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2020 ISSUE PAPERS

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

AFGE 2020 Issue Papers

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Federal Pay

Introduction

Wages and salaries paid to federal employees are governed by statute. Two pay systems cover the vast majority of federal employees. Hourly workers in the skilled trades are paid under the Federal Wage System. Salaried workers in professional, administrative, and technical occupations are paid under the General Schedule's Locality Pay System. Both pay systems are based on the principle of local labor market comparability. Successive Congresses and administrations have failed to adhere to this principle, causing federal wages and salaries to fall far below the standards set in the private sector and state and local governments. As such, federal employees are underpaid relative to their non-federal counterparts and have experienced a decline in living standards over the past decade.

The purchasing power of federal salaries has declined by **4.5 percent** since 2011.

YEAR	FEDERAL PAY RAISE	INFLATION
2011	0	3.6%
2012	0	1.7%
2013	0	1.5%
2014	1.0%	1.7%
2015	1.0%	0
2016	1.0%	0.3%
2017	1.6%	2.0%
2018	1.8%	2.8%
2019	1.9%	2.3%
2020	3.1%	n/a
Total	11.4%	15.9%

It is clear from the above that even in the midst of low inflation, federal salaries are in need of adjustment, not only in order to bring living standards of federal employees at least back to pre-recession levels, but also to assist in the recruitment and retention of a high-quality federal workforce.

White Collar Pay

The Federal Pay Comparability Act (FEPCA) provides the basis for the operation of the pay system that covers most salaried federal employees. The law defines market comparability as 5 percent below salaries paid in the private sector and state and local government for jobs that are performed by federal employees. Recognizing that labor markets vary by region, FEPCA created distinct pay localities among urban areas with large concentrations of General Schedule, or salaried, federal employees.

Under FEPCA, annual pay adjustments are supposed to include two components. The first is a nationwide, across-the-board adjustment based on the Bureau of Labor Statistics' (BLS)

Employment Cost Index (ECI), a broad measure of changes in pay in the private sector and state and local government. The second is the locality adjustment. Locality adjustments are based on the size of gaps between federal salaries and those paid to workers in the private sector and state and local government who perform the same jobs as federal employees. Pay gaps are calculated using the Bureau of Labor Statistics' (BLS) Occupational Employment Statistics data.

For 2020, the nationwide adjustment ECI-based adjustment should have been 2.6 percent (full ECI of 3.1 percent minus 0.5 percentage points). Locality payments should have closed remaining gaps to the law's definition of comparability, 5 percent below market. The law originally envisioned gradual closure of gaps until 2002 when full comparability payments would be made. However, remaining pay gaps still average around 31 percent. In spite of an initial proposal by the administration to freeze federal pay for 2020, an executive order providing a 2.6 percent across the board increase for 2020 was issued in August, which would have frozen locality pay at 2019 levels. Ultimately, Congress provided a 3.1 percent adjustment, which was implemented as 2.6 percent across the board plus 0.5 percent divided variously among the localities.

For 2021, AFGE urges Congress to provide a 3.5 percent federal salary adjustment, and fully supports the "Federal Adjustment of Income Rates Act" (FAIR Act) introduced by Representative Gerry Connolly (D-VA) and Senator Schatz (D-HI), H.R. 5690/S. 3231. This amount reflects the relevant ECI (September 2018 to September 2019 of 2.5 percent) plus an additional 1 percent to be distributed among the localities. While modest relative to the size of the pay gap between federal and non-federal salaries, this amount would begin to restore purchasing power and living standards for federal workers and would go a long way in demonstrating respect for the value of the work and dedication of the federal workforce. It would also facilitate recruitment and retention of the next generation of federal employees which is so important to the proper functioning of federal agencies.

Blue Collar Pay

Federal blue-collar workers' pay is governed by a statutory "prevailing rate" system that purports to match federal wages with those paid to workers in skilled trades occupations in the private sector. That system has never been permitted to function as intended. Instead, annual adjustments have been capped at the average adjustment provided to white collar federal employees under the General Schedule (GS). Prevailing rates are defined in the law as fully equal to market rates paid in the private sector, unlike "comparability" in the white-collar system, which is defined as 95 percent of market rates.

While the white-collar system uses BLS data to determine non-federal rates and thus the gap between federal and non-federal pay, the blue-collar system relies on surveys conducted by local teams comprised of representatives from the union and from management from the agency with the largest numbers of blue-collar employees in the local wage area. These local survey teams are prohibited from using any data from local building trades' unions' scales. The data are used to create wage schedules that describe local prevailing rates.

For the past two decades, Congress has added language to appropriations bills that guarantee that blue-collar federal employees receive the same annual adjustments as their white-collar coworkers. Although the boundaries of local wage areas are different from General Schedule, the language grants the same annual pay adjustment to all salaried and hourly workers within a given white-collar locality.

This policy of equal annual pay adjustments solves just one inequity between the two systems. The GS locality boundaries are drawn according to commuting rates, which is the proper way to define local labor markets. The FWS locality or wage area boundaries were drawn mostly in the 1950s, reflecting the location of large military installations that employed the majority of federal hourly workers at that time.

Today, some GS localities include several FWS wage areas. Thus while everyone in a given GS locality receives the same annual raise, hourly workers in a given GS locality may receive vastly different base wages. For example, the salaried workers at the Tobyhanna Army Depot in Monroe County, Pennsylvania are paid according to salaries in the New York City locality because, according to Census data on commuting, Monroe County is part of the overall New York City labor market. Yet the hourly workers there are considered to be in a different local labor market. Hourly and salaried workers at Tobyhanna who work side-by-side in the same place for the same employer and who travel the same roads to get to and from work are treated as though they are in different locations.

Efforts to “Reform” the Federal Pay Systems

Over the past several years, there has been a concerted effort to disparage and discredit the locality pay system for General Schedule employees. It has been derided as inflexible, antiquated, and inadequate for purposes of recruiting and retaining a talented federal workforce. The pay gap calculations based on BLS data have been ridiculed as “guesstimates” despite the fact that they are based on sound and objective statistical methods. These arguments are window-dressing for a much more malign agenda. Advocates of replacing the GS locality system with a so-called pay-for-performance system actually propose to reallocate federal payroll dollars.

The outlines for a new system that have received support from organizations like the Heritage Foundation, the Cato Institute, and the government contractor Booz Allen Hamilton (working through the Partnership for Public Service) propose paying higher salaries to those at the top of the current scale and lower salaries to those in the middle and bottom. This reallocation would occur through a formal system that considered both market data by occupation and individual performance. Although reallocation of payroll is not explicit, it is implicit in the notion that absent substantial increases in resources for federal payroll, in order for some salaries to rise substantially, others would have to fall. The Trump administration has attempted to use the Federal Salary Council and the Pay Agent to advance such a plan; its report attempts to justify lowering pay for those at the bottom of the scale in order to raise pay for those at the top. The National Security Personnel System (NSPS), a short-lived experiment in “performance pay” in the Department of Defense under then-Secretary Rumsfeld provides ample evidence of some of the pitfalls of such a plan. Indeed, Congress repealed authority for this system a mere three

years after its inception because the discretion given to managers over pay adjustments produced larger raises for white males in the Pentagon and much lower raises for everyone else in the Department. It was found to be profoundly discriminatory in outcome with no measurable improvement in productivity or performance. Morale and trust in the integrity of the system both plummeted.

Another Trump administration strategy to justify refusal to adjust salaries is to argue that salary comparisons that compare salaries are inadequate and that the cost and provision of non-salary benefits should be included in salary comparisons. This approach would penalize federal employees for the fact that their employer provides subsidized health insurance and retirement benefits unlike some of the largest private employers in the U.S. The fact that roughly half of American workers receive no retirement benefit from their employer¹ should not be grounds for denying federal employees pay adjustments that allow them to keep up with the cost of living.

What AFGE is Asking Congress to Do:

1. Provide a 3.5 percent pay adjustment for 2021. This adjustment follows the well-established precedent of civilian-military pay raise parity and is an amount that reflects pay adjustments in both the private sector and state and local government.
2. Resist the calls to impoverish further the middle and working class federal employees who are in the middle and lower grades of the General Schedule by reallocating their pay toward those in the top grades. No matter how strong the denials are that “reform” means reallocation to the top, what matters is the incidence, distribution, and fairness of the system’s mechanisms for pay adjustments. Any system that rewards those at the top by providing less to those at the bottom and middle of the pay distribution should be strongly opposed, no matter how compelling the obfuscating rhetoric of modernization might sound.

