that Force of the Future and Booz Allen Hamilton propose for DoD and the rest of government. Like their NSPS forbearer, the plans

would divide the workforce by occupational category, reserving the highest raises for the highest earners. Those in the midlevel occupations would stagnate or decline, while their betters would be provided with both higher salary increases and a larger pool of funds from which to draw performance-based adjustments.

Force of the Future and its governmentwide twin from Booz Allen Hamilton should also be opposed because they both would undo the tremendous achievement of the current system with respect to eliminating discrimination in pay. AFGE urges Congress to treat the findings of the OPM study on pay equity as important accomplishments worth protecting. We should be celebrating this success, not considering replacing the system that produced it. And that celebration must include full funding, so that federal employees can restore their status in the middle class.

The Federal Salary Council Approach

The Federal Salary Council uses BLS data gathered by trained data collectors who visit businesses and government agencies and record detailed information about the job duties assigned to workers at each salary level and at each location. The dataset used by Heritage asks individuals to identify their occupations by broad industrial categories; e.g., a lawyer would have an occupation called “legal services” as would many others with jobs in that industry. In contrast, the BLS data records, for example, a salary for a “senior attorney with at least 10 years of experience in administrative law and litigation in the area of securities law.” The legal profession includes a broad range of salaries, with the majority of lawyers earning modest salaries for providing routine services such as title searches, real estate closings, preparation of simple wills, and representation in small claims court. While some attorneys employed by the government perform similarly routine functions, many more are responsible for complex litigation and regulatory oversight. The data in the National Compensation Survey capture these differences and apply them to the calculation of the gap between federal and private sector pay exactly according to their weight in the overall distribution of federal jobs.

Another difference that explains the opposite results of Heritage and the BLS and OPM is methodological. Heritage uses the “human capital” approach, comparing the pay of individuals on the basis of personal attributes such as age, industry, geographical location, gender, race, ethnicity, educational attainment, occupation and tenure. One appalling result of Heritage’s approach is the interpretation of the fact that the federal government is less likely to discriminate against women and minorities in terms of pay than the private sector: It is viewed as evidence that the government “overpays” relative to the private sector, rather than the other way around.

In contrast to Heritage, the BLS and OPM use a method that matches federal jobs with jobs in the private sector that are similar not only in terms of occupation but also that match levels of responsibility, and levels of expertise required. The personal attributes of the job holder are not included in the calculation, only job description, duties, and responsibilities. In this careful analysis, which focuses on the jobs of the actual federal workforce, the universal and consistent

finding is that federal employees are underpaid relative to their counterparts in both the private sector and state and local government.

While the human capital approach is a valid way to reveal patterns of discrimination against individuals, it is not appropriate for pay-setting. Unfortunately, it has proved to be extremely valuable for scoring cheap political points, as the pay freeze and subsequent budget deals' cuts to federal retirement attest.

Conclusion

On paper, the General Schedule pay system is a model of market sensitivity and budget prudence that upholds the government's merit system principles and guards against discrimination. It has extensive flexibility that allows recognition for exceptional performance and special rates for jobs that are hard-to-fill. But what's on paper and what occurs in practice have become two very separate things. The three-year pay freeze followed by two years with meager one percent adjustments made a mockery of market sensitivity. Budget prudence has been used as an all-purpose excuse for a reluctance to allow federal pay to keep up with inflation. And there remains a steady drumbeat for the view that federal pay should match that of the worst private employers, and that subjectivity should replace objectivity in structuring a new system.

The federal payroll played no role in the creation of the economic crisis that required massive government spending to resolve. Federal employees did not cause the housing bubble either to inflate or to burst. Federal employees did not engage in speculative investments in derivatives of mortgage securities. Federal employees did not mislead investors, did not outsource jobs to China or Mexico, and did not destroy the financial system.

The president's budget makes the opening bid for annual adjustments in federal wages and salaries, and AFGE urges the Trump administration and Congress to propose a 3.0 percent pay increase for 2019, a raise that will begin to restore living standards for a workforce that will have suffered \$256 billion in losses in the decade ending in 2021. When politicians propose to freeze federal pay again, the response must be an emphatic rejection of their effort to drive down living standards for these middle class workers again, either now or in the future. Federal employees deserve better than the role of pawn in the war against the middle class and the war against government.

Federal Pay – Blue Collar

Another Unfulfilled Promise of Market Comparability

The Federal Wage System (FWS), the federal government’s pay system for hourly workers in the skilled trades, is supposed to be a “prevailing rate” system that matches federal- and private-sector rates on a locality basis. For almost four decades, this system has been distorted by the application of a pay “ceiling” that prevents any annual adjustments from exceeding the average GS adjustment. In the past 15 years, Congress matched the “ceiling” with a “floor” so that the government’s hourly and salaried workers receive the same annual locality and nationwide adjustments. They recognize that the hourly and salaried employees of the federal government work side-by-side for the same employer, commute together on the same roads, share health insurance, pension, and other non-pay compensation, and should be treated equally.

There remain substantial disparities between the General Schedule system for salaried workers and the FWS. Almost all of these disparities disadvantage blue-collar workers. In particular, the blue-collar system has only five steps for recognizing the added-value and skills that tenure and experience bring to the workplace, while the General Schedule has 10 steps. In addition, the FWS uses outdated systems for gathering data to measure the gaps between federal and private-sector wages. Finally, the FWS includes 131 local wage areas (plus 118 non-appropriated fund wage areas) with boundaries drawn to reflect blue-collar employment in the federal government dating from as far back as 1965 and 1972, rather than the contemporary commuting data used by the GS locality system.

In October 2010, the Federal Prevailing Rate Advisory Committee (FPRAC) voted to end the practice of treating blue-collar and white-collar federal employees differently with regard to the drawing of local labor market boundaries. The effect of the FPRAC-supported regulation would be to limit each non-Rest of U.S. General Schedule (GS) locality to one Federal Wage System (FWS) local wage area. The new policy awaits approval by the administration. The administration has cited the pay freeze as an explanation for the long delay in approval of the regulation; the lifting of the freeze eliminated this justification, and we look forward to its publication.

Unifying FWS and GS Locality Boundaries Brings the FWS into the 21st Century

One important argument in favor of unifying FWS local wage areas and GS localities is that it modernizes the prevailing rate system’s recognition of what constitutes a local labor market. Chapter 53 of Title 5 directs OPM to maintain “a continuing program of maintenance and improvement designed to keep the prevailing rate system fully abreast of changing conditions, practices, and techniques both in and out of the Government of the United States.” When the prevailing rate system’s current local wage area boundary-drawing criteria were established more than 50 years ago, the white-collar pay system did not yet vary salaries on the basis of

local labor markets. The boundaries were drawn around federal facilities that employed large numbers of blue-collar federal employees. Many of those federal blue-collar jobs and facilities no longer exist, but the separate facility-based wage areas do still exist. These old wage areas also reflect a time before the expansion of metropolitan areas and the establishment of new highways and public transit systems that allow commuting within large metropolitan areas.

The enactment of the Federal Employees Pay Comparability Act (FEPCA) in 1990 led to the establishment of modern criteria for defining the local labor markets, putting an emphasis on commuting data from the decennial census. These data are widely used by employers in both the public and private sectors to define local labor markets. In contrast, the FWS continues to draw boundaries on the basis of custom, tradition, and often out-of-date information on concentrations of blue-collar workers in the private and federal sectors. It is time for FPRAC to recognize that the commuting patterns recognized by the GS system are the most relevant factors for local labor market definitions.

Congress Just Re-affirmed its Support for Treating FWS and GS Equally for Purposes of Annual Pay Adjustments

In December 2016, Congress voted to provide the same pay adjustment for FWS employees as the president provided GS employees with his Executive Order. Prior to the freeze, the Congress had voted for more than a decade to treat the federal government's blue- and white-collar employees the same with regard to annual locality pay adjustments. Recognizing that all FWS employees within a given GS locality deserve to be treated as if they worked in the same local labor market, the Congress has directed federal agencies to provide the same annual percentage pay adjustment to all blue-collar workers within a given GS locality. Congress has recognized that this is an important element of the internal equity that it wants federal pay systems to maintain. Indeed, almost all federal agencies with non-GS pay systems that grant locality differentials have voluntarily adopted the GS locality boundary definitions for non-GS employees, including the Transportation Security Administration's PASS system, the repealed National Security Personnel System (NSPS), and numerous others.

Maintaining Different Local Labor Market Boundaries for Blue-Collar and White-Collar Workers is Inequitable

Treating blue-collar workers as if they are in one local labor market for purposes of annual pay adjustments and as if they are in a different local labor market for purposes of setting underlying base pay is inconsistent and inequitable. It violates basic standards of fairness. The policy makes an invidious distinction among federal employees in pay-setting. Blue-collar workers are treated differently from white-collar workers for reasons entirely unrelated to the work that they do. It is not and should not be acceptable to treat workers of different races or genders or ages who work in the same location as if they were in different local labor markets; likewise, it should not be acceptable for any employer, and especially not the federal government, to make this distinction on the basis of hourly vs. salaried work.

Disparate Treatment Creates Internal Conflict at the Workplace

Continuation of the current practice of treating different federal employees in the same federal workplace as if they work in different localities creates massive inequities and disunity. For example, the Tobyhanna Army Depot is located in the New York City GS locality, but the Scranton FWS locality. The resulting pay inequities are extremely troubling and indefensible. At Tobyhanna, WG-11 Electronics Mechanics and Production Machinery Mechanics are responsible for highly complex electronics weapons manufacture, repair, modification, configuration, installation, and testing. They are responsible for equipment and machinery that is worth hundreds of millions of dollars and directly affects the progress of war and the well-being of warfighters. The skilled tradesmen and women who perform these jobs work directly with GS personnel, side-by-side, day after day. The WG-11 annual pay ranges from \$46,488 to \$54,246. In the same building at the same time, GS-9 Process Improvements Specialists earn between \$55,327 and \$71,920 and GS-7 Secretaries earn between \$45,232 and \$58,802 with a career ladder that makes them eligible for GS-8 salaries of between \$50,092 and \$65,116. No one is questioning the appropriateness of the Federal Salary Council's designation of Tobyhanna within the New York City commuting area; it is a well-established observable fact, as described by census data. What is questioned is pretending that the blue-collar workers at Tobyhanna work in a different location than the white-collar workers there.

Unifying FWS and GS Locality Boundaries is Not New, Just Overdue

In 2008, the Federal Prevailing Rate Advisory Committee (FPRAC) undertook a comprehensive examination of the criteria for defining FWS wage areas. At that time, numerous updates were adopted, including the requirement that wage area boundaries would not split Metropolitan Statistical Areas (MSAs) as defined by the Office of Management and Budget (OMB). The unification of MSAs was justified on the basis of a recognition that the FWS wage areas reflected outdated notions about how far workers in the skilled trades would commute to jobs. Census data that are used to define MSAs proved that commuting patterns in large metropolitan areas that include urban cores, suburbs, and "exurbs," are similar for workers in all occupations. The next step was to unify the FWS and GS locality boundaries, since the latter are determined by a combination of MSA definitions, commuting patterns, and concentrations of federal employment. This element of the modernization of FWS boundary criteria remains to be addressed. AFGE urges passage of legislation to require this unification of local pay area boundaries.

Conclusion

There is no rationale for maintaining different local pay area boundaries for the federal government's salaried and hourly workforces. No private employer follows such a practice. It is a relic of the past, of a time that preceded the existence of large suburban and ex-urban housing and commuting patterns affecting not only those in the skilled trades, but workers in professional and administrative jobs as well. The census data demonstrate clearly that workers

in all kinds of occupations, blue and white collar, travel the same highways, ride the same trains, and work in the same buildings. Some are paid by the hour, some are paid an annual salary. It is indefensible for the federal government to continue to classify them as though they live, travel, and work in different locations when they live, travel, and work in the exact same place. Congress already recognizes the importance of equity in pay adjustments between the hourly and salaried federal workforces. It is time to recognize equity in local pay area definitions as well.

Federal Retirement

Since 2011, \$246 billion has been taken from federal workers for deficit reduction, including an unprecedented three-year pay freeze, a 2.3 percent increase in pension contributions by employees hired in 2013, a 3.6 percent increase in pension contributions by employees hired after 2013, and a proposed pay freeze in 2019. The \$246 billion does not include the hardship that resulted from delayed paychecks, threats to credit ratings, and general disruption to the lives of federal employees and their families caused by the 16-day government shutdown and furloughs in 2013.

<i>3-year pay freeze (2011, 2012, 2013)</i>	<i>\$98 billion</i>
<i>2012 UI extension which increased retirement contributions for 2013 hires to 3.1 percent</i>	<i>\$15 billion</i>
<i>2013 lost salaries of 750,000 employees furloughed because of sequestration</i>	<i>\$1 billion</i>
<i>2013 Murray-Ryan increased retirement contributions for post-2013 hires to 4.4 percent</i>	<i>\$6 billion</i>
<i>2014 pay raise of only 1 percent; lower than baseline of 1.8 percent</i>	<i>\$18 billion</i>
<i>2015 pay raise of only 1 percent; lower than baseline of 1.9 percent</i>	<i>\$21 billion</i>
<i>2016 pay raise of only 1.3 percent; lower than baseline of 1.8 percent</i>	<i>\$23 billion</i>
<i>2018 pay raise of 1.9 percent</i>	<i>\$13 billion</i>
<u><i>2019 proposed pay freeze</i></u>	<u><i>\$51 billion</i></u>
<i>Total</i>	<i>\$246 billion</i>

Federal employees hired after 2013 already pay 4.4 percent of their salaries toward their defined benefit pension and 6.2 percent to Social Security, which makes it all but impossible for many to take full advantage of matching funds for their Thrift Savings Plan (401(k) equivalent) accounts. The result is a serious shortfall in their retirement income security, and a substantial lowering of their standard of living as they pay more and receive less than their coworkers hired before them.

AFGE rejects the notion that there should be a trade-off between funding the agency programs to which federal employees have devoted their lives, and their own livelihoods. None of this would have occurred were it not for the perverted logic of austerity budget politics. The Budget Control Act of 2011 was a grave mistake, and the spending cuts it has imposed year after year have been ruinous for federal employees, for our economy and for the government services on

which all Americans depend. Spending cuts hurt not only the middle class, the poor and the vulnerable, they also hurt military readiness, medical research, enforcement of clean air and water rules, access to housing and education, transportation systems and infrastructure, and homeland security.

Background

At the end of 2013, then House Budget Committee Chairman Paul Ryan and then Senate Budget Chair Patty Murray negotiated over a budget that would repeal sequestration for two years in order to restore most agencies' funding levels above sequestration levels. Their primary differences were on which offsets should be used to pay for the two-year repeal of sequestration. Eventually, they agreed that one offset would be a \$6 billion hit to federal employee retirement, which was achieved by increasing pension contributions for employees hired after 2013 to 4.4 percent.

Using federal retirement to facilitate budget deals must not happen again. It was entirely unjustified and unjustifiable in 2013, and it should never happen again. The \$246 billion forfeited by the working and middle-class Americans who make up the federal workforce has been an unconscionable tax increase on just one small group of Americans. In wake of the recent tax cuts granted to wealthy individuals and corporations, AFGE urges lawmakers not to repeat the mistakes of the past and require federal employees to make up for revenue losses from those whose ability to pay far exceeds the modestly paid federal workforce.

Current Proposals

The House Budget Resolution for FY 2018, echoing earlier proposals from 2013-2017, proposes massive cuts to federal retirement. The first is to require current employees to increase their contributions to cover fully half the cost of their defined benefit. Federal Employees Retirement System (FERS) employees would go from paying 0.8 percent of salary to their pension to 7.0 percent of salary to their pensions. Civil Service Retirement System (CSRS) employees would go from paying 7 percent of their salary to 12.5 percent to their pension.

In addition to the increased taxes on federal salaries to fund retirement costs, the administration and the House proposed other possibilities: reducing cost-of-living adjustments for CSRS annuitants by half a percentage point and eliminating them altogether for FERS annuitants. They proposed changing the formula for calculating FERS annuities so that it would be based on the average of the highest five years of salary, rather than the current "high three." They propose eliminating the FERS annuity for new hires altogether.

In a direct attack on federal law enforcement officers who are required by law to retire by age 57, the House Republicans proposed elimination of the so-called "FERS Supplement," which pays those who have earned a full, unreduced retirement annuity the equivalent of the Social Security benefit they have earned during their federal service until they reach age 62. The FERS supplement was meant to be a central element of that retirement system. FERS was created as

a result of the Social Security Amendments of 1983, signed into law by President Ronald Reagan. To help finance Social Security benefits for the eventual retirement of the baby boom, Congress made a number of changes to the Social Security system. Among them was to bring federal employees into the system. CSRS employees did not participate in Social Security, but their benefits were calibrated to equal those being offered by large private employers. Thus, CSRS benefits resembled the pension payments plus Social Security payments that private sector employees received. When federal employees were brought into Social Security by means of the establishment of FERS, a “Social Security equivalent” was necessary for early retirees who, under CSRS, received a full, unreduced benefit. Thus, the FERS supplement was born. The House Republican Budget proposes to eliminate this crucial element of law enforcement retirement benefits.

The proposals to increase federal employee retirement contributions so that employees pay fully half of the cost of the FERS defined benefit amounts to a reduction in salary of 6.2 percent for those hired before 2013. These proposed cuts have been justified on the absolutely false argument that private-sector workers with defined benefit pensions pay this amount of salary for similar benefits. According to the Bureau of Labor Statistics, 96 percent of private sector and state and local government employees with defined benefit pensions pay nothing for this element of their compensation. That is, 96 percent of American workers who receive a defined benefit from their employer are not required to make any “contribution” from their salaries for this benefit.

Also, the additional 6.2 percent of salary that the administration and House budgets would require from federal employees derives from a fundamental misunderstanding of the difference between private- and public-sector finance. Because federal pension assets are invested exclusively in Treasury bonds, they have a lower rate of return than private-sector pension assets that can be invested in both public and private equities. Because of this investment restriction (which AFGE strongly supports), the cost of providing/saving for a dollar of retirement income to a federal worker is higher than that for a private-sector worker. The federal government needs to save more to provide the same benefits to its employees than a private-sector employer. Federal employees should not be forced to pay this differential either.

It is important to view all proposals to cut federal retirement in the proper context. The federal retirement systems play no role whatsoever in the creation of the deficit, and reducing benefits to federal workers has made no positive effect on the budget or the economy. These proposals have no justification other than to scapegoat federal employees and retirees for an economic crisis they had no part in creating. No other group of middle-class Americans has contributed to deficit reduction the way federal employees have. Now that the deficit will balloon as a result of tax cuts to corporations and wealthy individuals, it is even more unconscionable to reduce the pensions of working class federal employees as a means of so-called deficit reduction. AFGE will continue to oppose any additional efforts to undermine the statutory retirement promises on which federal employees rely.

Efforts to Take Away Earned Pensions from Federal Employees

Representative Rokita of Indiana's PAGE Act would allow the government to deny earned pensions to any current or future federal employee who is convicted of a felony. Section 6 of the legislation proposes to require forfeiture of an earned annuity for any felony conviction relating to an employee's work. This raises serious due process and property rights issues, and goes far beyond what is permitted in the private sector for pension forfeiture under ERISA. For example, an employee performs 30 years of flawless service. During year 31, the employee misuses a government charge card, and is convicted of a felony. Under Rokita's bill, the employee would forfeit all pension rights going back to their first year of service.

Also in the 114th Congress, and likely to be re-introduced, there were numerous bills that attempted to require pension forfeiture from employees of the Department of Veterans Affairs, both from senior executives and front-line, non-management health care professionals. AFGE opposed these efforts not only because of the violation of due process and property rights, but also because the forfeiture would rob alleged victims of the potential for monetary damages against the employee.

Eliminating Defined Benefit Pensions for New Federal Employees

The Heritage Foundation's "Blueprint for Reform" http://thf_media.s3.amazonaws.com/2016/BlueprintforReform.pdf#page=109 recommends eliminating the FERS defined benefit altogether for new employees. After assertion of a number of false and misleading arguments about private sector vs. federal retirement plans, Heritage puts forth a plan that would allow those with at least 25 years of service to retain their benefits, force those with between five and 25 years of service to choose between paying more for their benefits or have their benefits frozen (or receive a lump sum of 75 percent of the present value of their FERS benefit's accrued value) while receiving an additional three percent of salary toward the Thrift Savings Plan. For federal employees with less than five years, FERS would end. Heritage proposes a lump sum refund of their contributions (not the government's!), and going forward would receive just 3 percent of salary more into their TSP accounts.

AFGE strongly opposes this Heritage plan because it is an entirely unjustified reduction in compensation for federal employees and is based on false assumptions concerning private sector practice and the source of the federal retirement system's costs.

Conclusion

AFGE strongly supports legislation that repeals the draconian increases in employee contributions to retirement for those hired after 2012. Likewise, AFGE strongly opposes all additional efforts to reduce or eliminate defined benefit pensions for new or current employees. Finally, AFGE will vigorously oppose efforts to enact legislation that would allow the government to force employees to forfeit their earned pensions under any circumstances apart from those currently in law.

Federal Employees Health Benefits Program

The Federal Employees Health Benefits Program (FEHBP), which covers more than eight million federal employees, retirees, and their dependents, is the nation's largest employer-sponsored health insurance program. FEHBP was affected by the Patient Protection and Affordable Care Act, otherwise known as Obamacare. FEHBP is also a target of those who would force federal employees to forfeit their earned benefits to finance deficit reduction. The attacks on FEHBP are likely to continue in Congress this year and may be intensified by those who support voucherizing federal health insurance. AFGE strongly opposes dismantling either FEHBP or Medicare by replacing the current premium-sharing financing formula with vouchers.

Even if FEHBP's current structure remains in place, federal employees continue to be forced to bear a greater share of premiums each year because of the peculiarities of the program's financing. While average premiums in the program rose by 4.0 percent for 2018, the process of shifting costs onto employees continues. The average employee share will rise by 6.1 percent in 2018 while the government's share will go up by just 3.2 percent. This shift in the costs of health insurance away from the government would be intensified by a voucher program.

Obamacare and FEHBP

Neither the enactment of the Affordable Care Act in 2010, nor the inception of the individual mandate, has solved all of our nation's problems associated with health care costs and insurance coverage, as millions of Americans remain uninsured or underinsured, and we still spend almost twice as much per capita as other advanced industrialized countries with nationalized health care. This is true despite the fact that almost half of all American health care spending is funded by the U.S. government through Medicare and Medicaid which are not drivers of cost. The country's problems with prices and coverage derive from the other "half" of health care spending, the portion controlled by private insurers and pharmaceutical companies and where policies and rates are set by the private sector rather than government regulation.

The phase-in of benefits from Obamacare began in 2011 with extension of coverage to dependents up to age 26, no copayments for preventive care, and smoking cessation benefits, again without charging any copayments. Several other provisions of Obamacare affect federal employees and retirees who participate in FEHBP. Three will have a direct cost impact. The most promising is the rule on medical loss ratio limitations. Insurers have to spend at least 80 percent of premiums on medical care or functions that improve the quality of care. For those covered by large group policies, insurers must spend an even higher amount – 85 percent. Insurers who fail to meet this standard must provide policyholders with a rebate instead of pocketing the extra premiums as profit.

Those covered by Medicare and an FEHBP plan pay nothing for one annual well-patient visit to a doctor, and can request a personalized illness prevention plan at no cost. Medicare beneficiaries are also able to get immunizations and screenings for cancer and diabetes without

any copayments. Those who participate in Medicare Part D are eligible for a 50 percent discount on brand-name drugs and a seven percent discount on generic drugs if the plan has a coverage gap (also known as a “donut hole”). These discounts will increase each year until the donut hole is completely eliminated by 2020.

In 2014, the income-based government subsidies for individuals to purchase health insurance from state-run “exchanges” became available. Unfortunately, tens of thousands of federal employees who should qualify for these subsidies, because their incomes are so low, will not be eligible because they have access to FEHBP plans, which are partially paid for by their employer. Obamacare’s subsidies are calculated partially to limit the share of family income paid out in premiums, and partially on the basis of family size, but FEHBP’s employer contributions do not vary by family size or income level. Thus, federal employees who cannot afford FEHBP premiums will not be able to obtain subsidies to purchase insurance on the exchanges.

FEHBP already had some of the consumer protections that the Affordable Care Act extended to everyone in 2014. First among these are rules to prevent insurance companies from discriminating against those with a pre-existing or existing health problem. Second, insurance companies are now prohibited from placing lifetime limits on the amount they will pay for benefits for a patient (the law raises the limit and eventually eliminates it). Restrictions on insurance companies’ ability to cancel coverage when an enrollee falls ill also came into effect in 2014.

The most serious concern AFGE has had regarding Obamacare and the one that is likely to be very damaging to federal employees is the excise tax known as the “Cadillac Tax” on high cost health plans that was set to go into effect in 2018. Implementation has been delayed until 2020 as a result of the Omnibus Appropriations bill passed in late 2015. This excise tax will make FEHBP far less affordable for many federal employees and retirees than it already is.

Most disturbing is the fact that it will fall on many FEHBP plans whose high costs are not at all a reflection of a rich benefit package. In fact, the highest cost plans in FEHBP are not those with the most comprehensive benefits. The highest cost plans are those that exploit FEHBP’s structural weaknesses by encouraging those with the highest health risks to congregate, and thus their costs reflect the risk group rather than the actuarial value of the benefits offered. Additionally, many FEHBP plans become “high cost” because of their political power and the Office of Personnel Management’s long history of exempting them from cost accounting standards, as well as OPM’s practice of acceding to demands for large annual premium increases.

FEHBP contracts are fixed price re-determinable type contracts with retrospective price redetermination. This means that even as the insurance companies receive only a fixed amount per contract year per “covered life,” they are allowed to track their costs internally until the end of the year. The following year, they can claim these costs and recoup any amount they say exceeded their projections from the previous year. They are guaranteed a minimum, fixed profit each year regardless of their performance or the amount of claims they pay. The cost

“estimates” on which they base their premium demands are a combination of what they report as the prior year experience plus projections for the coming year plus their minimum guaranteed profit. Clearly, there is no ability for federal employees to alter the “high cost” of these plans. It is in the FEHBP’s insurance companies’ interests to keep costs and profits high, and benefits low. And to subject the result of this inefficient system to a “Cadillac tax” when its high costs have nothing to do with benefits just adds insult to injury.

Although the implementation of the “Cadillac tax” has been delayed until 2020. AFGE had been working to further delay the implementation of the tax and managed to do so through bipartisan support in the Omnibus Appropriations bill. AFGE continues to support the repeal of the tax. One reason for our opposition is that the excise tax is a heavily regressive tax on federal workers, especially those whose incomes are too high to be eligible for the exchange subsidies but are too low to afford employee premiums in excess of \$3,000 per year. While the 40 percent tax is levied on the insurance company and is paid on incremental costs over \$10,200 for individuals and \$27,500 for families, there are already FEHBP HMOs whose rates meet the 2018 and ultimately the 2020 thresholds.

With the delay enacted, AFGE remains concerned about how the cost thresholds will be calculated since they continue to be based on the initial costs (listed above) adjusted for inflation. In addition to the delay in implementation, the excise tax will now be tax deductible, which is a new policy that will benefit employers. Finally, the initial costs were calculated and benchmarked based on the Blue Cross/Blue Shield benefit option under FEHBP. The 2016 Omnibus Appropriations bill requires a study to determine whether that benchmark is appropriate for age and gender adjustment and will make recommendations about alternative benchmarks. The delay in implementation is a positive step, but the excise tax will remain a problem and AFGE will continue to work for its repeal.

Turning FEHBP into a Voucher System

The House Republican Study Committee (RSC) is a powerful caucus of Republican members of Congress. Recently, the RSC recommended transitioning the Federal Employees Health Benefits Program (FEHBP) to a “premium support system.” The RSC suggests that because the government covers a set percentage of an employee’s health premium, FEHBP participants have an incentive to choose higher-priced health plans.

“The government would offer a standard federal contribution towards the purchase of health insurance and employees would be responsible for paying the rest,” the RSC plan said. “This option would encourage employees to purchase plans with the appropriate amount of coverage that fits their needs.”

House Republicans have repeatedly proposed turning FEHBP into a defined-contribution or voucher system. Premium support or voucher plans provide a fixed subsidy that is adjusted by an amount unrelated to changes in premiums. One proposal would adjust the voucher by the growth in Gross Domestic Product (GDP).

The voucher plan would change FEHBP by having the government provide a fixed amount of cash each year that employees could use to buy insurance on their own, instead of paying a percentage of average premiums charged by the insurance companies coordinated by the Office of Personnel Management, as is currently the case. Under the existing statutory system, if premiums go up by 10 percent, the government's contribution goes up by around 10 percent. The FEHBP financing formula requires the government to pay 72 percent of the weighted average premium, but no more than 75 percent of any given plan's premium. With a voucherized plan, the government's "defined contribution" or voucher would not rise in step with premium increases and thus, every year, employees would have to pay a larger percentage of the cost of their insurance. For example, between 2012 and 2018, FEHBP premiums have increased by over 4.0 percent per year. During the past two FEHBP premium setting years (2017 and 2018), the government's contribution has not kept pace with the increase in the employee contribution, and for 2018, the government contribution will increase only about half as much as the increase in the employee contribution. If the voucher proposal would have been in effect, the government's "contribution" or voucher would have gone up by GDP + 1 percent. During periods of slow growth, the voucher program would not cover premium increase; for example, GDP in 2015 was estimated to have grown by 2 percent. Adding an additional percentage point to that, the voucher would have risen by 3 percent, not enough to cover the 4.1 percent average rise in premiums over the last 5 years. This amounts to additional cost shifting to employees.

Scaling Back FEHBP for Retirees

Yet another attack on FEHBP is being mounted by the Heritage Foundation and their allies. The Heritage Foundation is very influential in Republican circles and has supporters in important administration positions affecting federal employee pay and benefits.

The key part of the Heritage proposal, which has Republican support, is to shift more federal retiree health care costs away from FEHBP. Heritage proposes that all federal retirees be required to purchase Medicare Part B insurance even if they already have better FEHBP coverage, and can neither afford nor want to pay two insurance premiums instead of one. Mandatory Medicare Part B coverage would be useless to veterans who use the FEHBP in combination with Veterans Affairs (VA) care to cover their costs. Heritage includes in its proposal a loss of all health insurance for retirees who refuse to pay two premiums.

Conclusion

AFGE strongly opposes all efforts to replace FEHBP with a voucher or "premium support" structure for health insurance. The current program already does a poor job providing affordable care to federal employees and their families, with a financing formula that allows gradual cost-shifting from the government to employees each year. Voucherizing the system would only exacerbate this problem, leading to ever-lower living standards for federal employees as the cost of health insurance outpaces wages and salaries.

During the past seven years, including the three-year pay freeze, federal pay rose by just 8.3 percent (0 percent for 2011-2013, 1 percent for 2014 and '15 and 1.3 percent in '16, 2.1 percent in '17, and 1.9 percent in '18). But in that same period, federal employees' premiums are over 30 percent higher in dollar terms in 2017 than they were in 2012. The cost to employees of participating in FEHBP continues to rise by more than either the general rate of inflation or the rate of growth of their ability to pay (i.e., COLA growth for retirees or pay adjustment rates). For 2018, federal employees will pay 6.1 percent more for their health care premiums – similar to the increase from 2017 – and employees will only realize a 1.9 percent rise in their wages and salaries. In addition, while the average employee percentage share of the premiums will increase 6.1 percent in 2017, the average increase in the government share of the premiums will be only 3.2 percent.

While the consumer protections included in Obamacare have allowed all Americans to enjoy some of the positive elements of the FEHBP, federal employees' main benefit has been the extension of coverage to dependents up to age 26. AFGE supports efforts to lower FEHBP's prescription drug prices, but will closely monitor any impact on the formulary. We oppose differentials in FEHBP premiums based on health status, and will oppose regional PPOs until more information on the impact on enrollees is provided. AFGE continues to support full equality in the provision of health insurance for all families, including those that are comprised of domestic partnerships. Finally, AFGE is pleased that the health care "Cadillac tax" implementation has been postponed to 2020 and will continue to oppose this tax, because it would punish enrollees for the failure of OPM to negotiate premiums that are a fair reflection of the benefits contained in FEHBP's plans.

Sourcing: Complying with the Law

Summary

- 1. EXTEND THE GOVERNMENT-WIDE SUSPENSION AGAINST STARTING UP ANY NEW OMB CIRCULAR A-76 STUDIES:** Maintain the suspension on the use of the OMB Circular A-76 privatization process until required reforms have been implemented and functions performed by contractors are finally targeted for insourcing. The Office of Management and Budget (OMB), by its own admission, has made none of the necessary changes to an A-76 process it acknowledges to be flawed. Schemes to repeal the A-76 suspensions were unsuccessful in previous years, but contractors will no doubt be back again this year. Although AFGE has been successful in maintaining both governmentwide appropriations restrictions on use of A-76, as well as specific DoD authorization restrictions, we must redouble our efforts for 2018. The new Congress and president have made no secret of their desire to privatize as much of government operations as they can. They cloak their rhetoric in taxpayer friendly language, claiming to be interested in saving money. However, make no mistake, this is ideologically driven. Every neutral study of contracting-out has clearly illustrated the additional costs to taxpayers, often coupled with shoddy performance and disputes with the contractors.
- 2. ENFORCE PROHIBITIONS AGAINST DIRECT CONVERSIONS:** Consistent with the law, no work last performed by federal employees should be contracted out without first conducting a full and fair public-private competition. The Department of Defense (DoD), the largest department in the federal government, acknowledging that the risk of direct conversions increases significantly during downsizing, issued guidance to promote compliance with the law. OMB has issued guidance for the non-DoD agencies, but that guidance is not reaching the folks who matter the most — front-line managers and the acquisition workforce. OMB needs to issue the necessary guidance to protect federal employees from agencies' illegal privatization schemes. AFGE's concern in 2018 is that even using a totally flawed and contractor biased A-76 process may not be enough for the privatizers. Knowing they can't win if they play by the rules, they may attempt to throw the rules out. The desire to simply convert federal employee work to private companies cannot be overstated.

The fiscal year 2018 National Defense Authorization Act includes language mandating more upfront planning and transparency for services contracting prior to developing DoD contract services budgets. It requires senior official approval and places limitations on the use of "bridge contracts" when it is clear that insufficient planning, programming, and budgeting for contracted services has been done. Additionally, the fiscal year 2018 National Defense Authorization Act contains language requiring standardized guidelines on use of "total force management" to challenge contract service requirements during the planning, programming, and budgeting stages of determining contract requirements. House language that would have modeled these guidelines on the Army checklist for identifying unlawful contracts was struck in Conference and needs to be

tightened in the next NDAA process so that there is a standardized, comprehensive and efficient implementation of statutory restrictions against direct conversions, and an audit trail for enforcement.

3. **THROUGH INSOURCING, REQUIRE AGENCIES TO GIVE FEDERAL EMPLOYEES OPPORTUNITIES TO PERFORM NEW AND OUTSOURCED WORK:** Consistent with the law, agencies should insource functions that were contracted out without competition or are being poorly performed. Significant savings are possible from insourcing. An independent group determined that contractors are generally twice as costly as federal employees. DoD has claimed significant savings through insourcing. However, that effort was shut down in the prior administration when DoD imposed a cap on the size of its civilian workforce, but not on its contractor workforce. The Defense Business Board (DBB) has approved for DoD a “total force rationalization plan” that encourages insourcing where appropriate. Additionally, the Office of the Secretary of Defense has eliminated caps on the size of the civilian workforce.
4. **COMPILE SERVICE CONTRACT INVENTORIES:** Consistent with the law, agencies should compile inventories of their service contracts to make clear how much contractors cost, how many employees are performing each contract, and how well they are performing. It is imperative that agencies be able to identify and control contractor costs to the same extent that they can already identify and control federal employee costs if downsizing is not to disproportionately impact the less costly civil service. After overcoming OMB opposition, DoD has made progress, but is still years away from integrating its contractor inventory into its budget process. However, GAO reports that non-DoD agencies are far behind, principally because OMB allows agencies not to collect from contractors important cost information required by law.

Unfortunately, the FY 2017 NDAA scaled back on the requirement for DoD to compile inventories of service contractor employees. Rather than compiling inventories of all service contractor employees, the inventories will be limited to counting only employees working on contracts in excess of \$3 million in four selected “acquisition portfolio groups”: 1) Logistics management services; 2) Equipment-related services; 3) Knowledge-based services; and 4) Electronics and communications services.

In the FY 2018 National Defense Authorization Act, there was an effort to reframe the contractor inventory issue and remedy these problems by requiring Future Year Defense Program (FYDP) visibility of contract services spending when developing DoD service contract budgets. This would have implemented a GAO recommendation that contract services start to be managed with the transparency of weapon systems in the budget process by including the four out years that precede the president’s budget year in contract services budget submissions. In conference, this was watered down with direction to a Federally Funded Research and Development Center to study the feasibility of implementing the GAO recommendation. More than anything else, requiring FYDP visibility of contract services would fundamentally alter the dynamic that

currently encourages constraining the civilian workforce with caps while permitting expanded direct conversions to contract.