¹ <http://www.pensionrights.org/publications/statistic/how-many-american-workers-participate-workplace-retirement-plans>

Federal Retirement

INTRODUCTION

Since 2011, federal workers have had roughly \$195 billion taken away from their compensation and benefits for deficit reduction, including an unprecedented three-year pay freeze, a mandatory increase in employee pension contributions of 2.3 percent of salary for employees hired in 2013, and an additional 3.6 percent of salary increase in pension contributions by employees hired after 2013. The \$195 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 government shutdowns in 2013 and 2018-2019.

Increased mandatory pension contributions that federal employees hired after 2013 makes it all but impossible for many to take full advantage of matching funds for their Thrift Savings Plan (401(k) equivalent) accounts, resulting in a serious shortfall in their retirement income security, and a substantial lowering of their standard of living.

FEDERAL WORKERS CONTRIBUTED OVER \$246 BILLION TOWARD DEFICIT REDUCTION	
<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>
<i>Total</i>	<i>\$195billion</i>

AUSTERITY BUDGET POLITICS HAS CAUSED SEVERE HARM TO FEDERAL EMPLOYEES

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 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, and for the government services on which all Americans depend. Spending cuts hurt not only the middle class, the poor and the vulnerable, and 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, the then House and Senate Budget Committees 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 mandatory pension contributions/salary reductions for employees hired after 2013 to up to 4.4 percent of salary.

Using federal retirement to facilitate budget deals must not happen again. It was entirely unjustified and unjustifiable in 2013 and 2014 and the ongoing salary reductions first imposed during those years should be repealed. The \$195 billion forfeited by the middle and working 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.

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 deficit reduction. AFGE will continue to oppose any additional efforts to undermine the statutory retirement promises on which federal employees rely.

There have been repeated efforts 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 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.

Reduced COLAs: In addition to the increased taxes on federal salaries to fund retirement costs, the administration proposed other possibilities: reducing cost of living adjustments for Civil Service Retirement System (CSRS) annuitants by half a percentage point and eliminating them altogether for FERS annuitants.

Calculating FERS Annuity Using The “High Five”: The administration also 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.”

Elimination of FERS Supplement for Law Enforcement Officers: In a direct attack on federal law enforcement officers who are required by law to retire by age 57, the administration has 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.

Eliminating Defined Benefit Pensions for New Federal Employees: The Heritage Foundation’s “Blueprint for Reform” 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

http://thf_media.s3.amazonaws.com/2016/BlueprintforReform.pdf#page=109

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.

Backdoor Efforts to Take Away Earned Pensions from Federal Employees:

In 2017, Congress passed legislation to make it easier to fire employees of the Department of Veterans Affairs that also allows the reduction of pensions for VA employees convicted of felonies that influenced their performance. AFGE opposed this legislation 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.

Congressional Action Needed:

- Support legislation that repeals the draconian increases in employee contributions to retirement for those hired after 2012.
- Oppose all additional efforts to reduce or eliminate defined benefit pensions for new or current employees.
- 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 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 vouchering federal health insurance. AFGE strongly opposes dismantling either FEHBP or Medicare by replacing the current premium-sharing financing formula with vouchers.

Issue and Background - Maintain the Quality and Control Escalating Employee Cost Sharing For the FEHBP

At present the FEHBP is a cost-sharing program. On average, the government contributes approximately 70 percent of the premium cost for most employees, although this number can vary considerably depending on the plan chosen by a covered employee and his/her family. (This formula is 72 percent of the weighted average premium; in practice, this has meant an average contribution of 70 percent.)

In order to lower the overall costs of the program, the Office of Personnel Management (OPM), the federal agency administering the FEHBP, has been promoting employee enrollment into lower premium plans, e.g., the new BlueCross/Blue Shield Blue Focus plan. While this plan and other lower premium plans may appeal to those seeking to pay lower upfront costs, they offer inferior benefits, and out-of-pocket costs to employees can be quite high, especially if an employee and his/her family experience high overall health care costs in a given year.

It is vital to federal employees that the government's current premium sharing formula for the FEHBP be maintained, and that the share of cost attributable to employee paid premiums be kept as low as possible, consistent with plans that offer comprehensive benefits. That is, FEHBP must continue to be financed with the government paying a percentage of premiums, not a flat rate or cash voucher.

The largest FEHBP plans contract with OPM on a fixed price re-determinable basis with retrospective price redetermination. This means that even as the insurance companies receive only a fixed amount per contract year per "covered participant," 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.

AFGE will continue to monitor OPM's administration of the FEHBP, and urges all members to actively engage with their Congressional representatives to ensure that any attempts to scale back the government's FEHBP share of premiums is defeated.

Issue and Background - Turning FEHBP into a Voucher System

The House Republican Study Committee (RSC) is a powerful caucus of Republican members of Congress. The RSC has recommended changing FEHBP into a "premium support system." This is a euphemism for vouchers. 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."

What this means is that they propose 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.

Between 2012 and 2019, FEHBP premiums increased by about 4.0 percent per year. For 2020, Federal employees and retirees saw an average increase in their FEHBP premiums of 5.6 percent. This is the largest increase since the 2018 plan year, when premiums for employees jumped 6.1 percent.

Meanwhile, the government's share of the premium increase for 2020 is only 3.2 percent, meaning that more of the cost of healthcare insurance is falling on employees rather than agencies. Combining this increase of 5.6 percent with the Administration's average proposed pay raise of 3.1 percent, means that the employee premium increase percentage will be almost twice as large as the pay raise. For retirees who are entitled to a COLA, the health insurance premium increase will be even more dramatic, as retirees who are eligible for the COLA received an increase of only 1.6 percent in their annuity.

In justifying the higher premiums, the Administration attempted to blame Congress, and more specifically a provision of the Affordable Care Act (ACA) designed to fund state healthcare exchanges. For the past several years, Congress has suspended this provision. According to the Administration, not suspending insurer payments to the healthcare exchanges is responsible for 2 percent of the 5.6 percent increase in employee premiums.

For 2020, the Office of Personnel Management (OPM) added two new nationwide indemnity plans – both from GEHA. These two new plans “fill a gap” that has existing for over thirty years, when Aetna dropped out of offering indemnity plans under the FEHBP. As a practical matter, in the ensuing thirty years, indemnity plans and “fee-for-service plans,” e.g., Blue Cross/Blue Shield, are effectively identical in benefit structure, so there is no policy change by adding indemnity plans to the FEHBP mix. Employees and retirees will simply have two more nationwide plans to choose from.

Those employees/retirees who choose to enroll in the Federal Employees Dental plan also saw premiums increase, on average, by 5.6 percent. For employees/retirees who enroll in the Vision Plan, premiums increased by 1.5 percent.

During the past three FEHBP premium setting years (2018, 2019 and 2020), the government’s contribution has been less than the increase in the employee contribution. (In 2018, the government contribution increased only about half as much as the increase in the employee contribution. In 2019, the government’s increased contribution was 20 percent less than the employee’s increased contribution. In 2020, the government’s contribution was 40 percent less than 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 increases; 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.

Issue and Background - 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 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 Department of 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.

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 and retirees as the cost of health insurance continues to outpace increases in wages and salaries.

Congressional Action Needed to Address FEHBP Issues

- During the past 9 years, including the three year pay freeze, federal pay rose by just 13.3 percent (0 percent for 2011-2013, 1 percent for 2014 and 2015 and 1.3 percent in 2016, 2.1 percent in 2017, 1.9 percent in 2018, 1.9 percent 2019, and 3.1 percent in 2020). But in that same 9 year period, federal employees’ premiums are over 35 percent higher in dollar terms in 2020 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).
- FEHBP’s funding structure should be maintained in its current form. All attempts to convert the formula into a voucher or “premium support system” should be rejected.

Collective Bargaining and Employee Representation

AFGE Urges Congress to protect the workplace and union rights of federal workers. The rights of federal workers are under attack. The Administration is working to undermine the ability of federal employee unions to represent and protect the rights of the workers in their bargaining units. A coordinated effort to restrict federal unions' ability to negotiate fair contracts, stemming from three executive orders, is being waged by the Administration.

Federal Workforce Executive Orders

In May 2018, the Administration issued three executive orders (EOs) that eliminated many rights afforded federal workers under Title 5 of the United States Code. Specifically, the orders place severe restrictions on how and the issues agencies and federal employee unions can collectively bargain, eliminate the ability of union representatives to represent employees on the worksite, and unreasonably limit the amount of time union representatives can engage in representational work during the workday. The executive orders also abolish federal workers' due process and merit systems protections which are essential to maintaining an apolitical civil service. AFGE filed a lawsuit and a District Court judge issued an injunction and struck down provisions of the EOs. The Administration appealed the decision and the Court of Appeals ruled that the District Court did not have jurisdiction to rule on the lawsuit and federal unions must challenge the EOs through administrative avenues provided in the Federal Labor Relations Act.