5. **LIFT CAPS ON AGENCIES' IN-HOUSE WORKFORCES WHICH FORCE WASTEFUL PRIVATIZATION:** There is no question that work performed by federal employees is being contracted out in defiance of the law because of personnel ceilings. And there is no question that personnel ceilings are being used to deny federal employees opportunities to perform new work and outsourced work. The FY 2017 NDAA loosens the restrictions on capping DoD's in-house workforce, although DoD must now provide a written explanation of "changed circumstances" that require civilian personnel to be managed subject to caps and/or limitations. Since the prior limitation was frequently observed in the breach, it should be interesting to see what types of explanations DoD may use to further contractor performance of work currently being performed in-house. The FY17 and FY18 Appropriations bills continued prior language prohibiting managing civilian employees to military personnel ceiling caps, but this language is weakened by the absence of better visibility of contract services spending.

Official Time is Essential to Federal Government Efficiency and Productivity

Congress must oppose any attempts to curtail or eliminate the use of official time within the federal government. Official time is the use of volunteer union representatives to conduct limited representational activities while in an official duty status. Under the Federal Service Labor-Management Relations Act, official time is a longstanding, necessary tool that gives federal agencies and their employees the means to expeditiously and effectively utilize employee input to address mission-related challenges, as well as bring closure to conflicts that arise in all workplaces.

Bipartisan Congressional coalitions have supported the use of official time for decades. In fact, repeated legislative attempts to eliminate official time have been defeated with strong bipartisan support for many years. During the 114th Congress, on April 29, 2015, Rep. Jody Hice (R-Ga.) offered an amendment to the Military Construction-Veterans Affairs Appropriations bill to eliminate official time for all Department of Veterans Affairs (VA) employee union representatives. The House of Representatives soundly rejected the amendment by a vote of 190-232, with all Democrats and 49 Republicans voting against the elimination of official time within VA.

In the 115th Congress, Rep. Hice introduced the “Official Time Reform Act of 2017,” HR 1364, which unreasonably caps, and ultimately eliminates, the use of official time. HR 1364 would take away federal employees’ pensions for exercising their right to serve as a union representative. This legislation proposes to cut federal employees’ retirement pensions, by taking away creditable service hours for any time spent conducting official representational duties once an employee reaches the arbitrary cap. This pension penalty, along with changes in how official time can be used within the federal workplace, will effectively eliminate the use of official time. The threat to federal employees’ pensions will serve as an enormous financial disincentive for employees to serve as union representatives, thus eliminating employee representation and penalizing federal employees for exercising their legal right to join and be represented by a union.

Rep. Todd Rokita (R-Ind.) introduced HR 3257, the “Promote Accountability and Government Efficiency Act,” which would also propose to eliminate official time and many other federal employee rights. AFGE strongly opposes this legislation.

Official time gives federal employees a right to provide input to improve workplace policies and procedures, as well as protection if they are discriminated against or treated unfairly. Eliminating official time, eliminates basic, much needed employee protections for America’s public servants — federal workers who work to support our military, get the Social Security checks out on time, ensure a safe food supply, go after those who pollute our water and air, and care for our wounded veterans.

How Official Time Works

In the federal government, union membership is optional — it is a choice. Employees only join the union and pay dues if they choose to join. By law, federal employee unions are required to provide representation for all employees in units that have elected union representation, even for those who choose not to join the union or pay dues. Federal employee unions are also forbidden from collecting any fair-share payments or fees from non-members for the services the union must provide.

In exchange for the legal obligation to provide the same services to those who pay as well as those who choose not to pay, the Civil Service Reform Act of 1978 allowed federal employee unions to bargain with agencies over official time. Under this law, federal employees who volunteer as union representatives are permitted to use official time to engage in negotiations and perform representational activities while on duty status.

Legally permitted representational activities are limited to:

- Creating fair promotion procedures that require that selections be based on merit, so as to allow employees to advance their careers
- Setting procedures that protect employees from on-the-job hazards, such as those arising from working with dangerous chemicals and munitions
- Enforcing protections from unlawful discrimination in employment
- Participating in improvement of work processes
- Providing workers with a voice in determining their working conditions

The law provides that the amount of time that may be used is limited to that which the labor organization and the agency agree is reasonable, necessary, and in the public interest. The law states that, “(a)ny activities performed by an employee relating to the internal business of the labor organization must be performed while in a non-duty status.”

Activities which may **not** be conducted on official time include:

- solicitation of membership
- internal union meetings
- elections of officers

To ensure its continued reasonable and judicious use, all federal agencies track basic information on official time, and submit it annually to the Office of Personnel Management (OPM), which then compiles a governmentwide report on the amount of official time used by agencies. In March 2017, OPM reported that the number of official time hours used per bargaining unit employee increased from 2.81 hours in FY 2012 to 2.88 hours in FY 2014, and that official time costs represented one-tenth of 1 percent of the total of federal employees’ salaries and benefits for FY 2014.

Official Time Makes the Government More Efficient and More Effective

Through official time, union representatives are able to work together with federal managers to use their time, talent, and resources to make our government even better. Gains in quality, productivity, and efficiency across the government would not be possible without the reasonable and sound use of official time.

Private industry has known for years that a healthy and effective relationship between labor and management improves customer service and is often the key to survival in a competitive market. The same is true in the federal government. No effort to improve governmental performance will be successful if labor and management maintain an adversarial relationship. In an era of downsizing and tight budgets, it is essential for management and labor to develop a stable and productive working relationship.

Union representatives and managers have used official time to transform the labor-management relationship from an adversarial stand-off into a robust alliance. If workers and managers are really communicating, workplace problems that would otherwise escalate into costly litigation can be dealt with promptly and more informally.

Official Time Produces Cost Savings in Reduced Administrative Expenses

Union representatives use official time for joint labor-management activities that address operational mission-enabling issues in the agencies. Official time allows activities such as designing and delivering joint training of employees on work-related subjects and introduction of new programs and work methods that are initiated by the agency or by the union.

Union officials use official time for routine problem-solving of emergent and chronic workplace issues. For example, union representatives use official time when they participate in agency health and safety programs operated under the Occupational Safety and Health Administration (OSHA). Such programs emphasize the importance of effective safety and health management systems in the prevention and control of workplace injuries and illnesses.

Official time is also used by union representatives participating in programs such as LEAN Six Sigma, labor-management collaborative efforts which focus on improving quality of products as well as procedural efficiencies. Recently, union representatives have participated on official time by working with the Department of Defense to complete a department-wide performance management and recognition system and accelerate and improve hiring practices within the department.

Conclusion

Congress must protect federal employees' official time rights and oppose any attempts to eliminate the use of official time within the federal government. AFGE strongly opposes any

legislative effort to erode or eliminate the ability of elected union representatives to use official time to represent both dues and non-dues paying federal employees.

Congress Must Protect Federal Employees' Right to Choose Payroll Deduction of Union Dues

Federal Employee Payroll Deduction of Union Dues

Anti-union legislators have increased efforts at the local, state, and federal levels to ban employees from choosing to have their union dues deducted from their paychecks. Federal employees in bargaining units choose whether to join the union and pay dues. Federal employee unions do not collect fair share fees. **Federal employees only pay dues if they choose to join the union.** It is both the right and choice of federal employees, who have chosen to join the union, to have their dues deducted through the automatic payroll system. The deduction of union dues is no different from the current list of automatic payroll deductions available to federal employees that range from health insurance premiums to contributions to charitable organizations.

Federal agencies throughout the country operate under an open shop collective bargaining arrangement, established first by Executive Order under President Kennedy in 1962, reaffirmed by Executive Order under President Nixon in 1969, and finally established by statute, the 1978 Civil Service Reform Act. Under the law, if a labor union is elected by the non-supervisory employees of a federal agency, then the union is legally obligated to represent *all* the employees in that bargaining unit, whether they join the union or not. ***The employees in that bargaining unit are under no obligation whatsoever to join the union, nor are they under any obligation to pay for representation or pay any other fee to the union.*** When federal employees choose to join the union, they sign a form called an "1187" that establishes their union membership and sets up the payroll deduction. When federal employees choose to pay union dues, they utilize a process that was established by the agencies for purposes other than just collecting union dues.

Legislative Background

During the 114th Congress, Rep. Tom Price (R-Ga.) introduced HR 4661, the "Federal Employees Rights Act, which proposed elimination of automatic payroll deduction of federal union dues. During the 113th Congress, legislation was introduced to amend current law by making it illegal for federal agencies to allow federal employees who are union members to pay their dues through automatic payroll deduction. This legislation was introduced by Rep. Mark Meadows (R-N.C.) (HR 4792) and Sen. Tim Scott (R-S.C.) (S 2436). In 2013, Senator Scott also offered a Senate floor amendment to eliminate payroll deduction of union dues. This amendment was soundly rejected, 43 to 56.

Rep. Todd Rokita (R-Ind.) introduced HR 3257, the "Promote Accountability and Government Efficiency Act." If enacted, this legislation would make all new federal employees at will, eliminate employee due process rights, and potentially prohibit all federal agencies from voluntary payroll union dues deduction. AFGE strongly opposes this legislation.

Opposition to payroll deduction of union dues is rooted in the false premise that there is a cost savings if the collection of union dues is eliminated. Since payroll deductions are no longer done by hand, but electronically, it costs the government virtually nothing to deduct union dues. The federal government currently provides payroll deductions for the following:

- Combined Federal Campaign
- Federal, state, and local taxes
- Federal Retirement System annuity funding
- Thrift Savings Plan (TSP) contributions and TSP loan repayments
- Federal Employees Health Benefits (FEHBP) premiums
- Supplemental private dental, vision, and long-term care insurance (these are not financed at all by the government, just facilitated through payroll deductions for premiums)
- Court-ordered wage garnishment for alimony and child support
- Flexible spending accounts for payment of health costs not covered by insurance

If it is wrong to provide employees with electronic payroll deductions for dues, then it is just as wrong to provide the service for these other worthy goals.

Conclusion

AFGE strongly opposes any efforts in the House or Senate to eliminate the ability of federal employees to choose to have their union dues deducted from their paychecks. Any legislation that aims to eliminate payroll deduction of union dues is a blatant political attack on federal employees' wages, benefits, collective bargaining rights, and jobs. Such attacks are designed to silence the collective voice of federal employees who carry out the work of federal agencies and programs on behalf of the American people. Congress must protect federal employees' right to join a union and have their dues automatically deducted.

Department of Defense (DoD): Keeping Our Nation Safe and Secure

AFGE is proud to represent 270,000 civilian employees in the Department of Defense (DoD), whose experience and dedication ensures reliable and cost-efficient support of our nation's warfighters. Our members perform a wide range of civilian functions, from maintaining weapons to overseeing contractors to guarding installations. The Pentagon's own data prove that of the department's three workforces – military, civilian, and contractor – the civilian workforce is the least costly and the most efficient, yet nevertheless is targeted for the largest cuts. AFGE is honored to represent civilian employees on a wide range of issues, both on Capitol Hill and within the department.

1. NO MORE ARBITRARY CUTS: REDUCTIONS IN DOD CIVILIANS SHOULD BE BASED SOLELY ON CUTS IN WORKLOAD AND BUDGET

That the civilian workforce has been cut the most does not stop some lawmakers from proposing additional arbitrary reductions. DoD should manage its civilian workforce by workloads and budgets – if there is work to be done and money to pay for that work, then managers should be free to use civilians, consistent with law, cost, policy, and risk-mitigation. Arbitrary cuts in civilians don't save money because work shifts to more expensive contractors and military personnel.

2. SCRAP THE CAP: FREE THE CIVILIAN WORKFORCE FROM ARBITRARY CONSTRAINTS ON ITS SIZE

Through at least 2019, the size of the civilian workforce is capped at its 2010 level, which prevents managers from assigning work on the basis of law, cost, policy, and risk-mitigation. Work which could be performed more efficiently by civilian employees is sometimes transferred to contractors or military personnel, both of which DoD acknowledges cost more. Scrapping the cap doesn't increase costs, but it does allow managers to use the least costly workforce. Reductions in DoD spending should come from the legislative and executive branches deciding which functions DoD should no longer perform – and then dismissing the relevant workforce, whether it be military, civilian, or contractor. The FY18 NDAA includes a report on readiness analysis. AFGE will continue to push the concept of not constraining or reducing the civilian workforce based on this readiness analysis.

3. ENSURE DOD COMPLIES WITH PRIVATIZATION SAFEGUARDS

Thanks to longstanding, bipartisan safeguards, DoD is required to at least guesstimate that conversion to contractor performance would result in marginal savings before privatizing work performed by civilian employees. Nevertheless, either out of ignorance or defiance, our work continues to be unlawfully privatized without regard to the impact on taxpayers. DoD has promulgated guidance but doesn't enforce it effectively. Do review a checklist of relevant sourcing and workforce management laws prior to outsourcing our work.

The department should adopt an existing process, such as the Army's standardized checklist for compliance with total force management laws, as the best way to prohibit illegal outsourcing. The GAO found that the checklist was an efficient way of improving compliance in the Army. The FY18 NDAA directs the military to use standard guidelines to create such a checklist. AFGE recommends going further and requiring the Army Checklist to be used universally.

4. CIVILIAN-TO-MILITARY CONVERSIONS MUST BE COST-EFFICIENT

The cap on the size of the civilian workforce is so onerous that DoD is using military personnel to perform functions long carried out by civilians, even though the Pentagon acknowledges that civilians are significantly cheaper. DoD must be required to establish an occupational link between incoming military personnel and the civilian positions that they will take over in order to promote readiness (preventing a hollow force that places stresses on the all-volunteer military) and ensure that any conversions are cost-efficient. At a time when force structure is being dramatically reduced and defense dollars are precious, replacing civilian personnel with military personnel rarely if ever makes fiscal sense.

5. IDENTIFY AND CONTROL SERVICE CONTRACT COSTS

Service contract costs exceed the costs of civilian personnel and military personnel combined. Despite the more than \$200 billion billed annually to taxpayers by service contractors, DoD has little visibility into or control over their costs because it has failed to comply with a longstanding requirement to compile an inventory of service contracts and then integrate the results into the budget process. According to GAO, DoD could control service contract costs if it finally finished the inventory. However, DoD is defying senior level commitments and several laws by suspending work on the inventory and has already succeeded in convincing Congress to partially junk a proven methodology for data collection.

6. USE INSOURCING TO SAVE TAXPAYER DOLLARS AND IMPROVE PERFORMANCE FOR WARFIGHTERS

DoD is required to give "special consideration" to using civilian employees to perform privatized functions if the work costs too much, is poorly-performed, or is too important or sensitive to have ever been outsourced, using a methodology approved by GAO, although no insourcing is actually required. Despite the Pentagon's acknowledgement that contractors are significantly more expensive, the department essentially no longer insources because of its cap on the size of the civilian workforce, which makes it difficult to add new staff no matter how much money might be saved. According to DoD, insourcing efforts from FY10 and FY11 resulted in significant savings. However, a Total Force Management Rationalization Plan, approved by OMB for DoD use, encourages insourcing where appropriate; in some components, insourcing has started. However, bad habits of managing to caps are hard to break. Until that happens, consistent adherence to the "special consideration requirement" is unlikely. The Defense Business Board in December 2017 was performing a study with the intent of facilitating fully-burdened cost analyses on the military, civilian employee and contract workforces and has recommended discontinuation of managing civilians to FTE caps, a reversal from prior Defense Business Board recommendations.

7. END THE OUTSOURCING OF INCURRED COST AUDITS PERFORMED BY THE DEFENSE CONTRACT AUDIT AGENCY AND PRESERVE DCAA CAPABILITIES

The NDAA FY 2018 gives discretion to the DCAA director on the level of outsourcing and reporting back to Congress materiality standards. It is anticipated that there will be further efforts to weaken DCAA credibility and independence during the next NDAA and we will be prepared to continue to preserve the integrity of the DCAA.

8. RECRUIT AND RETAIN THE HIGHEST QUALITY CYBER SECURITY PROFESSIONALS

Ensuring the Department of Defense is able to recruit, develop and retain the highest caliber workforce of cybersecurity professionals is crucial to our ability to pro-actively respond to the cybersecurity threat to our nation's security. Under the guise of meeting this need, the FY18 NDAA required the Department of Defense to carry out a pilot program for cybersecurity and legal professionals hired after January 1, 2020 and through December 2029. AFGE strongly opposes this pilot program and urges Congress amend or strike this pilot program in the upcoming FY19 NDAA. Depriving cybersecurity and legal professionals of civil service protections is a foolhardy policy that will encourage rapid turnover and reduce the likelihood of whistleblowers coming forward with information relevant to national security. The pilot is a transparent attempt to revive the discredited National Security Personnel System of the Rumsfeld era and should be ended.

9. SAVE THE EARNED COMMISSARY BENEFIT FOR AMERICA'S WARFIGHTERS AND THEIR FAMILIES

The Defense Commissary Agency (DeCA) enjoys broad support – from the private-sector vendors who supply the commissaries, to the military families who can balance their budgets because of less expensive DeCA products, to the hard-working and dedicated civilian workforce represented by AFGE that makes the agency an integral part of the compensation package for our warfighters and their families – and it must be saved from the Pentagon's false economies.

10. PROTECT HIGH-QUALITY CHILD CARE ON MILITARY BASES

The Defense Department oversees over 300 Child Development Centers (CDCs) on military installations in the United States. These centers offer a safe child care environment and meet professional standards for early childhood education. School-age programs provide care to children in kindergarten through sixth grade. Care is offered before and after school, during non-school days and summer vacations. AFGE represents many of these workers and is fighting hard to preserve a living wage and benefits for the employees who provide this important service to the children of warfighters.

11. PROTECT THE HEALTH AND SAFETY OF THE DEPARTMENT OF DEFENSE MEDICAL PROFESSIONALS BY SUPPORTING ADEQUATE STAFFING MODELS

The Defense Health Agency (DHA) is a joint, integrated Combat Support Agency that enables the Army, Navy, and Air Force medical services to provide a medically ready force and ready medical force to Combatant Commands in both peacetime and wartime. The DHA supports the delivery of integrated, affordable, and high-quality health services to Military Health System (MHS) beneficiaries. One issue that has a direct impact on the quality of work our medical

professional employees experience is hospital staffing. An improperly and understaffed hospital puts patient care and employee safety at risk. That is why AFGE strongly supports “The Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act” (H.R. 2392, S. 1063).

12. CAREFULLY CONSIDER THE CONSEQUENCES BEFORE UNDERTAKING NEW ROUNDS OF BRAC

Base Realignment and Closure (BRAC) is not the answer to the military’s budget dilemma; causes real harm to civilians, military, and communities; does not demonstrate a direct benefit to military readiness; and has a history of mixed results in terms of reducing infrastructure and costs, especially based on the results of the most recent BRAC in 2005. Congress should avoid passing a BRAC resolution that repeats past mistakes when the calculated savings were scheduled to appear far into the future, while the Department of Defense (DoD) spent enormous sums upfront, increasing the national debt, disrupting the lives of our nation’s hardworking civilians and military, and in some cases destroying the livelihood of communities in the name of savings that fail to materialize as expected.

The Pentagon must resist the temptation to pre-determine BRAC sites through selective and arbitrary reductions of civilian personnel through reorganizations, Reductions-in-Force, transfer of military assets and budget starvation so that the military value of an installation is diminished in advance of a review by an impartial panel or Congress. Further, the retirement benefits of civilian personnel must be protected to prevent creation of a double hardship for those who may be forced to retire early due to unforeseen and unavoidable job losses caused by a BRAC action or budget generated downsizing.

13. PRESERVE AND PROTECT DOD’S INDUSTRIAL FACILITIES

Congress and the administration must ensure preservation of our organic industrial base – our nation’s government-owned and government-operated depots, arsenals, and ammunition plants – as DoD shifts military strategy. The administration’s stated commitment to preserving the defense industrial base must extend to the organic industrial base. It is vital that the House and Senate protect and enforce Title 10 statutory provisions that assure the viability of an organic logistics and fabrication capability necessary to ensure military readiness – that the Armed Forces of the United States are able to meet training, operational, mobilization, and emergency requirements without impediment.

The statutes that require this core capability and others, such as designation of a 50 percent floor for depot maintenance work by civilian employees of DoD, and protection of the organic industrial manufacturing base through the Arsenal Act, have kept our nation secure and our core defense skills protected, and they should continue to be supported and strengthened. Review and engagement with the required core and 50/50 reports will be key to preserving the long-term viability of the organic depot systems. Arsenals must work with Congress to ensure that minimum capability to support the warfighter and preserve key capabilities are assigned to the facilities at efficient levels to maintain readiness. Lawmakers must be vigilant as DoD and the Armed Services Committees pursue Acquisition Reform to maintain government control of organic depot maintenance, key pathways for bringing new systems into the depots and

efficient utilization of organic industrial facilities. Congress must work to overturn misunderstood changes to commercial items statutes that undermine the organic industrial base and military readiness.

14. CUTS TO FEDERAL EMPLOYEES' PER DIEM ALLOWANCE FOR LONG-TERM OFFICIAL TRAVEL

In November 2014, DoD implemented changes to the Joint Travel Regulations (JTR) that reduces the per diem allowance for federal employees who travel for long periods of time. AFGE represents thousands of DoD civilian employees that provide essential mission support on long-term Temporary Duty (TDY) assignments. This change is negatively affecting federal employees and as a result of these changes, DoD employees must now identify reduced rate lodging and live off a per diem allowance for meals and incidental expenses that is well below nationally established per diem rates while traveling for work extended periods of time. AFGE strongly opposes reducing the per diem rates of DoD employees who are required to travel for more than 30 days. Federal employees have had to sacrifice and work through years of pay freezes, furloughs, and reductions in pay to reduce the federal deficit. Further cost savings should not be at the expense of federal employees who are required to regularly travel for long periods of time.

NO MORE ARBITRARY CUTS:

REDUCTIONS IN DOD CIVILIANS SHOULD BE BASED ON CUTS IN WORKLOAD AND BUDGET

THE FOLLY OF ARBITRARILY SLASHING THE CIVILIAN WORKFORCE: Legislation (HR 340) was introduced in the House of Representatives in 2015 that would have arbitrarily cut the civilian workforce by 15 percent, or almost 120,000 jobs. Although it attracted much attention, the bill itself garnered only nine cosponsors. The legislation would not have reduced the department's workload – instead, DoD would simply have been told to do the same with less – and it would not have required any cuts in service contract spending, which has doubled over the last 10 years.

Just to put the immensity of DoD service contract spending in perspective, consider the bipartisan report language in the Senate FY12 NDAA: *“Over the last decade, DoD spending for contract services has more than doubled from \$72.0 billion in fiscal year 2000 to more than \$150.0 billion (not including spending for overseas contingency operations), while the size of the Department’s civilian employee workforce has remained essentially unchanged.”*

THE SIZE OF THE CIVILIAN WORKFORCE IS ALREADY BEING ARBITRARILY CUT: Over the objections of the White House and the Pentagon, the FY13 NDAA included a provision (Section 955) that by 2017 requires DoD to cut civilians and contractors by the same percentage as it will reduce military personnel. Because of Section 955 and the department's own cuts, DoD is actually cutting civilian personnel not deemed critical at a faster rate than military personnel, but it is not cutting contractors. Through FY19, according to the Comptroller in 2014, civilian personnel are being reduced by 9.1 percent and military personnel by 8.7 percent. No long-range reductions are available for contractor personnel. However, spending for contractors increased slightly in FY15, particularly on Operations and Maintenance.

IMPOSING ARBITRARY CUTS ON ONE OF THE DEPARTMENT'S THREE WORKFORCES IS SELF-DEFEATING: If the Congress wants the department to cost less, then the Congress must reduce the department's responsibilities. It is incumbent upon the Congress to determine which functions the department should no longer perform, so that the relevant workforce(s) can be downsized commensurately.

The department should perform its mission on the basis of budgets and workloads. If it has work to do and money to pay for that work to be done, then there is no reason why DoD managers should be prevented from using civilian employees, contractors, or military personnel. Rather, performance decisions should be based on law, cost, policy, and risk.

However, through 2019 only the civilian workforce is supposed to be no larger than it was in 2010 – it is arbitrarily capped. The imposition of a unique constraint on the size of the civilian workforce drives work that had been performed by civilians towards the other two workforces, regardless of law or cost.

DoD told the Senate Homeland Security and Governmental Affairs Committee in 2012 that

"(t)his 'civilian cap' has reduced the flexibility of the Army to utilize the types of manpower it sees as most beneficial to the performance of its mission...The current caps on federal employees hiring have hampered agencies from actually making cost-analysis based decisions when contracting...In practical terms, if the Army cannot hire civilians, then it must turn to other sources of labor--like contracting--when it needs to execute missions..."

DoD officials have admitted that contractors cost more than civilian employees. Former DoD Comptroller Robert Hale acknowledged in 2013 testimony before the Senate Defense Appropriations Subcommittee that service contractors generally cost two to three times what in-house performance costs, particularly for long-term functions, a view subsequently affirmed by the Army Chief of Staff.

In fact, civilian employees are now in such short supply that the department is, increasingly, using more expensive military personnel to perform routine functions that could be performed more efficiently by civilian personnel, which, as was pointed out in FY14 NDAA report language by the House Armed Services Committee, is increasing costs and diminishing readiness. In other words, imposing further arbitrary reductions on the civilian workforce will actually cause DoD to rely even more on more expensive contractors and military personnel, significantly increasing costs to taxpayers.

SCRAP THE CAP: FREE THE CIVILIAN WORKFORCE FROM ARBITRARY CONSTRAINTS ON ITS SIZE

SUMMARY: Absent any requirement in law, DoD has imposed a cap on the size of its civilian workforce – through 2019, the civilian workforce should not be larger than it was in 2010. Work that should be performed by civilian employees because of law or policy must sometimes instead be performed by military personnel or contractors. Work that could be performed more cheaply by civilian employees is sometimes instead contracted out or given to military personnel. And even when new work is assigned to civilian employees, adherence to the cap often requires an offsetting reduction – which means that the jobs of a comparable number of civilian employees elsewhere must be eliminated and their work converted to performance by military personnel or contractors.

In short, the cap has so significantly undermined sourcing and workforce management laws and policies that DoD managers are unable to always make performance decisions that are consistent with law, cost, policy, and risk mitigation. The imposition of an arbitrary cap on the size of the civilian workforce is in defiance of 10 USC 129, which forbids the application of such constraints on the size of the civilian workforce, instead requiring the department to manage its civilian workforce by workloads and budgets – which means that if there is work to be done and money to pay for that work to be done, managers should not be prevented from using civilian employees to perform that work.

DoD claims that the cap is not illegal because the Pentagon has a process by which exceptions to the cap may be secured. However, that exceptions process is forbidding and cumbersome; and, as noted earlier, even when an exception is granted, it usually means that the civilian workforce must be reduced elsewhere in order to offset the increase. Worse, the arbitrary cap is unique to the civilian workforce. The department has imposed no cap on service contract spending, and reductions in military personnel are based on changes in military strategy. Skeptics can argue that the Pentagon's cuts in force structure are too steep, ill-conceived, and excessively budget-driven, but they do have a strategic basis, unlike the purely arbitrary cap imposed on the civilian workforce.

HOW THE CIVILIAN WORKFORCE CAP WORKS SPECIFICALLY IN THE ARMY: In no part of DoD is the cap on the civilian workforce imposed more stringently than in the Army, a practice continuing into FY2017, notwithstanding the August 2017 OMB Total Force Management Rationalization Policy approved by the new administration at the OMB level and recent December 2017 Defense Business Board recommendations against managing to caps (a reversal from prior DBB positions). Also, notwithstanding the Total Force Management Rationalization Policy, the Director of Cost and Program Evaluation at the OSD level often disregards this new flexibility when it makes Future Year Defense Program decisions cutting the civilian full-time equivalent (FTE) levels and managing with a de facto cap at the OSD level for all Defense components, and not just the Army. Still a restatement of the historical application of the cap as a continuing business practice in the Army is still illustrative and relevant. In a 2014 report to Congress on compliance with the prohibition against arbitrary constraints on the civilian

workforce, Army Secretary John McHugh acknowledged: “(I)t has come to my attention that there may be elements of the Army that appear to be operating with de facto caps on the civilian workforce.”

However, as the Army itself had admitted earlier, the application of the cap on the civilian workforce is neither isolated nor merely an appearance. As the Army testified in 2012, more than two years ago, before the Senate Homeland Security and Governmental Affairs Committee:

“As a result of the civilian cap, individual Army Commands have a cap on their own manpower, in order to ensure the Army’s ongoing compliance with policy. This cap limits the flexibility that the Army has, both as a whole and in individual components, when managing its manpower mix. If a civilian cannot be hired, then the only remaining options are to contract the function, or use borrowed military manpower. The use of military personnel is usually not an option, which leaves only contracting as a viable means of executing a mission.

“When faced with hiring decisions, people are therefore being placed in the unenviable position of having to decide whether to comply with the civilian cap, or to comply with the other statutes and policies governing the workforce (like the prohibition on the performance of inherently governmental functions by contractors).

“Although the goal of the civilian cap – the reduction in overall Department of Defense expenditures – is clearly a good one, the workforce cap has had the unintended consequence of limiting the flexibility of the Army in managing its workforce. Cost-effective workforce management decisions ought to be based on allowing for the hiring of civilians to perform missions, rather than contractors, if the civilians will be cheaper. The lifting of the civilian workforce cap would restore this flexibility, and in that sense it would seem to be a positive potential step forward.”

The Army thus acknowledged that its application of the cap resulted in higher costs to taxpayers and the illegal performance by contractors of functions too important or sensitive to privatize. Implicitly, the Army acknowledged that the cap also caused it to defy 10 USC 129.

AFGE’s members in the Army report without hesitation that the application of the cap has become even more onerous as the budget’s vise has been further tightened. For example, as the Army itself acknowledged, in “POM 14-18 Realignment of Resources, As of 5-30-2012,” hundreds of civilian security guards, all of them veterans and many of them partially disabled veterans, were arbitrarily eliminated because of the cap:

“Headquarters Department of the Army directed IMCOM to execute a cost and risk-informed functional prioritization to identify offsets for emerging manpower requirements. After a careful and deliberate review of programs and functions,

IMCOM has identified authorizations to adjust or eliminate in order to meet these requirements.

“A total of 988 DA Civilian authorizations across the command will be eliminated by FY '14 to offset the emerging manpower requirements for programs and services...

“Authorizations to be eliminated are 598 Security Guard authorizations at 13 FORSCOM installations...”

This example of the perverse impact of the cap is particularly pertinent because the conversion of work was entirely dictated by the cap on the civilian workforce. There was no attempt to establish a Military Occupational Specialty linkage between the security guard positions and the incoming soldiers. There was no attempt to determine if this massive conversion was cost-effective. At a time of heightened concern over security, there was no attempt to determine if military personnel could perform the work as reliably and comprehensively as it had been performed by civilians. And, of course, this directive was issued by Secretary McHugh's own office. The Army's only consideration: adherence to an arbitrary cap on the size of the Army's civilian workforce.

The application of the cap is not just an appearance, as the Army maintains, but reality, and the inevitable results are illegal and costly mis-assignments of work. As the Army suggested in its 2012 testimony, the cap should be lifted because of its “unintended consequences.”

Instead, the Army should manage by budgets and workloads. If it has work to do and funding to pay for that work to be done, no Army manager should be prevented from using civilian employees because of cap. Performance decisions should be driven by law, cost, policy, and risk-mitigation. The Army knows which functions it must perform and how much funding it will be given to perform that work.

Consequently, the Army should think of its workforce holistically and assign work to military personnel, civilian personnel, and service contractors based on approved criteria, rather than arbitrary constraints on the civilian workforce. This approach would be consistent with 10 USC 129, allow the Army to reduce the size of its entire workforce, enhance compliance with laws and regulations that require work to be assigned to particular personnel, and reduce costs since work could be assigned to the most efficient workforce when costs are the sole criterion. Of course, none of this discussion – both the problems caused by the cap and the appropriate remedy – is unique to the Army because the cap perverts assignments of work throughout DoD.

ENSURE DOD COMPLIES WITH PRIVATIZATION SAFEGUARDS

HOW WE CAN PROMOTE COMPLIANCE WITH PROHIBITIONS AGAINST DIRECT CONVERSIONS:

Thanks to two longstanding, bipartisan safeguards – a perennial general provision in the defense appropriations bill and 10 USC 2461 – DoD must at least guesstimate, based on a formal cost comparison process, that contractor performance would be marginally more efficient before work designated for performance by civilian employees may be privatized. These prohibitions still apply during sequestration.

ADDITIONAL STEPS TO ENSURE ENFORCEMENT OF SAFEGUARDS AGAINST DIRECT

CONVERSIONS: Congress should require the Pentagon to both build on its earlier guidance and comply with recent Congressional direction to require acquisition personnel to review a checklist of relevant sourcing laws and regulations before outsourcing work designated for performance by civilian employees.

1. **EXPAND ON GUIDANCE:** Administrative and legislative requirements to reduce the size of the civilian workforce do not trump the prohibitions against direct conversions. In fact, there are laws which specifically forbid DoD from using its own arbitrary in-house personnel ceilings as well as cuts required by Congress in the size of the civilian workforce to contract out work designated for performance by civilian employees:
 - a. 10 USC 2461(a)(3)(B), which forbids contracting out work designated for performance by civilian employees in order to circumvent a personnel ceiling; and
 - b. Section 955 of the FY13 NDAA, P.L. 112-239, which forbids “unjustified transfers of functions between or among the military, civilian, and service contractor personnel workforces” in order to comply with arbitrary reductions in those workforces, and affirms the imperative to comply with four important sourcing laws.
2. **COMPLY WITH CONGRESSIONAL DIRECTION:** In the FY15 NDAA, Congress required that DoD components and agencies establish a standard checklist of sourcing laws and regulations that must be reviewed before contracting for services, after previous administrative efforts to adapt a checklist departmentwide failed because of internal opposition. This Congressionally-directed checklist would impose no new requirements; rather, it would merely ensure that all relevant legal and regulatory requirements are integrated into one convenient, easy-to-use checklist.

For several years, the Army has been using a checklist of laws and regulations that makes it more difficult to privatize bargaining unit work:
<http://www.asamra.army.mil/scra/documents/ServicesContractApprovalForm.pdf>. Since management must actually use the checklist and comply with the laws and regulations listed, it is not foolproof. However, the Army checklist does make it harder for management to directly convert our work and easier for AFGE Locals to independently review the legality and appropriateness of their installation’s service contracts.

In appreciation of the Army's efforts, the Congress included this language in the FY15 NDAA:

"We direct the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the senior acquisition executive for the Department of the Navy and the Department of the Air Force, no later than March 30, 2015, to issue to the Defense agencies and the military services, respectively, policies implementing a standard checklist to be completed before the issuance of a solicitation for any new contract for services or exercising an option under an existing contract for services, including services provided under a contract for goods. We recommend that the Under Secretary and the senior acquisition executives, to the extent practicable, model their policies and checklists on the policy and checklist relating to services contract approval currently used by the Department of the Army."

The House and Senate Armed Services Committees must ensure that the department follows this direction and that a checklist of laws and regulations like the one devised by the Army is always used before any work designated for performance by civilian employees is privatized.

CIVILIAN-TO-MILITARY CONVERSIONS MUST BE COST-EFFICIENT BECAUSE COSTS TO TAXPAYERS INCREASE WHEN DOD DECREASES USE OF CIVILIANS

Taxpayers are paying more for work that had been performed by civilian personnel but is now being performed by more expensive military personnel. There are many different terms to describe this process: borrowed military manpower, re-greening, re-purposing, and blending.

WHAT THE CAUSES ARE: There are several causes of civilian-to-military conversions: The cap on civilian personnel incentivizes managers to find alternative workforces to accomplish work. Sequestration – at the election of the President – exempts military pay, making military personnel seem like a free alternative to civilian personnel. DoD masks the impact of civilian furloughs by using military personnel to nominally perform civilian functions. Despite the military drawdown, components, particularly the Army, are attempting to find alternative positions for returning military personnel.

IT'S NOT ANTI-MILITARY TO BE CONCERNED: Many AFGE members in DoD and the Department of Veterans Affairs are veterans. Many contractors believe military personnel should never perform functions that would otherwise be performed by civilian personnel or contractors. Not AFGE, which believes that there are justifications for using military personnel to perform some routine commercial functions: recruitment, retention, and career development. However, with the military drawdown – e.g., the Army going down to its smallest size since WWII – and the need to cut costs, there should be fewer military personnel performing non-military functions, not more. DoD has acknowledged that "civilians typically prove to be a more cost-effective source of support than their military counterparts." Moreover, the Congressional Budget Office recommended that 70,000 military positions be converted to civilian positions, which it said would save taxpayers \$20 billion in less than 10 years.

The House Armed Services Committee was critical about the use of military conversions in report language to its mark of the FY14 National Defense Authorization Act:

“As DoD makes reductions in its Total Force workforce composition, military, civilians, and contractors, the committee is increasingly concerned about the use of military manpower to perform functions previously performed by either civilians or contractors. While the Department of the Navy and the Department of the Air Force have indicated they do not anticipate wholesale substitutions using military personnel, the Secretary of the Army, in testimony before the committee in April 2013, predicted that the Army could use as many as 8,000 uniformed personnel to fill positions during the current fiscal year because reduced funding for training has created time gaps in the duty day and freed up soldiers for other duties. The committee understands the need for temporary, limited local command use of military personnel performing civilian work to accomplish mission objectives, but the committee notes that use of military manpower outside the service member’s military occupational specialty poses risks to readiness and training, and raises issues of unsustainable costs. Consistent with ‘Guidance Related to the Utilization of Military Manpower to Perform Certain Functions,’ issued March 2, 2012, by the Under Secretary of Defense for Personnel and Readiness, the committee expects the Department of Defense to calculate the cost of using military personnel in lieu of civilian personnel or service contractors to perform non-military tasks in accordance with Directive Type Memorandum (DTM)-09-007, ‘Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support’ or any succeeding guidance.”

WHAT RULES APPLY: There are no laws that govern the conversion of work from civilians to military. The Army and the Office of Personnel and Readiness (P&R) have issued guidance in order to rationalize the conversion of civilian and contractor positions to military personnel. The Army’s October 2011 guidance required a link between soldiers’ Military Occupational Skill (MOS) and the functions to be performed. In order to replace civilians or contractors with military personnel, the Army was required to perform a formal cost comparison. P&R’s March 2012 guidance imposes a requirement of military essentiality. If a function is not military essential, then a formal cost comparison is required. If a function is military essential, then no cost comparison is required. Here are the seven examples of military essential functions (which are summarized from DoD Instruction 1100.22):

- 1. Missions involving operational risks and combatant status under the Law of War.*
- 2. Specialized collective and individual training requiring military unique knowledge and skills based on recent operational experience.*
- 3. Independent advice to senior civilian leadership in Department requiring military unique knowledge and skills based on recent operational experience.*
- 4. Command and control arrangements best performed within the Uniform Code of Military Justice.*
- 5. Rotation base for an operational capability.*

6. *Career progression.*
7. *Esprit de corps (such as military recruiters, military bands).*

Personnel and Readiness' guidance insists that any use of military in lieu of civilians should be temporary and short-term. In April 2013, Army Secretary John McHugh wrote to AFGE that the "Army's (borrowed military manpower) policy is a short-term solution...to address emergency requirements associated with the current budgetary situation does not contemplate the permanent conversion to military performance of work presently allocated to civilian employees." In November 2013, Secretary McHugh wrote that "(t)he use of 'Borrowed Military Manpower' continues to be a short-term, stop-gap measure..." Even during sequestration, substitutions of military personnel for civilian personnel are supposed to be temporary and short-term.

AFGE'S EXPERIENCES: At Fort Rucker, Alabama, the Army announced that 20 civilians performing support functions would be converted to military. Management told AFGE that the Army needed to find slots for returning military personnel and acknowledged that the military personnel taking the civilian positions had no relevant MOS links. Moreover, no costing was done. At Fort Stewart, Georgia, more than 40 civilian security guards – all veterans and almost all partially disabled – were replaced by military personnel. No costing was done, and there were MOS links for only some of the military personnel. Worse, this conversion was done explicitly because of an illegal constraint on the size of the civilian workforce – the Army was getting new work and had to eliminate comparable numbers of positions elsewhere in the civilian workforce. And the Army is planning to withdraw from the Defense Finance and Accounting Service and reconstitute its own financial operations, using military personnel instead of civilians.

WHAT HAPPENED AND DIDN'T HAPPEN IN LAST THREE YEARS: The FY16 House NDAA included a provision authored by House Armed Services Subcommittee Ranking Member Madeleine Bordallo, D-Guam, that would have essentially codified the pertinent parts of the Army's October 2011 guidance and Personnel and Readiness' March 2012 guidance: If a function comes under the first four examples of military essential functions, then it can be converted from civilian or contractor performance. However, if a function comes within the latter three examples of military essential or is not military essential at all, then there must be an MOS link between the function and the military personnel involved as well as a formal cost comparison which determines that performance by military personnel is cheaper. The FY18 House NDAA included this same amendment sponsored by Rep. Bordallo, but she withdrew her support for the amendment during the HASC Chairman's mark because of compromise Senate language from the FY17 NDAA that required Secretariat level consideration of the budgetary consequences of such conversions before approving them, a much weaker provision than requiring a fully-burdened cost analysis and Military Occupation Series connection for the work being converted. DoD Total Force Management Rationalization guidance approved by OMB in August 2017 discourages in stronger terms the use of borrowed military manpower and the Defense Business Board in December 2017 made recommendations that the fully burdened

costs of military and military essentiality be required before converting civilian or contract work to military performance, which the DBB described as the most expensive workforce.

A comparable amendment was filed by Senators Robert Casey (D-Pa.) and Lisa Murkowski (R-Alaska) to the Senate version of the FY16 NDAA, but it was blocked from consideration, and opposition from the Pentagon and the Senate Armed Services Committee killed the Bordallo amendment in the conference, which is essentially the same result as last year.

Consequently, there are no statutory limitations on the extent to which DoD can arbitrarily shift work from civilians (and contractors) to military personnel, regardless of the increased costs to taxpayers. And because of the onerous cap on the size of the civilian workforce and the resumption of sequestration, it is expected that civilian-to-military conversions will only increase in size and frequency.

The big difference between the FY16 NDAA and the FY15 NDAA with respect to military conversions is that independently corroborated authoritatively corroborated in 2015 what AFGE has been saying about the use of borrowed military personnel for the last two years.

Per the Government Accountability Office's report "MILITARY PERSONNEL: Army Needs a Requirement for Capturing Data and Clear Guidance on Use of Military for Civilian or Contractor Positions, 15-349," GAO reported that the Army does not track:

a. how long borrowed military personnel are used in lieu of civilians and contractors;
"An Army regulation required borrowed military personnel assignments normally should be limited to 90 days, but...(t)he Army did not track the actual amount of time soldiers served in this temporary status..."

b. whether borrowed military personnel are used consistently with their professional specialties;
"Borrowed military personnel were used in various capacities outside of their Military Occupational Specialty, including as lifeguards, grounds maintenance personnel, and gym attendants because the Army did not provide specific guidance on what functions it considered appropriate to fill with borrowed military personnel."

Note: *"Army data show that for the three installations, on average 38 percent of soldiers were performing special duty within their Military Occupational Specialty and 62 percent of soldiers were performing duty that was not related to their specialty."*

c. how much more borrowed military personnel cost than the civilians and contractors they replace;
"The Army did not consider full costs in fiscal years 2013 and 2014 when deciding to use borrowed military personnel and the Army did not provide the oversight that was necessary to ensure that commanders documented and reported the full costs of using borrowed military personnel in these years. This is important because the full costs of borrowed military personnel

can be greater than civilian personnel performing the same function. GAO reviewed special duty data reported in February 2014, and found that none of the 13 commands and installations reviewed reported the full costs for all military, civilian, and contractor personnel.”

Note: “In cases which the full cost of civilians performing gate guard and lifeguard duties do not exceed \$3,908, then the average full cost of military personnel performing those duties may be double or more than the costs of civilian personnel conducting those activities.”

d. and what impact the use of borrowed military personnel has on readiness and training. *“(T)he Army does not know the extent to which the use of borrowed military personnel affected readiness and training...(T)he Army does not now have a requirement to monitor this usage even though Army officials said this usage of borrowed military manpower would continue...Without a continued requirement and clear guidance for identifying and monitoring the extent to which borrowed military personnel are used, the Army risks allocating its resources inefficiently and ineffectively and may be unable to identify any potential problems with this use of personnel, including any impacts on training and readiness.”*

To the extent that DoD and the Army have issued guidance, GAO’s report indicates that such guidance has been unclear, ignored, unenforced, and suspended. Leaving the department to its own discretion has clearly not worked, despite the significant interests at stake, particularly when defense dollars are precious and force structure is being dramatically reduced. Therefore, Congress should have acted to ensure that rules based on the department’s own guidance are actually codified. The only reservation AFGE has about GAO’s report is that it focused exclusively on the Army – because that component was the only one that confessed to GAO that it undertook civilian-to-military conversions, even though the practice is widespread.

And per replacing military personnel in support positions with civilian employees, the Congressional Budget Office (CBO) reported that, “In 2012, about 340,000 active-duty military personnel were assigned to commercial positions that support functions.” The CBO recommended: “To cut costs, DoD could transfer some of those positions to civilian employees and then reduce the number of military personnel accordingly. The Congressional Budget Office estimates that doing so for 80,000 full-time positions could eventually save the federal government \$3.1 billion to \$5.7 billion per year.” Of course, following through on CBO’s recommendation would require the Pentagon to lift the cap on the size of the civilian workforce and the Congress to repeal the arbitrary cuts in the number of civilian employees. What’s more important to the Congress and the Pentagon – cutting costs or cutting more efficient civilian employees?

AFGE locals that are losing bargaining unit work to military conversions should contact AFGE’s General Counsel’s Office, which will assist in documenting the conversion and determine whether it is inconsistent with the department’s guidance; then, working with the Legislative Department, the local can pursue administrative and legislative remedies. Such efforts have sometimes prevailed; even when they don’t, fighting back often deters management from undertaking additional military conversions and helps to focus Congressional attention on the

need for serious reforms. As Senate Armed Services Committee Chairman McCain has correctly noted, “less than one-quarter of active duty troops are in combat roles, with a majority instead performing overhead activities.” It is unfortunate that AFGE’s effort to at least rationalize civilian-to-military conversions have been frustrated two years in a row.

IDENTIFY AND CONTROL SERVICE CONTRACT COSTS

INTRODUCTION: DoD spends two and one-half times more on service contracts than on civilian employees, with service contract costs having more than doubled during the last 10 years. Nevertheless, DoD still can’t identify and control its spending on service contracts because it has yet to compile an inventory of its service contracts that is integrated into the budget, despite having been required to do just that since 2008. However, because of opposition from contractors and their allies in the acquisition community, DoD has failed to comply with the law.

Thanks to pioneering work by the Army, it seemed as if DoD might be on the path toward compliance; DoD, contractors, AFGE, Congress, and GAO agreed that the Army’s methodology should be the basis for the contractor inventory. However, stubbornly snatching defeat from the jaws of victory, the Pentagon suspended work on the inventory in 2014 and is now considering junking the Army’s methodology in favor of another that will leave unaccounted for significant contractor costs.

GAO has reported that DoD can get service contract costs under control – or at least limit the growth in such costs – by requiring DoD to complete the inventory of service contracts and enforcing the longstanding cap on service contract spending.

DOD DEFIES LAWS AND COMMITMENTS FOR IMPLEMENTATION OF THE INVENTORY: In the FY08 NDAA, a statutory requirement to inventory service contracts was enacted, the one with which DoD has yet to comply.

In the FY10 NDAA, based on GAO findings that the department had made little discernible progress toward the implementation of an inventory of contracted services, Congress codified a requirement that the department better project and justify requested budgetary resources for contracted services – a requirement that the department still struggles to meet.

Pursuant to the FY10 NDAA, Congress directed the department to make resources available to adopt a proven Army data collection methodology.

In the FY11 NDAA, Congress assigned responsibilities to the Under Secretary of Defense for Personnel and Readiness with regards to the collection of data that would enable improved oversight of contracted services consistent with management of the department’s Total Force – the military, civilian, and contractor workforces.

In the FY11 Defense Appropriations Bill, Congress required the Pentagon to submit detailed plans for all DoD organizations to come into compliance with longstanding statutory requirements for the inventory.

In the FY12 NDAA, Congress directed the department to use the inventory to ensure a balanced and effective workforce; inform strategic workforce planning; justify budget requests for service contracts; and identify poor, wasteful, illegal, or inappropriate service contracts.

The Under Secretaries of Defense for Personnel and Readiness and Acquisition, Technology, and Logistics jointly submitted to Congress, in November 2011, a comprehensive plan delineating a path forward to full compliance with Congressional direction by the end of fiscal year 2014.

This plan was subsequently endorsed by former Secretary Leon Panetta, in a letter to the chairman and ranking member of the House Armed Services Committee.

In accordance with those plans, in early 2012 the department made commitments to service contractors and the public through the Paperwork Reduction Act process regarding implementation of the inventory.

In November 2012, the Under Secretaries for Personnel and Readiness and Acquisition, Technology, and Logistics jointly signed guidance to begin departmentwide use of and reporting into the enterprise wide Contractor Manpower Reporting Application (eCMRA) for inventorying service contracts – a system predicated on a proven Army business process.

As reported by GAO, the department allocated dedicated resources, beginning with fiscal year 2015, to ensure continued implementation of Congressional direction.

The importance of dedicated resourcing of this effort was endorsed by two Deputy Secretaries of Defense – then Secretary Ashton Carter and Acting Secretary Christine Fox.

In spite of that lengthy history, ample precedents, and senior level commitments, the Office of Personnel and Readiness decided in September 2014 to suspend work on the inventory and consider an alternative methodology to collect information from contractors for the inventory. GAO and DoD IG have also reported that the department is not providing the inventory effort with sufficient resources.

WHAT SHOULD HAVE HAPPENED IN 2017 AND DID NOT HAPPEN: Rather than get bogged down in arcane, internal disputes about methodology and responsibility, AFGE urges the Office of Personnel and Readiness (P&R) to adhere to the commitments for the inventory of contract services that it made in writing in 2014 to the Congress. P&R made five broad, overarching commitments for the inventory, which are reproduced in the italicized language, below. Some progress has been made toward the first two commitments, but little if any progress has been made with respect to the latter three commitments:

1. Taking the department of the Army's centralized Contractor Manpower Reporting Application (CMRA), and

"The Department adopted the reporting tool and successful processes that the Army has used for the past several years with its centralized Contractor Manpower Reporting Application (CMRA)."

2. Adopting it for departmentwide use through the Enterprise-wide Contractor Manpower Reporting Application (ECMRA), and then

"The cornerstone of these improvements is the software we made available for all Components based on the Army's CMRA; we call it the `Enterprise-wide Contractor Manpower Reporting Application (ECMRA)."

3. Providing the ECMRA with the support necessary to implement it across the entire department,

"I am also pleased to share with you that in FY2015 the Department will have additional dedicated resources in this area. We are currently establishing a Total Force Management Support Office to comprehensively implement the ECMRA across the Department."

4. So that it can be used as required by law to review and analyze service contracts for possible correction, whether that be modifying the contract or insourcing the function,⁴

"This will ensure a consistent review and analysis process related to the performance of functions under contract. This analytical feature of the ECMRA business processes complements policy formulation, oversight of reporting, and consequent actions for all Defense Components."

5. Under the overall direction of the Office of Personnel and Readiness, consistent with its statutory responsibilities.

"This office, in coordination with the Comptroller's office, will leverage the Army's established processes to ensure that the contract component of the Total Force is incorporated into the Department's Planning, Programming, Budgeting and Execution process in order to fully implement the statutory mandates within section title 10, USC, section 235."

AFGE rebutted a RAND study used by the SASC in the FY 2017 NDAA to weaken the contractor inventory requirement. At present, there is more bipartisan support on the need for better

⁴ 10 USC 2330a

visibility of contract services in the budget process. Accordingly, AFGE will tackle this problem from the back end of first building consensus for improved Future Year Defense Program visibility of contract services implementing a GAO recommendation, followed up with reintroduction of the contractor inventory requirement to service as a baseline for assessing the credibility of FYDP projections supporting the contract services budget exhibit.

USE INSOURCING TO SAVE TAXPAYER DOLLARS AND IMPROVE PERFORMANCE FOR WARFIGHTERS

WHAT INSOURCING ACTUALLY IS AND WHY CONTRACTORS DON'T LIKE IT: Insourcing refers to the process by which work performed by contractors is brought in-house because the work is too important or sensitive to have been outsourced, performance can be improved, or costs can be reduced. Insourcing is common in the private sector as well as at lower levels of government.

Contractors don't like insourcing because it cuts into profits. Pro-contractor lawmakers sponsor legislation to prevent agencies from insourcing. Senior acquisition executives, most of whom have worked for contractors and / or will go to work for contractors, refuse to insource. Arbitrary constraints on the size of in-house workforces – whether pursuant to caps, freezes, or cuts – make it very difficult to insource, no matter how many taxpayer dollars might be saved.

Pursuant to 10 USC 2463, DoD is required to develop insourcing policies for new work and outsourced work, in particular to give “special consideration” to insourcing contracted out work that:

1. is too important or sensitive to privatize,
2. was contracted out without competition and is now presumably more expensive than it should be, or
3. has been deemed poorly performed.

The insourcing law for DoD was enacted through the FY08 NDAA. DoD is not compelled to insource; rather, with respect to certain categories of work, DoD is simply required to give “special consideration” to insourcing. 10 USC 2330a, also enacted through the FY08 NDAA, requires DoD to use reliable and experienced civilian employees to the “maximum extent practicable” to perform closely associated with inherently governmental functions, which includes such work as developing regulations, preparing budgets, and interpreting regulations. Nobody would ever consider having such work performed by contractors – except, of course, contractors, who have continually tried to repeal the law.

HOW DOD HAS INSOURCED: DoD officials told the Government Accountability Office (GAO) that, *“Insourcing has been, and continues to be, a very effective tool for the Department to rebalance the workforce, realign inherently governmental and other critical work to government performance (from contract support), and in many instances to generate resource efficiencies.”*

In FY10, the department added nearly 17,000 new civilian positions as a result of insourcing. Of those, 9 percent were added because the work was actually inherently governmental, 41 percent because work was exempted from contractor performance (to mitigate risk, ensure continuity of operations, meet and maintain readiness requirements, etc.), and 50 percent solely because of cost savings, according to the department. In FY11, the department added almost 11,000 new civilian positions as a result of insourcing. Of those, 6 percent were added because the work was inherently governmental, 13 percent because work was exempted, and 81 percent because of cost savings, again according to DoD.

According to GAO, DoD reported, in FY10 alone, \$900 million in savings from insourcing. The Army, which had conducted the most robust insourcing effort in DoD, reported savings from between 16 and 30 percent. More significantly, “During the much smaller period from Fiscal Year 2008 to 2010 when the department instituted an active insourcing program in conjunction with its service contract pre-award approval process and contractor inventory review process, contract service obligations not identified to Overseas Contingency Operations funding decreased from \$51 billion in fiscal year 2008 to \$36 billion in fiscal year 2010.” The increase in civilian personnel costs from insourcing was slight in comparison with the steep reduction in service contract costs.

Contractors, insisting that the insourcing process was biased against them, turned to the Center for Strategic and International Studies (CSIS), which claimed that the DoD’s costing methodology did not take into account a multitude of in-house costs. Congress later assigned the GAO to review DoD’s costing methodology. After discussions with contractors, CSIS and AFGE, GAO last year issued its own assessment of the costing methodology, which implicitly rejected the CSIS critique. If anything, GAO’s report revealed that the methodology is more biased against civilians than contractors.

WHAT HAPPENED TO INSOURCING: Insourcing has been essentially shut down by DoD because of the imposition of an in-house personnel cap which inhibits the civilian workforce from becoming larger than it was in 2010. Now, insourcing can only occur if proposals are signed off on by senior officials after going through a daunting and cumbersome approval process. Moreover, insourcing proponents are often compelled to find comparable numbers of in-house jobs to eliminate in order to stay below the cap. DoD has imposed no comparable size constraint on contractors and required no additional authorization before entering into new contracts or expending on existing contracts.

INDEPENDENT SUPPORT FOR INSOURCING: In 2011, the Project on Government Oversight (POGO), which accepts no union contributions, compared the costs of federal employees and contractors in a seminal study entitled *Bad Business: Billions of Taxpayer Dollars Wasted on Hiring Contractors*, the first to compare service contractor billing rates to the salaries and benefits of federal employees. POGO determined that “on average, contractors charge the government almost twice as much as the annual compensation of comparable federal employees. Of the 35 types of jobs that POGO looked at in its new report, it was cheaper to hire federal workers in all but just 2 cases.”

WHY INSOURCING IS MORE IMPORTANT THAN EVER: Senior DoD officials have acknowledged that contractors cost more than civilian employees. Former DoD Comptroller Robert Hale acknowledged in 2013 testimony before the Senate Defense Appropriations Subcommittee that service contractors generally cost two to three times what in-house performance costs, particularly for the performance of long-term functions, a view subsequently affirmed by General Ray Odierno, the then-Army Chief of Staff, in House Armed Services Committee testimony.

Nevertheless, spending on service contracts has far exceeded investments in civilian personnel. As the Senate Armed Services Committee noted in bipartisan report language to the FY12 NDAA: *“Over the last decade, DoD spending for contract services has more than doubled from \$72.0 billion in fiscal year 2000 to more than \$150.0 billion (not including spending for overseas contingency operations), while the size of the Department’s civilian employee workforce has remained essentially unchanged.”*

WHAT HAPPENED IN 2015 through 2017: DoD should be required to finally hold contractors accountable to taxpayers. DoD should be required to use its costing methodology to determine whether new work, which is not required by law, regulation, or policy to be performed by military or civilian personnel, should be performed by military, civilians, or contractors. Right now, because of the cap on civilian employees that work is almost automatically given to contractors. Also, given the Comptroller’s assessment that civilian employees are cheaper for long-term functions, DoD should be required to review such workload and determine whether it might be performed by civilian employees, using its own costing methodology. In both instances, DoD should be required to raise its cap on the civilian workforce to accommodate any new positions created because in-house performance promised to be less expensive.

The House FY16 NDAA included a bipartisan provision which codified existing DoD policy that the Department use its own costing methodology in assigning new work to military personnel, civilian personnel, or contractors if the work did not need to be assigned to a particular workforce because of law, policy, or risk. Contractors opposed the provision because they generally prefer to avoid having their costs compared to those of in-house workforces, even after their think-tank’s criticisms of the DoD methodology were rejected by GAO.

Because of opposition from the Senate Armed Services Committee, an amendment filed by Senator Sherrod Brown, D-Ohio, which was comparable to the House provision, was blocked from consideration, and the House provision was dropped in conference. Consequently, the “explosion” in service contracting lamented by Chairman McCain will continue.

An amendment in the House FY18 NDAA to codify the requirement for the department to use its own costing methodology in assigning new work to military personnel was withdrawn during the chairman’s mark because compromise language requiring secretariat-level approval of any such conversions based on budgetary considerations (which is different than cost) had been enacted in the FY17 NDAA.

END THE OUTSOURCING OF INCURRED COST AUDITS PERFORMED BY THE DEFENSE CONTRACT AUDIT AGENCY AND PRESERVE DCAA CAPABILITIES

The NDAA FY2018 Conference outcome for DCAA significantly mitigated the original bad language from Chairman Thornberry. It gets rid of the original mandate for a minimum level of outsourcing of incurred cost audits and the prescriptive materiality standards in law; instead it gives discretion to the DCAA director on the level of outsourcing and reporting back to Congress materiality standards. Senator McCain, Ranking Member Reed, and Ranking Member Adam Smith were on the same page on this issue. It is anticipated that there will be further efforts to weaken DCAA credibility and independence during the next NDAA.

RECRUIT AND RETAIN THE HIGHEST QUALITY CYBERSECURITY PROFESSIONALS

Ensuring the Department of Defense is able to recruit, develop and retain the highest caliber workforce of cybersecurity professionals is crucial to our ability to proactively respond to the cybersecurity threat to our nation's security. Under the guise of meeting this need, the FY18 NDAA required the Department of Defense to carry out a pilot program for cybersecurity and legal professionals hired after January 1, 2020 and through December 2029.

The creation of this pilot program for civilian personnel, that incidentally includes legal professionals, restricts the flexibility of the department to hiring only "renewable term and temporary appointments" during the period of the pilot from 2020 through 2029. This program would place at risk the important mission of cybersecurity through its narrow focus on civilian personnel matters rather than the broader mission focus and flexibilities they should provide for both the military and civilian workforce of the Department of Defense.

AFGE strongly opposes this pilot program and urges Congress amend or strike this pilot program in the upcoming FY19 NDAA.

SAVE THE EARNED COMMISSARY BENEFIT FOR AMERICA'S WARFIGHTERS AND THEIR FAMILIES

Congress must preserve the earned commissary benefit for service members, veterans, and their families. The commissary benefit is a benefit treasured by servicemembers and veterans, and their families. Through the Defense Commissary Agency (DeCA), service members, veterans and authorized members of their families buy items at cost plus a five percent surcharge, which covers the costs of building new commissaries and modernizing existing ones. Veterans and military families save an average of more than 30 percent on their purchases compared to commercial prices – savings that amount to thousands of dollars annually when shopping regularly at a commissary.

The core goals of DeCA are to "provide service members and their families with a quality benefit at significant savings, sustain a capable, diverse, and engaged civilian workforce, and be a model organization through agility and governance." Despite the undeniable benefits that the commissaries provide servicemembers and their families, DeCA is under attack. Prior NDAA bills

have given the Department of Defense (DOD) the authority to convert the commissary system to a non-appropriated fund (NAF) status with operating expenses financed in whole or in part by receipts from the sale of products and the sale of services, and the power to identify and convert employee positions that are funded through the appropriations process to a NAF status. Prior NDAA bills have also created a variable pricing program that allows the prices of commissary goods to be established in response to market conditions and customer demand, and to charge military families an additional surcharge of not more than five percent of sale proceeds.

Converting commissaries to a NAF status will have severe consequences for the agency's workforce and the long-term viability of the commissary benefit. Converting the DeCA workforce to a NAF status means a significant pay cut for many employees who are veterans and/or the spouses of military members. DeCA employees will face a severe reduction in pay as wages for NAF employees are an average of 20 percent lower for DeCA employees; hourly NAF employees are paid approximately 35 percent lower than DeCA employees, and salaried NAF employees are paid approximately 10 percent lower than DeCA employees.

DeCA employees who are converted to a NAF status will face a reduction in benefits. NAF employees are not eligible for the Federal Employees Health Benefits Program (FEHBP), but obtain health insurance through the Department, which offers far fewer options for coverage. NAF employees are not eligible for the Federal Employees Retirement System and participate instead in the NAF retirement program which makes lower employer contributions and has higher retirement ages. DeCA employees will also lose civil service protections against job loss. While DeCA employees in a non-NAF status are subject to formal reduction-in-force (RIF) procedures that honor performance and seniority, NAF employees have few job protections. They are "at-will" employees subject to business-based actions, which means management can change their hours and employment conditions at will.

Moreover, the department arbitrarily excludes NAF employees from Title 10 U.S. Code, Section 2461, the law that requires that there at least be a formal guesstimate that conversion to contractor performance could result in marginal savings before functions performed by civilian employees may be outsourced. When converted to a NAF status, DeCA employees will be performing the same work, but because they would be in a NAF status, the new personnel system will allow management unfettered discretion to fire them or contract out their jobs.

The department can certainly save money by paying DeCA employees less, providing them with inferior benefits, and making their jobs disposable, but those are false savings, particularly given that the working and middle-class Americans who work for DeCA are often veterans and military spouses – which means converting commissaries to a NAF status hurts military families.

AFGE believes that DeCA should continue to strive to achieve efficiencies in the provision of the commissary benefit. However, there is no shame in taxpayers continuing to subsidize this important earned benefit, as just about anything of real value must ultimately be paid for. And although the commissaries have attracted extraordinary attention from policymakers in the

legislative and executive branches, it must also be acknowledged that DeCA's appropriation is a tiny fraction of the department's budget.

As a core military family support element, and a valued part of military pay and benefits – according to surveys of military personnel – commissaries enhance the quality of life for America's military and their families, and help recruit and retain the best and brightest men and women to serve our country. AFGE strongly opposes converting commissaries and positions of DeCA employees who are paid with appropriated funds to a NAF status. AFGE urges Congress restore and maintain the defense commissary system and fully fund DeCA through the appropriations process.

PROTECT HIGH QUALITY CHILD CARE ON MILITARY BASES

The Defense Department oversees over 300 Child Development Centers (CDCs) on military installations in the United States. These centers offer a safe child care environment and meet professional standards for early childhood education. School-age programs provide care to children in kindergarten through sixth grade. Care is offered before and after school, during non-school days and summer vacations. AFGE represents many of these workers.

This benefit for military families is invaluable in that it allows military personnel to have peace of mind that their children are in a nurturing and safe environment while they are at work. It also allows military spouses flexibility to pursue jobs that will bring in additional income and improve the quality of life for the family itself.

One provision in the FY18 NDAA is aimed at improving this benefit for military families. Starting now, childcare hours and operations are required to take into account the schedules of military personnel at each location. As worker representatives, AFGE will work to ensure that this new requirement is administered appropriately and that childcare providers are given enough support to continue to provide the highest quality care for the children.

The FY18 NDAA also took aim at the manner in which childcare personnel are hired. Under the new law, if a facility determines (and certifies) that there is a critical hiring need, they have the ability to forgo the current hiring process and directly hire childcare workers at each facility. AFGE will be monitoring how this authority is certified and utilized.

Of most concern, we are closely watching the execution of two provisions aimed at the wages of childcare workers and clearly takes the Department of Defense closer to outsourcing this benefit entirely. First, a review and report on childcare workers' compensation will be completed and provided to Congress by September 2018. Second, a report on the feasibility and advisability of contracting with private sector childcare providers will be completed and reported back to Congress by March 2018. AFGE will be working with allies to assess the recommendations made in these reports and protect the quality of the jobs provided.

AFGE strongly opposes reducing wages and benefits for childcare workers as well as the movement to privatize this important service to military families. AFGE urges Congress to maintain the childcare workforce for military families in a manner that reflects the significance of their role in family life within the Department of Defense.

PROTECT THE HEALTH AND SAFETY OF THE DEPARTMENT OF DEFENSE MEDICAL PROFESSIONALS BY SUPPORTING ADEQUATE STAFFING MODELS

The Defense Health Agency (DHA) is a joint, integrated Combat Support Agency that enables the Army, Navy, and Air Force medical services to provide a medically ready force and ready medical force to Combatant Commands in both peacetime and wartime. The DHA supports the delivery of integrated, affordable, and high-quality health services to Military Health System (MHS) beneficiaries. AFGE represents these workers.

One issue that has a direct impact on the quality of work our medical professional employees experience is hospital staffing. An improperly and understaffed hospital puts patient care and employee safety at risk. That is why AFGE is a strong supporter of “The Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act” (HR 2392, S 1063).

This bill recognizes that adequate nurse staffing is critical for improving outcomes for hospital patients, reducing preventable adverse events, and helping hospitals to attract and retain direct care nurses. The bill sets minimum nurse-to-patient staffing requirements for direct-care registered nurses, requires a study of staffing requirements for direct care licensed practice nurses, and provides whistleblower protections. Hospitals will be required to develop staffing plans within one year after date of enactment that identify and establish guidelines by which the hospital must increase staffing above the required minimums to meet nursing care requirements necessitated by patient needs.

The workforce health and safety protections included in this legislation will ensure that Department of Defense hospitals are better run for the benefit of military personnel. AFGE urges Congress to pass this important legislation.

CAREFULLY CONSIDER THE CONSEQUENCES BEFORE UNDERTAKING NEW ROUNDS OF BRAC

AFGE-represented Department of Defense (DoD) facilities must prepare for the possibility of a future Base Realignment and Closure (BRAC) round, minimizing the risk for closure of specific facilities and enhancing the chance for survival in the event of a closure or realignment recommendation from DoD or additional scrutiny recommended by a Commission or Congress. It is important to align AFGE locals with their communities and other interested parties so that the public understands the importance to their regions of the military facilities and the government employees who make those facilities possible.

The current political environment is not favorable for federal employees, particularly for those working in DoD facilities. The administration is calling for massive cuts in federal employees. After more than a decade of war, the defense budget is being reduced dramatically as result of sequestration and the removal of troops from Iraq and Afghanistan. In some sectors of the military services, we have already seen civilian reductions of more than 30 percent at some bases and the totals are climbing. According to DoD documents, across-the-board, planned civilian downsizing will exceed the cuts to military and contractor workforces by the end of FY 2019. And this is before counting the full impact of sequestration or recent congressional action to transfer large swaths of workload from the public to the private sector! In the absence of some sort of budget agreement to remove the threat of sequestration, the threats only mount. Failure to reach agreement on a greater long-term budget agreement puts DoD at risk for almost another half trillion-dollar series of across the board spending cuts over the next several years of sequestration. Each impacted Secretary of Defense and Chairman of the Joint Chiefs of Staff have characterized sequestration as devastating to the U.S. military force structure, personnel, and infrastructure.

The president's FY15 Budget requested a BRAC round in 2017 and estimated costs of \$1.6 billion through FY19, but savings of \$1.6 billion to begin in FY20. The FY16 and FY17 budget requests repeated the request, each asking for 2 years of BRAC rounds. Fortunately, Congress has voted "NO" each year. The budget development exercise leading to the FY18 president's budget request also included a request for another BRAC round, which President Trump forwarded to Congress. Most informed observers believe the FY19 president's budget request will also include a request for additional BRAC authority.

It should be noted that for several years, DoD military and civilian leadership have estimated that the department has between 20 percent to 25 percent excess capacity based on the status of the facilities' footprint following BRAC 2005. This has not changed even as threats around the world have mounted with the increasing challenges from Russia and North Korea.

As budgets have tightened, senior military leadership calls for BRAC have escalated with each of the military service chiefs indicating their active support and stating the absolute necessity of a BRAC to manage the size and scope of the budget cuts facing DoD. In the FY15 DoD budget proposal, DoD stated that BRAC was needed to accomplish civilian workforce reductions and to garner future, multi-year savings. AFGE has no reason to believe that this remains a significant goal of the department. The Strategic Review included BRAC as a centerpiece and the Quadrennial Defense Review (QDR) followed suit. Further, multiple think tanks across the ideological spectrum are calling for another BRAC round as part of their assessments of the actions necessary to downsize DoD in the current and future budget environment. The services, and particularly the Army, have stated that they plan to invest in larger, more established bases and rid themselves of older infrastructure. The Defense Business Board recommended a BRAC for the organic industrial base, indicating a belief there is up to 30 percent excess capacity in at least one of the

military services. While these numbers could be disputed potentially, the continuing enthusiasm for BRAC outside congress builds pressure.

With few exceptions, congressional reaction to the updated BRAC proposal from the President has continued to be generally negative – at least publicly. But to some extent, the opposition may be softening. Once again, for FY18, the NDAA cut funding for BRAC planning and forbade a BRAC. However, most offices and Members acknowledge that a BRAC is a matter of when, and not if, at this point. Even if it turns out to be after this current election cycle or administration, actions taken now will set the stage for the future BRAC as the impact of many current actions in DoD often take up to five years to come to full fruition.

AFGE locals at DoD facilities should begin now to protect their jobs by strengthening the military value and the political position of their military bases. Regardless of protestations to the contrary, BRAC, as has been implemented up until this point, is political at every stage of the process, beginning with the development of the initial list of bases for closure proposed by the military services and ending with the vote of the BRAC Commission. On the other hand, there are factual, data-driven components that are considered with significant weight when determining military value. The specific elements that will be considered in the military value of facilities will be unknown for some time; however, history has shown certain areas are always factors such as cost, efficiency and military necessity based on mission and unique capabilities. Other intangibles, such as quality of life, are always considered. AFGE members should unite to address these factors in a systematic manner. AFGE DEFCON is assisting by mapping all AFGE DoD locals.

There are several steps that union members can take to strategically prepare for BRAC to protect jobs and military bases from closure or major realignment. NVPs and other regional and national leaders should assist locals in identifying ways to showcase individual military facilities. Competition should be limited to non-AFGE represented bases to the greatest extent possible as DoD looks at military value from a cross-service perspective.

- a. Energize and Organize Elected Officials: Your elected officials at every level of government will be important to saving your base from closure. All of the “easy” bases to close have been shuttered. No base is completely safe and many are extremely vulnerable. Elected officials can influence the Pentagon decision-makers and eventually BRAC Commissioners, if that is the method used to close bases, but they need to be armed with facts rather than just good intentions – although they must have good intentions.

First, if you do not know your member of Congress and your senators in Washington, introduce yourselves and your military facility to him or her and the staff. If they are not naturally friendly toward unions, use your local elected officials to help you gain an entrance to their offices. Have your member of Congress or senators seek information from your military service or DoD on your projected workload, have them ask questions

about the calculation of your rates if you handle industrial work; keep them involved with the military on behalf of your base. Encourage your elected officials to become involved with the Pentagon in support of your facility – this is especially important for those bases represented by members who do not serve on one of the defense committees. The defense committees are recognized to be the House and Senate Armed Services Committees and the House and Senate Appropriations Subcommittees on Defense. There is also involvement for BRAC with the House Appropriations Subcommittee on Military Construction and Veterans Affairs.

Get to know your locally elected officials at the community, regional and state levels. Just as you will your Washington officials, make them aware of any potential threat to your facility as a result of a force structure change, reduction in personnel, weapons system cancellation or reduction, functional merger, or other sentinel event. Have your local officials pass resolutions of support for your military facilities and the civilian and military personnel who work on base and transmit these resolutions to Washington. These elected officials should participate in any community-hosted meetings with senior DoD personnel.

- b. Partner with Your Local Chamber of Commerce and Prominent Civic Organizations: Military facilities have a huge multiplier effect in terms of the economy of any community. Depending on the type of facility, the ratio could be estimated as high as approximately 4:1. Federal facilities produce a strong middle class for most host communities and are greatly appreciated, as are the people who work at the base.