Despite the appellate court's ruling, agencies are still legally obligated to bargain with federal employee unions over the implementation of the EOs. However, many agencies are ignoring this obligation and revoking previously negotiated and agreed upon amounts of official time, removing unions from the workplace and prohibiting the use of agency space or equipment by unions. Some agencies are now beginning the process of charging unions inflated prices for the use of agency space and are also engaging in "bad faith" bargaining, proceeding quickly to impasse, sending proposals that all but obliterate the union's ability to carry out its representational obligations under the law.

All federal employee unions have a legal duty to represent all members of a "bargaining unit" regardless of whether they choose to join and pay dues or not. The EOs undermine the unions' ability to carry out the duty of fair representation and essentially eliminate the representation rights of federal employees provided in law.

Protecting Workplace Representation

Federal employees are prohibited by law from bargaining over pay and benefits. Federal employees only join a union if they choose to do so. Federal unions bargain solely over the conditions of work and the ability of both sides to enforce contracts. Collective bargaining involves a process of give-and-take and compromise. Both sides, the union and management,

must come to terms that promote the mission of the agency, the efficiency of the service, and fairness and stability for the workforce.

As a result of the implementation of the EOs, federal workers who have voted for union representation no longer have an elected union representative on the job who can meet with them during the workday when they experience instances of harassment, discrimination or need to report issues of workplace safety or productivity. The Eos will also make it harder for unions to hold agencies accountable for actions that undermine the apolitical merit system.

Collective Bargaining and Congressional Action

In the past year, many Members of Congress and Senators have sent multiple letters to the White House and agency leaders in support of protecting federal employees' workplace and union rights.

AFGE urges Congress to conduct continued oversight of federal agencies to ensure that they meet their legal obligations to bargain in good faith with federal employee unions and uphold federal employees' workplace rights.

Government-Wide Sourcing Issues

Issue

The Office of Management and Budget (OMB) and agencies have not addressed specific problems with public-private competitions pursuant to OMB Circular A-76 that prompted a Congressional moratorium on use of A-76. The moratorium was first imposed as a result of a scandal at the Walter Reed Army Hospital when wounded warriors were provided inadequate care resulting from staffing shortages caused by A-76. Numerous GAO and DoD Inspector General audits found that A-76 competitions had substantial unprogrammed investment costs and over-stated savings, even after the establishment of a “Most Efficient Organization.” Additionally, there is a virtual absence of contractor inventories, contract services budgets, and adequate review processes to ensure that inappropriate contracts, and contracts involving inherently governmental functions are not awarded.

Many government service contracts have been found to involve “personal services” which are unlawful under existing statutory authority for most agencies. And statutory exceptions have been abused, as exemplified by the Abu Ghraib scandal where personal services exceptions allowed for contract interrogators to completely undermine command lines of authority and discipline when the personal services authority was used to permit their performance of inherently governmental functions and engage in unlawful torture that had adverse operational affects on the Department’s mission. OMB has also allowed continuing abuses to persist with contracts that are characterized as involving services that are “closely associated with inherently governmental functions.” OMB has even allowed such contracts to be classified as “commercial” in nature, a characterization criticized by both Congress and the Commission on War Time Contracting. These concerns were embodied in Congressional findings with direction to OMB to revise the inherently governmental guidelines. To date, neither OMB nor any agencies have fully addressed these findings.

Sourcing of work among civil service employees, contractors, and other labor sources is affected by pro-contractor procurement policies, anti-civil service hiring limitations, and the absence of planning to encourage a strong career civil service. Also contributing to a pro-outsourcing agenda by the Administration are weaknesses in agency budget development and execution; and, the lack of adequate compliance mechanisms with existing sourcing laws, including the current A-76 moratorium.

Background/Analysis

Sourcing of work among the federal government’s civil service workforce and contractors or other sources of labor is affected by:

1. Procurement policies devised to promote contracting-out of so-called "commercial" functions – very loosely defined and without regard to sufficient oversight over costs;
2. Hiring restrictions (such as Full Time Equivalent personnel caps imposed by the Office of Management and Budget (OMB)) and limitations on insourcing disconnected from human capital planning and agency workload requirements or cost considerations;

3. The way agencies develop, defend and execute their budgets for the civil service workforce as opposed to contractors, who are not subject to any personnel ceilings (including inventories of contractor performed work). The focus is on fully executing agency budgets and wasting resources in the fourth quarter of each fiscal year by focusing on awarding contracts to fully obligate agency funds. Once contracts are awarded, there is little concern about the cost of performance, and various “acquisition reforms” have focused on weakening oversight and audit capabilities – leaving agencies defenseless to contractors. The civilian workforce is used as an offset or billpayer for under execution of an agency’s budget or to fund new requirements not fully funded by OMB or Congress. Insourcing is discouraged even when allowed by statute. Vacant civil service positions are not automatically filled but often cut during this process. Contractor inventories exclude so-called “commercial item” contracts and are otherwise curtailed and sabotaged.
4. The absence of oversight mechanisms to ensure an agency complies the A-76 moratorium and other legal limitations on contracting-out.

Congressional Action:

- Continue the OMB A-76 moratorium and mandate enforcement mechanisms for all statutory sourcing limitations;
- Eliminate FTE caps on civilian hiring, allow insourcing; and promote better human capital planning informed by workload and costs;

Improve agency budgets to highlight contractor workforce costs informed by comprehensive contractor inventories.

Official Time is Essential to Federal Government Efficiency and Productivity

Protect the use of Official Time Within the Federal Government

Official time is a legal term that describes time spent by federal employees who volunteer to be union representatives and who are engaged in representational duties required by the Civil Service Reform Act of 1978. According to that law, the amount of official time granted by a federal agency to volunteer union representatives is subject to collective bargaining and should be granted in amounts that are “reasonable, necessary, and in the public interest.”

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

Repeated legislative attempts to eliminate official time have been defeated with strong bipartisan support. During the 115th Congress, no official time amendments came to the floor for a vote in the House or Senate. However, for the first time since passage of the Civil Service Reform Act of 1978—which required federal employee unions to represent all federal employees in a bargaining unit (even employees who choose not to pay union dues), and therefore, gave unions the right to bargain over amounts of official time—the current administration issued an Executive Order to eliminate federal employees’ right to bargain over this aspect of union representation.

The Executive Order prohibits official time for negotiated grievances on behalf of employees represented by a labor organization and prohibits official time for the purpose of representing employees in negotiated grievances. The Executive Order also sets an arbitrary limit on the number of hours of official time that agencies should grant to union representatives. There has been bipartisan opposition to the Executive Order and on August 29, 2018, a federal judge ruled that the orders were in violation of current law. However, the Administration successfully appealed this decision to the U.S. Court of Appeals for the D.C. Circuit which ruled that the District Court did not have jurisdiction to rule on the lawsuit.

Multiple agencies have put forward extreme proposals for agency contracts with AFGE. These agency proposals kick unions out of the workplace and prevent the exercise of employees’ right to represent one another through the use of official time. The contracts and contract proposals mirror the President’s Executive Orders. Agencies are engaging in surface, bad faith bargaining and forcing the union to impasse.

EEOC Official Time Rule

The Equal Employment Opportunity Commission (EEOC) has proposed a rule to prohibit federal employees who are union representatives from utilizing official time or paid duty time to represent their co-workers in an Equal Employment Opportunity matter. Currently, a federal employee with an EEOC complaint is free to choose who will represent him or her in the matter, and both the employee with the complaint, and the chosen representative are permitted to use official time to pursue the case. The official time used in EEO matters is separate and apart from official time bargained for use in other labor-management matters. If current regulation is amended to allow the EEOC to prohibit the use of EEO official time by union representatives, the EEOC will effectively eliminate the right of federal employees to choose their representative in an EEO complaint.

The new regulation would only exclude one category of individuals as representatives in EEOC matters – union representatives. Such discrimination against union representatives is a form of intimidation that discourages workers from coming forward with issues such as workplace harassment and unfair treatment. Employees will be prevented from seeking assistance and representation from their union representatives who have valuable knowledge and experience about EEO complaints.

The proposed rule also places an unfair limitation on the choice of a workers' representative. By excluding union representatives from using official time when representing a co-worker in an EEO matter federal employees are then forced to represent themselves, pay for legal representation or have a co-worker with no knowledge or experience of the EEO process represent them. The cost of an attorney will be prohibitive for many of the most vulnerable federal employees.

The proposed rule unfairly discriminates against union representatives because they are affiliated with the union. When a federal employee is elected by his or her co-workers to become a union representative, the employee does not currently forfeit any of his or her rights as a federal employee. By denying union representatives, and only union representatives, the right to use official time to represent a co-worker in an EEO matter the proposed rule discriminates against union officers.

Official Time Legislative Background

On April 29, 2015, Representative 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.