Local Chambers of Commerce generally recognize the strong economic impact of a military facility and the economic engine provided, creating many jobs in the private sector. Many Chambers have Military Liaisons totally focused on the military bases, while others have designated officials who regularly communicate with base leadership. AFGE locals, if they have not already, should initiate a relationship with their local Chamber of Commerce to establish a unified grass-roots campaign to protect the local facility from downsizing and BRAC. Inform the Chamber of any impending personnel reductions, workload losses, and adverse events that impact civilian and/or military employees at the base. Work with the Chamber of Commerce to develop promotional material that can be used to brief senior DoD officials on the benefits of your facility. Encourage the Chamber to host higher command and Pentagon briefings on the surrounding area and your facility and participate in those meetings. Identify senior or highly decorated military members in your local area and have them begin networking on behalf of your facility. The same is true for retired senior civilian leadership. Seek support from local educational outlets, particularly universities and community colleges. They are particularly helpful in providing economic data on the benefit of the base to the local economy. Identify issues and allies from past BRAC rounds.

Encourage positive media attention regarding your facility, the work completed by the civilian workforce and the value of the base to the community. Newspaper articles are

often included in the daily summary distributed throughout the Pentagon so having your local paper write positive stories has a constructive purpose. Public interest pieces work almost as well as hard news stories to produce a good reputation. Television news stories are also important for capturing the attention of your local politicians and the members of your community in terms of building popular support.

Get the community involved now in promoting the benefits to the military of your facility – they can help you fight BRAC actions aimed at your base.

- c. Work with Management: First and foremost, military leadership tries to protect those bases that they view as good, solid bases with a content, reliable workforce and look for ways to close those that they feel are problematic. A reputation for poor labor-management relations is one of the fastest ways to have your facility targeted for closure. Both management and labor must work together to overcome difficulties for the sake of the workforce and the community.

Local facility management will be directed to supply information to higher command on specific elements related to military value, usually in formats that can be related to efficiency, cost, capability, and unique capacity. Insight into the questions being asked and the answers submitted provide great assistance in preparing a facility to fight a base closure recommendation. Often questions are subject to some level of interpretation, requiring judgment in the answers. Strong, open communication is crucial since much of this information is conveyed to Commanding Officers and staff in a confidential format. Discretion is a virtue.

Therefore, now is the time for AFGE Locals to build management relationships with both senior career and military leadership.

- d. Maximize Strengths and Minimize Weaknesses: Encourage quality work and efficiency on the part of union members. Their jobs may depend on the reputation of their work. As much as it is up to you, increase your competitive edge and reduce your rates in working capital funds if that applies to your Local. Know your competitors both in industry and the military and do a better job than they do. Develop your best arguments for saving your facility. Educate AFGE district personnel of the importance of your facility and the threat of BRAC. Do your part as individuals to save your base.

AFGE locals can and must take positive action now to minimize the impact and size of BRAC actions by strategically addressing specific elements where senior DoD officials have the ability to make choices between facilities and/or programmatic decisions. The actions with the greatest probability of success in reducing the number of civilian personnel job losses at DoD are those that are taken in advance of any adverse decision. From a historical perspective, military facilities enjoying the greatest across-the-board unity between all

elements of the community and political spectrum are the ones who have been the most likely to survive a BRAC threat. Political activism and early involvement by base employees have been critical elements of success. AFGE locals can and should take steps now to reinforce their facilities and save jobs.

WHAT HAPPENED LAST YEAR: President Trump's Fiscal Year 2018 budget request for the Department of Defense (DoD) included another Base Realignment and Closure (BRAC) round. DoD based the request on an approximate 20-25 percent excess capacity in facilities.

In terms of legislative activity, it was noteworthy that three of the four top leaders of the House and Senate Armed Services Committees supported authorizing a new BRAC: Both Senators McCain and Reed, chairman and ranking member of the Senate Armed Services Committee (SASC), and Congressman Adam Smith, ranking member of the House Armed Services Committee (HASC). The lone holdout was Chairman Mac Thornberry of the HASC, who based his opposition on the lack of an updated National Military Strategy and the failure of Secretary of Defense Mattis during congressional hearings to confirm the estimated excess capacity claimed by DoD based on increasing threats by Russia, ISIS, and North Korea.

During mark-up of both the HASC version of the FY18 NDAA, the bill resulting from the chairman's mark was silent on BRAC and was billed as "not authorizing a BRAC." The bill also required an updated infrastructure study to determine the match between facility capacity and force structure requirements for the national military strategy with a determination of excess capacity by category. However, members of the HASC who adamantly opposed BRAC were unsatisfied with the silence on BRAC. Congressman Shuster (R-Pa.), a Depot Caucus Member, offered an amendment at the HASC mark-up of the NDAA, to add language that would specifically state that nothing in the bill authorized a BRAC round. While the language was largely symbolic, it clearly put the HASC on record as opposed to BRAC. During House floor consideration of the NDAA, a floor amendment was offered to delete the language offered by Congressman Schuster. AFGE actively opposed the amendment, which was defeated on the floor in a recorded vote by a bipartisan majority. This was a huge victory for AFGE activists, who played a major role in defeating the amendment. AFGE supported the provision requiring the infrastructure study as it will provide needed intelligence to help Locals prepare for a future BRAC round.

In the Senate, the SASC version of the NDAA similarly failed to authorize a BRAC. During Senate floor consideration of the NDAA, Senators McCain and Reed offered an amendment to authorize a BRAC round. Their amendment would have altered the process to put the Pentagon and Congress in charge of closing bases rather than a BRAC Commission. AFGE vigorously opposed the McCain-Reed amendment and solicited AFL-CIO assistance, as well as initiated a major grass-roots campaign with Senators. Opposition was so intense among Senators that Senators McCain and Reed declined to bring their amendment forward for a vote and BRAC died in the Senate.

In late calendar year 2017, the administration continued to ask that the FY18 NDAA conferees reconsider their position on BRAC and authorize a two-part BRAC round. Secretary Mattis certified that the Army has almost 30 percent excess capacity and that the Air Force has approximately 20-25 percent excess capacity. While the Navy and USMC have less excess capacity, he indicated that some capacity is ill suited for the modern mission and needs to be realigned. Based on past experience, DoD would expect to reduce capacity by at least 5-6 percent. It has been suggested by senior political leaders that BRAC could be raised as part of an overall budget, debt limit and appropriations agreement. AFGE will continue to fight against that type of scenario based on the upfront costs and the fact that the most recent DoD infrastructure analysis is not in compliance with the requirements of the FY18 NDAA.

WHAT COULD HAPPEN THIS YEAR: AFGE should expect that either the administration or a Member of Congress will once again request BRAC authority in FY19 or beyond to deal with perceived excess infrastructure based on the national military strategy or recommended changes to public law that allows outsourcing of public jobs to the private sector.

It is expected that all of the top four leaders of the HASC and SASC remain in place for the coming year or at least temporarily. It is possible that there could be a change passed on the health condition of the Chair of the Senate Armed Services Committee. The House and Senate Armed Services Committees may continue to oppose BRAC for the moment, while beginning to give some indication for future support. The current Chairman of the House Armed Services Committee has stated that he is uncomfortable with approving a BRAC until he has a clearer picture of the roles and missions of BRAC; however, he was quick to say that he was not saying “NEVER BRAC.” Additionally, he had indicated hesitancy based on Secretary Mattis’ previous failure to certify his personal assurance of excess capacity. The Secretary has now met that challenge. Further, the current Ranking Member of the House Armed Services Committee has repeatedly called on Congress to pass a BRAC resolution.

Since BRAC will almost surely happen eventually, AFGE has begun reaching out to pro-BRAC lawmakers in order to urge them not to include controversial language in any base closure proposals that could be used to promote the practice of privatization-in-place (PIP). We are not changing our minds on BRAC and they are not changing our minds on BRAC, but we do not want their BRAC proposals to be used to push outsourcing. This will be particularly important in a Trump administration.

AFGE has also suggested the inclusion of language that would affirm that BRAC should be conducted pursuant to existing sourcing and workforce management law, perhaps by requiring the Secretary and the Commission to certify, separately, that the recommendations they submit are consistent with sections 129a, 2330a, 2461, and 2463 of title 10, United States Code. We do not pick those laws at random. Rather, those are the statutes that are singled out by Section 955(e) of the FY13 NDAA – which required the department to reduce its military, civilian, and contractor workforces consistent with existing sourcing and workforce management law. We have also suggested that the

comparable laws in the depot maintenance context be added, specifically sections 2464 (core), 2466 (50/50), 2469 (\$3 million rule) and 2472 (management by end strength) of Title 10, United States Code, because those laws have been breached in the past in order to accommodate recommendations of prior BRAC commissions.

PRESERVE AND PROTECT DOD'S INDUSTRIAL FACILITIES

Congress and the administration must preserve our organic industrial base – our nation's government-owned and government-operated depots, arsenals, and ammunition plants – as the Department of Defense continues its shift in military strategy and continues to live under the reality of sequestration. DoD's stated commitment to preserve the defense industrial base must extend to the organic industrial base. It is vital that the House and Senate affirm Title 10 statutory provisions that assure the viability of an organic logistics and fabrication capability necessary to ensure military readiness.

AFGE agrees with long-held public policy that it is essential to the national security of the United States that DoD maintain an organic capability within the department, including skilled personnel, technical competencies, equipment, and facilities, to perform depot-level maintenance and repair of military equipment, as well as fabrication and manufacturing capabilities at our arsenals and ammunition plants, in order to ensure that the Armed Forces of the United States are able to meet training, operational, mobilization, and emergency requirements without impediment.

The organic capability to perform depot-level maintenance, repair and production/fabrication of military equipment and ammunition must satisfy known and anticipated core maintenance and repair scenarios as well as retain key manufacturing capabilities across the full range of peacetime and wartime scenarios.

The statutes that require this core capability and others, such as designation of a 50 percent floor for depot maintenance work performed by civilian employees of DoD, and protection of the organic industrial manufacturing base through the Arsenal Act, have kept our nation secure and our core defense skills protected and should continue to be supported and strengthened. AFGE opposes establishment of an outside commission or panel of private industry analysts to review Chapter 146 of Title 10 for a major overhaul because of the inherent lack of impartiality to be found on such a panel.

For FY19 Congress must designate a core workload for arsenals and ammunition plants or at a minimum provide enforcement tools for the Arsenal Act to strengthen the manufacturing arm of our organic industrial base. This workload should not come at the expense of workload already being performed by the Army organic sector. The intent is not to pit facilities against each other or to shift work from one organic facility to another, but to have arsenals perform the work that is critical to our national defense, where there is no domestic manufacturing, fabrication or production capability or very limited supply available at a reasonable cost.

The Science, Technology, Math, and Engineering (STEM) workforce is an extremely important component to the organic industrial base that must be preserved. Congress must pass legislation that reviews skill gaps in this area, as well as manufacturing and maintenance (MM) and develop plans for developing the gaps in STEM(MM) in order to ensure that the military has the necessary skills required to sustain military readiness for the warfighter.

AFGE applauds the Appropriators and the Congress providing Industrial Mobilization Capacity (IMC) funding for arsenals to reduce rates and improve efficiency to enable competitiveness and support continued funding in FY18. As importantly, we urge the administration and the Army to seek expanded and non-traditional new manufacturing opportunities to meet the workload levels determined as the amount necessary to be efficient in accordance with the Army Organic Industrial Base Strategy Report.

AFGE also opposes DoD and the military services using sequestration, funding uncertainties, furloughs, and arbitrary civilian personnel cuts and caps as an excuse to breach the 50/50 depot maintenance law or to circumvent fully meeting core requirements. Congress made it clear in FY15 that it expects DoD to fully comply with 50/50 statute and the investment in the upgrade and maintenance of organic depots and AFGE fully applauds those efforts. In FY16 Congress made it clear that it expects DoD to comply with core at all levels of maintenance. However, AFGE remains very concerned about the ongoing reports of personnel caps and arbitrary cuts at some organic depots. These cuts undermine the integrity of the working capital fund and the statutes in Title 10 that require that depots and depot personnel be managed to workload and budgets rather than end strength.

In addition to opposing arbitrary personnel ceilings, AFGE strongly supports legislation in FY19 that would eliminate sequestration related furloughs, which are devastating to military readiness and to civilians and their families. This is especially true of the unnecessary furlough of working capital fund employees, who are not paid through direct appropriations, but rather through customer orders. In FY16, the Congress passed legislation prohibiting the furlough of any employees whose work is charged to a working capital fund as long as there is money in the working capital fund to pay for the workload. However, the language included specific verbiage related to sequestration that is confusing at best and damaging at worst. This language needs to be removed and it should be clarified that even under a sequestration scenario, as long as funds are available, working capital fund employees should not be furloughed.

Under this legislation, before the Secretary of Defense or of a military service could furlough a working capital fund employee, he/she would have to certify to Congress that no funds are available in the working capital fund and that the workload will not be transferred to the private sector, uniformed military, or any other civilian workforce. This amendment makes the furlough provision permanent rather than specifically tying to sequester budget cuts; however, it would also apply to sequester furloughs. Furloughing

working capital fund employees saves no money because they are funded through customer orders in a revolving fund and not directly through appropriations. For example, depots and arsenals would not have had to furlough workers during the previous sequestration of funds because they had sufficient funds and workload.

During the shutdown furlough in 2013, working capital fund employees were exempt even if their work was not considered excepted. The sequestration furloughs cost more money than they saved in many cases by increasing overhead and raising rates plus delaying delivery of orders. In some cases, work was transferred from government facilities to higher priced contractors in violation of multiple statutes. The military services are still complaining of large backlogs caused by the furloughs ordered by the Secretary of Defense – even years after the fact! This legislation is common sense. It doesn't prevent a furlough if a program runs out of money. It only prevents a furlough if there is money available.

As Congress and the administration consider Acquisition Reform, AFGE urges members, especially those who support depots and arsenals, to be on alert for unintended consequences and impacts to organic depots, arsenals, and ammunition plants. Issues of special concern include: DoD and the military services encouraging the blanket use of Performance Based Logistics (PBL) contracts, which call into question the whole issue of government control and government owned workload and have been used in some cases as an excuse to move work from organic facilities to contractors in spite of protestations to the contrary by DoD; streamlined acquisitions that fail to create programs of record, thus circumventing milestones and criteria that are the "hooks" in statute, policy and direction to bring core and new workload into the organic depots; ownership of so-called intellectual property (IP) or data rights, which impacts the ability for depots to secure and obtain unfettered access to data rights necessary to maintain and overhaul weapons systems and components (examples exist where they can have the data, but can't "see" it because of technicalities); and accounting for core and workload that is designated at the very "minimum" versus the statutory definition of "efficient." Most importantly, lawmakers must roll back changes in acquisition statutes related to commercial items that could result in the unintended transfer of great swaths of workload from the organic industrial base to the private sector.

Further, depot and arsenal advocates must continue to watch closely the workforce numbers and the arbitrary constraints on the workforce. (While this trend is being reversed at the Air Force, it still remains in force for other areas of the depot and arsenal systems.) When combined with DoD comments about the need to get at depot employees and depots and arsenals for BRAC, members of Congress should be very concerned about administration actions. This is in spite of DoD reporting an uptick in the funding for commercial depot maintenance and the fact that the DoD comptroller has reported that contractors cost more than two times as much as having work completed by civilians.

In summary, an analysis of historical data reveals that organic depot level maintenance, as well as arsenal and ammunition plant manufacturing capabilities, provides the best value to the American taxpayer in terms of cost, quality, and efficiency.

To preserve our military readiness, the department should sustain the organic capability and capacity to maintain and repair equipment, including new weapons systems within four years of Initial Operating Capability, associated with combat, combat support, combat service support, and combat readiness training.

To ensure the efficient use of organic maintenance, repair, and production capacity, as well as best value to the taxpayer, the department must effectively utilize its organic facilities at optimal capacity rates. Not only does this strategy reduce costs, it returns taxpayer dollars to the community as economic multipliers for industrial jobs are almost double those for almost any other sector, creating on average three jobs for every one – certainly a priority in this economic climate.

Further, the department must sustain a highly mission-capable, mission-ready maintenance, arsenal, and ammunition plant workforce; therefore, depot, arsenal, and ammunition plant personnel must be managed to funding levels and not by artificial civilian end-strength constraints.

Acquisition reform efforts must be leveraged to ensure that the definition of commercial item supports maintaining critical weapons systems in organic depots by government employees and that organic arsenals have access to workload assignment and competition. Further, data rights must be negotiated so that up-to-date maintenance and sustainment data is delivered to the depots in order to maintain and sustain core and critical weapons systems necessary for our national defense and military readiness.

Items, which are currently sole-sourced to companies located in foreign countries or to foreign-owned companies, should be sent to arsenals or depots for completion. The Army should invest in appropriate tooling to encourage additional workload for arsenals.

AFGE believes it is important to recall that our organic depots and industrial facilities are essential to ensuring the success of the military warfighting mission. During downsizing, DoD must protect those functions necessary to ensure readiness and defend the United States and our allies during periods of armed conflict. These government-owned, government-operated facilities, employing government personnel, meet defense requirements effectively and efficiently; are highly flexible and responsive to changing military requirements and priorities; produce the highest quality work on critical systems; meet essential wartime surge demands; promote competition; and sustain critically needed institutional expertise.

WHAT HAPPENED LAST YEAR: The FY18 NDAA, as enacted, and the FY18 Defense Appropriations Act, as passed by the House, contained a number of provisions directly related to depot maintenance.

- Successful passage of an amendment to the House version of the FY18 DoD Appropriations Act to prohibit use of A-76 studies at DoD. This passed by recorded vote with 63 Republicans supporting the prohibition. Eleven members, including 10 who were Depot/Arsenal Caucus members, cosponsored the bipartisan amendment.
- Successful passage of an amendment to the House version of the FY18 Financial Services Appropriations Act to prohibit use of A-76 studies anywhere in the federal government. This amendment passed by voice vote as part of an en bloc amendment offered by the subcommittee chair and co-chair. Once again, the bipartisan amendment was co-sponsored by 11 members, including 10 who were Depot/Arsenal Caucus members.
- A provision in the House NDAA to negotiate data rights access early in the acquisition process before the engineering and manufacturing phase of a major weapon system in order to that the negotiation takes place when there is still competition between contractors, which is important to the sustainment and fabrication missions of depots and arsenals.
- An amendment in the House bill to reauthorize the Multi-Trades Demonstration Act for five years, which will offer an opportunity for advanced training and increased salaries for wage grade workers at specific depots in a pilot project. This program has been endorsed by the AFGE Depot/Arsenal Caucus for pursuit at specific depots that are designated by the pilot.
- A provision in the House bill that directs the Secretary of the Army to maintain sufficient workload at arsenals to ensure affordability and technical competence in all identified critical capability areas. This is the closest we have ever come to passing an “Arsenal Core” provision in either chamber’s version of the NDAA. We will need to continue to strengthen this provision in the coming year.
- Two provisions in the House bill that would strengthen and expand the report on core depot level maintenance and compliance with the core statute that requires the military services to use government depots for critical systems and to maintain critical capabilities.
- A provision in the Senate bill that would expand the budget exhibits for depot budget submissions in order to make the amount spent more transparent, demonstrating what is actually budgeted for each depot as well as contractors.
- Provisions in both the House and Senate NDAA bills extending the temporary direct hire authority for the organic industrial base, as well as major range and test facilities.
- A provision in the House bill extending the temporary authority to transfer temporary and term employees to permanent status for five years.
- Provisions in both the Senate and House versions of the NDAA to extend overtime pay authority of civilians working overseas.
- Significant report language accompanying both the House and Senate versions of the FY18 NDAA supporting depots, arsenals, and ammunition plants.

- Changes to the definition of commercial items that included an exemption for depot core; however, the provisions could be interpreted to require a major transfer of workload from the public sector to the private sector. AFGE will work diligently in the coming year to roll back these provisions and change the narrative on acquisition reform as it relates to services, especially as it impacts the organic industrial base, as well as ensuring that congress understands the impact on the organic industrial base of decisions made in the acquisition phase of major weapons systems.

WHAT COULD HAPPEN THIS YEAR: WCF furloughs will likely be an issue in FY 2018 and in the FY19 defense bills cycle if sequestration is not lifted or relieved and it is possible that an amendment will be offered to either the FY19 National Defense Authorization Act or the FY18 or FY19 Defense Appropriations Act or any future Continuing Resolution or any combination of the above. As the House and Senate Armed Services Committees, as well as the Department of Defense, pursue acquisition reform, locals and members representing arsenals and depots, as well as ammunition plants, must be on alert for provisions and policy directives that would either strip or downgrade protections in statute such as 50/50, core, A-76 prohibitions, etc.; provisions that would prevent the public sector from competing for manufacturing or maintenance workload; provisions that fail to secure necessary data rights in order to work effectively on warfighting platforms; or provisions that mandate logistics and sustainment strategies that have negative long-term impacts on the organic industrial base. The top priority will be to overturn provisions in FY18 that will effectively gut the organic industrial base if implemented unfettered. Funding shortfalls may be expected in some areas based on budget priorities. AFGE depot and arsenal locals will need to work to reinstate the inventory for contractor services for contracts for maintenance, sustainment and fabrication workload since this workload is not considered inherently governmental, as well as further identification of contractor spending in budget planning and exhibits. Further, AFGE will work to modify rules for calculating excessive carryover funds; require a review and plan to address skill gaps for STEM(MM); and amend the rules for the term and temporary employee transfer program to allow it to apply to all employees hired since 2001.

CUTS TO FEDERAL EMPLOYEES' PER DIEM ALLOWANCE FOR LONG-TERM OFFICIAL TRAVEL

Background

In November 2014, the Department of Defense (DoD) implemented changes to the Joint Travel Regulations (JTR) that reduces the per diem allowance for federal employees who travel for long periods of time. The American Federation of Government Employees (AFGE) represents thousands of DoD civilian employees that provide essential mission support on long-term Temporary Duty (TDY) assignments. This change is negatively affecting federal employees and as a result of these changes, DoD employees must now identify reduced rate lodging and live off a per diem allowance for meals and incidental expenses that is well below nationally established per diem rates while traveling for work extended periods of time.

DoD Per Diem Cuts

DoD cut the per diem allowance for employees traveling 31 to 180 days to 75 percent of the current per diem rate, and further reduced the per diem allowance to only 55 percent of allowable expenses for travel longer than 180 days. These cuts to DoD employees' per diem allowance for lodging, meals and incidental expenses is a misguided and misplaced attempt at meeting the goal to reduce DoD travel expenditures. This new policy penalizes the federal employees who work to support the men and women of the U.S. armed forces, and spend significant amounts of time away from their families and homes.

Specifically, this new policy requires DoD employees to identify reduced rate lodging when they are required to travel for more than 30 days, often resulting in substandard lodging accommodations or employees having to complete a cumbersome approval process when lodging is not available at reduced per diem rates. This process will delay mission assignments and could ultimately increase overall costs to DoD.

Cuts to the per diem allowance will inevitably lead to DoD employees who travel for long periods of time having to personally pay for expenses directly related to official travel, cutting into employees' personal finances. The current cuts to long-term TDY travel penalizes the military and civilian employees who have already been asked to spend a significant amount of time away from their homes and families. Many of these employees have school aged children and family obligations for which they are still responsible while on official travel. DoD military and civilian employees should not have to worry if they have enough money for both their personal responsibilities at home as well as money to cover basic necessities such as food, laundry, and transportation to and from their duty assignments while on official travel.

Legislation Background

During the 115th Congress, Reps. Derek Kilmer (D-Wash.) and Walter B. Jones (R-N.C.) introduced HR 2036, and Sen. Mazie Hirono (D-Hawaii), introduced S 901. Both bills prohibited DoD from reducing the per diem allowance for long-term travel. Although the FY 2017 National Defense Authorization Act included language that authorized DoD to waive the reduced per diem rate for long-term travel and pay for employee's actual expenses up to the full per diem rate when the reduced rate is deemed insufficient, this provision will still result in some employees traveling with insufficient per diem allowances. Many employees will still travel for months at a time trying to balance their personal expenses back at home and pay for expenses such as food, transportation, and laundry with a per diem that is lower than what has been nationally prescribed as the amount needed for their assigned location.

AFGE urges Congress to fully repeal the DoD per diem cuts for long-term travel. While AFGE understands the need to identify cost savings within the Defense budget, reducing the per diem for long-term travel is a misguided attempt to find cost savings at the expense of the service members and civilian employees who are required to travel on assignments for extended periods of time.

AFGE strongly opposes reducing the per diem rates of DoD employees who are required to travel for more than 30 days.

Department of Veterans' Affairs

Introduction

Adequate staffing of the Department of Veterans Affairs (VA) front-line workforce is essential to keeping the promise to our nation's veterans. In 2018, AFGE and its National VA Council (NVAC) will continue to advocate for the hiring of additional medical professionals, patient schedulers, and other health care personnel at Veterans Health Administration (VHA) medical centers throughout the country as well as mental health providers in Vet Centers who provide readjustment counseling.

We will also address problematic working conditions at Veterans Benefits Administration (VBA) regional offices (RO) and the Board of Veterans Appeals (Board) that interfere with the ability of VBA personnel to provide veterans with thorough, timely, and accurate claims decisions that allow them to care for their families and access the VA's exemplary health care that they have earned and prefer over private sector care.

In 2018, the relentless bashing of services provided directly by the VA (as opposed to VA contractors who are subject to minimal oversight) and the equally politicized attacks on its dedicated employees is very likely to continue. These inflammatory attacks by those intent on privatizing the VA mask the significant progress that the VA has made in addressing wait lists, construction cost overruns and other problems that have come to light since 2014. The smear campaign by privatizers also diverts the public's attention from the vital fact that only a government-run health care system like the VA can be called before Congress to be held accountable for deficiencies that need to be addressed. In sharp contrast, mismanagement and unsafe medical practices that pervade private sector health care contractors treating growing numbers of veterans through Choice and other VA contract care programs are rarely brought to light.

In 2018, AFGE and NVAC will intensify efforts to stop the dismantling of the VA health care system and efforts to privatize other VA services. The VA health care system is veterans' first choice for care and the VA consistently provides better and less expensive care than the private sector. Veterans Benefits Administration (VBA) contracts also have a dismal track record and like VA health care, VBA in-house services are more cost effective than the private sector.

In 2018, AFGE and NVAC will seek oversight of large scale contracts entered into by VBA over the past year that use private sector medical and mental health professionals to perform disability "Compensation & Pension" exams that are essential to a proper evaluation of what benefits and health care services should be provided to each veteran who files a claim.

Veterans Prefer a Strong VA Health Care System with Adequate Staffing

VHA Privatization Threats: The VA health care system has been subjected to “death by a thousand cuts” privatization threats since the start of George W. Bush’s administration including closures of emergency rooms and intensive care units, inpatient bed closures, and overreliance on costly contractor-run outpatient clinics. While the VA has long had statutory authority to contract directly with non-VA providers to fill gaps in VA care, the Bush administration took privatization to a new level by shifting resources and control from the VA to the private sector through pilot projects that created non-VA provider networks established and operated entirely by corporate health care entities. A severe lack of transparency or oversight has made it impossible to assess the true cost, quality, or timeliness of non-VA care provided through these pilots.

Since 2014, the threat of annihilation of the VA health care system has only intensified. In response to calls to turn the VA into an insurance company providing vouchers for costly care in the private sector, a compromise was reached as part of the Veterans Access, Choice and Accountability Act of 2014 (Public Law 113-146) (“Choice Act”). The law has vastly expanded the use of non-VA care at every VA medical center under a three-year pilot project that was set to expire in August 2017. The resulting chaos created by the Choice Program – including delays, lack of care coordination, and additional burdens on short staffed VA medical centers – has been widely reported. Yet, some lawmakers seek to extend the duration of the Choice Program and eliminate all eligibility restrictions despite lack of evidence of its success or affordability, and strong countervailing evidence that the VA outperforms private sector health care on cost and quality and is strongly preferred by the vast majority of veterans.

After the VA Accountability and Whistleblower Protection Act was signed into law last year, the Senate and House Veterans’ Affairs Committees turned their attention to the Choice Program. AFGE and NVAC fought hard to ensure that bills to provide temporary funding to Choice also provide VA with resources for staff, leases, IT upgrades, and other neglected needs. Secretary Shulkin himself stated last spring that the VA had 49,000 unfilled positions.

Since August 2017, AFGE and NVAC have lobbied in opposition to two extremely harmful Choice replacement bills which would drastically increase the amount of care being provided outside of the VA. This has been an uphill battle from the beginning, with each piece of legislation being drafted without input or consideration from AFGE or NVAC. But we remain undeterred and continue fighting tooth-and-nail to stop any legislation that does not strengthen the VA, maintain its core capacity, or address chronic understaffing problems, or that waste precious resources on further privatization. HR 4242, introduced by House Veterans Affairs’ Committee (HVAC) Chairman Phil Roe, would eliminate virtually all eligibility requirements to sending veterans outside the VA for care. The bill fails to provide any accountability mechanism so that the private sector is held to the same standards of quality and timeliness of care as the VA. No thought is given to the open-ended cost of private care. Chairman Roe’s bill also fails to ensure real “remediation” that would fix problems in specific medical centers that led to the outsourcing of more care; it would only require a “capacity

study” every three years that would focus very little on staffing and infrastructure needs. The Roe bill also failed to address short term hiring needs though a funded hiring mandate. On December 19, 2017, HR 4242 passed the full House VA Committee along a party-line vote with every Democrat opposing the bill.

In the Senate, the NVAC and AFGE have been fighting a bipartisan Choice replacement plan called the Caring for Our Veterans Act, which was introduced by Senate Veterans’ Affairs Committee (SVAC) Chairman Senator Johnny Isakson and Ranking Member Senator Jon Tester. This legislation would allow the VA to send 36 medical service lines to the private sector, with no relevant or applicable metric to justify that decision or timeline to bring that care back into the VA. The Isakson-Tester legislation would also allow permanent access to walk-in clinics (like CVS “minute clinics”). In terms of the cost of private care and the resources it inevitably takes from the VA system, the bill is silent. AFGE and NVAC opposed the unfettered expansion of this existing pilot program because there is no study of the cost or quality of care being given in these clinics. We were successful in getting two amendments adopted by the Committee when they marked up this legislation: one that would force the VA to be transparent about the number of unfilled positions within the VA, and another that would direct the VA to hire mental health and primary care professionals. This legislation was passed by the full VA Committee, and is currently pending before the full Senate.

Furthermore, AFGE and NVAC have serious concerns about the VA’s contracts with TRIWEST and HeathNet related to their billing methods. A recent report by the VA Office of the Inspector General shed light on questionable accounting practices used by TRIWEST and HealthNet in their contracts with the VA, including double billing and improper payment rates. These concerns merit increased oversight by Congress to ensure that taxpayer dollars are not wasted or abused.

Staffing: AFGE and NVAC played a key role in the formulation and development of HR 3459, the “VA Staffing and Vacancies Transparency Act of 2017,” authored by Rep. Anthony Brown (D-Md.). This legislation addresses the ongoing chronic short staffing at the VA by putting new transparency requirements in place, including a requirement that the VA post, on a publicly available website, the total number of personnel encumbering positions, the number of people who have entered and exited the workforce in the last month, the total number of vacancies by occupation, and the total number of active job postings within the Department. The Brown bill will also require the VA to submit a report to Congress detailing the progress they are making in hiring new employees as well as providing Congress with an explanation of the steps they are taking to achieve full staffing.

A second bill aimed at addressing vacancies that AFGE and NVAC have supported is S 1723, the “Strengthening Veterans Health Care Act of 2017,” introduced by Sen. Bernie Sanders (I-Vt.). The Sanders bill would make a onetime appropriation of \$5 billion to hire primary care and specialty physicians and other medical professionals, pay for the improved physical infrastructure of the VA, and require the Secretary of Veterans Affairs to submit a report to Congress detailing his hiring efforts.

Congressional Action Needed:

- Conduct comprehensive oversight on the cost, use and implementation of the Choice Act to include: impact on the VA workforce, work of third-party administrators, and the impact on care received by veterans, and the cost and quality of private care relative to that provided by the VA.
- Oppose all legislation that would extend or expand the Choice contract care program.
- Oppose all legislation that would replace the Choice program with a permanent community care program.
- Enact legislation to mandate that the VA hire enough front-line federal employees to erase the 49,000 unfilled in-house positions.
- Conduct oversight of VA's accounting practices and agreements related to claims made through the VA's private-care programs, including the Choice Program.
- Conduct a report on the impact of the secondary and tertiary functions of VHA such as its role in training medical professionals and serving as a resource during natural disasters and national emergencies.

Adequate VHA Staffing Levels are Essential to Ensuring that Veterans Access Timely, High Quality, Cost Effective and Safe Care

Chronic short staffing of VA medical professionals continues to be the number one cause of VA wait list problems. The VA health care system's ability to attract and keep VA physicians and other clinicians in short supply is undermined by multiple factors, including poor hiring practices, unreasonable workloads and schedules, intimidation and silencing of clinicians, and discriminatory pay practices.

Management rarely solicits the valuable perspective of front-line employees and their labor representatives to expedite hiring, eliminate unnecessary workload burdens, or make other improvements in VHA working conditions that cause barriers to recruitment and retention of medical professionals in short supply. Secretary Shulkin's misplaced focus on more direct hire authority and increases in medical executive pay and bonuses will not make VHA a more competitive employer in the current marketplace. The VHA Title 38 personnel system has provided the department with direct hire authority for decades; it simply needs to be used effectively in conjunction with other improved practices that can be identified through true labor-management collaboration in conjunction with many other existing tools that Congress has provided to maintain a strong health care workforce.

The peer-based market pay setting panel put in place in 2006 to make VA physician and dentist pay competitive was eliminated in legislation passed in 2016 (P.L. 114-315). A new system is urgently needed to restore the VA's ability to compete in local health care marketplaces.

Mandatory nurse-patient ratios, already in place in some states, are the only way to hold managers accountable for proper staffing plans and adequate staffing levels for patient safety.

AFGE and NVAC will continue to support safe staffing legislation that includes specific protections for VA Title 38 nurses.

AFGE and NVAC fully support thorough reviews and reporting of allegations of improper patient care by VHA providers. However, one size fits all policies that can easily destroy a provider's career based on unsupported allegations will make it nearly impossible for the VA to recruit and retain primary care practitioners and specialists in short supply. As currently drafted, S 2107, the Department of Veterans Affairs Provider Accountability Act, would require the VA to report all major adverse actions taken against medical professionals hired under 38 USC 7401(1) to the National Practitioner Data Bank and state licensing boards even when no finding of negligent care is present (unlike the private sector). It should also be noted that a "major adverse action" for this group of clinicians includes suspensions as short as one day and all demotions and removals. This bill would also eliminate the right of every VA employee to enter into "clean record" settlement agreements.

Congressional Action Needed:

- Enact HR 2392, the Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act of 2017.
- Introduce legislation to increase physician/dentist continuing medical education (CME) reimbursement (that has not been increased since 1991!) and extend CME benefits to other VHA personnel.
- Oppose S 2107, the Department of Veterans Affairs Provider Accountability Act, as currently drafted.
- Conduct oversight of VA physician/dentist pay setting process to determine the most effective new system to make market pay for VA physicians and dentists competitive, and ensure the proper use of the performance pay setting process.

Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017

In 2017, VA employees faced a severe, unprecedented reduction in due process and collective bargaining rights with the enactment of P.L. 115-41, the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017. This destructive, politically driven legislation to use the VA to launch an attack on all civil service protections was allegedly aimed at mismanagement. However, the VA law devastated the rights of every rank and file non-management employee who made no management decisions but who was also a valuable front-line witness to management misdeeds.

As a result of the new law, managers gained and have used their new authority not to fire managers but rather fire disproportionate numbers of low wage service-connected disabled veterans, women and minorities in the VA workforce. Shorter timeframes to respond to proposed removals and to file appeals with the Merit System Protection Board, coupled with lower evidentiary standards to review appeals, have resulted in managers "charging higher," i.e., employees who would have faced lesser discipline in the past or would have had

opportunities to improve their performance or conduct are now sent packing on their first offense.

The VA has not responded to formal requests for information submitted by AFGE and NVAC regarding which employees have been terminated under this new law. The scant amount of published data confirms that VA's most vulnerable non-management employees, including disabled veterans, have been hardest hit by this so-called management accountability bill.

Attacks on VA Official Time

In addition to governmentwide attacks on official time, we have faced persistent attacks on our workforce targeted to the VA, including a specific aim at official time. As with other attacks directed at the VA workforce, these are first steps to imposing similar limitations government-wide.

Two pieces of legislation were introduced in 2017 and one in January 2018. They await further action in 2018:

HR 1461/S 2288

On March 9, 2017, Rep. Jodey Arrington (R-Texas) introduced HR 1461, the "Veterans, Employees, and Taxpayers Protection Act," legislation to severely restrict who can conduct representation under official time and how much time can be used. As passed by the House Veterans Affairs Committee in May, the bill eliminates official time for all full Title 38 employees, caps official time at 25 percent for all others in the VA, and allows for an onerous waiver process that takes away collective bargaining of official time. It deprives unions of resources to provide representation by allowing members to drop union membership at any time and extends to two years the at-will probationary period, during which employees can be fired for any reason – good or bad. It also discourages federal employees from communicating with members of Congress by expressly banning lobbying under official time, even though it is already not permitted under law. Companion legislation, S 2288, mirroring the bill as amended in the House Veterans' Affairs Committee, was introduced on January 10, 2018 by Sen. Ted Cruz (R-Texas). The bill has been referred to the Senate Veterans' Affairs Committee.