Official time gives federal employees the ability to provide input to improve workplace policies and procedures, as well as protection if they are discriminated against or treated unfairly. Prohibition on the use of official time eliminates basic, much-needed protections for America's public servants—federal workers who support our military, make sure the Social Security checks

are sent out on time, ensure a safe food supply, enforce clean water and clean air laws, and care for wounded veterans.

How Official Time Works

In the federal government union membership is optional—it is a choice. Employees join the union and pay dues only if they choose to do so. By law, federal employee unions are required to provide services to all employees in units that have elected union representation, even for those who choose not to join the union and pay dues. Federal employee unions are 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 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 duties 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 that information to the Office of Personnel Management (OPM).

Official Time Makes the Government More Efficient and More Effective

Through official time, union representatives are able to work with federal managers to use their time, talent, and resources to make our government even better. Improvements 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 operational efficiency and is often the key to survival in a competitive market. The same is true in the federal government. No effort to improve or sustain improvements in governmental performance will be successful if labor and management maintain an adversarial relationship. In an era of 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 communicating effectively, workplace problems that would otherwise escalate into costly litigation can be dealt with promptly and more informally.

Official Time Produces Cost Savings from Reduced Administrative Expenses

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

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. The EEOC's rule is being proposed while the administration imposes harsh restrictions on federal employee unions' ability

to represent their members in any context during regular business hours. The administration's attack on "official time" is an attack on unions' ability to represent during business hours, the hours during which most federal agencies operate.

AFGE strongly opposes any legislative effort to erode, restrict, 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 prohibit 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 elect 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 in 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 to join the union, nor are they under any obligation to pay for that representation or pay any other fee to the union.***

Legislative Background

During the 114th Congress, Representative Tom Price (R-GA) introduced H.R. 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 Representative Mark Meadows (R-NC) (H.R. 4792) and Senator Tim Scott (R-SC) (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.

Opposition to payroll deduction of union dues is rooted in the false premise that elimination of payroll deduction would produce cost savings to the government. Since payroll deductions are done electronically, it costs the government virtually nothing to deduct union dues. The federal government currently provides payroll deductions for the following:

- Combined Federal Campaign (Charities)
- 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, bankruptcy, and commercial garnishment
- Flexible spending accounts for payment of health costs not covered by insurance
- Collection of debts owed to the United States
- Professional Association dues
- Personnel account Allotments (savings accounts)
- IRS Paper Levies
- Military Service Deposits

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, is nevertheless 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. RESTORING SENIORITY AND VETERANS PREFERENCE AS PRIMARY RETENTION CRITERIA DURING REDUCTIONS IN FORCE AND PROHIBITING FORCED DISTRIBUTION PERFORMANCE EVALUATIONS

Issue

Subjective performance evaluations displaced the more objective criteria of seniority and veterans' preference in the order of retention during Reductions in Force in a statutory change enacted in section 1597(f) of title 10, United States Code, enacted in section 1101 of the National Defense Authorization Act for Fiscal Year 2016 (P. L. 114-92) (2016 NDAA). Performance evaluations are being implemented with forced distributions mandating "average" ratings for employees irrespective of their actual performance.

Background/Analysis

Until 2016, the reduction in force provisions codified in section 3502 of title 5 United States Code established seniority as primary, followed by veterans' preference, as the required order of retention during reductions in force.

In 2016, everything changed. Objective measurements of work experience (seniority and rating systems based on standards without "bell curve" ratings) and the acknowledged value of military service (veterans' preference) were replaced with the subjective and easily manipulated criteria of "performance." DoD Components have started to implement "New Beginnings" performance evaluation system with mandates that most employees obtain "average" ratings, misleadingly claiming this practice is consistent with evaluating an individual employee based on an objective standard when in fact it does the very opposite.

A key foundation to retaining an apolitical civil service and adhering merit principles has been to ground retention on an employee's proven commitment to public service, reflected both by their service as a veteran in the armed forces and the seniority of their continued employment with the federal government.

The senior military leadership of the Department has testified in the past few years during Readiness depot Maintenance Hearings before the Armed Services Committees on the importance to readiness of retaining an experienced workforce. Losing experienced employees directly impacted workload backlogs which had a direct impact on training and readiness of warfighting capabilities supported by these civilians. (See., e.g., HASC on 7 Feb 2017 and SASC on 8 Feb 2018).

Respected business journals such as the “Harvard Business Review” have reported on how many performance management appraisal review systems are being abandoned by the private sector because of their expense, subjectivity, misdirection of performance measures to “activities” rather than “outcomes,” “the need for better collaboration,” “the need to attract and retain talent,” “the need to develop people faster,” and “the changing nature of work.” (See, e.g., David Rock and Beth Jones, “Why More and More Companies are Ditching Performance Ratings,” Harvard Business Review (Sep. 8, 2015)

2. RETAINING THE MORATORIUM ON PUBLIC-PRIVATE COMPETITIONS PURSUANT TO OMB CIRCULAR A-76

Issue

Despite previous Congressional direction, DoD is not prepared to conduct viable A-76 competitions. In fact, the disruptive impacts of A-76 competitions on the care provided to Wounded Warriors being treated at the former Walter Reed Army Medical Center in February 2007 led to multiple investigations, resignations of senior officials, Hearings and legislation by Congress prohibiting the conduct of A-76 competitions, initially at military medical treatment facilities, and the Department of Defense, as currently reflected in Fiscal Year 2010 NDAA section 325, and later extended to the entire federal government through annual appropriations restrictions typically reflected in the Financial Services appropriation for the entire government.

Background/Analysis

Section 325 of the Fiscal Year 2010 NDAA made Congressional findings on the flaws of public-private competitions as devised by OMB Circular A-76 and implemented within DoD. These flaws included:

1. The double-counting of in-house overhead costs as documented by the DoD IG in D-20090-034 (15 Dec 2008);
2. Failure to develop policies that ensured that in-house workforces that had won A-76 competitions were not required to re-compete under A-76 competitions a second time;
3. The reporting of cost savings were repeatedly found by the GAO and DoD IG to be unreliable and over-stated for a variety of reasons, including:

- a. Cost growth after a competition was completed because the so-called Most Efficient Organization and Performance Work Statements that were competed often understated the real requirement;
 - b. Military buy-back costs documented in GAO-03-214 because A-76 competitions required a Military Department either to reduce its end strength or reprogram the funds to Operations and Maintenance appropriations in order to complete the competition.
4. As a result of these flaws, DoD was required to develop comprehensive contractor inventories, improve its services contract budgets, and to have in place enforcement tools to prevent the contracting of inherently governmental functions; to ensure that personal services contracts were not being inappropriately used; and to reduce reliance on, or improve the management over high risk “closely associated with inherently governmental” contracts.

These flaws have not been addressed and the conditions laid out in section 325 have not been complied with (based on required GAO reviews and the lack of required DoD certifications of actions taken). In fact, June 28, 2011 is the last time DoD specifically reported out to Congress on its plans to address specifically section 325 of the FY 2010 NDAA problems.²

Congressional Action

- Continue the Public-Private Competition moratorium.
- Congress, through its oversight over the Department, require the Department to address the requirements of section 325 of the Fiscal Year 2010 NDAA in full, followed up by a GAO review.

3. PRESERVING THE DOD COMMISSARY NON-PAY BENEFIT SAVINGS (WHICH ARE PARTICULARLY IMPORTANT IN REMOTE AND OVERSEAS AREAS) AND ITS WORKFORCE (THAT INCLUDES VETERANS AND MILITARY SPOUSES AND FAMILY MEMBERS)

Issue

DoD has placed the important commissary benefit at risk. The DoD has programmed substantial reductions premised on “assumed efficiencies” from prior and on-going Defense Resale Reform initiatives, at the same time that sales have dropped by nearly 25 percent, from \$6 billion to \$4.7

² Additionally, the Department notified Congress on November 26, 2019 that it would be transitioning from the Enterprise Contractor Manpower Reporting Application to the System for Award Management (SAMS), and that it would provide a summary of FY 2020 data by the end of the third quarter of FY 2021. The DoD notification did not explain that SAMS excludes most services contracts and does not address the analytical review requirements of section 2330a of title 10, as the statute requiring SAMS across non-DoD agencies had a much narrower scope than the DoD statute.

billion, and with an apparent near term goal of reducing the needed \$1.26 billion annual subsidy long acknowledged as crucial to preserving this benefit in an ill-considered conversion to a Non-Appropriated fund workforce.