Opponents of the bill emphasized the need to address growing staff vacancies at the VA and offered amendments to require official time record-keeping track use of time spent on health and safety training and implementation, whistleblower protection, reporting of fraud and abuse resulting in Inspector General investigations and reports, implementation of new management directives, and gathering of information and evidence to support claims of discrimination based on gender, race, age, disability, and veteran status.

S. 1477

On June 29, 2017, Sen. Jeff Flake (R-Ariz.) introduced S 1477, the “Serve Veterans First Act,” which ties use of official time to wait times by banning use of any official time for an entire year if any one veteran in the country is unable to schedule an appointment for any service within 30 days. The bill has not been scheduled for a hearing at this time.

To date, neither of these bills has reached the House or Senate floor for a vote. VA Secretary David Shulkin has said he wants to curtail official time through the next VA collective bargaining agreement. It is also possible the provisions of one of these bills could be attached to a larger bill addressing veterans’ needs.

Congressional Action Needed:

- Oppose all legislation to reduce or limit use of official time at the VA.

Unequal Title 38 Collective Bargaining Rights

In 1991, Congress enacted 38 USC § 7422 to clarify that registered nurses (RNs), physicians and other VA health care professionals with full Title 38 rights have the same collective bargaining rights as other federal employees. However, since 2003, the VA has endorsed a “7422” policy that directly contradicts congressional intent and deprives these employees of their right to bargain (i.e. negotiate, grieve, or arbitrate) over routine workplace matters such as scheduling and reassignment.

This VA policy has severely weakened workplace morale and greatly undermines the VA’s ability to compete with other public and private health care employers for primary care physicians and other scarce medical professionals. Collective bargaining rights also give health care professionals a voice in workplace matters that leads to increased health care quality and safety and better workplace morale.

In contrast, VA’s Hybrid Title 38 employees and clinicians at Department of Defense and Bureau of Prison facilities are afforded full bargaining rights under Title 5 and they use these rights to work with management to negotiate better working conditions and policies that improve patient care.

Legislation is needed to put an end to VA Secretary “7422” determinations that violate agency policies on pay, schedules, assignments, training, workload and numerous other matters without any accountability. The VA needs to return to the common sense 7422 policies in place prior to 2003, when labor and management operated under an agreement that vastly reduced the number of labor management disputes and fostered valuable collaboration on innovations in health care delivery.

Congressional Action Needed:

- Conduct oversight of the VA Accountability and Whistleblower Protection Act of 2017 on VA hiring goals for veterans, women and minorities; investigate the VA's failure to comply with information requests by AFGE and NVAC.
- Oppose all legislation to reduce or limit use of official time at the VA.
- Cosponsor S 336/HR 980, the VA Employee Fairness Act of 2017, to restore equal collective bargaining rights to all VA clinicians.

VA Benefits Issues

Adequate VBA staffing and fair treatment of staff are essential to ending claims backlog: AFGE and NVAC remain committed to ending the backlog of veterans' disability claims and providing veterans with the benefits they earned. The Veterans Benefits Administration (VBA) must commit to hiring and training a significant number of additional employees and stop using mandatory overtime as a solution for achieving arbitrary performance goals.

Performance standards: Arbitrary performance standards have caused widespread employee burnout and morale problems at the regional offices and delayed care to veterans. This was highlighted by the VBA's recent attempt to terminate 23 percent of the roughly 7,500 Veteran Service Representatives – nearly 900 of whom are veterans themselves – who are integral to processing claims and getting veterans the care and benefits they have earned. Recommendations by AFGE and NVAC, as well as veterans' groups, to develop evidence-based performance standards have gone unheeded. Furthermore, the VA has intentionally eliminated the "lanes" for certain claims processing, resulting in underutilization of the specialization and expertise developed by employees assigned to work specific types of cases. This counterproductive change has caused increased delays in completion of claims. In its place, VBA has established a National Work Queue that has been plagued by implementation problems that have worsened the backlog and needlessly made production standards harder to meet. This is compounded by the fact that the labor-management workgroup established several years ago to revise performance standards was unilaterally disbanded by VBA leadership.

Employees must be treated with respect and integrity to foster the most productive and healthiest culture possible. VBA must take steps to end employee burnout, raise morale, create promotion opportunities within the agency, and create a work credit system using a scientifically based time motion study that best utilizes its employees' experience and talent.

Congressional Action Needed:

- Provide sufficient funding for a significant increase in claims processors for disabilities claims, appeals and additional work products.
- Reconvene the labor-management performance standards workgroup and enact legislation to abolish arbitrary performance standards.

- Increase oversight of the National Work Queue (NWQ), an electronic workload management initiative that was rolled out to improve productivity.
- Mandate a study of production standards in place for VSRs and RVSRs.
- Improve oversight of cost and quality of services provided by VBA contractors.

VBA Outsourcing: VBA continues to employ a highly problematic dependency claims contract. The dependency claims from the contractor often do not have the correct effective date among other issues, so every case must be checked and often reworked by VBA employee claims processors. This is a major waste of taxpayer money. AFGE and NVAC urge Congress to provide oversight on future contracting out of claims and work to bring dependency claims back in house.

A recent effort to increase the contracting out of veterans' benefits cases came in the form of a VA initiative to quietly dismantle VHA's compensation and pension (C&P) exam function. This was done through massive VBA direct contracts with examiner companies, without analysis of its impact on the quality of exams, veterans' disability ratings, or the ability to provide veterans with integrated care.

Earlier this year the VA proposed a change to its ethics rules that would have allowed "all VA employees" to "receive any wages, salary, dividends, profits, gratuities, or services from, or own any interest in, a for-profit educational institution" that participate in the GI Bill. This type of blanket waiver had the great potential to harm both veterans and taxpayers by allowing inappropriate financial entanglements between VA employees and for-profit colleges that want GI Bill benefits. AFGE and NVAC opposed this change and were pleased that the proposal was rescinded, but there is still a chance it will come back in future.

Congressional Action Needed:

- Conduct oversight of the current dependency claims contract and mandate VBA compliance with federal laws banning direct conversions and other illegal outsourcing.
- Conduct oversight of the current use of contract C&P exams that includes an analysis of the quality of the exams, veterans' disability ratings, and the ability to provide integrated care.
- Conduct oversight of VA and any proposed changes it makes to this anti-corruption rule.

Federal Prisons

Summary

The Federal Bureau of Prisons (BOP) correctional institutions have become an increasingly dangerous place to work. The savage murders of Correctional Officer Jose Rivera at U.S. Penitentiary (USP) Atwater (Calif.), Correctional Officer Eric Williams at USP Canaan (Pa.), and Lieutenant Osvaldo Albarati at Metropolitan Detention Center Guaynabo (Puerto Rico), as well as the hundreds of vicious, albeit less-than-fatal, inmate-on-staff assaults that have occurred at many BOP institutions, illustrate that painful reality.

AFGE and the Council of Prison Locals strongly urges the administration and the 115th Congress to:

1. Increase federal funding of BOP to remedy the serious correctional officer understaffing and prison overcrowding problems that are still plaguing BOP prisons.
2. Address the primary cause for the explosive growth in the BOP prison inmate population by passing meaningful sentencing reform for non-violent first-time offenders.
3. Pass the Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act.
4. Pass the Thin Blue Line Act.
5. Oppose any changes to the use of segregated housing units (SHU) in BOP facilities.
6. Continue the existing prohibition against the use of federal funding for public-private competition under OMB Circular A-76 for work performed by federal employees of BOP and FPI.
7. Prohibit BOP from meeting additional bed space needs by incarcerating prison inmates in private prisons and returning those inmates currently in private prisons back to BOP care, if bed space is currently available.
8. Support the Federal Prison Industries (FPI) prison inmate work program.
9. Support legislation that would provide registered nurses employed at BOP Federal Medical Centers and other BOP institutions, as well as at the various Department of Defense medical facilities, with the same right to full time-and-a half overtime pay as private sector registered nurses.

Discussion

1. Increase federal funding of BOP to remedy the serious correctional officer understaffing and prison inmate overcrowding problems that are plaguing BOP prisons.

Over 184,000 prison inmates are confined in BOP correctional institutions today, up from 25,000 in 1980, 58,000 in 1990, and 145,000 in 2000. Over 155,000 of those inmates are confined in BOP-operated prisons while approximately 10,000 are managed in private prisons.

This explosion in the federal prison inmate population is the direct result of Congress approving stricter anti-drug enforcement laws involving mandatory minimum sentences in the 1980s such as:

- The Comprehensive Crime Control Act of 1984 created a mandatory 5-year sentence for using or carrying a gun during a crime of violence or a drug crime (on top of the sentence for the violence itself), and a mandatory 15-year sentence for simple possession of a firearm by a person with three previous state or federal convictions for burglary or robbery.
- The 1986 Anti-Drug Abuse Act established the bulk of drug-related mandatory minimums, including the five- and 10-year mandatory minimums for drug distribution or importation, tied to the quantity of any “mixture or substance” containing a “detectable amount” of the prohibited drugs most frequently used today.
- The Omnibus Anti-Drug Abuse Act of 1988 created more mandatory minimums that were targeted at different drug offences. At one end of the drug distribution chain, Congress created a mandatory minimum of five years for simple possession of more than five grams of “crack” cocaine. (Simple possession of any amount of other drugs – including powder cocaine and heroin – remained a misdemeanor with a mandatory 15-day sentence required only for a second offense.) At the other end, Congress doubled the existing 10-year mandatory minimum for anyone who engages in a continuing criminal enterprise, requiring a minimum 20-year sentence in such cases.

Serious correctional officer understaffing and prison inmate overcrowding problems have resulted in significant increases in prison inmate assaults against correctional officers and staff. Illustrations of this painful reality include: (1) the savage murder of Correctional Officer Jose Rivera on June 20, 2008, by two prison inmates at the United States Penitentiary in Atwater, Calif.; (2) the lethal stabbing of Correctional Officer Eric Williams on February 25, 2013 by an inmate at the United States Penitentiary in Canaan, Pa. and (3) the murder of Lieutenant

Oswaldo Albarati on February 26, 2013 while driving home from the Metropolitan Detention Center in Guaynabo, Puerto Rico.

Yet even after correctional workers lost their lives in the line of duty, BOP has failed to adequately remedy their chronic understaffing. One troubling practice in place at every BOP installation across the country is “augmentation,” which allows wardens to use non-custody employees to fill custody vacancies. For example, if a correctional officer calls out sick, for that day, that correctional officer position could be filled by a case manager or secretary. For years the BOP has rationalized this practice by saying that all employees “are correctional workers first” instead of adequately hiring new custody staff. The Bureau has used augmentation to meet staffing needs and to get around paying officers overtime; this irresponsible practice puts lives in danger and must be stopped.

BOP has performed a rigorous analysis of the effects of prison inmate overcrowding and correctional worker understaffing on inmate-on-worker rates of violence. It found that increases in both the inmate-to-worker ratio and the rate of overcrowding at an institution are directly related to increases in the rate of serious inmate assaults on correctional workers.

AFGE has long been concerned about the safety and security of the correctional officers and staff who work at BOP institutions. But the significant increase in prison inmate assaults against correctional officers and staff has made it clear that the BOP correctional officer understaffing and prison inmate overcrowding problems must be solved.

Therefore, AFGE strongly urges the administration and the 115th Congress to:

- Increase federal funding of the BOP Salaries and Expenses account requiring BOP to hire additional correctional staff to return to the 95 percent staffing percentage levels of the mid-1990s. BOP is presently staffed at 88 percent systemwide.
- Increase federal funding of the BOP Buildings and Facilities account so BOP can build new correctional institutions and/or renovate existing ones to reduce inmate overcrowding, particularly at the high and medium security institutions.
 - Specifically, Congress must earmark funding for the Lecher County, Ky., high security facility to ensure that this facility is activated. Congress must also ensure Thompson is opened as a high security facility to ease inmate-to-staff ratios at other similar security facilities.
- Continue to extend the appropriations language that provides a second officer staffing high security housing units at all times.
- Exempt the BOP staff from any furloughs or staff cuts that may result from a Continuing Resolution (CR) or lapse in funding.

- Demand that BOP hire the necessary staff to fill custody roles instead of relying on augmentation (using a non-custody employee to fill a custody role).
- Demand that BOP not close **any** facility while the Bureau remains overcrowded and understaffed.
 - Specifically, BOP must not close any Federal Prison Camps (FPC). Currently, BOP operates six FPCs nationwide located at: Alderson FPC (W.Va.), Bryan FPC (Texas), Duluth FPC (Minn.), Montgomery FPC (Ala.), Pensacola FPC (Fla.), and Yankton FPC (S.D.).

2. Address the primary cause for the explosive growth in the BOP prison inmate population by passing sentencing reform for non-violent first-time offenders.

AFGE and the Council of Prison Locals support sentencing reform that will target non-violent first-time offenders. In no way do we advocate for the release of career criminals or those convicted of violent crimes; though we do believe there is a better way to do sentencing for certain types of low level offenders. By returning discretion to judges to make sure the sentence handed down matches the crime committed and by putting these inmates through programming that has been statistically proven to reduce recidivism rates, these offenders will be rehabilitated. This is a much better outcome than allowing them to learn how to be career criminals while serving an overly punitive mandatory minimum.

The statistics in the previous section demonstrate the need to move away from the “tough on crime” laws of the 1980s and focus more on “smart on crime” policies. That is why AFGE and the Council of Prison Locals have urged members of Congress to pass S 1933, the Smarter Sentencing Act, a bill that takes an incremental approach to modernizing non-violent drug policy. This legislation would:

- Modestly expand the existing federal “safety valve” with regard to mandatory minimum sentences and certain non-violent drug offenses.

The “safety valve” has been effective in allowing federal judges to appropriately sentence certain non-violent drug offenders below existing mandatory minimum sentences. However, this “safety valve” only applies to a narrow subset of cases – defendants that do not have more than one criminal history point.

The Smarter Sentencing Act would broaden the “safety valve’s” eligibility criteria. The bill provides that a federal judge can impose a sentence for certain non-violent drug offenses below existing mandatory minimum sentences if he or she finds the “criminal history category for the defendant is not higher than category II.” Category II includes 2 or 3 criminal history points.

- Retroactively apply the mandatory minimum sentencing reforms of the Fair Sentencing Act of 2010 (P.L. 111-220) to non-violent drug offenses that were committed before August 3, 2010, the date the president signed that bill into law.

The Fair Sentencing Act of 2010 (P.L. 111-220) reduced the disparity between the amount of crack cocaine and powder cocaine that is needed to trigger federal mandatory minimum sentences from a 100-to-1 weight ratio to an 18-to-1 weight ratio. The 2010 federal law also eliminated mandatory minimum sentences for simple possession of an illegal drug, narcotic, or chemical.

The Smarter Sentencing Act would provide that a federal judge who imposed a drug offense sentence under the pre-Fair Sentencing Act of 2010 regime, may – on a motion of the sentenced inmate or the BOP director – impose a reduced sentence as if the 2010 federal law was in effect at the time the inmate committed the drug offense.

- Reduce the 5-, 10-, and 20-year mandatory minimum sentence “floors” for federal non-violent drug offenses to 2-, 5-, and 10-year terms, respectively.

The Controlled Substances Act and the Controlled Substances Export and Import Act provide that non-violent drug offenders shall be sentenced to a term of imprisonment of not less than the *minimum* mandatory minimum sentence (or “floor”) and not more than the *maximum* mandatory minimum sentence (or “ceiling”). For example, a person who knowingly distributes 500 grams of powder cocaine “shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years.” The Smarter Sentencing Act would reduce the *minimum* mandatory minimum sentences (or “floors”) for non-violent drug offenses, allowing a federal judge more discretion than he or she has now to decide the appropriate sentence in individual cases. The bill does not lower the *maximum* mandatory minimum sentences (or “ceilings”). In the above example, a person who knowingly distributes 500 grams of powder cocaine shall be sentenced to a term of imprisonment which may not be less than 2 years – lowered from 5 years – and not more than 40 years.

3. Pass the Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act.

AFGE and the Council of Prison Locals support HR 613/S 1084, the Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act, and urge members of Congress to pass this important workplace safety legislation.

The Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act would require that the director of the Federal Bureau of Prisons (BOP) ensure that each warden of a BOP institution provides a secure storage area located outside of the secure perimeter of that BOP institution for personal firearms carried to and from work by BOP correctional workers.

Currently, BOP correctional workers are unable to carry their personal firearms to and from BOP institutions because BOP refuses to provide a place to secure those personal firearms. Many workers, particularly those who work in or near large cities, want to carry their personal firearms because they have real worries that former prison inmates and others may attempt to harm them.

BOP management has argued that providing a storage area for personal firearms carried to and from work by correctional workers would lessen security at BOP institutions. However, we believe BOP is refusing because it does not want to be put in a publicly embarrassing situation if a BOP correctional worker accidentally shoots himself/herself with his/her personal firearm while driving to and from work.

AFGE and the Council of Prison Locals strongly believe that BOP correctional workers' very real personal safety interests should outweigh BOP management's concerns about a hypothetical, publicly embarrassing situation.

In addition, we believe it is ironic that BOP is so reluctant to provide BOP officers with a place to secure their personal firearms when BOP is already providing such secure places for certain non-work, non-BOP firearms. MDC Guaynabo, one of the many BOP institutions that provides on-site housing for BOP correctional officers, provides a place on site (the institution's armory) for those officers to secure their personal firearms. In addition, when county and local law enforcement officers transport criminals to BOP institutions, those BOP institutions provide a safe place for those county and local law enforcement officers to secure their firearms.

Last year AFGE and the Council of Prison Locals were successful in getting HR 613 passed out of the House Judiciary Committee. On April 27, 2017, the full House Judiciary Committee favorably passed this legislation by voice vote. We are asking the full House to take up and pass this important legislation as soon as possible.

We were successful last year in lobbying the administration and the Attorney General to implement a gun lockers policy through administrative action. However, this policy is much like the original pepper spray "pilot program" and could be changed by a future attorney general or president. Sadly, even though this decision was made nearly a year ago we have not seen a system-wide gun lockers policy be implemented.

4. Pass the Thin Blue Line Act, a bill that would make murdering a law enforcement officer an aggravated factor in sentencing for a capital crime.

AFGE and the Council of Prison Locals believe that Congress must punish those who actively target and kill our members. Too many times we have witnessed our fallen brothers go without justice. Our fallen officers deserve respect and their families deserve better than plea bargains. These men and women are heroes, and we demand that Congress treat them as such.

That's why AFGE and the Council of Prison Locals support HR 115/S 1085, the Thin Blue Line Act, so that any time a member of the law enforcement community is targeted and killed that murder will have a greater chance of facing the death penalty. We are urging members of Congress to pass this important legislation because there is no justice in giving second-consecutive life sentences to cold-blooded killers. The Council of Prison Locals refuses to stand by while our men and women are put in harm's way every single day. Congress and the administration must send a message that our lives and our safety matter. We demand action on this legislation so that every inmate will know that if they kill one of our brothers or sisters they will be facing the possibility of the death penalty.

5. Continue to oppose any changes to the way the BOP uses and administers segregated housing units (SHU).

Like local cops on the beat who arrest and detain citizens who engage in disorderly conduct in our communities, correctional workers need the same authority behind the prison walls and fences to maintain good order. One of the most important tools currently available for correctional workers is the use of segregated housing units – commonly referred to as “solitary confinement.” Most often segregated housing is used to separate violent inmates from the general population.

For example, if a fight breaks out, correctional workers would be able to place the offending inmate into a segregated housing unit to restore control in the area. They would then be able to conduct an in-depth investigation as to what caused the disturbance and make sure that any problem is addressed before putting that inmate back into the general population. While it's certainly possible to have smart prison reform, AFGE and the Council of Prison Locals believe that labor must have a seat at the table. We must be given the ability to represent the interests of the workers called to protect America from society's worst of the worst—enemies foreign and domestic.

As front-line employees, AFGE and the Council of Prison Locals caution Congress from implementing any type of “one size fits all” corrections policy, particularly as it relates to segregated housing. It is imperative that lawmakers remember that the decisions they make impact the lives of thousands of correctional workers across the country; their lives and safety matter.

6. Continue the existing prohibition against the use of federal funding for public-private competition under OMB Circular A-76 for work performed by federal employees of BOP and FPI.

The current continuing resolution (CR) contains the FY 2017 Commerce-Justice-Science (CJS) Appropriations bill and includes a general provision – Section 211 – to prohibit the use of FY 2017 funding for a public-private competition under OMB Circular A-76 for work performed by federal employees of the BOP and FPI. Here is the exact language:

“Sec. 211. None of the funds appropriated by this Act may be used to plan for, begin, continue, finish, process, or approve a public-private competition under the Office of Management and Budget Circular A-76 or any successor administrative regulation, directive, or policy for work performed by employees of the Bureau of Prisons or of Federal Prison Industries, Incorporated.”

AFGE strongly urges the administration and the 115th Congress to continue to include the Section 211 language in the remainder of FY 2017 funding and for the FY 2018 CJS Appropriations bill because:

(a) Competing these BOP and FPI employee positions would not promote the best interests or efficiency of the federal government with regard to ensuring the safety and security of federal BOP prisons. Federal correctional officers and other federal employees who work for BOP and FPI are performing at superior levels. It therefore would be ill-advised to compete their positions merely to meet arbitrary numerical quotas.

(b) Various studies comparing the costs of federally operated BOP prisons with those of privately operated prisons have concluded – using OMB Circular A-76 cost methodology – that the federally operated BOP prisons are more cost effective than their private counterparts. For example, a study comparing the contract costs of services provided by Wackenhut Corrections Corporation (now The Geo Group) at the Taft Correctional Institution in California with the cost of services provided in-house by federal employees at three comparable BOP prisons (Forrest City, Ark.; Yazoo City, Miss.; and Elkton, Ohio) found that “the expected cost of the current Wackenhut contract *exceeds* the expected cost of operating a Federal facility comparable to Taft...” (*Taft Prison Facility: Cost Scenarios*, Julianne Nelson, Ph.D, National Institute of Corrections, U.S. Department of Justice.)

7. Prohibit BOP from meeting additional bed space needs by placing federal prison inmates in private prisons.

In August 2016 AFGE and the Council of Prison Locals were successful in lobbying the previous administration to change its policy on private prisons. Then-Deputy Attorney General Sally Yates provided updated guidance to Bureau leadership that they were to phase out their private prison contracts. This was the first major rollback of private prisons since the Bureau began contracting services out in the mid-1990s.

In February 2017 this policy was reversed. For the remainder of 2017 BOP continued to use private prisons, but did not actively attempt to move inmates from BOP-operated facilities to private prisons. However, on January 24, 2018, a new policy direction was announced via a memo from the DOJ Leadership. This memo directs BOP to “submit eligible inmates for re-designation” in order to transfer those inmates from low-security BOP facilities to private-

contract facilities. DOJ says that this decision was made “in order to alleviate overcrowding” in our federal prisons, but this is nothing more than a thinly veiled excuse to privatize government work and federal jobs.

AFGE and the Council of Prison Locals have long maintained that BOP must stop relying on private facilities to supervise and rehabilitate inmates. These facilities fail to provide adequate safety, security, and rehabilitative services as compared to their federal counterparts. Further, the real overcrowding at BOP exists at facilities that are classified as medium-and-above security levels. Pushing the least dangerous offenders into private custody does nothing to alleviate the real problem of overcrowding at BOP, and it does nothing to keep correctional workers safe while on the job. Real lives are at risk when the Bureau fails to address chronic and widespread understaffing, and it is foolish to believe this problem can be solved by more outsourcing. As the research below indicates, BOP must abolish private prisons and reinvest those dollars into its fulltime law enforcement staff.

Private Prisons Are Not More Cost Effective

Proponents of prison privatization claim that private contractors can operate prisons less expensively than federal and state correctional agencies. Promises of 20 percent savings are commonly offered. However, existing research fails to produce evidence that private prisons cost less than public prisons.

For example, in 1996, the U.S. General Accounting Office reviewed five studies of prison privatization deemed to have the strongest designs and methods among those published between 1991 and mid-1996. The GAO concluded that “because these studies reported little cost differences and/or mixed results in comparing private and public facilities, we could not conclude whether privatization saved money.” (*Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service*, GGD-96-158 August 16, 1996.)

Similarly, in 1998, the U.S. Department of Justice entered into a cooperative agreement with Abt Associates Inc. to conduct a comparative analysis of the cost effectiveness of prison operations in both the private and public sectors. The report, which was released in July 1998, concluded that while proponents argue that evidence exists of substantial savings as a result of privatization, “our analysis of the existing data does not support such an optimistic view.” Instead, “our conclusion regarding costs and savings is that.....available data do not provide strong evidence of any general pattern. Drawing conclusions about the inherent [cost-effective] superiority of [private prisons] is premature.” (*Private Prisons in the United States: An Assessment of Current Practice*, Abt Associates, Inc., July 16, 1998.)

Finally, a 2001 study commissioned by the U.S. Department of Justice concluded that “rather than the projected 20 percent savings, the average saving from privatization was only about one percent, and most of that was achieved through lower labor costs.” (*Emerging Issues on Privatized Prisons*, by James Austin, Ph.D. and Garry Coventry, Ph.D., February 2001.)

Private Prisons Do Not Provide Higher Quality, Safer Services

Proponents of prison privatization contend that private market pressures will necessarily produce higher quality, safer correctional services. They argue that private prison managers will develop and implement innovative correctional practices to enhance performance. However, emerging evidence suggests these managers are responding to market pressures not by innovating, but by slashing operating costs. In addition to cutting various prisoner programs, they are lowering employee wages, reducing employee benefits, and routinely operating with low, risky staff-to-prisoner ratios.

The impact of such reductions on the quality of prison operations has been obvious. Inferior wages and benefits contribute to a “degraded” workforce, with higher levels of turnover producing a less experienced, less trained prison staff. The existence of such under qualified employees, when coupled with insufficient staffing levels, adversely impacts correctional service quality and prison safety.

Numerous newspaper accounts have documented alleged abuses, escapes and riots at prisons run by CoreCivic (formerly Correctional Corporation of America), the nation’s largest private-prison company. In the last several years, a significant number of public safety lapses involving CCA have been reported by the media. The record of Wackenhut Corporation (now The Geo Group), the nation’s second largest private-prison company, is no better, with numerous lapses reported since 1999.

And these private-prison problems are not isolated events, confined to a handful of “underperforming” prisons. Available evidence suggests the problems are structural and widespread. For example, an industry-wide survey conducted in 1997 by James Austin, a professor at George Washington University, found 49 percent more inmate-on-staff assaults and 65 percent more inmate-on-inmate assaults in medium- and minimum-security private prisons than in medium- and minimum-security government prisons. (referenced in “Bailing Out Private Jails,” by Judith Greene, in *The American Prospect*, September 10, 2001.)

Lacking data, BOP is not able to evaluate whether confining inmates in private prisons is more cost-effective than federal government prisons.

Despite the academic studies’ negative results, BOP has continued to expand its efforts to meet additional bed space needs by incarcerating federal prison inmates in private prisons. Over a 10-year period, the costs to confine federal BOP inmates in non-BOP facilities nearly tripled from about \$250 million in FY 1996 to about \$700 million in FY 2006. To determine the cost-effectiveness of this expanded use of private prisons, Congress directed the U.S. Government Accountability Office (GAO) in the conference report accompanying the FY 2006 Science, State, Justice and Commerce Appropriations Act (P.L. 109-108) to compare the costs of confining federal prison inmates in the low and minimum-security facilities of BOP and private contractors.

However, GAO determined in its October 2007 report that a methodologically sound cost comparison analysis of BOP and private low- and medium-security facilities was not feasible because BOP does not gather data from private facilities that are comparable to the data collected on BOP facilities. As a result, the GAO concluded that:

“[W]ithout comparable data, BOP is not able to evaluate and justify whether confining inmates in private facilities is more cost-effective than other confinement alternatives such as building new BOP facilities.” (*Cost of Prisons: Bureau of Prisons Needs Better Data to Assess Alternatives for Acquiring Low and Minimum Security Facilities*, GAO-08-6, October 2007)

BOP officials told GAO that there are two reasons why they do not require such data from private contractors. First, federal regulations do not require these data as a means of selecting among competing contractors. Second, BOP believes collecting such data could increase private contract costs. However, BOP officials did not provide evidentiary support to substantiate this concern.

In conclusion, AFGE strongly urges the administration and the 115th Congress to prohibit BOP from meeting additional bed space needs by incarcerating federal prison inmates in private prisons. Prison privatization is not the panacea that its proponents would have us believe. Private prisons are not more cost effective than public prisons, nor do they provide higher quality, safer correctional services. Finally, without comparable data, BOP is not able to evaluate or justify whether confining inmates in private facilities is more cost-effective than building new BOP facilities.

8. Support the Federal Prison Industries (FPI) prison inmate work program.

The increasingly violent and dangerous environment in which BOP correctional officers and staff work is the primary reason why AFGE and the Council of Prison Locals strongly supports the FPI prison inmate work program.

The FPI prison inmate work program is an important management tool that federal correctional officers and staff use to deal with the huge increase in the BOP prison inmate population. It helps keep over 11,000 prison inmates productively occupied in labor-intensive activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides strong incentives to encourage good inmate behavior, as those who want to work in FPI factories must maintain a record of good behavior and must have completed high school or be making steady progress toward a General Education Degree (GED). Additionally, inmates who participate in FPI programs are 24 percent less likely to recidivate after their sentence ends.

The FPI program also puts money back into local economies. According to its 2017 Annual Report, 96 percent of its resources are reinvested into local economics through local procurement of raw materials, equipment, transportation, and staff salaries. This figure is

further broken down to show that 50 percent of FPI's procurements are made to small businesses, women-owned businesses, and service-disabled veteran-owned businesses. FPI has a clear and tangible benefit to correctional workers, local economies, and inmates.

Unfortunately, over the past several years, the FPI prison inmate work program has experienced a significant decline in its ability to remain financially self-sustaining while providing "employment for the greatest number of inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible." (18 U.S.C. 4122).

Significant limitations imposed by Congress and the FPI Board of Directors on FPI's mandatory source authority relating to DoD's and federal civilian agencies' purchases from FPI have resulted in serious sustainability problems for FPI. But of the many imposed limitations, Section 827 in the National Defense Authorization Act for FY 2008 (P.L. 110-181) – which is statutorily 10 U.S.C. 2410n – is probably the most significant impediment to the FPI prison inmate program.

The FPI Board of Directors in 2003 administratively ended the application of mandatory source authority for those FPI-made products where FPI had a share of the federal market that was greater than 20 percent. But Section 827 took a much more stringent approach, ending the application of the mandatory source authority with regard to DoD purchases of FPI-made products where FPI's share of the DoD market for those products was greater than 5

As can be seen, FPI is in desperate need of new inmate work program authorities. That is why AFGE was pleased when Congress included Section 221 in the FY 2011 Commerce-Justice-Science Appropriations bill (P.L. 112-55). This section extended – for the first time – the Prison Industry Enhancement (PIE) inmate employment program to the federal BOP system. The PIE program was created by Congress in 1979 to encourage state prison systems to establish employment opportunities for inmates that approximate private-sector work opportunities. The program is designed to place inmates in a realistic work environment, pay them the prevailing local wage for similar work, and enable them to acquire marketable skills to increase their potential for successful rehabilitation and meaningful employment upon release.

9. Support legislation that would provide registered nurses employed at BOP Federal Medical Centers and other BOP institutions with the same right to full time-and-a-half overtime pay as private sector registered nurses.

AFGE strongly urges the new administration and the 115th Congress to support legislation that would provide registered nurses employed at the 122 Federal Bureau of Prisons (BOP) institutions – including the six BOP Federal Medical Centers located at Devens, Mass.; Rochester, Minn.; Butner, N.C.; Carswell, Texas; Lexington, Ky.; and Springfield, Mo. – with the same right to full time-and-a-half overtime pay as registered nurses in the private sector under the Fair Labor Standards Act (FLSA) (29 U.S.C. 201-219). Many BOP registered nurses currently receive a more limited overtime pay capped at the General Schedule (GS) -10, Step 1 rate, pursuant to 5 U.S.C. 5542(a)(2).

BOP registered nurses should be provided the same right to full time-and-a-half overtime pay as private-sector registered nurses because:

- They perform the same nursing duties as private-sector registered nurses and they are paid on the same hourly basis as private-sector registered nurses.
- Providing them with the same right to full time-and-a-half overtime pay as private-sector registered nurses would help mitigate somewhat the serious BOP registered nurse staffing shortages. The primary reason for such shortages is that GS position grades and compensation are not competitive with private-sector markets.
- Other federal government registered nurses – those who are employed by the Department of Veterans Affairs and the Department of Defense – already are provided the same right to full time-and-a-half overtime pay as private-sector registered nurses.

This legislation is necessary because the AFGE General Counsel Office (GCO) has determined that it would not be able to successfully argue in federal court that BOP registered nurses should be classified – like private-sector registered nurses – as FLSA nonexempt because they are hourly employees under the Department of Labor (DOL) FLSA regulations. (FLSA nonexempt employees are entitled to receive full time-and-a-half overtime pay; FLSA exempt employees are not.)

AFGE’s GCO made this determination after reviewing Billings v. U.S., 322 F 3d 1328 (Fed. Cir. 2003), a case in which the Court of Appeals for the Federal Circuit – the appellate court that reviews federal employee pay cases – held that that the Office of Personnel Management is not required to apply the “salary basis” test of the DOL FLSA regulations (29 C.F.R. 541.602) to federal employees. This forecloses the argument that federal employees should be deemed to be FLSA nonexempt because they are hourly employees under the DOL FLSA regulation’s salary basis test.

Here is the legislative language that would provide BOP registered nurses with full time-and-a-half pay for overtime work:

5 U.S.C. 5542(a)(6):

Notwithstanding paragraphs (1) and (2) of this subsection, for an employee of the Bureau of Prisons who is a registered nurse, the overtime hourly rate of pay is an amount equal to one and one half times the hourly rate of basic pay of the employee, and all that amount is premium pay. These employees shall receive overtime for performing officially ordered or approved hours of service in excess of 40 hours in an administrative workweek, or in excess of eight hours in a day.

5 U.S.C. 5543(e):

Notwithstanding paragraph (a) of this subsection, compensatory time off instead of payment under section 5542 or section 7 of the Fair Labor Standards Act of 1938 for an equal amount of time spent in irregular or occasional overtime work for an employee of the Bureau of Prisons who is a registered nurse, shall not be permitted, except as voluntarily requested in writing by the employee in question.

Transportation Security Administration and Transportation Security Officers (TSOs)

“To delay justice is injustice.”

William Penn

The more than 42,000 Transportation Security Officers (TSOs) represented by AFGE have upheld their obligation to be an integral part of national security by ensuring public safety as they screen passengers and baggage at our nation’s airports, mass transit and large public gatherings such as presidential inaugurations and the Super Bowl. Recent attacks around the world document terrorists’ ongoing fixation on attacking public transportation. It should follow that the Transportation Security Administration (TSA) would treat the TSO workforce as trained professionals who are partners in providing aviation security. Sadly, the opposite continues to be true of TSA’s relationship with its front-line workforce: TSA stubbornly refuses to grant TSOs real due process rights, including the right to appeal adverse personnel decisions to an objective third party, and other workplace rights and protections afforded the majority of federal workers.

No federal agency head, regardless of the mission of the agency, should be above the law. With the exception of TSOs, all TSA employees, including TSA managers, follow the Federal Aviation personnel management system, including the right to file appeals to the Merit Systems Protection Board (MSPB). TSA claims to lack the authority to apply important Title 5 statutory rights and protections such as compensation under the General Schedule (GS) wage system and important procedures and statutory protections under the Federal Labor Standards and Civil Rights Act. The fact is that TSA has no legitimate excuse for refusing to follow the same laws, Office of Personnel Management (OPM) regulations and guidance as the rest of the federal government. TSA has issued three Determinations on Collective Bargaining derived from the agency’s interpretation of the same authority under the Aviation and Transportation Security Act (ATSA) the agency denies when it comes to TSO rights. AFGE calls upon President Trump to direct the TSA administrator to immediately apply all laws, guidelines and regulations applicable to Title 5 workers to the TSO workforce and for Congress to pass legislation to repeal the ATSA footnote and granting TSOs all statutory rights under Title 5.

HR 2309, the Rights for Transportation Security Officers Act and S 272, the Strengthening American Transportation Security Act (SATSA)

Congress must act in the absence of a presidential or administrative directive. Basic workforce protections should have the permanence of enacted law and not be subject to the politics of successive administrations. HR 2309, the Rights for Transportation Security Officers Act, was introduced on May 3, 2017 by Reps. Bennie Thompson (D-Miss.) and Nita Lowey (D-N.Y.). The bill currently has 43 cosponsors. Sen. Brian Schatz (D-Hawaii) introduced the Senate companion to HR 2309, the Strengthening American Transportation Security Act, on February 1, 2017. SATSA marks the first introduction of a Senate TSO rights bill in over 5 years.