Background/Analysis

The Commissary benefit is a crucial non-pay benefit for the military and their family members, particularly in remote and overseas locations. During the implementation of recent “reforms” from the Boston Consulting Group, sales have dropped by nearly 25 percent and coupon redemption has been reduced by more than half from 113 million in 2012 to 53 million in 2017. SNAP usage has dropped by 947,000 down to 550,000. All this has occurred during a period when DeCA has lacked a permanent director for two years and a Defense Resale “Reform” Task Force has apparently been making plans for an eventual conversion to Non-Appropriated Funds (NAF). The FY2020 NDAA prohibits consolidation of DeCA with the Exchanges until the HASC and SASC notify the Secretary of Defense in writing of receipt and acceptance of the findings of a GAO review required to be completed by June 1, 2020, with an interim report by March 1, 2020. There is a broad coalition supportive of preserving the Commissary benefit and preventing the merger of DeCA with the Exchanges led by the American Logistics Association.

Congressional Action

- Reject and restore any cuts to the DeCA appropriation in the President’s Budget request.
 - Ensure DoD does not preemptively restructure DeCA, consolidate DeCA and the Exchanges, or convert the DeCA workforce to Non Appropriated Fund prior to Congressional receipt and acceptance of GAO review.
 - Ensure DoD does not convert the DeCA workforce to Non Appropriated Fund.
- 4. REPEALING THE “COMPREHENSIVE PENTAGON BUREAUCRACY REFORM AND REDUCTION” PROVISIONS IN ORDER TO ELIMINATE ADDITIONAL BUREAUCRACY AND REPORTING CENTERED ON THE CHIEF MANAGEMENT OFFICER**

Issue

- The “Comprehensive Pentagon Bureaucracy Reform and Reduction” provisions enacted in sections 921-928 of the FY 2019 National Defense Authorization Act (CPBRR) incorrectly characterized “covered activities” in Defense Agencies as “overhead” while actually creating additional bureaucratic overhead centered on the Chief Management Officer (e.g., with required reports on efforts to achieve 25 percent savings based on directed studies on Defense Agencies). Section 901 of the SASC markup of the FY 2020 NDAA repealed the 25 percent targets and certifications directed solely against Defense Agencies and replaced this derogatory language biased against Defense Agencies with a general requirement without any pre-conceived targets applicable to all DoD organizations that they take actions to “minimize duplications of efforts” across all

of DoD. However, the Conferees on the House side “recede[d] with an amendment that would eliminate the repeal of certain certifications and modify the increases in the statutory caps on headquarters personnel with the intent of enhancing the opportunity for civilian perspective and advice...” The Conferee report was completely silent on the rationale for restoring the 25 percent targets and did not even acknowledge that this was, in effect, what it was doing.

Background/Analysis

Compelling testimony from expert witnesses on Defense Agency organizations provided on April 18, 2018 stated that:

- Combining the Defense Finance and Accounting Service, Defense Contract Management Agency and Defense Contract Audit Agency would be inefficient and raise conflicts of interest because of the disparate missions of these organizations;
- Directing further reductions or “efficiencies” or realignments of missions from the Defense Logistics Agency and Defense Finance and Accounting Service would be counterproductive, as these were already highly efficient organizations. “DFAS took over more than 300 separate finance and accounting systems and 27,000 employees from the Services when it was established in the early 1990s. It now runs a much improved finance and accounting operation with a handful of business systems and just 11,000 people. DLA absorbed functions from the Services over a longer period of time, but managed to go from 64,000 employees in 1992 to 23,000 in 2014, while dramatically reducing warehouse space and other overhead.”
- The CPBRR proposals will simply have a “balloon effect” of just moving functions around in a shell game where nothing is really changed, except return on investment, efficiency and effectiveness would suffer.

The final proposal that was enacted has been claimed to be an “improvement” because it merely requires that DoD produce a report and that DoD has the option of providing an alternative plan to taking the 25 percent reductions. But this language merely provides the opportunity for the following kind of misinformed jawboning and oversight as exemplified by this exchange between Senator Blackburn on the SASC and Hon. Lisa Hershman during her confirmation hearing to become the DoD CMO on October 29, 2019:

BLACKBURN: Thank you, Mr. Chairman and thank you to each of you for being here this morning. Ms. Hershman, I want to continue basically where Senator King was. Moving, talking about these deliverables, that are so necessary, and in the 2019 NDAA, you are tasked with reducing covered activities and contacting 25 percent.

And, the first benchmark, was an initial plan, but that arrived from your office a couple of months late. And, GAO's review of that document was not a favorable review. And, left a lot of questions that were out there and they really, their comment was, that it was difficult to assess the feasibility of future reforms, based on what you delivered, for them.

The second report was due at the beginning of this month and the reforms identified came in at 5 percent across the baseline instead of the 25 percent that you have been mandated to meet. So, we've got two timelines and two sets of deliverables that have been missed, in this process, so far. And, we are looking at January, where there is another report that is due.

So, I want you to layout for the committee, how you are approaching this report--this report in January? What are the deliverables and the savings that you have identified? How are you going to reduce those covered activities, like services contracting, and real estate management, so that you are going to hit that target? Because this fourth estate reform, is vital to effectiveness and efficiency and as you say, keeping that focus on lethality.

HERSHMAN:

Senator, in that report, the 25 percent target also included the statement that if it would be injurious or inefficient to meet that 25 percent target, please state why. In the timeline, for meeting that target was within one fiscal year and across all of the fourth estate, the average came out to be about 5 percent. However, within that and this came largely from Ranking Member Thornberry, and his legislation and I've had conversations with--with Ranking Member Thornberry on this, and some of the things we discussed was the focus on the fourth estate and particularly baselining within organizations like Washington Headquarters Services, some of the things that we are doing within my own directorate, with regard to, say civilian management, which is one of the covered areas, we actually have a target of 30 percent in the fiscal year--

BLACKBURN:

And do you have a timeline for meeting that target?

HERSHMAN:

Yes.

BLACKBURN:

A set of deliverables, that are that are attainable?

HERSHMAN:

Yes, we do. And--

Congressional Action

- Repeal the “Comprehensive Pentagon Bureaucracy Reform and Reduction Act” (CPBRR) and replace with a general requirement without any pre-conceived targets applicable to all DoD organizations that they validate their requirements based on workload and cost analysis of the most appropriate total force mix of military, civilian employees and contractors needed for their mission, using language similar to the FY 2020 NDAA Senate markup language for section 901.

5. REPEAL FISCAL YEAR 2018 NATIONAL DEFENSE AUTHORIZATION ACT SECTION 803 INCURRED COST AUDIT PROVISIONS THAT WEAKENED THE DEFENSE CONTRACT AUDIT AGENCY OVERSIGHT

Issue

Section 803 of the FY 2018 NDAA established a so-called “risk and materiality” framework that will allow substantial and increased amounts of contract spending to be considered “low risk,” and a framework for using so called “qualified” private sector contractors to perform incurred cost audits. This leads to unnecessary expenses.

Background/Analysis

These changes were driven by criticisms that Defense Contract Audit Agency (DCAA) incurred cost audit backlog that started after 2008. The backlog was driven in part by staffing shortfalls, budgetary uncertainty, furloughs and hiring freezes, combined with an increased workload --- “doing more with less” in response to new GAO criticisms that Generally Accepted Government Auditing Standards (GAGAS) were not being met because of the “lack of working-paper documentation.”

“When an auditor completes an audit, he (sic) creates working papers to document the audit steps performed, including records of discussions with contractors and Government officials, supervisory guidance and final review notes by the supervisor. Most, if not all, auditors would prefer to spend budgeted audit hours on actual audit effort rather than on time-consuming working-paper documentation. When DCAA auditors were faced with smaller and tighter audit budgets because of inadequate funding from DoD over the years, one of the first areas cut was working-paper documentation.” Richard Loeb reports that during the same time of the GAO criticisms, the DoD IG had given DCAA “a clean opinion on peer reviews since the inception of the requirement for peer reviews.” (Richard Loeb, GAO vs DCAA –And the Winner Is? Contractors! -- Government Contract Costs, Pricing and Accounting Report Vol 5, Issue 2 (West) (March 2010)).

Instead of addressing the root causes of this backlog, section 803 was enacted. And, as a consequence of this statutory change, DCAA is now reportedly performing about 500 incurred cost audits per year, down from its performance of about 10,000 incurred cost audits in FY 2007. DCAA saves the taxpayers approximately \$5 or more, on average, for every dollar spent on operations. For FY 2017, net savings to the taxpayer were approximately \$3.5 billion on \$673 million of operating expenses, a return of \$5.20 for every dollar spent.

Congressional Action

- Repeal Fiscal Year 2018 NDAA section 803 and replace it with direction to develop a plan to increase DCAA staffing levels commensurate with their workload.
- 6. IMPLEMENTING AND CLARIFYING SECTION 711 AND 712 OF THE FY 2019 NATIONAL DEFENSE AUTHORIZATION ACT TO ENSURE THAT THE DEPARTMENT MAINTAINS SKILLS PROFICIENCY, QUALITY OF HEALTH CARE SUPPORT TO MILITARY MEMBERS AND FAMILIES AND READINESS**

Issue

Section 719 of the FY 2020 NDAA placed limitations on the realignment or reduction of military medical Manning end strength until there is a plan in place “for mitigating any potential gap in health care services caused by such realignment or reduction.” But it leaves unanswered the heart of the issue, for purposes of the Military Personnel Subcommittee oversight in the HASC, that surfaced during a Hearing on December 5, 2019 with the ASD Health Affairs, Director of the Defense Health Agency and the Military Department Surgeon Generals: how to establish a framework with the right guard rails to preclude any ambiguity whatsoever on the level of manpower staffing required to protect patient safety with respect to military families, whether they obtain their care in a military medical treatment facility or in TRICARE in the private sector: H.R. 2581, “Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act of 2019” sponsored by Rep. Schakowsky (and others), and the corresponding S. 1357 sponsored by Sen. Warren (and others), specifically fills that gap and should be addressed in this year’s NDAA markup.

Background/Analysis

Sections 711 and 712 of the FY 2019 NDAA establishes a framework for realigning the administration of functions to the Defense Health Agency from the Military Departments and retaining within the Military Departments only those functions needed to meet military medical readiness requirements of senior operational commanders. Section 711 further allows closure of a military medical treatment facility or downsizing of a medical center, hospital, or ambulatory care center after 90 days of submission by DoD to the Armed Services Committee a report on the planned actions. Section 721 of the Fiscal Year 2017 NDAA provides authority to convert military medical and dental positions to civilian performance based on cost and readiness considerations.

The DoD has not provided timely and complete analysis to unions or Congress with respect to their plans to reorganize the medical function and their announced plans to downsize approximately 17,944 military medical positions, and associated civilian structure, have not been fully explained to Congress. In February 2019 the GAO confirmed Congressional concerns with the paucity of DoD justifications of these reductions and their impacts. The HASC Military Personnel Subcommittee held a hearing on December 5, 2019 with the ASD Health Affairs, Director of the Defense Health Agency and the Military Department Surgeon Generals where strong concerns were expressed about the effects these reductions would have on military families. The subcommittee expressed specific concerns that the local civilian healthcare networks lack the capacity because the healthcare market is already “oversaturated” even in large metropolitan areas and that these reductions and associated reorganization amounted to “gutting our military health system and calling it an efficiency”.

H.R. 2581, “Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act of 2019” sponsored by Rep. Schakowsky (and others), and the corresponding S. 1357 sponsored by Sen. Warren (and others), currently in the Energy and Commerce Committee, provides the best framework for addressing the specific concerns of the military personnel subcommittee that emerged out of the December 5, 2019 Hearing. HR. 2581 establishes minimum direct care

registered nurse staffing requirements based on the number of patients served by a hospital, whether it is in the public sector or private sector to ensure quality of care and protect patient safety.

Congressional Action

- HASC Military Personnel subcommittee should include H.R. 2581 in its markup of the NDAA. SASC should include S. 1357 in its markup of the NDAA.

7. IMPROVING THE CIVILIAN HIRING PROCESS BY ESTABLISHING AN OBJECTIVE EXAMINATION PROCESS WITH AFFIRMATIVE ACTION FOR DIVERSITY IN COHORT HIRING WITH STANDING LISTS; OPPOSE EXPANDED RELIANCE ON DIRECT HIRE AUTHORITIES

Issue

Section 1109 of the FY 2020 NDAA consolidates and sunsets until 30 Sep 2025 various direct hire authorities established on a piecemeal basis over the course of several NDAA's into a single provision. Section 1109 also requires the SecDef in coordination with OPM to provide for an independent study to identify steps that could be taken to improve the competitive hiring process consistent with ensuring a merit based civil service and diverse workforce in DoD and the federal government. The study is required to consider the feasibility and desirability of using "cohort hiring" or hiring "talent pools" instead of conducting all hiring on a "position-by-position basis." The study is to proceed in "consultation with all stakeholders, public sector unions, hiring managers, career agency and Office of Personnel Management personnel specialists, and after a survey of public sector employees and job applicants."

Background/Analysis

AFGE has serious concerns involving direct hiring, and waiver of the 180 day waiting period for hiring retired military into civil service positions because these exceptions to full and fair open competition for jobs have both been used to circumvent internal competition for jobs, weaken diversity and are incompatible with merit-based hiring in a fully open and competitive process that does not exclude otherwise qualified candidates from consideration. Sometimes, in the past, AFGE has supported direct hire for depots, but has seen these authorities later illegitimately expanded to cover areas such as installation support services in public works offices.

Direct hire authorities work "well" for a hiring manager when one knows specifically who one wants to hire for a job by cutting off competition and shortening the length of a hiring process. But they completely undermine recruiting the best qualified candidate from a diverse pool of qualified candidates and largely perpetuate a "closed system" of hiring in the federal government where getting hired means "knowing someone on the inside".

The Merit Systems Protection Board recently suggested in November 2019 that agencies can hire better, not just faster and cheaper, by bringing subject matters experts into the hiring process and "ensuring that the advertised qualifications of a job posting more accurately line up to the

competencies need to be successful.” The American Federation of Government Employees similarly recently suggested in a letter to NDAA Conferees last year that the absence of an objective examination process for recruiting, such as one the State Department uses or the Armed Forces use with the Armed Services Vocational Aptitude Battery is a major impediment to merit-based hiring and contributes to lack of diversity as well. The current environment of budgetary uncertainty and government shutdowns, hiring freezes, personnel caps, and pay freezes, arguably make the federal government and DoD a less attractive place to work.

Direct hire authorities are typically justified as a means of streamlining the lengthy hiring process to fill positions that would otherwise be filled with other labor sources (contractors or military).

However, direct hire is a band aid that fails to deal with the root causes of hiring delays and largely circumvents other Congressional objectives such as veterans’ preference, hiring military spouses, allowing for internal competition for jobs and diversity of the workforce.

There are four root causes to hiring delays, none of which is addressed by direct hire authorities:

1. Budgetary uncertainty arising from hiring freezes, sequestration, furloughs, and arbitrary caps on the size of the civilian workforce reflected in Full Time Equivalent projections in the budget or the number of authorized positions on an organization’s manning documents. Virtually every management layer of the DoD can create impediments to hiring by requiring organizations to seek their approval prior to initiating a hiring action with the human resources departments.
2. Restrictions on the use of “overhires” for civilian positions even when a workload requirement exists and funding is available to a local manager to initiate hiring for that position. These restrictions create incentives for managers to use available funding for civilian employment to hire contractors instead, even for inherently governmental functions that by law, cannot be contracted out. The GAO recently found that the depots in the organic industrial base sometimes commence hiring at 80 percent of their authorizations on a position by position level waiting for vacancies to occur rather than a more proactive approach of hiring at some percentage above 100 percent of one’s authorizations to account for hiring lag.
3. Downsizing and centralization of human resources offices, in the name of “efficiency,” which sever the relationship between hiring managers and the human resource “recruiters” who have been asked to do more with less.
4. The processing of security clearances is an entirely separate process from the hiring which, nonetheless will impact the time it takes to fill many positions, whether or not direct hire authority is used.

Congressional Action

- Oppose adding additional direct hire authorities pending the completion and coordination of study mandated by section 1109.
 - Encourage OPM, Agency and DoD development of objective examination tools similar to the Armed Services Vocational Aptitude Battery (ASVAB) and State Department exam and some of the civilian career programs within individual military departments.
- 8. REPEAL AUTHORITY FOR ACQDEMO AND OPPOSE SIMILAR SO-CALLED PERFORMANCE MANAGEMENT SYSTEMS SIMILAR TO THE FORMER NATIONAL SECURITY PERSONNEL SYSTEM (NSPS)**

Issue

The AcqDemo is infected with the same problems that occurred under NSPS described below and recommendations from the section 809 Panel to make its authority permanent and expand it to the entire Acquisition Workforce are flawed and should be opposed.

Background/Analysis

A recent RAND review of the AcqDemo identified the following problems:

1. It is not clear whether the AcDemo flexibility has been used appropriately, as starting salaries for AcqDemo participants were about \$13K higher than starting salaries for “comparable” GS employees in DoD.
2. As occurred in NSPS and similar pay-banding structures, “female and non-white employees in AcqDemo experienced fewer promotions and less rapid salary growth than their counterparts in the GS system.”
3. Only about 40 percent of respondents to RAND survey perceived a link between their contribution and compensation, and figure that “is lower than comparable survey statistics from other demonstration projects.”
4. Subject Matter Expert interviews and survey write-in responses opined that AcqDemo was overly bureaucratic and administratively burdensome – taking time away from actual mission performance: “appraisal writing, feedback sessions, and pay pool administration, in particular, were perceived to be time-consuming” and “inefficient.”