Like the Rights for Transportation Security Officers Act, SATSA strikes the Aviation and Transportation Security Act footnote used by TSA Administrators to set the terms and conditions of employment for the TSO workforce and places all TSA employees under Title 5, including the following rights and protections:

- The same rights and protections as other federal workers, including those at DHS.
- TSA would no longer be the “judge, jury, and executioner” on disciplinary actions against TSOs.
- TSOs could appeal adverse personnel actions such as removal, demotion, and long-term suspensions to an outside, independent third party.
- TSO pay would be consistent under the GS system – which already includes a pay-for-performance component.
- TSOs would have protections against discrimination based on gender, religion, race, disability, and age under the Civil Rights Act because they are federal workers, and not because TSA “allowed” protections in limited circumstances.
- TSA would be required by law to establish effective worker safety and health programs and to provide safety equipment and devices such as dosimeters to detect radiation exposure.
- The TSO union would have full labor rights, including the right to bargain on all mandatory subjects.

TSA’s behavior toward the TSO workforce has shown that the sweeping authority granted to it by an ill-considered management rights provision included in ATSA to be a grave mistake. A statutory footnote has no relationship to the goal of defending the country against those planning harmful acts. AFGE will continue the fight for rights for TSOs and respect for the important work that they do. Our goal is not impossible to achieve. No matter the trials and obstacles, AFGE will obtain justice for TSOs.

AFGE and Council 100 Continue the Fight for a Fair Contract

The TSA bargaining unit membership of Council 100 overwhelmingly ratified a contract negotiated under circumstances that are unique to TSA. The contract reflects limitations on negotiable issues, timing of negotiations and process. AFGE filed a complaint with TSA’s National Resolution Center (NRC) challenging negotiation restrictions the agency place on negotiations for the latest contract. TSA refused to negotiate on: third party review regarding grievance and arbitration proceedings; rights to Garritty, Micah and Kalkines warnings; performance management and plans and performance ratings; awards and attendance management fitness for duty decisions; wash up and other breaks; holiday pay and shift trades; and access to gym facilities and child care subsidies. The NRC is a body comprised of TSA management, which influenced a decision that every single issue was decided against the union. AFGE has appealed this decision and will continue the process to ensure the application of union rights to TSOs. We call upon the House and Senate to immediately pass legislation to

provide to TSOs the same workplace rights – including collective bargaining rights – and protections that other federal workers have as a matter of law.

In the context of these negotiations, AFGE and TSOs are not just fighting for a fair contract for the workforce. We are fighting as well for the integrity of public sector collective bargaining for all federal workers.

TSA is Understaffed and TSOs Pay the Price

TSA allowed the TSO staffing levels to fall even when it was clear that the public did not participate in the PreCheck program at the levels necessary to support a smaller workforce and continued diversion of the security fee to application for deficit reduction instead of funding adequate staffing levels. TSA needs to hire more full-time TSOs and work harder to retain the current workforce by increasing wages and granting Title 5 rights. The proposed House TSA budget included additional funding for Personnel, Compensation, and Benefits that could be used to increase staffing. The TSA section of the fiscal year 2018 Department of Homeland Security Appropriations bill essentially cut TSA staffing by a decrease in the funding for Personnel, Compensation, and Benefits. This is the same as a staffing cut. Congress must address transparent moves by TSA to hide the agency's understaffing, such as assigning all Behavior Detection Officers (BDOs) to checkpoint and budget requests to end the Visible Intermodal Prevention Teams (VIPR). Female TSOs continue to bear a significant burden of short-staffing, and report denial of shift or line bids and delayed breaks during the day. AFGE is collecting documentation of the disproportionate negative effect of short staffing on female TSOs and will share our findings with congressional offices.

AFGE calls on TSA's new administrator, David Pekoske, to address the chronic and severe understaffing of the TSO workforce by requesting adequate appropriations to hire and retain sufficient numbers of employees to screen efficiently and effectively and address low pay, work environment issues, and the lack of career opportunities that contribute to TSA's high attrition rate. AFGE hopes to work with Administrator Pekoske to address these issues and confirm that technology and canines cannot replace the work of TSOs. Increased technology is not a remedy for screening concerns and diverts resources from hiring, training, and retaining the workforce needed to keep the flying public safe.

The Screening Partnership Program (SPP)

AFGE became aware in July 2017 that TSA has accepted the Screening Partnership Program (SPP) of the South Jersey Transportation Authority (the Authority) to privatize screening at Atlantic City International Airport (ACY). The Authority filed the application after ACY airlines strongly objected to TSA management's refusal to hold open checkpoints even though delayed international flights carried passengers who required screening before they could connect to domestic flights. Passengers were only able to board connecting flights the following day when TSA reopened checkpoints. There were no "union rules" or contract provisions that prevented overtime to screen the passengers. TSOs never received formal notice of the application and

were notified of the Authority's SPP application months after it was filed. The Authority held no public meetings or votes on the decision. AFGE opposes the SPP because it is a privatization program that lacks transparency, fails to save taxpayer money, and potentially jeopardizes airport security as private screeners replace experienced TSOs. The only parties who benefit are contractors looking to turn a profit at the expense of security.

AFGE strongly supports the Contract Screener Reform Act, introduced by Rep. Bennie Thompson in the 114th Congress, that would provide transparency to the public. AFGE also supports changes in the SPP that would require TSA to notify the union upon the filing of an SPP application and allow the union to comment on the petition on behalf of its members.

TOPS to Bottom: Replace TSA's Unfair Pay System with the Federal Pay System that Works: the General Schedule

The year-long efforts of Council 100 forced TSA to apply additional fairness to this year's Transportation Officer Performance System (TOPS) pay system. Unlike the previous year's payout which resulted in over half (53 percent) of the TSO workforce receiving no pay raise, all TSOs who achieved Expectations or better received a performance award. Even as AFGE fights for fairness under TOPS, our union's resolve to reform TSA's pay system is stronger than ever.

TSOs sense that they do not receive fair pay for doing their job is reflected in the low level of trust between management and the workforce. Rampant employee dissatisfaction led to employees ranking TSA dead last in pay and next to last in "performance-based rewards and advancement" out of 158 agency subcomponents in the *2017 Partnership for Public Service Best Places to Work in the Federal Government* survey. TSA also skidded to next to last placements in both "effective leadership and "performance-based rewards and advancement," both an *improvement* over 2016.

By contrast, if TSO pay is calculated under the General Schedule (GS), objective criteria would accurately assign jobs by grade, including performance-related criteria. The GS system precludes management from using the bait-and switch tactics that TSA implemented to cheat TSOs out of their pay raises and bonuses. The attrition rate at TSA remains higher than that of the federal workforce overall; TSOs routinely leave TSA to find better pay and employment rights at other federal agencies under Title 5 and the GS system. No federal employee, especially TSOs assigned an important piece of the national security framework, should have to worry about fair pay. Enactment of HR 2309/S 272 will ensure that TSOs are paid under the same GS salary system used by other DHS components.

AFGE also supports HR 2283, the Department of Homeland Security Morale, Recognition, Learning and Engagement Act of 2017, introduced by Rep. Bennie Thompson and passed by the House on June 20, 2017. The bill implements recommendations from several Government Accountability Office reports on DHS employee morale to promote employee input on working conditions and establishing new award programs at components. The Senate has not taken up the bill.

Pregnancy Discrimination/Medical Eligibility

Several House members are actively investigating TSA's ongoing refusal to prohibit discrimination against TSOs with medical conditions. The agency's attempt to remove several TSOs due to health conditions has resulted in inquiries as to whether TSA follows the Rehabilitation Act, which Congress directly applied to TSOs in a provision included in the Whistleblower Protection Enhancement Act. The Equal Employment Opportunity Commission ruled in 2014 that TSA must now reassign medically disqualified TSOs when the worker is qualified for a vacant position in either TSA or DHS under the Rehabilitation Act. The decision does not guarantee continued employment because the agency can claim no positions are available for which the TSO is qualified or the TSO may reject the available positions. The remedy for discriminatory medical disqualifications is TSO Title 5 rights. Title 5 rights include application of the Rehabilitation Act, which requires management to demonstrate that the employee's medical condition prevents him or she from performing job duties, as opposed to TSA's decisions based simply on the diagnosis of a condition.

AFGE is outraged that TSA currently takes the unprecedented position of stealing pay from TSOs while they await decisions on their medical eligibility. TSA does not place TSOs on paid administrative leave while they await a decision on their medical eligibility and refuses to provide backpay to TSOs who went without pay for months awaiting a determination from TSA's Chief Medical Officer. AFGE is working with several House and Senate offices to investigate this unjust theft of wages from the TSO workforce, and to obtain backpay for TSOs who were unable to work due to TSA's unverified suspicions of the status of their health.

HR 2825, the DHS Authorization Act/ S. 1872, the TSA Modernization Act

The House reported DHS Authorization Act by a bipartisan vote of 386-41. The bill included AFGE-negotiated provisions that require TSA to participate in a working group with the union to negotiate reforms to the agency's personnel system, including access to the Merit Systems Protection Board (MSPB) and a dispute resolution system for adverse personnel actions outside of the Aviation and Transportation Security Act footnote. The bill is divided between two Senate committees, the Homeland Security and Governmental Affairs and the Commerce, Science, and Transportation committees. The Commerce committee reported out the TSA Modernization Act, a bill that included no personnel provisions. Chairman John Thune (R-S.D.) stated his attention to work with Senator Tammy Baldwin (D-Wis.). The Homeland Security and Governmental Affairs Committee is currently working on the DHS Authorization bill.

HR 99, Honoring our Fallen TSA Heroes

Forty-six members of Congress, including Rep. Lamar Smith (R-Texas) joined Rep. Julia Brownley (D-Calif.) in reintroducing the Honoring Our Fallen TSA Heroes Act in the 114th Congress. The bill grants TSOs Public Safety Officer benefits in the event of their death or severe injury while in the line of duty. AFGE strongly believes TSOs protect the public and are deserving of these benefits.

HR 2514, the Funding for Aviation Screeners and Threat Elimination Restoration (FASTER) Act

Immediately following House Homeland Security Committee hearings on TSO staffing shortages and checkpoint lines in 2016, Reps. Peter DeFazio (D-Ore.), Bennie Thompson (D-Miss.), and Bonnie Watson Coleman (D-N.J.) reintroduced the Funding for Aviation Screeners and Threat Elimination Restoration (FASTER) Act. The FASTER Act currently has 46 cosponsors and would end the diversion of the 9-11 Security Fee and return the proceeds to TSA to provide increased security funding for TSA. The cosponsors project the return of \$14 billion in funding to the agency. The bill is supported by AFGE, Airlines for America, and the U.S. Travel Association.

H.R. 1351, the TSA Employee Misconduct Act

The House Homeland Security Committee reported out HR 1351, the TSA Employee Misconduct Act, on a partisan vote. The Oversight and Management Efficiency Subcommittee Chairman Scott Perry (R-Pa.) introduced the bill strongly opposed by AFGE. The controversial bill responded to a highly flawed 2016 TSA employee misconduct report prepared by majority committee staff. Chairman Perry stated his intention to introduce a bill that required severe disciplinary actions against TSA employees following his consternation that TSA removed no TSOs following an alleged “breach” of security at John F. Kennedy Airport earlier this year. The bill defined mistakes, medical unfitness for duty and certification review failures as misconduct with escalating penalties. AFGE is working to prevent a vote in the House or for bipartisan opposition if a floor vote is scheduled.

TSO Respect, Violence Prevention, and Health and Safety Issues

Disrespect Inevitably Leads to Violence

Tragically on November 1, 2013, an active shooter at Los Angeles International Airport (LAX) murdered TSO Gerardo Hernandez, the first TSO to die in the line of duty. Two other TSOs were injured in the same attack. The potential for checkpoint carnage aimed at the TSOs on duty that day was immeasurable. The shooter was indicted on federal charges including murder of a federal employee, but he was not charged with violation of 49 U.S.C. §46502, which establishes assault with a dangerous weapon on security workers at an airport as punishable with a sentence of up to life imprisonment. This omission was yet another indication of a failure to appreciate the skill, commitment to duty, and courage of our nation’s 45,000 TSOs. Every member of the flying public should know that it is unacceptable, and a violation of federal law to assault a TSO.

TSA must also take steps to better protect the TSO workforce. Although TSOs are required to report checkpoint assaults to management, it is not clear what occurs from that point. Some managers have refused to detain passengers who assaulted TSOs, and at times TSOs who were the victims of assaults are blamed for the incident. TSOs are unarmed; do not have apprehension authority or even the authority to call airport local police if there is an assault. Because of the LAX shooting, we have learned that delays in summoning – and the response

time of – airport local police may result in loss of life and injury. AFGE strongly supports the creation of an armed federal law enforcement TSO position to guard the checkpoint and our nation’s airports.

Why Won’t TSA allow TSOs to Wear Dosimeters?

AFGE raised the radiation issue with TSA in early 2010 and urged all officers to file with TSA a CA-2 workers’ compensation claim to document their exposure to ionizing radiation after AFGE received numerous reports from employees alarmed by what appeared to be many cancer diagnoses and thyroid conditions in Boston and other locations. TSA maintained that the X-ray machines were safe and repeatedly denied AFGE’s requests for dosimeters and our offer to purchase them for officers. AFGE took the issue to Capitol Hill and testified before Congress, calling for a radiation safety and monitoring program at the agency. TSA announced that it would retest every one of its 247 full-body X-ray scanners at 38 airports after maintenance records on some of the devices showing X-ray machines emitting radiation 10 times higher than previously reported.

In an article from the premier science publication, *Scientific American*, two quotes from respected scientists say it all: “I wouldn’t dream of not having [dosimeters] already,” said Dr. Nagy Elsayyad, of the University of Miami School of Medicine. “By any definition they are radiation workers,” said David Brenner, director of the Center for Radiological Research at Columbia University. AFGE will continue to press Congress for legislation that would require TSA to allow TSOs to wear dosimeters and be responsible for the collection, testing, and reporting of the results.

Conclusion

A majority of the flying public recognizes TSOs as the first and best line of defense against those who desire to harm the U.S. aviation system and have persevered as a workforce despite the lack of fundamental statutory rights and protections. Their commitment to protect the public equals their determination to fight for their rights. AFGE will continue the fight for TSO Title 5 rights and statutory rights and protections in the 115th Congress and the Trump administration.

Voter and Civil Rights

The American Federation of Government Employees, AFL-CIO, continues its historic collaboration with the civil rights movement. In 1937, the Brotherhood of Sleeping Car Porters, led by A. Phillip Randolph, became the first majority African-American union to join the American Federation of Labor. The United Auto Workers supported the Montgomery bus boycott during the 1950s. In 1969, Dr. Martin Luther King Jr. was assassinated in Memphis where he was preparing to march with sanitation workers who were members of American Federation of State, County, and Municipal Employees. As the Rev. William Barber, president of the North Carolina National Association for the Advancement of Colored People (NAACP) and founder of Moral Mondays, stated, "I want you to know without a shadow of a doubt that the fight that labor wages, and the fight for civil rights, are two movements headed in the same direction." Even as the U.S. has made remarkable progress around civil rights, inequality persists on matters of income and interactions with the criminal justice system. The work of the country in advancing rights for all remains incomplete.

AFGE is a full and active partner in the traditional alliance between the civil rights and workers' rights movements. AFGE created the Fair Practices Department in 1968 to fight racial injustice in federal employment and expanded it in 1974 to become the Women's and Fair Practices Departments protecting the federal workforce. AFGE leaders marched in Selma in 2015 with many others to honor the sacrifice of those who fought for the Voting Rights Act of 1965 and to ensure those rights will not be denied or diluted by state legislatures or federal judges. AFGE has recognized disparities in the criminal justice system, and has worked with advocates on sentencing reforms. AFGE fights for equal pay between men and women and against the use of discriminatory pay-for-performance schemes. AFGE fights for the federal government to become THE model employer, and for the rights and dignity of all federal workers regardless of race, sex, religion, orientation or gender identification, national origin, age, or disability status.

Legislative and Judicial Attacks on the Right to Vote

The preclearance section of the Voting Rights Act blocked discriminatory voting changes before implementation. In addition to the Southern states, many are familiar with due to the history of voting discrimination (Alabama, Georgia, Louisiana, Mississippi, South Carolina, Texas, and North Carolina), the entire states of Virginia, Alaska, and Arizona and parts of California, Florida, Michigan, New York, and South Dakota were subject to preclearance following 1965. Fifty-three percent of the states covered by the preclearance requirements due to past discrimination passed or implemented voting restrictions that disenfranchised tens of thousands of voters. Virginia purged more than 38,000 names from voter rolls. Immediately following the Supreme Court's decision in *Shelby County V. Holder*, striking the preclearance provision of the Voting Rights Act, states previously subject to preclearance (Texas, Alabama, and North Carolina) implemented restrictive identification requirements, purged voter rolls, eliminated same day voting registration and limited early voting. The intent is clear: Political control will be maintained by denying the ballot those who may vote in opposition.

Contradicting claims of President Trump of voter fraud following his victory in the 2016 presidential election, there was no evidence of mass (or even minimal) illegal votes. Even prior to the 2016 Presidential election, states implemented draconian voting restrictions. Restrictive voter eligibility requirements have made the fundamental right to vote much harder to exercise for the elderly, people of color, college students, low income, and disabled voters. The National Commission on Voting Rights found that voting discrimination has a significant impact on African Americans, Latinos, Native Americans, and Asian Americans. The implementation of laws enacted by many state legislatures has established a modern poll tax of cost and burden on voters.

Voting rights restrictions have a direct impact on federal workers. Statistics from the American National Election Studies indicate that union household turnout is 5.7 percent higher than that of nonunion households. A 2010 article in the *Social Sciences Quarterly* stated that public-sector voting turnout was 2 percent to 3 percent higher than private-sector union households. Voters who favor a strong federal government and recognize the contributions of the federal workforce are more likely to show that support when they cast a ballot.

Gill v. Whitford

The Supreme Court heard oral arguments in the *Gill v. Whitford* case, a case challenging political gerrymandering in Wisconsin, during fall of 2017. Although Wisconsin is a traditional “battleground” state characterized by close statewide and presidential elections, state legislature races produced results that resulted in Republican candidates winning 63 of 99 seats in the state assembly with only 52 percent of the statewide vote. If the Supreme Court justices find that Wisconsin participated in illegal gerrymandering, it is likely that the guidelines set forth by the court will be part of the calculus for redistricting following the 2020 census.

The Voting Rights Enhancement Act

AFGE strongly supports HR 2978, the Voting Rights Advancement Act, reintroduced by Representative Teri Sewell (D-Ala.). The Voting Rights Advancement Act limits discriminatory voting laws by: reducing the ability of state and local government to restrict the voting rights of racial and language minority groups; creates a new national coverage formula to determine which states (states with 15 or more voting rights violations over the past 25 years) are subject to preclearance; and would lessen the likelihood of changes in voting standards and procedures within 180 days prior to a federal election. For the first time, Native American and Alaska Natives voters would see increased access to polling locations, absentee voting, and voter registration locations. AFGE remains concerned that House Judiciary Committee Chairman Robert Goodlatte (R-Va.) continues his refusal to hold a hearing on the Voting Rights Advancement Act. Chairman Goodlatte celebrated the 50th anniversary of the Voting Rights Act, but stated that restoring voter protections in the wake of court decisions and legislation “is not necessary.” AFGE knows otherwise, and adopted several resolutions in strong support of voting rights at the 2015 Convention.

AFGE also calls on Congress to better address the needs of the nation's disabled voters. In addition to experiencing difficulties acquiring state-issued photo identification, disabled voters remain underserved by voting equipment and locations. In 2002, Congress passed the Helping America Vote Act, which required fully accessible voting machines for people with disabilities by 2006. Often the issue is a lack of resources to provide the equipment and accessible voting locations disabled voters require. AFGE calls on Congress to provide adequate funding for voter access programs.

Equal Pay

AFGE strongly supports HR 1869, the Paycheck Fairness Act, introduced by Rep. Rosa DeLauro (D-Conn.). The bill would close loopholes that hinder the Equal Pay Act's effectiveness, prohibits employer retaliation against employees who share salary information among colleagues, and ensures that women who prove their case in court receive awards of both back pay and punitive damages. The Obama administration stated that a woman working full time still earns \$.79 for every \$1 a man earns. The gap is higher for working women of color. Working families can lose hundreds of thousands of dollars over the course of woman's lifetime due to the pay gap.

Conclusion

Application of civil rights protections in voting, employment, and other aspect of life requires constant vigilance and action by all workers. Federal government employees have a unique perspective from which to participate in the fight. AFGE is committed to voting and civil rights for workers, and the enforcement of those rights in the future.

Paid Parental Leave

Introduction

AFGE calls on the House and Senate to recognize the value of this benefit to the federal workforce and working families. The Federal Employee Paid Parental Leave Act (FEPPLA) should be advanced in the 115th Congress and sent to the president's desk for signature.

HR 1022/S 362, the Federal Employee Paid Parental Leave Act or FEPPLA, was introduced in the House by early supporter Rep. Carolyn Maloney (D-N.Y.) and in the Senate by Sen. Brian Schatz (D-Hawaii). If enacted, FEPPLA would codify much of the January 15, 2015, presidential memorandum updating federal leave policies by directing federal agencies to advance up to six weeks paid leave for the care of a newborn, newly-adopted, or newly-placed foster child. The presidential memorandum also allows advanced leave to be used for spouses and partners to care for newborn children and newly adopted or foster children. President Obama's actions were necessary because despite the protections of the Family and Medical Leave Act (FMLA), federal workers are among those who must choose between a paycheck and meeting their family obligations because they currently have no paid parental leave.

President Obama's memorandum also encouraged agencies to utilize Employee Assistance Programs to assist workers who need emergency care for children, seniors, and adults with disabilities. These policies recognized that the committed federal workforce is strengthened by helping employees balance their work and family obligations. The Trump administration budget proposal included a provision to create a federal paid family leave program that will provide families after the birth or adoption of a child with six weeks of paid leave. This proposal excluded fathers, single women, and adoptive and foster parents. This is not the respect for working parents AFGE demands.

The House and Senate versions of FEPPLA would provide federal employees six weeks of paid parental leave upon the birth, adoption, or fostering of a child. The Senate bill ensured that paid parental leave will extend to the nation's 45,000 TSO workforce.

All research on child development and family stability supports the notion that parent-infant bonding during the earliest months of life is crucial. Children who form strong emotional bonds or "attachment" with their parents are most likely to do well in school, have positive relationships with others, and enjoy good health during their lifetimes. These are outcomes that should be the goal for all children, including those of federal employees. Spending time with a newborn, newly-adopted, or foster child should not be viewed as a personal choice, or a luxury that only the rich should be able to afford. The only reason a new parent would ever go back to work immediately after the birth of a child, adoption or placement of a foster child – even with the protections of the FMLA – is because she or he could not do without his or her paycheck. And far too many workers in both the federal government and outside must make this terrible choice.

Congressional opponents of paid parental leave for federal employees have raised arguments largely based on cost, or notions that attempt to “rank” parental status. Unrealistic assertions about the ability of federal workers to accumulate and save other forms of paid leave continue. It is not difficult to speculate on the cost of failing to extend this benefit to new families. Productivity is lost when a parent returns to work too soon without securing proper daycare for a newborn or newly adopted child or when federal employees come to work when they are ill because they used all their sick leave during the adoption process or caring for a newborn. A lack of paid parental leave also negatively impacts the government when a good worker, trained at taxpayer expense, decides to leave federal service for another employer, often a government contractor, who does offer paid leave.

There is public–private employer agreement that improving the quality of life for working families is good policies. Growing numbers of private employers, including taxpayer-funded federal contractors, and most governments across the globe have acknowledged the benefits that accrue to employers when workers are provided paid new parent leave. Only 12 percent of U.S. workers have paid family leave and only 61 percent have paid sick leave according to the Bureau of Labor Statistics. The U.S. joins Papua New Guinea as the only countries with no statutory paid parental leave for workers.

FEPPLA Equally Recognizes Mothers, Fathers, and Families Formed Through Adoption

Some opposition to the Federal Employee Paid Parental Leave Act is based on irrelevant distinctions between adoptive parents, birth parents, mothers and fathers. The FMLA settled the question of whether anyone besides a woman who has just given birth deserves time off from work to care for a child. Attempts to create an employer-financed short-term disability insurance for federal employees as a means of providing paid maternity leave for birth mothers only solves part of the problem. Such a short-term disability insurance program would not provide a solution for new fathers or new adoptive parents and is therefore discriminatory as a solution to the problem of providing paid leave to new parents. The FEPPLA takes it as a given that all parents deserve equal treatment.

Congress Should Recognize the Benefits of Leave to Workers and Agencies

Congress must face the reality of the difficulties federal workers face in accumulating annual leave. Federal employees are only able to accumulate a maximum of 30 days of annual leave, not an adequate amount of time for providing care to a newborn or a newly adopted child. By most conservative estimates it would take a federal worker who takes two weeks of annual leave and three days of sick leave per year close to five years to accrue enough sick and annual leave to receive pay during the 12 weeks of parental leave allowed under FMLA. Even if a federal worker never got sick and never went on vacation it would take over two years to accumulate enough leave to pay for 12 weeks of parental leave. The alternatives suggested by federal employee paid parental leave opponents are far too simplistic and unrealistic to adequately address the problem. Federal workers who take unpaid parental leave too often fall behind on their bills and face financial ruin. Federal workers in their child-bearing or adopting

years, earn less, on average, than other federal employees. They are at a moment in their careers when they can least afford to take any time off without pay, and least likely to have accumulated significant savings.

In 2009 the Congressional Budget Office scored an earlier version of the Paid Parental Leave Act and determined that the bill was budget neutral. AFGE believes that the Paid Parental Leave Act will result in the retention of talented workers who would otherwise leave federal government work for private sector jobs because of the availability of paid parental leave. The federal government currently reimburses federal contractors and grantees for the cost of providing paid parental leave to their workers. Surely if such practice is affordable and reasonable for contractors and grantees, federal employees should be eligible for similar treatment.

Child Tax Credit

According to the Internal Revenue Service, family members can claim the child and dependent care credit if they paid expenses for the care of a qualifying individual to enable them to work or actively look for work. Families may not take this credit if their filing status is married filing separately. The amount of the credit is a percentage of the amount of work-related expenses paid to a care provider for the care of a qualifying individual. The percentage depends on your adjusted gross income. The total expenses that one may use to calculate the credit may not be more than \$3,000 (for one qualifying individual) or \$6,000 (for two or more qualifying individuals). If you received dependent care benefits that you exclude or deduct from your income, you must subtract the amount of those benefits from the dollar limit that applies to you. The GOP tax bill gets rid of flexible spending accounts that allowed some workers to put pre-tax money toward \$5,000 worth of child care costs annually. The average family's costs for child care in this country is anywhere between \$7,000 to \$20,000 a year. The Child Tax Credit increase of \$600 does very little to help working families cover the increasing costs of child care.

HR 1516/S 636, the Healthy Families Act

The working families coalition supported HR 1516/S 636, the Healthy Families Act, which would establish a true national paid sick days standard that allows working people to earn up to seven paid sick days each year. Rep. De Lauro and Sen. Murray introduced the bill in March. AFGE looks forward to working with the working families coalition in the future to ensure that future versions of this bill address the particular paid leave needs of federal workers and their families. We work with the cosponsors of the bill and the working families coalition to make sure the needs are adequately addressed in the future.

Conclusion

President Obama led by example by directing federal agencies to support their workers by providing paid leave for newborn, newly adopted, and newly placed foster children. We hope the Trump administration will follow suit and pass legislation in service to working families. AFGE knows that the federal government can only attract and keep the workforce necessary to carry out its mission by providing benefits on par with other large employers, including federal contractors. AFGE will again work with a coalition of work-family advocates to support the Federal Employee Paid Parental Leave bill. The benefits to children and families of six weeks of paid parental leave are enormous and long-lasting. AFGE strongly urges passage of the Federal Employee Paid Parental Leave Act during the 115th Congress.

The Equality Act

Introduction

In June 2015, the Supreme Court's decision in *Obergefell v. Hodges* established the Constitutional right of same-sex couples to marry in the United States. Although the marriages of same-sex couples must be afforded the same legal rights and protections as all other marriages, in eighteen states there are no protections against workplace or housing discrimination based on sexual orientation. In 2014, President Obama signed an amendment to Executive Order 11478 protecting federal workers from discrimination based on gender identity. Despite significant advancements, Congress failed to send President Obama legislation to ensure that all workers – federal and others – are treated equally. AFGE will fight for equality until those rights are achieved because we agree with former Attorney General Loretta Lynch that “the founding ideas that have led this country – haltingly but inexorably – in the direction of fairness, inclusion and equality for all Americans” will prevail.

HR 2282/S 1006, the Equality Act

The pursuit of justice has not always been easy or popular, but AFGE stands true to a basic tenet of fairness: all individuals should be judged by the same criteria. Accordingly, AFGE strongly opposes employment discrimination based on sexual orientation. Currently it is not a statutory civil rights violation to fire, deny housing, or educational opportunities to individuals simply because they are not heterosexual – and that is wrong. Although this protection has applied administratively to federal employees for decades, the Special Counsel under the Bush administration systematically denied federal workers a process to remedy discrimination based on sexual orientation. This demonstrated the need for statutory protections. The Equality Act, reintroduced by Rep. David Cicilline (D-R.I.) in the House, and Sen. Jeff Merkley (D-Ore.) in the Senate, provides important federal protections for the first time. The Equality Act extends discrimination protections against discrimination based on sexual orientation in employment, housing, and access to public places, federal funding, credit, education, and jury service based on orientation or gender identification. AFGE supports the Equality Act.

Conclusion

AFGE strongly urges House and Senate passage of the Equality Act.

Stopping Attacks on the Civil Service and Preserving Due Process Rights

Introduction

Democracy depends on an unbiased, nonpartisan civil service. The recent onslaught by some in Congress and supported by President Trump to erode civil service due process has alarmed federal workers and should alarm the public we serve. These efforts have no connection to the efficiency and effectiveness of government services that are a lifeline to the public. Services such as the administration of Social Security benefits, protections when we fly provided by Transportation Security Officers and employees of the Federal Aviation Administration, services to veterans, and safe food and water provided by the Food and Drug Administration and the Environmental Protection Agency actually save lives. If anything, due process deprivations create the likelihood that the federal workers who provide essential protections and service to the American public can lose their jobs for no good reason. AFGE calls on Congress to protect the public by protecting federal worker due process rights.

Federal worker due process are basically the following procedures for suspensions of 14 or more days, demotions, reduction in pay, and removal:

- Thirty days written advance notice of adverse actions. Employees are provided a clear explanation of the charges against the employee and information about the proposed penalty;
- Reasonable time (at least 7 days) to respond;
- The right to representation at every step of the process;
- A written decision within a reasonable period of time;
- Consideration of mitigating circumstances and penalties; and
- The right to appeal to an objective, agency outside of the agency, such as the Merit Systems Protection Board (MSPB).

Veterans Affairs employees have seen the harsh effects of due process rollbacks. Limits on due process Congress placed on VA senior executives extended to most of the VA workforce. Transportation Security Officers at the Transportation Security Administration (TSA) are currently subject to a personnel system created by TSA management that lacks negotiated grievance procedures or the right to appeal adverse actions to the MSPB. Morale among TSA employees is low and attrition rates are high. Both TSA and the VA have experienced issues with recruiting and retaining employees to perform the important tasks of protecting the flying public and serving our nation's veterans. Congress fails both the workforce and the public when federal workers lose protections against partisan bias, and the ability to appeal unfair decisions to the MSPB.

AFGE is committed to the preservation of civil service due process rights and will challenge efforts to deprive federal workers of those rights and replace the competitive civil service requirements of qualifications and experience with political patronage.

The History of Due Process Protections

Prior to the adoption of strong due process protections and the creation of a competitive civil service, all Executive Branch employees were considered to be “at will” and were largely appointed based on patronage principles (“to the victor go the spoils”). This resulted in a highly partisan civil service, which frequently changed when a new presidential administration took office. Unqualified people were appointed to offices that required more and more technical expertise in an emerging modern state.

The assassination of President Garfield in 1881 by a disappointed office seeker finally provided the impetus for passage of the Pendleton Act. In 1897, President William McKinley ordered that federal workers would only be removed for “just cause.” President John Kennedy addressed the patchwork of due process procedures that existed between the civil and excepted service in 1962 by extending appeal rights to the entire civil service.

A “merit-based” civil service system is a cornerstone of all modern Western democracies. It ensures that technical expertise is brought to bear on performing agency missions, without the threat of overt partisan agendas driving day-to-day operations.

The Civil Service Reform Act (CSRA) of 1978 provides the modern-day basis for both selection of most career civil servants, and their protection from unwarranted personnel actions, including removals (unwarranted = motivated by politics, bias, etc.). This law protects the public from having their tax dollars used for hiring political partisans for non-political jobs, and helps ensure the efficient and effective governance of federal agencies.

What is “Due Process”?

The CSRA provides that employees may be removed for either misconduct or poor performance. As defined by the Supreme Court, due process is required whenever the government seeks to deny a person of life, liberty or property. Federal worker Due Process is protected by the Fifth Amendment to the U.S. Constitution. Court decisions mandate that just cause is required to take significant action against appointments to service that are justified by a “fitness for office” requirement. This is achieved by informing employees of their alleged deficiency and the reason that management proposes to take an action against him or her (removal, demotion, suspension, etc.).

Unlike prior law, the CSRA provided more bases for managers to take action against federal employees.

The Role of the MSPB

An employee may appeal an adverse action to the Merit System Protection Board (MSPB), a third-party agency that hears and adjudicates civil service appeals. MSPB administrative judges (AJs) hear the matter in an adversarial setting and decide the case in accordance with established legal precedents. If dissatisfied with the AJ's decision, either the agency or the employee may appeal the decision to the full three-member MSPB.

Civil Service Due Process: The Facts

The CSRA does not give unfair advantages to federal employees.

1. Agencies generally prevail in 80 percent to 90 percent of all cases at the AJ level, and only about 18 percent of all AJ decisions are appealed. AJs are upheld by the full MSPB in about 80 percent of all appealed cases.
2. Agencies may remove an employee without notice if there is reasonable belief the employee's actions could lead to a conviction of a crime with a penalty of imprisonment.
3. An employee removed by an agency receives NO PAY during the appeal process.

It is very important to note that following an agency's adverse decision against an employee, the agency's decision is automatically effected (e.g., the employee is removed from the agency's payroll the day of issuance of the decision or within several days following the decision). An employee removed by an agency receives NO PAY during the appeal process.

The MSPB appeals process is efficient and expeditious. Most AJ decisions are rendered within 70 days of the filing of an appeal. An appeal to the full MSPB from an AJ decision takes about 210 days. (The agency's decision remains in effect during the entire appeals process.)

The importance of maintaining a nonpartisan, apolitical civil service in an increasingly partisan environment cannot be overstated. First, most federal jobs require technical skills that cannot simply be obtained through non-merit based appointment. Second, career employees must be free to perform their work in accordance with objective professional standards. Those standards must remain the only basis for evaluating employee performance or misconduct.

Calls to decrease due process rights are "dog whistles" for making the career service subject to the partisan or personal whims of supervisors and political appointees.

Whatever lack of public confidence in government exists today (usually because of political partisanship) will be magnified a hundredfold if all civil servants become de facto political appointees, serving at the whim of supervisors.

The *Conyers* Decision and Eligibility to Hold Noncritical Sensitive Positions

In 2014 the U.S. Supreme Court refused to hear the appeal of the Federal Circuit decision in the case of *Kaplan v. Conyers* (*Conyers*) upholding the ability of federal agencies to deny employees the ability to appeal agency decisions that they are no longer eligible to hold their jobs if the positions are changed from noncritical nonsensitive to noncritical sensitive. AFGE member Rhonda Conyers, an accounting clerk at the Defense Finance and Accounting Service (DFAS), was deemed ineligible to occupy her position even though the duties did not change and she had years of exceptional performance evaluations. Positions were designated noncritical sensitive by procedures established by the Office of Personnel Management and Office of the Director of National Intelligence without documenting how the interest of national security is furthered by denial of due process, the estimated number of positions subject to reclassification, or the cost of repetitive background investigation. Without Congressional intervention, thousands of hardworking public servants may be subject to arbitrary, unfair, or discriminatory, adverse actions without meaningful review. AFGE supports the reintroduction of legislation during the 115th Congress in the House and Senate that restores MSPB appeal rights to federal workers found ineligible to occupy a noncritical sensitive “national security” positions.

What to Expect in the 115th Congress

During the 114th Congress, Congressional Republicans, especially in the House, made it clear that they would work hard to weaken long-standing workplace due process rights for federal employees.

Congressman Todd Rokita of Indiana introduced a bill, HR 6278, the “Promote Accountability and Government Efficiency Act” (“PAGE Act”) that would make all federal employees hired a year after the effective date of the act “at-will.” The 115th Congress has already identified this as a “high-priority” by some in the House leadership.

The PAGE Act is a venomous assault on working families that would politicize the federal government’s workforce and give political appointees and managers who serve them unchecked authority to fire, demote, and discipline employees at will. It would remove the checks and balances that keep everyone honest. It is the antithesis of government accountability.

The PAGE Act’s “at-will” employment provision would mean that federal workers could be suspended or fired for any reason or no reason. It also would allow politically appointed agency heads to immediately suspend current workers, deny them pay, and give them just 10 days to appeal.

The PAGE Act will **reduce** accountability and government efficiency by allowing supervisors to arbitrarily fire and discipline employees who speak up against mismanagement and wasteful spending. The bill actually states that a federal employee can be fired for no cause or **bad**

cause. The bill will also make it harder for the federal government to attract and retain the top-quality professionals the American people expect.

In addition, the PAGE Act would:

- Deny any pay adjustment whatsoever to workers who fail to receive a performance rating above “fully successful” in a new, management-designed rating system that would inevitably allow subjectivity, favoritism, and politics to influence ratings.
- Allow the government to deny earned pensions to any current or future employee who is convicted of a felony.
- Eliminate an employee’s right to representation at the worksite by no longer allowing union representatives to resolve disputes, address issues of discrimination or retaliation, or propose improvements in the workplace during the workday.
- Allow agencies to continue workplace investigations even after employees have quit or retired.
- Allow political appointees to demote career executives and reduce their pay without cause.

In essence, the PAGE Act would give political appointees and their subordinates unchecked authority to target workers at random.

The PAGE Act is an example of the most extreme attempt to politicize the civil service, taking us back to the 19th century before enactment of the Pendleton Act in 1883. The services that federal employees provide are too important to the American public to allow this to happen again.

HR 559, the Modern Employment Reform, Improvement, and Transformation (MERIT) Act of 2017.

Without any evidence that the of agency failures to serve the public or any negative evidence that due process somehow interferes with mission of federal government agencies, Rep. Barry Loudermilk (R-Ga.) kicked off the 115th Congress with the introduction of the Modern Employment Reform, Improvement, and Transformation (MERIT) Act of 2017. If enacted the bill, which currently has 36 Republican cosponsors, would expedite the firing of federal workers by depriving them of due process procedures.

In summary, the MERIT Act takes every bad provision in previous VA employee due process bills and applies them to the rest of the federal workforce. The MERIT Act exposes the civil service to prejudice partisan bias and incompetent management. The MERIT Act:

- Limits written notice of a proposed personnel action and the employee response time to no more than 21 days.
- Places a 7-day limit on filing MSPB appeals.

- MSPB jurisdiction is further limited to removals.
 - MSPB decisions must be rendered within 30 days or the agency decision will be considered final.
 - The MSPB cannot stay removals except for those involving whistleblower retaliation or retaliation filing an appeal, complaint, or grievance.

This odious legislation has the potential to be the most damaging to the civil service since its inception.

AFGE is working to turn back any momentum the MERIT Act may achieve and is working to form a bipartisan coalition in support of federal worker due process rights.

Conclusion

AFGE strongly opposes legislative, judicial, and/or any administrative attempts to deny untold numbers of federal workers their due process rights. The civil service must not return to the “spoils system” of the 19th century. Federal appointments should be based on merit and objective standards. In addition, continued service should be objective and merit-based, with full due process rights to ensure that arbitrary, capricious, and politically motivated retaliation cannot occur. Recent Congresses have often claimed that they are friends of “whistleblowers.” However, the proposals before the 115th Congress would spell the end of whistleblower rights, and invite outright retaliation and other politically motivated behaviors.

The PAGE Act and MERIT Act are an example of the most extreme attempt to politicize the civil service, taking us back to the 19th century before enactment of the first federal worker protection in 1883. The services that federal employees provide are too important to the America public to allow this to happen again.

Every day, federal workers provide vital services to communities in your congressional district and the PAGE and MERIT acts will only make it more difficult for federal employees to patrol our borders, provide our veterans with the care they have earned, ensure that seniors and disabled individuals receive their essential support, keep our communities safe from dangerous criminals, keep travelers safe, and keep our military supplied and ready.

Equal Employment Opportunity Commission

AFGE Council 216 Will Urge Congress to Ensure that EEOC Focuses on Stopping Discrimination Not Dumping Cases from its Backlog

Summary

AFGE's National Council of EEOC Locals, No. 216, is proud to represent investigators, attorneys, mediators, administrative judges, and other Equal Employment Opportunity Commission (EEOC) staff who contribute to job creation by enforcing Title VII of the Civil Rights Act of 1964 and other key civil rights laws, which protect against discrimination on the job based on race, religion, color, national origin, sex, age, disability, and genetics. EEOC continues to be hobbled by budget constraints, inadequate numbers of front-line staff, low morale, and a failure to implement common-sense efficiencies.

Inadequate front-line staffing harms EEOC's ability to carry out its civil rights mission. EEOC ended FY17 with only 2,082 FTEs nationwide. EEOC projects that in FY18, investigator staffing will sink to 558. EEOC pretends its digital charge system (DCS) is the answer to staffing shortages and ignores the need for adequate front-line staff to process charges, whether they arrive as a digital or hardcopy charge.

EEOC ended FY17 with a backlog of 61,621 cases and touts this backlog reduction. Yet, this is still a terrible number of individuals stuck waiting. And it should raise alarms and red flags over how EEOC could shed so many cases from its backlog without deterring filings and dumping cases. Unfortunately, both shortcuts are encouraged by EEOC's new evaluation system.

Recent headlines expose EEOC's poor staffing and its inability to provide justice for workers. More Americans are taking note of EEOC's important mission and its inability to provide real help to victims of discrimination. The public waits 10 months on average for EEOC to process a case. Just to have a call answered by the in-house call center can take 60 minutes. After facing these obstacles, workers who wait patiently for help may be victimized by EEOC's quest for arbitrary numbers as little to no investigation occurs and cases are closed. EEOC is offering its successful mediation program to fewer workers and their employers.

For FY19, Council 216 will urge Congress to increase EEOC's funding to at least the FY10 funding level of \$367 million, to allow for limited front-line hiring. AFGE Council 216 will request that Congress review EEOC's new performance system to determine any harmful impact on enforcement and benefits for the public. AFGE Council 216 will press EEOC to avoid furloughs by implementing real efficiencies, such as the union's dedicated intake plan, reducing supervisor to employee ratio, cutting management travel, eliminating contracts for work that can be performed in-house, and to improve and morale to reduce costly turnover.

Discussion

1. Inadequate Front-line Staffing and High Workloads Continue to Plague the Public and Impact Civil Rights Enforcement; Agency Downsizing Would Be Disastrous.

- *AFGE Council 216 will lobby Congress to adequately fund EEOC, not downsize the already small agency, and ensure that EEOC prioritizes backfilling front-line staff.*

This year's news headlines about sex discrimination in the workplace bring renewed attention to the EEOC. Enforcing laws to prevent employment discrimination requires front-line staff. EEOC must have the resources to effectively deter and remedy discrimination. Ensuring Americans have a fair shot to get and keep their jobs provides a healthy economy for all.

The FY18 continuing resolution funds EEOC at \$364.5 million, the fifth straight year of level funding. To provide perspective, EEOC's FY18 funding is less than EEOC's FY10 budget of \$367 million. Meanwhile, inflation has increased the price of airline tickets, postage, leased space, etc.

EEOC's chronic flat funding hits staffing levels hardest. EEOC ended FY17 with staffing at an historic low of 2,082 employees nationwide. EEOC's workforce has steadily plummeted from FY11's 2,453 employees. Attrition, hiring freezes, budget cuts, and level funding have taken their toll.

EEOC's Strategic Enforcement Plan FY2017-2021 recognizes that "demand for EEOC's services continues to outpace our resources." Investigators are the primary resource in the agency's efforts to process discrimination claims. However, investigator staffing has sunk from a high of 917 in FY01 to approximately 551 in FY16. EEOC's FY18 budget reported that there would be a net attrition of investigator positions for this fiscal year.

EEOC's dismal average case processing delay is 10 months, during which time jobs are lost. The public is learning how harassed workers are fired or forced to quit and those brave enough to raise a complaint are retaliated against. Likewise, applicants are turned away for discriminatory reasons and qualified individuals with disabilities are not accommodated.

While EEOC's mediation program receives high marks from participants, low current staffing levels mean mediators conducted only 9,476 mediations in FY17. This is far fewer than 11,513 just four years ago, in FY13.

EEOC's in-house call center shrunk to approximately 30 intake information representatives (IIRs) from 65. The IIR shortage means the public waits almost 60 minutes, and often longer, to speak to a live person.

EEOC receives close to 18,000 Freedom of Information Act (FOIA) requests annually, which are processed by an estimated 39 full-time staff. The FY17 Chief FOIA Office report attributed an

increase in the FOIA backlog to the loss of staff, technological issues, and an increase in complex FOIA requests.

Haphazard vacancies disrupt operations. Front-line staff who depart are not replaced and these haphazard vacancies disrupt operations. The few clerical staff may leave for promotional opportunities elsewhere. Professional staff spend valuable time at the copier, scanner, postage meter and covering the front desk. Senior investigators retire and their cases get distributed to those few who are left, driving up caseloads and aged inventory. EEOC transfers thousands of old cases across the country from short-staffed offices to those with a few more bodies.

Transferred cases are often old and difficult to investigate from another state. Offices that receive these old cases simply close them to meet arbitrary performance requirements and boost the bottom line. The public, often far across the country, simply receives notice that the case has been closed.

These numerous concerns will be exacerbated if plans to downsize the federal workforce are applied to this historically small civil rights agency, with staffing for its current workforce at a record low.

When EEOC limits hiring, typically high-level management positions are reserved to be first filled. A more strategic and efficient operational plan would be to prioritize any hiring for front-line backfills to serve the public. This way, front-line employees can remain focused on their duties and not pulled away to cover other responsibilities.

For FY19, Council 216 will urge Congress to support EEOC's jobs focused mission by increasing funding to at least \$367 million, i.e., the FY10 funding level. Council 216 will urge Congress to direct EEOC to use any limited hiring to backfill front-line staffing vacancies. Council 216 will ask Congress to spare the small EEOC from downsizing, as current record-low staffing negatively impacts service to the public.

2. As #MeToo Raises EEOC's Profile, the Public Seeks Help from a Short-staffed EEOC, which Leaves Them Waiting, Closes their Files, and Cuts the Number of Cases Eligible for Mediation.

- *AFGE Council 216 will call for a review of EEOC's new performance management system, which pressures staff to deter, downgrade, and close discrimination charge filings.*

EEOC's backlog of discrimination charges has stubbornly stood at over 70,000 cases for a decade. Except for 2011-2012, when new front-line staff came on board, the backlog typically increases each year. But in FY17, EEOC announced a miraculous 16 percent reduction in the backlog from 73,508 cases to 61,621 cases.

Realistically, justice could not have been served for 12,000 Americans complaining of workplace discrimination who were removed from EEOC's books in FY17. The way this was accomplished and the impact on the public raises alarms and red flags. Each case in the backlog represents a

worker waiting for EEOC's help on a claim of discrimination. Justice delayed is a problem, but it's still better than justice denied.

EEOC attributes the jolting drop to prioritizing the backlog and sharing strategies between offices, but these are not new. The agency also points to its new digital charge system, but this should eliminate paper – not cases.

A straight line can be drawn from EEOC's first-time case processing quotas in evaluations to the drastic shift in the backlog numbers. EEOC set a requirement to reduce to an arbitrary percentile the number of cases over a certain number of days old. To get a passing grade, EEOC relentlessly pressures investigative staff to simply close cases.

Further, pushing staff to deter charges at intake depresses charge receipts. Requiring staff to arbitrarily triage more complaints as "C" charges for dismissal, reduces the number of "B" charges eligible for mediation and prevents parties from participating in EEOC's successful mediation program.

Likewise, EEOC's new performance evaluations pressure administrative judges to rush initial conferences, eliminate discovery, and issue summary judgment and bench decisions that short-circuit the rights of federal complainants, particularly those without counsel.

Private- and federal-sector workers want both a fair and timely complaint process, not just a quick closure. EEOC's answer to short-staffing should not simply be a rush to dump old cases. AFGE Council 216 will urge Congress to push the pause button on EEOC's new rating system until a review can assess its impact on appropriate charge processing and service to the public.

3. EEOC Should Improve Its New Digital Charge Initiatives to accomplish the Purported Goal of Efficiency.

- *AFGE Council 216 will lobby Congress to improve DCS to Support Constituents*

In October 2018, EEOC went nationwide with Phase 2 of its Digital Charge System (DCS), which steers workers to use an online system. The system pushes workers through questions about their work situation. If criteria are met, these workers can file an online inquiry and schedule an interview through an online appointment system. Generally, expanding technology enhances efficiency and access. However, EEOC rolled out this "efficiency" which provides limited substantive assistance to the public and forces more work on the agency's already overwhelmed staff despite adding no people resources.

DCS can act as a deterrent to workers trying to get help from the EEOC, especially those to who do not have computers (DCS does not have a version for mobile devices), are not computer literate, do not speak English, or have intellectual or physical disabilities that would interfere with a self-help online process. Workers must respond correctly to jurisdictional questions regarding statute of limitations and employee thresholds to proceed. Some may self-select out due to the length of the process or being discouraged by the

system indicating that they are probably ineligible, even when that is not necessarily the case, e.g., the 15-employee minimum can include other locations.

DCS generates more work for EEOC staff, rather than timesaving efficiencies. DCS was built on a preexisting electronic record system (IMS) platform with separate systems which are not integrated. Staff spend too much time downloading, saving, and uploading from one system to the other. Key paper forms must be printed and mailed. Hard copy documents often must be scanned, but there are not enough scanners. EEOC staff also expend time hunting down the correct employer email address. Because many individuals do not complete all online information sections, EEOC staff only receive barebone information before an interview. Additional work needs to be done on a reminder/auto-confirmation system to cut down on high and disruptive no-show rates.

Another new digital system provides complainants the ability to track online, the status of their charge. Considering the average processing delay of 10 months, it merely provides a way to track EEOC's bottlenecks, likely leading to constituent services calls. The public may even be worse off.

EEOC must improve these digital systems so that they support front-line staff and serve the public. Even then, EEOC must prioritize front-line staff so that when the public pushes "send" there is someone left at the agency to receive and assist with these charges and inquiries. Finally, EEOC must retain access for those who do not use computers or cannot access one for online charge filing. Mobile access must be mandated.

4. EEOC Should Implement Real Efficiencies and Cut Costs to Prioritize Front-line Services and Avoid Furloughs if Sequestration Does Return in Full Force in FY19

- *AFGE Council 216 will lobby Congress to make EEOC implement efficiencies to prioritize front-line staff.*

EEOC is expanding online access, but missing efficiencies that would make a real difference. EEOC should prioritize front-line services, prepare for the return of sequestration in FY19 and save money to avoid furloughs by cutting unnecessary expenses/travel and working smarter.

- **EEOC Should Adopt a Real Efficiency: The National Intake Plan**

AFGE Council 216's Full Service Intake Plan addresses the efficient use of resources and the backlog, both of which benefit the public. The heart of the plan is utilizing trained investigator support assistants (ISAs) and other support staff grades (GS-5 through GS-9) in dedicated units to advance the intake process from pre-charge counseling through charge filing. Such units also address the flood of intake questionnaires and long hold times for the public. Investigators, who now must stop investigating their cases to regularly rotate into intake, would be able to focus on their caseload to reduce the unacceptable 61,621 case backlog and 10-month wait times.

AFGE Council 216 first submitted the plan eight years ago. EEOC's failure to implement the plan or even a pilot remains a missed opportunity that continues to harm the public. The intake plan would achieve EEOC's Strategic Plan emphasis on consistent implementation of customer service goals and the priority charge handling process (PCHP). The intake plan could also be a means of using digital initiatives to make EEOC work smarter.

AFGE Council 216's National Intake Plan also helps the decimated Information Intake Group, which was based on the premise of having 65 Information Intake Representatives (IIRs) but is down to approximately 30 IIRs. Oppressive quotas mean high turnover rates for IIRs. The few remaining IIRs report that callers are angry and frustrated after hour long waits. In addition, e-mails often pile up.

Initially, the plan could be piloted. Existing ISAs and support staff could be coupled with IIRs and trained to create efficiencies without additional expense. These dedicated intake units would both answer phones and draft charges where appropriate, rather than bouncing the person to DCS or to an EEOC investigator. The intake units could also receive the new DCS online pre-charge inquiries and appointment requests, to conduct interviews draft charges where appropriate and send appointment reminders.

- **EEOC Must Prioritize Front-line Staffing**

It is now critical that EEOC implement real efficiencies and push resources to front-line staff. First, any hiring should be used to backfill frontline vacancies. Promoting staff to management without ensuring the resulting vacancies are backfilled exacerbates the impact of lack of front-line staff.

Second, by filling more GS-13 Lead Systemic Investigator positions, EEOC could retain talent and match staff to its stated emphasis on systemic cases. EEOC increased the number of lead systemic investigators in FY15 from 9 to 18 nationwide, and "more" in FY16, but this remains a small number given the relevant workload and is less than one per office.

Third, a budget-neutral way for EEOC to increase front-line staff is to reduce its current top-heavy 1:6 supervisor to employee ratio. The EEOC's Republican leadership in 2006 supported a 1:10 ratio, yet this reasonable goal has never been realized. In FY15, the last time EEOC provided the information, the bloated ratio was one supervisor for every six employees. EEOC continued to hire top managers before the start of the FY17 freeze. Flattening the agency would make it more efficient by focusing budget dollars on less costly front-line staff and would reduce micromanagement.

Finally, EEOC should smart staff offices in the manner recommended by Council 216's People First Plan. The premise of the plan is to rely on building blocks of staff. For instance, no EEOC office should have less than one full investigative team or block, which would consist of a supervisor or team leader, 10 investigators, two investigator support assistants, and one OAA support person. Smart staffing can best utilize hiring to efficiently address priorities in offices

that will continue to suffer arbitrary vacancies caused by attrition and the impact of the anticipated hiring freeze.

- **EEOC Should Improve Retention and Avoid Costly Staff Turnover by Fulfilling its Role as the Model Employer.**

Sadly, EEOC is a long way from realizing its goal to be the “model employer.” EEOC should limit costly turnover by acting to improve employee working conditions and morale.

EEOC demonstrates disdain toward its labor management obligations. Repeatedly EEOC has intentionally disregarded its statutory obligation to negotiate impact and implementation, including, over its midyear release of its controversial new performance standards; with a new table of penalties and unilateral changes to voluntary dues processing. In each of these instances, the union filed unfair labor practices and the FLRA issued complaints. An ALJ even ruled in favor of summary judgment against EEOC on the table of penalties violation, with a scathing decision that will hopefully be a wake-up call the “Model Employer”:

[T]he arguments presented by the Respondent [EEOC] to justify its failure and refusal to bargain over the impact and implementation of a Table of Penalties applicable to all employees demonstrates either an ignorance or a complete misunderstanding of the relevant federal labor law. Such flawed reasoning would be troubling were it exhibited by a neophyte attorney, that it is proffered by the Agency’s Employee Labor and Relations Division Director gives reason to question, whom within the EEOC could advise the Agency about its bargaining obligations under the statute.

EEOC also must stop delaying, denying, and failing to participate in the interactive process on reasonable accommodation requests. Likewise, EEOC often fails to comply with the FMLA. Another issue is EEOC botching the onboarding of veterans, such as providing appropriate military service credit for retirement and leave benefits.

EEOC should turn its recent efforts to “reboot” harassment prevention for the public to its in-house employees. Not only do EEOC employees complain of harassment and retaliation, but they are demoralized as they see their employer focus on initiatives, such as civility and bystander training, that do not apply in-house.

Although full reports are available, EEOC has released only aggregate scores from the FY17 Federal Employee Viewpoint Survey (FEVS). AFGE Council 216 will continue its fight to see and expose the full scores to address underlying issues on specific questions and offices with poor scores. Consistent areas of concern have been EEOC’s below government average score on this FEVS inquiry: “I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.” It is a sad irony that retaliation for protected activity is a basis that EEOC enforces. Other below average scores highlight the unreasonableness of workload and sufficient resources, “people, material, budget,” to get the job done.

EEOC's mostly salient management committee (BEST), sends out a flurry of emails immediately before the new survey, to drive up participation rates. However, the Union encourages EEOC to focus year-round on substantive areas that impact morale and retention. EEOC admits that EEO complaints are on the rise. Harassment, hostile work environment and retaliation, likely are issues, as those show up as problems in the EVS. While waiting for staff to retire may make a difference, this Model Employer must be proactive both to address and prevent these EEO violations. By doing so, EEOC can benefit from reduced turnover costs, greater employee engagement and innovation, and other efficiencies of a satisfied workforce.

- **EEOC Should Eliminate Expendable Contracts and Unnecessary Management Travel**

EEOC should eliminate contracts for work that is or could be performed in-house. EEOC employs mediators for its successful mediation program. EEOC should not pay contract mediators for work that can be performed by in-house mediators, especially those conducted within a 100-mile radius of an EEOC office and when EEOC reduced the number of eligible mediation cases. Also, EEOC could start an expanded voluntary telework program for mediators to extend their geographic reach by being based in or assigned to serve certain regions.

EEOC pays contract OIT staff and contract paralegals for functions that can be performed in-house.

EEOC habitually pays contractors to evaluate its work practices. The reviews can and should be performed by the Office of Inspector General (OIG). Instead, the OIG farms out these projects, it simply cannot afford:

- OIG contracted with the Urban Institute to conduct an evaluation of the agency's Outreach and Education Program for a report issued March 8, 2015.
- EEOC's OIG contracted a "Review of Evaluations," dated April 9, 2013, which was panned by EEOC's Office of Research, Information and Planning: "[T]he report is not really research per se but a review of relevant literature that is generally used to develop research and generally not used to make recommendations."
- EEOC resorted to three different contracts to develop an improved performance management program. EEOC rejected the contract versions as unusable. Unfortunately, the controversial new plans EEOC rushed out instead contain arbitrary numbers the agency refuses to explain or reveal the subject matter experts.
- EEOC wastes money for managers to travel to meetings and for office visits even though offices are equipped with video teleconference (VTC) ability, new television monitors and updated IT capabilities.
- Management has largely ignored the recommended protocol of a cost efficiency committee to purchase individual non-refundable airline tickets for a conference, instead purchasing more expensive government reserved contract carrier tickets.

5. Federal Employees Must Retain Rights to Discovery and Full and Fair Hearings

- *AFGE Council 216 will demand that federal employees not lose rights to discovery and hearings as EEOC implements changes to EEO processes.*

AFGE Council 216 will continue to ward off various schemes that threaten federal workers' rights to discovery and a full hearing. The most recent threat comes from new administrative judge performance plans that create a strong pressure to find more often in favor of agencies. This is accomplished through 60-day case categorization requirements that are a recipe for denying discovery. Discovery is the only way to keep the EEOC process fair. The new standards also press unnecessary quick closures through micromanaged summary judgment and bench decisions. The standards do not consider the complexity of cases, varying caseloads, and lack of clerical and paraprofessional support.

EEOC's case management and triage systems threaten judicial independence in favor of numbers. AFGE Council 216 will continue to oppose elements of the Federal Sector Quality plan that pose threats to judicial independence and federal employee rights. Specifically, administrative judges should retain independence to categorize cases, provide for and manage the discovery process, and not be forced to meet arbitrary numbers for case processing activities.

AFGE Council 216 will keep a watchful eye for any activities in response to an advance notice of proposed rulemaking (ANPR) regarding the federal sector EEO complaint process, issued by EEOC in February 2015. Questions were included that should raise alarm bells for those concerned about the rights of federal employees to seek redress for claims of discrimination: "Should the hearing stage be retained?" and "If the hearing stage is retained as a matter of right, should the administrative hearing take place after an investigation?" Moreover, efforts to move the hearing to a different stage in the process are a thinly veiled effort to foreclose discovery. Arbitrary actions should not strip federal employees of their rights to work free from illegal discriminatory practices.

As of FY15, EEOC had only 69 administrative judges, and with very few additional hires, that figure is likely the same today. AFGE Council 216 will continue to address the loss of EEOC administrative judges (AJs), caused by inadequate support from paralegal or writing attorneys, threats to judicial independence, and the absence of administrative law judge (ALJ) classification available at other agencies. EEOC's Strategic Plan acknowledges that: "In addition to improving systems and streamlining procedures, additional resources would be necessary for EEOC to increase timeliness to its federal sector program by reducing the ratio of hearings to administrative judges and the ratio of appeals to attorneys." AFGE Council 216 will maintain pressure to backfill federal sector AJ and writing attorney positions and provide them support staff.

AFGE Council 216 supports changes that can be accomplished under the regulations and statutes. AFGE Council 216 will continue to urge the chair to ensure EEOC AJs are competitive with judges at other agencies by addressing classification and regulatory issues that deny these

employees the judicial independence necessary to adjudicate and provide appropriate relief for federal sector claimants. Subpoena authority will continue to be sought to improve the due process afforded to both federal sector claimants and federal agencies.

6. EEOC's Draft Strategic Plan Raises Concerns

- *AFGE Council 216 Will Fight for the Plan to Best Serve the Public*

EEOC recently posted for comment a draft Strategic Plan for 2018-2022. Rather than advocate for needed resources, the plan focuses on prioritizing limited resources.

To accomplish this the Strategic Plan has tables full of "metrics," often listed as "X percent," apparently to be determined after the public review process. The plan also commits to integrate strategic plan goals with performance standards. Arbitrary numerical and percentage requirements are inserted throughout the new performance standards. EEOC's drive for numbers never has served either its employees or the public well, as large numbers of cases have been closed to meet arbitrary numbers, only to see those numbers climb dramatically in the following months. The public deserves more than a pendulum ride. AFGE Council 216 will continue to oppose turning EEOC's complex work of enforcing discrimination into a widget scorecard.

The Strategic Plan continues to emphasize systemic cases. Yet, without the efficiencies suggested by the union, this plan is rife with problems. First, systemic cases are very labor and resource intensive. EEOC's plan does not call for adding needed front-line staff, like additional systemic investigators, paralegals and investigator support assistants. Instead, EEOC relies on band-aids like "one EEOC" and a national law firm as euphemisms for pushing work from one overwhelmed office to another. AFGE Council 216 supports a more strategic and coordinated approach to systemic cases to better utilize existing resources. Drastic reductions in backlog numbers sound good, but fail to provide justice for workers.

The Union's Accomplishments

In 2017, AFGE Council 216 aggressively raised awareness with Congress and the civil rights community of what EEOC needs to succeed. The promise of America is not fulfilled when discrimination prevents people from working and supporting their families.

Results of AFGE Council 216's efforts this year:

1. Individuals finally received some compensation from the 10-year-old national overtime grievance EEOC settled for \$1.53 million and other relief.
2. AFGE Council 216 successfully negotiated MOUs to address the impact on the bargaining unit of EEOC's new Digital Charge System.

3. AFGE Council 216 won on summary judgment on unfair labor practice charge filed against EEOC for refusing to negotiate the impact of a new table of penalties.
4. FLRA issued a complaint on AFGE Council 216's unfair labor practice against the EEOC for unilaterally changing the process for deducting union dues without negotiating impact. The case had been settled.
5. FLRA issued a complaint on AFGE Council 216's unfair labor practice against the EEOC for refusing to negotiate the impact of new performance standards. A settlement was reached but requires negotiations.
6. AFGE Council 216 conducted a member survey of EEOC's new performance management system and obtained critical employee feedback about incorporated quotas, confusion over how employees will be monitored, and the agency's refusal to address the problems.
7. A controversial plan to have EEOC absorb DOL's OFFCP received pushback from a range of employer and employee stakeholders and was ultimately rejected by Congress.
8. AFGE Council 216 provided written testimony for the House CJS Subcommittee open witness hearing in support of an increased budget.
9. Appropriators ultimately marked up EEOC's budget at \$364.5 million for FY17, i.e., level funding with no cut.
10. Both House and Senate Appropriators included report language requiring EEOC to prioritize, not dump, the backlog and retain oversight of any reorganization.
11. AFGE Council 216 continues its vigorous battle for accommodations for disabled employees, whose requests have been fought, ignored, or delayed by the agency. Likewise, AFGE Council 216 fights for the agency to properly honor FMLA requests. AFGE Council 216 has helped vets get military service credit for their leave and retirement benefits. Council 216 will continue requiring that EEOC live up to the standards the law imposes on other federal agencies.
12. AFGE Council 216 kept up the pressure on EEOC's administration to act on the union's National Intake Plan.
13. AFGE Council 216 responded to EEOC's Sexual Harassment Reboot, and advocates to improve the internal harassment program and provide the same recommended civility and bystander training for EEOC's employees and managers.

14. AFGE Council 216 successfully advocated for EEOC's newest draft strategic plan to include constructive labor management relations, improved morale, and model workplace language.
15. AFGE Council 216 fights every day to improve the working conditions that have led to overall poor morale and poor responses to certain key questions in the annual Federal Employee Viewpoint Survey.

AFGE Activists should urge their lawmakers:

- To avoid or limit an across the board hiring freeze which would be detrimental to efficiently carrying out EEOC's civil rights mission.
- To request FY19 funding for EEOC of at least \$367 million, i.e., the agency's FY10 budget.
- To pause EEOC's new performance plans until they can be reviewed to determine the impact on the public, including deterring and closing cases and reducing cases eligible for mediation.
- To direct EEOC to focus available hiring, up to the staff ceiling, on front-line staff to help workers, whose cases are trapped in EEOC's backlog and are waiting on average 10 months to receive help.
- To smart-staff EEOC's front lines.
- To permanently end sequestration, which exacerbates EEOC's already diminished ability to enforce workplace discrimination laws.
- In the event of budget cuts, to make EEOC avoid or reduce furloughing front-line staff by eliminating unnecessary contracts and travel and implementing efficiencies.
- To reduce costly turnover by improving poor morale reported on federal surveys, including applying its harassment reboot in-house, taking a stand against harassment, and providing reasonable accommodations to disabled employees.
- To require EEOC to quickly implement Council 216's Cost-Efficient Intake Plan to provide timely and substantive assistance to the public.
- To direct EEOC to flatten the supervisor to employee staffing ratio to 1:10. EEOC's last reported the ratio to be 1:6.
- To demand that EEOC comply with applicable agency, regulatory, and Congressional oversight requirements before expanding its federal sector case management pilot or making changes to 1614.
- To demand that EEOC provide a plan, supported by federal sector constituency groups to ensure judicial independence and subpoena authority in the federal hearings process.
- To fight to ensure that EEOC's Quality Enforcement Plan best serves the public by genuinely focusing on quality rather than numbers.

One America, Many Voices Act

Introduction

According to the U.S. Census Bureau, 60.6 million people currently living in the U.S. speak a language other than English. Of those, 22.4 percent self-reported that they either did not speak English “very well” or “at all.” They are considered linguistically isolated, meaning that they lack a command of the English language and have no one to help them with language issues on a regular basis. A growing number of federal employees provide services to the linguistically isolated by using multilingual skills in their official duties to explain application processes, determine benefit eligibility and provide public safety. Increasingly, the multilingual skills of federal employees are an absolute necessity to serve the public and accomplish the mission of federal agencies. Yet there is no standard across federal agencies to provide compensation for federal workers who make substantial use of their multilingual skills in the workplace.

The “One America, Many Voices” Act

During the 111th Congress, Rep. Mike Honda (D-Calif.) introduced the “One America, Many Voices” Act to ensure that all federal workers who use their multilingual skills in the workplace on a regular basis are fairly compensated. The bill would have amended 5 U.S.C. §5545 by adding multilingual skills to the list of factors for which a differential might be paid. Current law provides for a pay differential to federal workers for night, standby, irregular, and hazardous duty work. The modification authorizes the head of an agency to pay a 5 percent differential to any employee who makes substantial use of a foreign language in his or her official duties.

The necessity for a multilingual pay differential has been recognized by federal law enforcement agencies. Agencies such as the Border Patrol recognize multilingual skills through either a pay differential or bonuses. Other agencies require employees to have multilingual skills in certain languages without a bilingual pay differential while other employees serving other populations with limited English proficiency in the same manner are not required to speak a second language and are provided interpreters. Although employees who can communicate effectively with the populations federal agencies are mandated to serve greatly assist the agencies in carrying out their respective missions, there is no standard for compensating those skills across the federal government.

In addition to adequately recognizing the skills of current federal workers, a multilingual pay differential would also help to entice young workers with multilingual skills into federal civil service. Although the private sector often pays a substantial dividend for the ability to speak fluently more than one language, many young workers with a commitment to their communities would be more likely to consider federal employment as a career option if they were to receive adequate compensation for their much sought-after language skills.

A number of federal agency offices are located in areas with a large and growing population of citizens with limited English-speaking ability, such as California, New Mexico, Texas, New York, and Hawaii. An August 2013 report of the Census Bureau notes the percentages of people with limited English abilities increased in Alabama, Kentucky, Mississippi, Arkansas, and Oregon. Multilingual skills will become increasingly necessary to foster client communication for effective delivery of services and for the successful function of federal agencies. If enacted, the One America, Many Voices Act would provide both a mechanism to pay current federal workers using their bilingual skills on the job, and work as an incentive to aid in the future recruitment of bilingual applicants.

Conclusion

AFGE will work for the reintroduction of the One America, Many Voices Act or similar legislation in the House and Senate during the 115th Congress. Lawmakers elected since 2010 have brought an increase in the number of members of both chambers who were raised in homes where a language other than English was spoken. This increased diversity should yield support for bilingual skills compensation legislation. The benefits of a more efficient government and better services to the public will far outweigh the modest cost of paying this differential.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, DISTRICT 14

District of Columbia Issue Paper

2014 Revised Abolishment Act and Conforming Amendments

In 2006, Congress extended the Abolishment Act (D.C. Code §§ 1-624.08 *et seq.*), effectively allowing the D.C. government to define the procedures governing any RIF initiated by an agency head by limiting the procedures to which an aggrieved employee is entitled and rendering those procedures nonnegotiable. Although this was a misguided effort by Congress to help D.C. government reduce costs, agencies heads exploited the Abolishment Act often using it as a means to rid their agencies of unpopular employees. The use of such improperly targeted reductions in force is an abuse of authority and does not serve the interests of the District. As a result, D.C. workers covered by a collective bargaining agreement have been unfairly deprived of any meaningful opportunity to assert the rights that they were intended to have under the District of Columbia Comprehensive Merit Personnel Act.

AFGE is requesting amendments to Subchapter 24 and Subchapter 6 of the Comprehensive Merit Personnel Act. The original iterations of the Abolishment Act, were limited in time to single fiscal years. More than 15 years ago, the Abolishment Act was made to apply beyond a single fiscal year.

AFGE recognizes that the District should have an interest in maintaining a stable and well-trained workforce with a wealth of institutional knowledge. Therefore, the time has come to change the Abolishment Act to reflect the District's complete emergence from the Control Board era and to eliminate the vestiges of the emergency that no longer exists.

District Accountability and Attorney Fees

Amendments to the Comprehensive Merit Personnel Act, D.C. Code §§ 1-601.01 *et seq.*, are intended to provide D.C. employees with similar protections to those they enjoyed under the federal Back Pay Act, 5 U.S.C. § 5596. Specifically, these amendments are intended to create a statutory authorization for the award of attorney fees in labor relations disputes involving the District and the labor organizations representing its employees.

The District government is in the process of creating a new compensation system. Once in place, it will replace all vestiges of the federal system that has existed in the District. This means that the Back Pay Act and its authorization for employees to collect attorney fees will no longer be in place for District employees.

AFGE is requesting that any changes to the Compensation System include a provision allowing for attorney's fees in labor and employment cases.

Federal Employees' Compensation Act

The Federal Employees' Compensation Act (FECA) is administered by the U.S. Department of Labor's Office of Workers' Compensation Programs and currently covers roughly 3 million civilian federal employees from more than 70 different agencies. FECA benefits include payments for (1) loss of wages when employees become injured or ill through a work-related activity, (2) schedule awards for loss of, or loss of use of, a body part, (3) vocational rehabilitation, (4) death benefits for survivors, (5) burial allowances, and (6) medical care for injured employees.

The FECA program is particularly important to those men and women whose work-related activity is inherently dangerous – Bureau of Prison correctional workers, U.S. Customs and Border Protection officers, federal firefighters, and other federal law enforcement officers. Unfortunately, it has not been significantly reformed since 1974, and as a result, a number of challenges have emerged.

Support the reintroduction of the Federal Workers' Compensation Modernization and Improvement Act of 2011

AFGE strongly urges the reintroduction of the bipartisan Federal Workers' Compensation Modernization and Improvement Act, which the House passed by voice vote on November 29, 2011.

This reintroduced legislation will enhance and update the FECA program, thereby ensuring the program meets the needs of both employees and taxpayers. The bill would reform the FECA program by:

- Authorizing physician assistants and advanced practice nurses, such as nurse practitioners, to provide medical services and to certify traumatic injuries.
- Updating benefit levels for severe disfigurement of the face, head, or neck (up to \$50,000) and for funeral expenses (up to \$6,000) – both of which have not been increased since 1949.
- Making clear that the FECA program covers injuries caused from an attack by a terrorist or terrorist organization.
- Giving federal workers who suffer traumatic injuries in a zone of armed conflict more time to initially apply for FECA benefits and extending the duration of the “continuation of pay” period from 45 days to 135 days.
- Including program integrity measures recommended by the Inspector General and the Government Accountability Office.