Additionally, the claim by AcqDemo proponents that it “links employees pay and awards to their contribution to mission outcomes rather than longevity” is unsupported. In fact, AFGE employees at Aberdeen Proving Ground (APG) supports AcqDemo precisely because it provided greater salary increases overall than the GS system for every employee, and had good grievance outcomes largely because of the failure of management to do all the book keeping required on a timely basis with respect to setting objectives and counseling, which would seem to run counter

to the argument of its proponents in management and the 809 Panel that describe it as rewarding and recognizing excellent performers.

Congressional Action

- Oppose expansion of AcqDemo and consider repealing authority for AcqDemo.
- 9. EXPANSION OF COMMERCIAL ITEMS DEFINITIONS THAT ENCOURAGE SOLE SOURCE PROCUREMENTS WITH REDUCED ACCESS TO TECHNICAL DATA RIGHTS, ORGANIC INDUSTRIAL BASE SUPPORT AND GOVERNMENT COMMAND AND CONTROL OF WEAPON SYSTEMS**

Issue

In Fiscal Year 2018 and 2019 NDAs, the definitions of commercial items were expanded very broadly in ways that could easily mischaracterize many weapon systems and components as commercial and thereby inappropriately shift sustainment workload from the organic industrial base to the private sector. Military leaders could lose command and control and depots could lose the ability to perform maintenance efficiently and effectively on new weapon systems. Government access to tech data rights, cost and pricing data would be diminished and the ability of the government to insource contract logistics support could be imperiled.

Background/Analysis

The following definitional changes are of concern:

- Changing the standard for designating the level of modifications to an item that would be required to deem an item as military unique. Many weapons and components that are only suited for military purposes could be modified to no longer be compatible with their civilian origins and yet would no longer be considered military unique.
- Changing the standard from multiple state “and” local governments to multiple state “or” local governments “or” foreign governments. This greatly expands the list of military unique items that could be considered commercial even though they have never been sold in the commercial market place.
- A single determination for a commercial item stands as the final determination for that item for all purposes throughout the lifetime of that item for all acquisition actions unless the Secretary of Defense determines otherwise in writing.

A Joint Hearing between the HASC Readiness and Tactical Land and Air Forces Subcommittees on November 11, 2019 focused on sustainment problems with the F-35 fighter jet, which is DoD’s costliest weapons system with acquisition costs expected to exceed \$406 billion and sustainment costs estimated at more than \$1 trillion over its 60 year life cycle. According to an April 2019 GAO-19-321 audit, “F-35 Aircraft Sustainment: DoD Needs to Address Substantial Supply Chain Challenges”, the F-35 aircraft performance is “falling short of warfighter

requirements- that is, aircraft cannot perform as many missions or fly as often as required . . . due largely to F-35 spare parts shortages and difficulty in managing and moving parts around the world.” For example, “F-35 aircraft were unable to fly nearly 30 percent of the May-November 2018 time period due to spare parts shortages” and a repair backlog of about 4,300 F-35 parts. Certain sets of F-35 parts are acquired years ahead of time to support aircraft on deployments, “but the parts do not fully match the military services’ needs because the F-35 aircraft have been modified over time. For example, 44 percent of purchased parts were incompatible with aircraft the Marine Corps took on a recent deployment.” The GAO, the DOD IG and some in Congress during this hearing acknowledged that these problems are rooted in the Government’s lack of access to intellectual property.

However, these same members of Congress do not seem to recognize that the goal post has been moved even further with additional impediments to the Government obtaining access to intellectual property in response to section 809 panel and section 813 panel recommendations that were recently enacted by Congress. For instance, a change made in section 865 of the FY 2019 NDAA is currently being implemented in Departmental rulemaking to remove an exception for major weapon systems to the presumption, for purposes of validating restrictions on technical data, that commercial items were developed exclusively at private expense. Currently, the general presumption of private expense at DFARS 227.7103-13(c (2)(i) is subject to an exception in subparagraph (c (2)(ii) for certain major weapon systems and certain subsystems and components. The rulemaking deleted the exception, making the presumption apply to all commercial items. Contracting officers now will presume development at private expense “whether or not a contractor or subcontractor submits a justification in response to a contractor’s asserted restriction on rights in technical data. See 84 FR 43513 (Sep. 13, 2019).

The majority industry members of the Section 813 Panel is recommending to Congress to rewrite federal acquisition law to allow for greater negotiation between government and industry on intellectual property developed with governmental funding. According to the minority members of that panel (from the government) this will “further remove any risk from the contractor and to transfer that risk to the Government” by allowing “a contractor, through negotiation, to transfer all R&D risk to the Government, accept billions of dollars in Government funding, and retain all Intellectual Property rights without providing any Intellectual Property Rights to the Government”.

The GAO itself, depending on who is leading the audit and when they did the audit, have sometimes supported industry’s position on IP and sometimes supported the notion that the government needs greater access to IP. See, e.g., GAO-06-839, *Weapon Acquisition: DoD Should Strengthen Policies for Assessing Technical Data Needs to Support Weapon Systems* (July 2006); versus GAO-17-664, *Military Acquisitions: DoD? Is Taking Steps to Address Challenges Faced by Certain Companies* (July 2017).

Some of the Members of Congress who expressed great concerns with these issues during the November 11th Hearing, seem to have backed away in response to industry assurances that they are negotiating in good faith with the Government to give the government access to all technical data “consistent with contractual arrangements”, which were established when the Government

decided to shift all sustainment responsibility to the contractor in a performance based logistics contract.

Congressional Action

- Ask for additional, GAO, DoD IG and Federally Funded Research and Development Center (FFRDC) studies of the issue on the impact of recent acquisition reforms to sustainment and readiness costs, focusing on access to Intellectual Property (IP) and “right to repair” issues in depot and operational environments for the Military Departments,
- Scale back the commercial items application to foreign military sales.
- Repeal section 865 of the FY 2019 NDAA that changes the presumptions for weapon systems against governmental access to IP.

10. UNLAWFUL DIRECT CONVERSIONS TO CONTRACT AND IMPROVING COMPLIANCE WITH SOURCING STATUTES

Issue

Statutory prohibitions against unlawful service contracting are often not complied with because of ignorance of the rules, disregard of the rules, lack of penalties for non-compliance or the absence of incentives encouraging enforcement. Some progress was made with directive report language of the HAC-D FY 2020 Defense appropriations markup that provided that “appropriated funds should not be used to fund service contracts that have not complied with the planning, programming, budgeting and total force management requirements of 10 U.S.C. sections 2329 and 2330a.” Additionally, clarity was provided in section 817 of the FY 2020 NDAA of USD (Comptroller) and Director, Cost Analysis Program Evaluation responsibilities for the programming and budgeting of contract services, which hitherto had been mis-assigned solely to Service Requirements Review Boards under the oversight of the USD (Acquisition and Sustainment). The Departmental response to a HASC question for record on the use of standard total force management sourcing guidelines provided little assurance of consistent and comprehensive application of statutory sourcing limitations in the total force management statutes of Title 10. This is due to the Department having implemented the Army checklist that was to be a model for these guidelines in a “handbook” that is non-directive in nature.

Background/Analysis

DoD ignored FY 2015 NDAA Conference report language that directed DoD to adopt a checklist used by the Army to improve consistent compliance with sourcing statutes for all contracted services, including: the statutory definitions of inherently governmental; closely associated with inherently governmental; the statutory and regulatory definition of personal services and the various statutory exceptions; the statutory restrictions on contracting firefighters and security guards; the statutory restrictions on contracting for publicity; the statutory

definitions and requirements for the contracting of critical functions; and the statutory prohibitions against contracting functions except through public private competitions and the existence of the moratorium against public-private competitions.

The GAO-16-46 found that the Army’s use of this checklist resulted in considerably more consistent and accurate identification of “closely associated with inherently governmental” functions than other Defense Components, reporting nearly 80 percent of the \$9.7 billion it obligated for the kinds of contracting activities where such contracts would likely be found. By contrast, because they did not use the checklist, Navy, Air Force and other Defense Components identified only a small fraction of what should have been identified. The checklist requires senior leader certification of all services contract requirements as part of the procurement package processed by contracting officers and is further reviewed after a contract is awarded as part of the post-award administration and service requirements validation.

A compromise statutory provision enacted in section 852 of the FY 2018 NDAA was watered down to require “standard guidelines” for implementing the title 10 “total force management” statutory requirements. Accordingly, the vagueness of current statutory language makes it possible for the Army to stop performing this requirement and there is no evidence that the checklist has been adopted throughout DoD given the continuing examples of inappropriate conversions to contract that continue to surface. (Currently, AFARS 5107.503(e)(ii) permits alternatives to the checklist and seems to limit consideration only to inherently governmental functions and not the full range of prohibited contracts covered in the checklist.) The checklist improves compliance because it promulgates in a single “user-friendly” document on an updated basis the applicable statutory requirements -- without modification or amendment within the Department. It is far less burdensome to comply with than requiring numerous government officials to individually and periodically do legal research on every applicable statute.