AFGE supported this measure in 2011 – and will support it again if reintroduced – because it modernizes the FECA program without undercutting federal employees’ compensation benefits.

Oppose the reintroduction of the Workers Compensation Reform Act of 2015, which was Title V of the Improving Postal Operations, Service, and Transparency Act of 2015 (S 2051)

AFGE strongly opposed the Workers Compensation Reform Act of 2015, which was Title V of S 2051 – and will oppose it again if reintroduced – especially given the troubling, critical analyses of these proposed changes conducted by the Government Accountability Office (GAO).¹

AFGE opposes Title V because it:

1. Would leave totally disabled FECA beneficiaries with the worst long-term injuries vulnerable to impoverishment when they reach their full Social Security retirement ages.

Section 502 of Title V would slash the FECA wage-loss compensation rate for totally disabled beneficiaries to 50 percent of their gross wages at time of injury once those beneficiaries reach their full Social Security retirement age. Currently, totally disabled beneficiaries who have an eligible dependent are compensated at 75 percent of their gross wages at time of injury and those without an eligible dependent are compensated at 66 2/3 percent.

The rationale for making this cut provided by the Senate Homeland Security and Governmental Affairs Committee (HSGAC) report (S.Rept.112-143) is that injured federal employees garner a larger benefit at retirement age under FECA than they would have received if they had been able to work their full careers under the Federal Employees Retirement System (FERS). This has left some lawmakers with the mistaken impression that many injured federal employees have no incentive to return to work, and that their non-injured co-workers receive inequitable retirement benefits after working full careers.

However, GAO has analyzed this “reduce FECA at retirement” proposal and found the rationale is incorrect:

- Under current law, the median FECA benefit packages for federal employee beneficiaries with 30-year federal careers were on par or less than the median FERS benefit packages – depending on the amount a FERS participant contributes toward his or her TSP account for retirement. Under a scenario where there is no employee contribution and the employing agency contributes 1 percent to TSP, the median FECA benefit package is about 1 percent greater than the median FERS benefit package. Under a scenario where each employee contributes 5 percent – and receives a 5 percent agency match – the median FECA benefit package is about 10 percent less than the median FERS benefit package.

- But under a proposal – like Section 502 – that reduces the FECA wage-loss compensation rate to 50 percent once beneficiaries reach the full Social Security retirement age, GAO found that the median FECA benefit packages for federal employee beneficiaries with 30-year federal careers were significantly less than FERS benefit packages – regardless of the contributions to TSP accounts. Under a scenario where there is no employee contribution – and a 1 percent agency contribution – the median-reduced FECA benefit package is about 31 percent less than the median FERS benefit package. Under a scenario where each employee contributes 5 percent – and receives a 5 percent agency match – the median-reduced FECA benefit package is about 35 percent less than the FERS benefit package.

2. Would be extremely detrimental to totally disabled federal employees with dependents.

Section 503 of Title V would set FECA wage-loss compensation benefits at a single rate – 66 2/3 percent – for totally disabled beneficiaries, regardless of whether the beneficiary has eligible dependents. Currently, totally disabled beneficiaries without an eligible dependent are compensated at 66 2/3 percent of their gross wages at time of injury and those with dependents are compensated at 75 percent – an augmentation of 8 1/3 percent.

The rationale for eliminating the FECA augmented payment provided by the HSGRC report is that “it is out of line with benefits under state workers’ compensation systems” with “few state systems providing any augmentation for dependents.” This, of course, begs the question as to whether the state systems provide adequate wage replacement benefits for totally disabled beneficiaries with dependents. After all, the modest 8 1/3 percent augmentation for totally disabled federal employees with dependents recognizes – unlike the single 66 2/3 percent rate – the greater financial needs of beneficiaries with dependents than those without.

The GAO’s analysis of the “single rate of 66 2/3 percent” proposal found that eliminating the augmented compensation rate would be extremely detrimental to totally disabled beneficiaries with dependents. Such a proposal:

- Would increase the difference in the 2010 median wage replacement rates between totally disabled FECA beneficiaries with and without a dependent – but would reverse the direction of the difference to the detriment of beneficiaries with dependents. Currently under FECA, the 2010 median wage replacement rate of beneficiaries with dependents is *3.5 percent higher* than those without a dependent: 81.2 percent compared to 77.7 percent. But under the “single rate of 66 2/3 percent” proposal, the 2010 median wage replacement rate of beneficiaries with dependents is *5.5 percent lower* than those without a dependent: 72 percent compared to 77.7 percent.
- Would reduce the 2010 median wage replacement rate for totally disabled FECA beneficiaries with dependents by 9 percent: 81.2 percent under FECA compared to 72.2 percent under the “single rate of 66 2/3 percent” proposal. At the same time, the 2010

median wage replacement rate for FECA beneficiaries without dependents would remain the same: 77.7 percent.

¹*Federal Employees' Compensation Act: Analysis of Proposed Program Changes (GAO-13-108); Federal Employees' Compensation Act: Analysis of Proposed Changes on USPS Beneficiaries (GAO-13-142R); Federal Employees' Compensation Act: Effects of Proposed Changes on Partial Disability Beneficiaries Depend on Employment After Injury (GAO-13-143R); and Federal Employees' Compensation Act: Analysis of Benefits Under Proposed Program Changes (GAO-13-730T).*

Food Safety Inspection Service

Summary

The Food Safety and Inspection Service (FSIS) is the public health agency in the U.S. Department of Agriculture responsible for ensuring that the nation's commercial supply of meat, poultry, catfish, and egg products is safe, wholesome, and correctly labeled and packaged. The National Joint Council of Food Inspection Locals (Council) of the American Federation of Government Employees, AFL-CIO, which represents the 6,200 FSIS inspectors, believes that fulfilling the following "needs" would help those hardworking inspectors better accomplish the FSIS mission:

- The need for more meat and poultry inspectors.
- The need for an Executive Order to transition permissive subjects of bargaining under 5 USC 1706(b)(1) into mandatory subjects of bargaining under 5 USC 7106(b)(2)(3). This can be accomplished by deleting the authority of FSIS and other agencies to decline to elect to negotiate 5 USC 7106(b)(1) permissive subjects.
- The need for a government or academic research study on (1) the effectiveness of antimicrobial sprays on possible salmonella in chicken and (2) the potential costs of antimicrobial sprays on FSIS inspectors and plant workers.
- The need to provide individuals with minor impairments the opportunity to work as FSIS inspectors.

DISCUSSION

NEED FOR MORE MEAT AND POULTRY INSPECTORS

Created in 1981, the FSIS is federally mandated to continuously monitor the slaughter, processing, labeling, and packaging of meat and poultry products to ensure the safety and wholesomeness of the billions of pounds of meat and poultry products that enter the market each year.

Unfortunately, the FSIS is suffering a serious shortage of inspectors at some of the nation's meat and poultry plants, a shortage that is threatening our nation's food supply. According to a 2015 Food and Water Watch analysis of USDA records, more than half of the FSIS districts are running double-digit vacancy rates for permanent full-time inspectors (*See Attachment A: Summary of FSIS tables on inspector shortages for FY 2014*). In addition, the USDA records show that the number of inspection procedures by permanent FSIS inspectors has declined (*See Attachment B: The top thirty plans listed for select categories of "not performed" codes, June 2012 through July 2014*).

This permanent inspector shortage is causing the inspection system to be strained to the point of breaking. There have been an increasing number of recalls of products under FSIS jurisdiction due to the lack of inspection. We believe that they are related to the lack of proper permanent inspection staffing across the country.

The shortages of permanent FSIS inspection personnel are the direct result of an FSIS hiring freeze policy adopted in 2012 in anticipation of a controversial proposed rule that would radically change the manner in which poultry is inspected (*Modernization of Poultry Slaughter Inspection*, 77 FR 13512, January 27, 2012). The hiring policy capped the number of permanent federal inspectors. Any vacancies that developed were to have been filled with “temporary” inspectors who could be terminated when the new rule was finalized. However, the “temporary” inspector hiring program has not achieved its goals and left most parts of the country short of USDA inspectors. Such inspector vacancy problems remain, despite the fact the role of federal inspectors in poultry plants is reduced, turning many of those responsibilities over the companies to police themselves.

We agree with Wenonah Hauter, Executive Director of Food and Water Watch: “USDA’s own data tells the story – inspector shortages mean that some meat and poultry products are not being adequately inspected. It is time for [the new President], Congress and the USDA to make sure that meat and poultry inspection gets the necessary resources to provide continuous government inspection of meat and poultry products.”

NEED FOR AN EXECUTIVE ORDER TO TRANSITION PERMISSIVE SUBJECTS OF BARGAINING UNDER 5 USC 1706(b)(1) INTO MANDATORY SUBJECTS OF BARGAINING UNDER 5 USC 7106(b)(2)(3). THIS CAN BE ACCOMPLISHED BY DELETING THE AUTHORITY OF FSIS AND OTHER AGENCIES TO DECLINE TO ELECT TO NEGOTIATE 5 USC 7106(b)(1) PERMISSIVE SUBJECTS.

The current 5 USC 7106(b)(1) states that:

Nothing in this section shall preclude any agency and any labor organization from negotiating – (1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty, or on the technology, methods, and means of performing work.

As can be seen, these permissive subjects include the methods and means of performing work and the number of employees assigned to an organizational subdivision. However, federal labor unions have no recourse if agencies decline to elect to negotiate these 7106(b)(1) permissive subjects.

To effect the “permissive subjects to mandatory subjects” change, an Executive Order must include the following language:

Election to Negotiate – I [President Donald J. Trump] hereby elect, on behalf of all executive departments and agencies covered by this order, to negotiate over the subjects set forth:

In 5 USC 7106(b)(1). My election to negotiate may not and shall not be revoked by department or agency heads or their subordinate officials. For purposes of proceedings undertaken pursuant to chapter 17 of Title 5, any attempts by department or agency heads or their subordinate officials to revoke my election shall have not force or effect.

Interestingly, the 2012 Report to the President on Negotiations Over Permissive Subjects of Bargaining: Pilot Projects, produced by the National Council on Federal Labor-Management Relations, found many positive outcomes:

- Participants generally reported faster resolution of issues being address.
- Participants uniformly reported an improvement in the labor-management relationship.
- Positive prior relationships, as well as agency and union leadership commitment, likely contributed to positive outcomes from the pilot projects.
- The requirement to collaboratively plan, identify metrics, or success indicators, and measure the outcomes also appears to have contributed to the pilots' effective bargaining.

NEED FOR A GOVERNMENT OR ACADEMIC RESEARCH STUDIES ON (1) THE EFFECTIVENESS OF ANTIMICROBIAL SPRAYS ON POSSIBLE SALMONELLA IN CHICKEN AND (2) THE POTENTIAL COSTS OF ANTIMICROBIAL SPRAYS ON FSIS INSPECTORS AND PLANT WORKERS.

The line speed of meat and poultry plants have increased over the last several years, making it harder to ensure that the meat and poultry produced there are safe and wholesome. Rather than slowing down and ensuring good sanitation, the industry wants to ramp up the antimicrobial sprays they aim at bird carcasses as they zoom down the line – a chemical fix to the problem of Salmonella and other pathogens.

But how effective is this chemical onslaught on Salmonella and other pathogens?

In the August 3, 2013, edition of the *Washington Post*, reporter Kimberly Kindy reported that there is evidence that the chemical onslaught is **masking, rather than reducing**, the amount of disease-causing bacteria on our supermarket chicken.

Here's how the system is supposed to work, according to Ms. Kindy:

“As the chicken moves down the processing line, the bird is sprayed with, and bathed in, an average of four different chemicals. To check that most bacteria have been killed, occasional test birds are pulled off the line and tossed into plastic bags filled with a solution that collects any remaining pathogens. That solution is sent to a lab for testing, which

takes place about 24 hours later. Meanwhile, the bird is placed back on the line and is ultimately packaged, shipped and sold.”

But for the pathogen tests to be accurate, Ms. Kindy reports that:

“...it is critical that the pathogen-killing chemicals are quickly neutralized by the solution – something that routinely occurred with the older, weaker antibacterial chemicals. If the chemicals [in the plastic bag] continue to kill bacteria, the testing indicates that the birds are safer to eat than they actually are.”

(Quotes taken from “USDA reviews whether bacteria-killing chemicals are masking salmonella,” by Kimberly Kindy, Washington Post, August 3, 2013)

At the same time, what are the effects of this chemical onslaught on FSIS inspectors and plant workers?

Ms. Kindy reported in an earlier *Washington Post* article, dated April 25, 2013, that “in interviews, more than two dozen FSIS inspectors and poultry industry employees described a range of ailments they attributed to chemical exposure, including asthma and other severe respiratory problems, burns, rashes, irritated eyes, and sinus ulcers and other sinus problems.” Unfortunately, however, little or no research has been conducted. According to Ms. Kindy, no industry-wide study has been done by the USDA or any other government agency, and USDA does not keep a comprehensive record of illnesses possibly caused by the use of chemicals in the poultry industry.” *(Quotes taken from “At chicken plants, chemicals blamed for health ailments are poised to proliferate,” Kimberly Kindy, Washington Post, April 25, 2013.)*

FSIS makes great claims about their new final rule on *Modernization of Poultry Slaughter Inspection*, 79 FR 49566, August 21, 2014: that it will improve food safety while cutting taxpayer costs by \$90 million over three years. But no word yet on the potential costs of antimicrobial chemical sprays on FSIS inspectors and plant workers.

NEED TO PROVIDE INDIVIDUALS WITH MINOR IMPAIRMENTS THE OPPORTUNITY TO WORK AS FSIS INSPECTORS

FSIS inspectors – plant inspectors and import inspectors – comprise the largest category of employees in the agency, with over 6,200 nationwide. The FSIS website states that to qualify for an entry-level position, an applicant must:

- Pass a written test
- Have a Bachelor’s degree or one year of job-related experience in the food industry. This experience must demonstrate knowledge of sanitation practices and control measures used in the commercial handling and preparation of food products for human

consumption. Qualifying experience should also demonstrate skill in applying, interpreting, and explaining standards in a food product environment.

- These FSIS inspector positions require a successful passing of a pre-employment.

Individuals with minor impairments who successfully meet the above requirements should be provided the opportunity to work as a FSIS inspector. It should not matter if the individual is overweight or a U.S. Veterans who uses a hearing aid. Indeed, both individuals could bring compensatory attributes to the position – a specific knowledge in interpreting and explaining standards or specific leadership abilities.

Expansion of the Law Enforcement Officer Statutory Definition

Congress must amend Title 5 of the United States Code to include federal law enforcement professionals whose duties meet the current statutory definition of a federal law enforcement officer (LEO). Under present law, the definition of a LEO does not include positions such as officers of the Federal Protective Service (FPS), and police officers from the Department of Defense (DoD), Veterans Affairs (VA) and the U.S. Mint. Despite having duties similar to or identical to other LEOs, these law enforcement professionals do not have equal pay and benefits status with their occupational counterparts. Specifically, they have lower rates of pay and are not eligible for full retirement benefits until years after their LEO peers. As a result of this disparity, the law enforcement agencies with lower pay and benefits are greatly disadvantaged when recruiting and retaining trained law enforcement professionals, and have low employee morale.

Statutory Definition of a Law Enforcement Officer

Because law enforcement positions require officers to be “young and physically vigorous,” and LEO positions have mandatory retirement ages ranging to age 57, the federal government makes a special provision for unreduced retirement at a younger age than that applied to other federal employees. Under the Federal Employee Retirement System (FERS), an employee who qualifies for LEO retirement status is eligible to retire upon attaining the age of 50, and after completing 20 years of eligible LEO service. In order to be eligible for LEO retirement coverage, positions must meet both the statutory definition under Title 5 U.S.C. Section 8401 as well as LEO requirements under FERS.

Under 5 U.S.C. Section 8401(17)(A), the term LEO means “an employee the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the U.S., or the protection of officials of the U.S. against threats to personal safety; and are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals.”

In order to be eligible under FERS, the duties of the employee’s position must be “primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States.” “Primary duties” means those duties of a position that:

- (1) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;
- (2) Occupy a substantial portion of the individual's working time over a typical work cycle; and
- (3) Are assigned on a regular and recurring basis.

The definition under FERS adds the further requirement that the duties of the position “are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals.”

The Importance of LEO Status

LEOs are entitled to many benefits that reflect the government’s acknowledgement of their unique status. Under 5 U.S.C., Section 8336(c), a federal LEO with a minimum of 20 years of service at age 50, or 25 years of service, is eligible to retire with a federal annuity. In contrast, federal employees who are not LEOs may begin to collect their annuities only after reaching age 60 with 20 years in federal service. Law enforcement retirement rules mandate LEOs to contribute more of their salary toward retirement than federal employees who are not LEOs. As a result of this contribution, LEOs are eligible to continue participation in the Federal Employees Health Benefits Program (FEHBP) and the Federal Employees Group Life Insurance (FGLI) immediately after they retire.

In contrast, employees without LEO status are not eligible for continued FEHBP or FGLI coverage after early retirement unless the retirement was a result of a downsizing, reduction in force (RIF), or offered in some other context under Voluntary Early Retirement Authority (VERA). Additionally, annuities for federal law enforcement officers and firefighters are calculated according to a substantially more generous contribution formula than that used for regular FERS employees.

Under FERS, LEOs also receive a “special retirement supplement” (SRS) if they retire when they are under age 62. This SRS provides an approximation of their Social Security benefit if they had retired at an age when they were eligible for Social Security retirement benefits. Legislation was recently signed into law that eliminated the early withdrawal penalty fee for LEOs who retire early after age 50. Congress passed this legislation in recognition of the fact that LEOs are often forced to retire before they become eligible to receive Social Security retirement benefits or can make withdrawals from their Thrift Savings Plan (TSP) without a financial penalty.

Early retirement without financial penalties, as well as the aforementioned benefits available to retired LEOs, serve as recruitment and retention tools and reflect the government’s interest in having “young and physically vigorous” individuals in law enforcement positions. All federal law enforcement personnel deserve equal treatment. The inequities in pay and benefits across law enforcement agencies lead to high turnover after law enforcement professionals are trained because they are recruited by other agencies that give them full respect, status, pay, and benefits.

Expansion of LEO Statutory Definition

During the 115th Congress, Rep. Peter King (R-N.Y.) and Sen. Cory Booker (D-N.J.) introduced HR 964 and S 424, respectively, the “Law Enforcement Officers Equity Act,” which proposes to amend the definition of the term “law enforcement officer” to include federal employees

whose duties include the investigation or apprehension of suspected or convicted individuals and who are authorized to carry a firearm; employees of the Internal Revenue Service (IRS) whose duties are primarily the collection of delinquent taxes and the securing of delinquent returns; employees of the U.S. Postal Inspection Service; and VA police officers.

AFGE fully supports HR 964 and S 424 and urges Congress to address the inequities in pay and benefits within the federal law enforcement workforce by expanding the statutory definition of a LEO to include positions like FPS officers, as well as police officers from VA, DoD, and the U.S. Mint. The primary duties of these law enforcement professionals include the protection of federal buildings, federal employees, officials, and the American public; as well as duties and responsibilities that are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the U.S., or the protection of officials of U.S. officials against threats to personal safety. These professionals are trained to use and carry authorized firearms, yet they are only considered law enforcement officers when they are killed in the line of duty and their names are inscribed on the wall of the National Law Enforcement Officers Memorial.

FPS officers, and police officers from VA, DoD, and the U.S. Mint are honorable protectors of the public and they deserve recognition as law enforcement officers. The primary duties and responsibilities of these law enforcement professionals are not only rigorous, but are also in direct alignment with the statutory definition of a LEO.

AFGE strongly urges the 115th Congress to pass legislation to amend 5 U.S.C. Section 8401 to include FPS officers, and police officers from the VA, DoD, and the U.S. Mint in the definition of a LEO.

Census Bureau AFGE Council 241 Legislative Issues

Support Funding Level for the U.S. Census Bureau in FY 2018 CJS APPROPRIATIONS BILL (Oppose Any Amendments to Reduce the Census Budget)

When the Congress considers the final Fiscal Year 2018 appropriations bill and the 2019 appropriations bill, the Census Bureau AFGE Council 241 urges Congress to increase funding for the U.S. Census Bureau above the levels in the House and Senate Commerce, Justice, and Science bills. Funding below the president's \$1.634 billion budget request will jeopardize implementation of a modern, cost-effective, and accurate **2020 Census**, and preservation of a robust **American Community Survey (ASC)**.

The committee allocated only 60 percent of the requested increase for the agency, at a time when the Bureau must "ramp up" spending in preparation for the 2020 Census, the nation's largest civilian mobilization. In FY 2018, the agency must prepare for the 2018 End-to-End readiness test, as well as test new counting methods in rural areas; finalize questionnaire topics (required by law), and finalize decisions regarding design reforms. The agency must finish production of IT and operational systems, in time; acquire space for six Regional Census Centers; and develop a vast, nimble Integrated Communications Plan to reach an increasingly diverse population efficiently and effectively.

Without adequate funding next year, the Census Bureau could abandon new, cost-saving methods as too risky or insufficiently vetted – a decision that could increase census costs by billions of dollars, or put the accuracy of the census at grave risk, given Congress' directive to keep the cost of the 2020 Census at or below the 2010 Census level.

Alternatively, the Bureau could be forced to scale back other programs that are irreplaceable sources of data for key economic indicators and socio-economic characteristics that support government and private sector decision-making. Congress has directed the Census Bureau to reduce the burden of ACS response, while preserving reliable and comprehensive data that guide the allocation of \$415 billion annually in federal grants. Budget cuts will continue to slow promising research to accomplish these goals.

An accurate census and comprehensive ACS help ensure fair political representation. ACS helps ensure fair political representation – for Congress down to local school boards – and the prudent distribution of federal aid to states and communities each year.

Lastly, the Census Bureau data are central to sustaining our nation's democracy and facilitating informed decision-making.

FEDERAL FIREFIGHTERS

AFGE represents federal firefighters at DoD, VA, and other agencies across the country. Too many firefighters are living with and dying from cancer in the United States every year. Firefighters are frequently exposed to smoke, toxic chemicals, and debris that can cause cancer. These civil servants and American heroes deserve the highest quality data and best public health solutions to help prevent and treat work-related illnesses.

Federal firefighters put their lives on the line every day to protect and serve the American people. Most federal firefighters are located at military facilities. These federal firefighters have specialized training to respond to emergencies involving aircrafts, ships, artillery and ammunition. Federal firefighters at the Department of Veterans Affairs serve civilians and veterans, including chronically ill and bedridden patients. Federal firefighters provide emergency medical services, crash rescue services, hazardous material containment, and fight fires.

The National Institute of Occupational Safety and Health (NIOSH) has conducted studies about the prevalence of cancer among firefighters; however, these studies have had two critical flaws: 1) the sample sizes were too small; and 2) they do not include many minority populations. This limited NIOSH's ability to draw productive statistical conclusions from their data. More comprehensive public health data must be collected to develop solutions to preventing the high rates of cancer in firefighters.

The Centers for Disease Control and Prevention's (CDC) National Program of Cancer Registries (NPCR) provides support for states and territories to maintain registries that provide high-quality data. Data collection systems like cancer registries help identify and diagnose work related illnesses. For instance, registries help bring attention to the fact that professional groups like firefighters are not getting much needed cancer screening tests, and more precaution is needed to decrease the likelihood of illness.

It is for these reasons that Rep. Chris Collins (R-N.Y.) has introduced HR 931, the Firefighter Cancer Registry Act of 2017. This bill directs CDC and the secretary of Health and Human Services (HHS) to develop and maintain a voluntary firefighter cancer registry to collect comprehensive data on relevant history and occupational information of firefighters to be linked to state cancer registries that already exist. HR 931 will also establish and improve collection infrastructure of nationwide monitoring of incidents of cancer among firefighters. If enacted, HR 931 will require the collection, consolidation of public health information related to cancer incidence, and trends among firefighters.

The newly established firefighter cancer registry would collect firefighters' relevant history, including occupational information (work history), demographic information, individual risk factors, and number of years on the job. Too many firefighters live with and die of cancer every year. With this new cancer registry, researchers and medical professionals will be able to gather

more pertinent data to help treat and prevent illnesses common among firefighters across the nation, to better understand why firefighters have higher rates of cancer, and offer preventative solutions.

HR 931 passed the House of Representatives on September 12, 2017, and there are currently 188 bipartisan cosponsors. AFGF strongly urges the Senate and the administration to pass this legislation and sign it into law before the end of the 115th Congress.

Federal Retirees

Retirement Benefits

Retirees under the Federal Employee Retirement System (FERS) and some under the Civil Service Retirement System (CSRS) are also beneficiaries of Social Security and will be adversely affected by proposals under consideration in Congress.

Cuts to Social Security

AFGE strongly opposes legislation that would:

- Cut or eliminate Social Security's annual cost-of-living adjustments for all beneficiaries, which would erode the value of Social Security benefits as people age into their most vulnerable years;
- Slash benefits for most retirees by flattening Social Security's progressive benefit formula; and
- Raise Social Security's full retirement age — currently rising from age 66 to 67, to 69 — which would cut benefits across the board for all new retirees.

AFGE opposes any effort to privatize Social Security, turning our guaranteed earned benefits over to Wall Street as limited private accounts subject to the whims of the economy.

Solvency and Improved Social Security Benefits

AFGE supports legislative efforts to address the long-term solvency of Social Security through progressive means such as eliminate or raise the cap on earnings subject to payroll tax.

AFGE supports expanding benefits, including legislation with provisions such as:

- Enacting a Consumer Price Index-Elderly (CPI-E) to provide for a fairer COLA that reflects seniors' expenditures;
- A 2 percent across-the-board benefit increase;
- Improving widows'/widowers' benefits so a household does not experience a devastating drop in income;
- Increasing the Special Minimum Benefit for low-income earners; and
- Creating a caregiver credit for workers who have taken time out of the workforce to care for children or elderly family members. This gap of service results in lower Social Security benefits. Legislation has been introduced that gives up to 5 years of credit for service to help increase the benefit, particularly benefiting women who have worked in low-paying jobs.

Government Pension Offset/Windfall Elimination Provision

AFGE supports the elimination of the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP), which cut Social Security benefits for federal government retirees and their dependents because these provisions unfairly reduce both a retiree's benefit and a spouse's benefit. It applies to federal employees who retired under the Civil Service Retirement System (CSRS), as well as many state, county, and municipal public servants. For 74 percent of affected spouses, the benefit is reduced to zero. These provisions have had the effect of disproportionately reducing the Social Security benefit Americans have earned.

Medicare

Most federal retirees become eligible for Medicare at age 65. Because many opt not to enroll in Medicare Part B, the part that covers most out-patient medical services, federal retirees would be less adversely affected by proposals in Congress to eliminate traditional Medicare and turn it into a voucher program. This has been the cornerstone of House Speaker Paul Ryan's budget proposals over many years, including for FY18.

The hospital coverage, Medicare Part A, along with the rest of the program, could be turned into a program that provides a capped benefit to purchase insurance on the open market. Older and sicker beneficiaries would find it difficult to purchase adequate coverage to insure them for extended or chronic illness. It would be harder for seniors, particularly lower-income beneficiaries, to choose their own doctors if their only affordable options were private plans that have limited provider networks.

AFGE also opposes the repeal of the Affordable Care Act. Under this law, Medicare beneficiaries are eligible for an annual wellness examination, which extends lives and can detect serious illness early enough to take curative action.

House Speaker Paul Ryan has proposed legislation that would raise the Medicare eligibility age from 65 to 67, further straining the Medicare system by skewing to an older cohort. He has also proposed higher hospital co-payments and substantial increases in deductibles. AFGE opposes these proposals that shift significantly more out-of-pocket costs to beneficiaries.

The recently passed tax overhaul would have triggered \$410 billion in cuts to Medicare, but Congress passed a last-minute waiver so that the \$1.5 trillion cost of the bill does not have to be offset with cuts elsewhere in the budget. The largest offset would have had to come from Medicare.

Medicaid/Affordable Care Act

Medicaid provides health care for low-income children and families. It is also the largest source of funding for long-term care and community-based supports for the elderly and people with disabilities, providing about 62 percent of all such services.

The House passed a budget in 2017 that would have capped Medicaid and turn it into a “block grant” program to the states by replacing the current joint federal/state financing partnership with fixed dollar amount block grants. States would have less money, resulting in significant reductions to beneficiaries, including nursing home residents and their families. AFGE opposes this block grant approach to funding Medicaid.

Further, there have been numerous attacks on the Affordable Care Act. While some of its underpinnings remain, Congress has agreed to a tax plan that eliminates the “individual mandate,” which creates a broad universe of insured individuals that determines pricing of insurance. Older adults not yet eligible for Medicare, aged 50-64, will experience drastic increases in insurance premiums and are most likely to drop coverage. As aging adults experience increasing chronic illness, they will have little or no health care and will reach Medicare eligibility with untreated conditions that increase costs to that system as well.

Additionally, the erosion of the ACA may affect some AFGE families. While members and retirees usually enjoy FEHB coverage, dependents such as grandchildren or aging parents in the household could lose their coverage and find that everything from basic preventive services to long term care are no longer available.

AFGE opposed the ACA cuts in the tax bill, noting that it would lead to an estimated 13 million more Americans without health care, increase insurance premiums, and use the revenue savings to cut the corporate tax rate.

Pretrial Services Agency for the District of Columbia AFGE LOCAL 1456 Legislative Issues

Issue: Support Legislation that would grant collective bargaining rights to the non-judicial personnel of the District of Columbia Superior Court and the District of Columbia Court of Appeals.

The District of Columbia Comprehensive Merit Personnel Act currently excludes non-judicial personnel of the District of Columbia Superior Court and the District of Columbia Court of Appeals from collective bargaining coverage, D.C. Code § 1-602.01 (a). The Court Social Services Division staff within the District of Columbia Superior Court supervise juveniles who have committed criminal offenses. The lack of bargaining rights in the workplace has put community safety at risk.

Balance and Restorative Justice (BARJ) is a concept that has been translated into somewhat of an afterschool program for the juvenile offender population in the pre-adjudication, pre-disposition, and post-disposition phases of a case. Probation Officers operate the BARJ Monday through Friday from 4-8:30 p.m. and Saturday from 10 a.m. to 2 p.m. The following will outline the impact on the employee, which transfers to the impact on the juvenile and the community safety:

1. There is no screening process to determine the appropriateness of youth participating. There are youth with various Axis I diagnoses who are not able to function in a group setting, but are ordered or forced to be in this setting. As a result, the youth become volatile in this setting.
2. On average, six out of every 10 youth participating in BARJ has an Individualized Education Program (IEP) or some sort of educational accommodation. Unfortunately, these accommodations are not upheld in the BARJ setting with employee to youth ratio or tutor to youth ratio.
3. Employees are not trained to interact with or de-escalate volatile behaviors in this setting. The employee is forced to retreat in situations where the youth become violent due to lack of training.
4. The youth often assault one another and have physically assaulted staff in this setting when attempts to intervene occurs. There are threats used against the employee without remedy or consequences.
5. Female employees have been sexually harassed while working BARJ; again, without remedy and consequence. One instance was so serious that it was brought to the attention of the youth's judge in D.C. Superior Court, who made a request through the Office of the Attorney General (OAG) for the charge to be petitioned. The youth was

eventually found incompetent via an evaluation and should not have been placed in BARJ, but without a screening process this cannot be determined absent an incident or crime against the youth or an employee.

6. Employees (Probation Officer, or POs) are forced to cook and serve the youth dinner every evening without any certified food licenses. While these duties are not included in the current job description, POs who voice concerns about performing this duty has been targeted by management.
7. Employees (POs) have been injured while operating BARJ. Employees have gotten burned while preparing meals without being advised of their right to workers' compensation (if covered) as BARJ and cooking is not in the current job description.
8. Employees (POs) are directed to create a module for various groups such as drug education, life skills, and anger management and are directed by management to run these groups in the BARJ without any training or certifications in the aforementioned areas.
9. The youth are released from BARJ (10-15) at the same time, 8:30 p.m., and they often commit crimes against one another ranging from simple assault to assault with intent to kill. The youth have also committed crimes against the community that include, but are not limited to, shoplifting, fare evasion, robbery (cell phone related), burglary, and theft. At one point a store manager in the community pled with the probation office to address the behaviors of the court involved youth being released into the community all at once. This is a practice that has not changed despite pleas from the community.
10. Employees (POs) are not provided a lunch break when working BARJ. BARJ operates from 4-8:30 p.m. and POs work from 3-11 p.m. during their BARJ tour of duty. The youth are scheduled to arrive by 4 p.m. and POs are scheduled to be present in the program from 3-8:30 p.m. During this time, POs prepare for group and meals until the arrival of the youth. Upon dismissal of the youth at 8:30 p.m., POs are scheduled to conduct curfew visits from 8:30-11 p.m. with no lunch hour and/or two 15-minute breaks built into this BARJ schedule.
11. POs also operate BARJ (without any supervisor or management present) one Saturday per month from 10 a.m.-2 p.m. In order to achieve this, POs are directed to flex the original 40 hours per week Monday-Friday work schedule 4 hours once per month to accommodate the Saturday schedule. POs are not offered over-time or compensatory time for working on a weekend and the flex time is hour for hour instead of time and a half
12. POs operating BARJ lose on average approximately 36 hours per month, which in turn impacts the time spent on preparing court reports, inputting entries into court database, meeting with youth and families to address concerns with the conditions of

release/probation, meeting with community stakeholders to identify and implement services beneficial to the rehabilitation of the court-involved youth. To add, this further impacts the youth's potential for success and impacts the community when time is lost in the rehabilitation process.

There is no direct evidence that youth participation in BARJ has reduced recidivism and aided in the rehabilitation of the court involved youth. There are instances however, where BARJ participation and current operation has hindered rehabilitation and furthered juvenile delinquency as the youth are often outside of the home past their court-ordered curfew times and without supervision to return home after BARJ. The BARJ's current operations and practices impacts the POs, which impacts the youth and community safety.

Probation Officers are public servants who are tasked with the rehabilitation of the juveniles and reducing recidivism among this population in the District of Columbia. Community interaction to include home visits, school visits, and curfew visits are an intricate part of achieving the mission of the District of Columbia Superior Court. More importantly, appropriate training is necessary in order to successfully complete the duties assigned; however, POs hired since 2009 have not been afforded an opportunity to participate in training required to ensure his or her understanding of applying knowledge, skills, and abilities required to supervise to the juvenile population.

Lastly, granting bargaining rights will help ensure public and community safety within the District of Columbia.

Office of Personnel Management

AFGE represents more than 700 members who are employed at the Office of Personnel Management (OPM). OPM plays an important role in answering to the needs of employees throughout the federal government. Our members are committed to this service for our fellow workers. AFGE is concerned that OPM management, policies, and procedures are not conducive to effectively fulfilling the agency's mission. We have recommended policy solutions to improve OPM's ability to provide quality services to federal employees and the American public.

Transfer Jobs from OPM to DoD Contractors

A policy change made in the National Defense Authorization Act (NDAA) will result in employment loss for many of our members. The Fiscal Year 2017 NDAA gives the Secretary of Defense the authority to transfer security clearance investigative work from OPM's "National Background Investigation Bureau" (NBIB) to a new department within the Department of Defense (DoD) that shall be named "Defense Security Service" (DSS).

AFGE is concerned that jobs that support the work of NBIB within OPM will be affected and we have many outstanding questions that deserve to be answered: Will the positions be terminated? Will employees be reassigned within OPM? Will employees be given the opportunity to move from OPM to DoD? And if they decline such a move, will there still be employment opportunities with OPM? How will opportunities to remain at OPM, through reassignments, be determined?

To ensure that this process is fair beginning with the affected employees at OPM, we ask that a taskforce be established between the legislature, labor, and management officials before any OPM jobs are transferred to DoD or any other agency.

Mismanagement of Disability Retirement and Appeals Services

OPM supervisors recently removed 11 Legal Administrative Specialists (LAS) from their positions within Disability Retirement and Appeals (DRA) Services, reclassifying the positions and adding a "new" academic requirement that made them no longer eligible for the jobs. These employees had collectively received excellent job reviews and had experience ranging from five to 15 years in these jobs. These workers have now been reassigned to the Federal Employees Retirement System (FERS) processing division. Currently, this work is being performed by newly hired employees who are supposed to have the academic requirements. However, these workers are still in training and are in the process of learning federal regulations that govern federal disability retirements. We are concerned that such important work should not be performed by newly hired employees who have not successfully completed training. If the new academic requirement is so important, why weren't the former employees who were reassigned given the opportunity to get the academic requirement?

Due in part to removing employees in the LAS positions from their posts, there is a backlog of 8,000 or more cases of employees seeking disability retirement that are pending determinations. Applicants, many of whom are disabled veterans, could be dying, losing their homes, or medical benefits while awaiting a decision from OPM.

Without any rationale, OPM has moved DRA Services in its entirety to Boyers, Pa., where they have hired new contractors to do the jobs that these 11 members were doing. This decision does not appear to be based on a lack of qualified candidates in the Metropolitan D.C. area, and has also made it nearly impossible for these workers to ever get their jobs back.

AFGE urges Congress to conduct oversight and review of the recent reclassification and transfer of DRA Services to ensure that the ongoing backlog of disability retirement cases is addressed.