The absence of penalties on the part of contractors and government decision makers when they deliberately or negligently fail to comply with these statutory limitations, and the absence of whistleblower private rights of action under the False Claims Act for contractor non-compliance, results in complete indifference to the risks born by the government. As a result, these laws are flouted without consequence.

Congressional Action

- Within the Armed Services Committees, clarify prior statutory direction so that DoD wide implementation of the checklist takes place without delay and that the Army not degrade this requirement’s rigor and proven effectiveness. Within Defense Appropriations, carry forward directive report language and augment with corresponding statutory provision prohibiting contracts that violate above statutes and require use of Army checklist. Within the Government Oversight and Reform Committee, pursue adding whistleblower private right of action against contractors for non-compliance under the False Claims Act, with a computed statutory penalty.

11. FIXING THE DAMAGE DONE TO THE SCOPE OF THE CONTRACTOR INVENTORY STATUTE IN THE FISCAL YEAR 2017 NDAA

Issue

DoD incurs waste and promotes inefficiencies because Section 812 of the Fiscal Year 2017 NDAA reduced the scope of the contractor inventory by excluding 56 percent of services contracts (1) by limiting the contractor inventory to four “service acquisition portfolio groups”; (2) by excluding services contracts below \$3M (the majority of contract actions for services task orders fall below \$3M); and (3) by limiting the inventory to “staff augmentation contracts” (defined as “personal services contracts”). Section 819 of the Fiscal Year 2019 NDAA would have repaired all these problems based on the House Chairman’s mark, but in Conference the SASC majority would only agree to expanding the contractor inventory to also cover “closely associated with inherently governmental” contracts, a move that could potentially increase the inventory by 25 percent. (However, the GAO documented that all but the Army have under-reported “closely associated with inherently governmental” contracts, so an increase by 25 percent is optimistic.) Finally, the Department notified Congress on November 26, 2019 that it would be transitioning from the Enterprise Contractor Manpower Reporting Application to the System for Award Management (SAMS), and that it would provide a summary of FY 2020 data by the end of the third quarter of FY 2021. The DoD notification did not explain that SAMS excludes most service contracts because of its exclusions and does not address the analytical review requirements of section 2330a of title 10, as the statute requiring SAMS across non-DoD agencies had a much narrower scope than the DoD statute.

Background/Analysis

The USD (Acquisition and Sustainment) conceded in a February 25, 2018 contractor inventory report to Congress that the Fiscal Year 2017 changes had reduced the inventory to approximately 25 percent or just under \$42 billion of the Department’s total \$160 billion plus spend for contracted services. An October 2019 information paper prepared by the Office of the USD (Acquisition and Sustainment) misleadingly claimed that the Department’s purported “implementation” of the Enterprise Contractor Manpower Reporting Application “(ECMRA) modeled on a prior successful Army initiative was unsuccessful and only had a 20 percent reporting compliance rate, and that therefore the Department of Defense was allegedly going to fully meet the requirements of section 2330a of title 10 through the OMB- developed Systems for Award Management (SAMS) used by the rest of the government under statutory authority requiring far less coverage and analysis than currently required for DoD.

An Oct 2016 GAO 17-17 report amply documents the vacillations, delays and malicious implementation by USD A&S and USD P&R of “ECMRA”. The 20 percent compliance figure cited in their paper was fore-ordained by their prolonged efforts to reverse Obama-era decisions. An AFGE RAND study letter sent to Congress two years ago also fills in some gaps of why the OSD effort is floundering and flawed. Additionally, the 2012 Army testimony before the Senate HSGA contracting subcommittee documents the successful Army ECMRA contractor inventory initiative never implemented by OSD.

- The lack of a viable contractor inventory is one of the conditions underlying the continuation of the public-private competition moratorium.

- Prior Army and Departmental testimony, as well as several GAO and DoD IG reviews, had established the importance of the contractor inventory in determining the direct labor hours and associated costs (direct and overhead) for services contracts; and for improved total force management planning. SAMS does not address this nor does the underlying statutory requirement for SAMS, which is far narrower in scope than the section 2330a requirement in Title 10.
- This testimony and these audits also established that the contractor inventory was important not just for identifying the size of the contractor labor component of the total force of military, civilian and contract, but who “the customer” was (the financial accounting systems and Federal Procurement Data System- Next Generation were not designed to identify the requiring activity who was the ultimate governmental customer for contract services, but instead identified the funding source in the case of the accounting system and the contracting activity in the case of FPDS-NG). Additionally, SAMS does not address this nor does the underlying statutory requirement for SAMS, which is far narrower in scope than the section 2330a requirement in title 10.
- The lack of a comprehensive and viable contractor inventory may very well hinder efforts to improve contract services planning and budgeting. Indeed, it will be difficult to validate projections of contract spending without a credible baseline for comparison of past expenditures by requiring activity and funding source. For instance, it is only through contractor inventories that the Army was able to ascertain that over 90 percent of the funding source for its headquarters’ contracts resided in mission areas budgeted for outside the headquarters accounts, making any future directed Congressional efforts to cut contract costs an easily evaded shell game. Again, SAMS does not address this nor does the underlying statutory requirement for SAMS, which is far narrower in scope than the section 2330a requirement in Title 10.
- When implemented in the manner of the Army, industry reporting burdens were reduced and accuracy increased through accommodation of industry reporting with a bulk loader for spreadsheets and use of a centralized help desk and data management capability. None of these features exists when implemented through a standard clause, resulting in less comprehensive and accurate inventories and complaints from industry on reporting burdens largely avoided by the Army’s original method for doing the inventory. Again, SAMS does use a standard clause for reporting because very little is actually reported in comparison to what was collected by the Army in response to the broader requirements in section 2330a of title 10.
- Government-wide, under authority of 48 CFR 52.204-14, unlike the Army inventory, “non-labor costs” are not collected, a major defect earlier noted by CBO, and the scope is limited to exclude fixed price contracts in excess of \$2.5M and collects cost-reimbursement contracts above the simplified acquisition threshold of \$150K. This makes SAMS, according to the CBO, virtually useless.

Congressional Action

- Repeal the \$3M threshold limitation.
- Repeal the limitation to just four service portfolio groups.
- Amend the scope to include all contract services, or alternatively add to the staff augmentation (personal services) and closely associated with inherently governmental categories, critical functions and any function performed by military or civilian force structure in the past ten years.
- Consider expanding the DoD statutory framework government-wide, in lieu of the current requirement being implemented through OFPP and FARS clause for SAMS to improve accuracy, completeness and reduce reporting burdens.
- Reject DoD efforts to rescope or repeal section 2330a of Title 10.
- Ensure that services characterized as commercial items that correspond to the scope of reporting are included.

12. RATIONALE FOR OPPOSING ANOTHER ROUND OF BASE REALIGNMENT AND CLOSURES (BRAC) AND FOR CLARIFYING LIMITED AUTHORITY FOR BRAC WHEN SELF-NOMINATED BY STATE GOVERNOR ENACTED LAST YEAR

Issue

Another BRAC round would undermine the DoD's efforts to rebuild its readiness and result in excessive unprogrammed investment costs in a politically divisive process with adverse economic impacts and dislocations on communities.

Background/Analysis

- Section 2703 of the FY 2020 NDAA prohibits another round of BRAC.
- DoD has undergone five BRAC rounds from 1988 to 2005.
- The Cost of Base Realignment Actions (COBRA) model used by DoD has typically under-estimated up-front investment costs and over-stated savings. See GAO 13-149. This occurred because:
 - There was an 86 percent increase in military construction costs in the last BRAC round caused by requirements "that were added or identified after implementation began."
 - DoD failed to fully identify the information technology requirements for many recommendations.

- There was no methodology for accurately tracking recommendations associated with requirements for military personnel.
- The GAO found that stated objectives of consolidating training so that the Military services could train jointly failed to occur in two thirds of the realignments for this purpose. See GAP-16-45.
- Section 2702 of the FY 2019 John McCain NDAA provided authority for DoD to realign or close certain military installations when self-nominated by the Governor of a State, subject to the Secretary of Defense and reporting that savings will exceed the costs of implementation by the end of the fifth fiscal year after completion of the realignment. However, this provision contains a loophole that could allow activities on a base being closed to be privatized, defeating the ostensible purpose of becoming more efficient. Additionally, Section 2702 did not include a process ensuring meaningful input from affected employees and the labor unions representing them.

Congressional Action

- Do not authorize another BRAC round or alternative to BRAC. Carry forward section 2703 of the FY 2020 NDAA.
- Eliminate loophole in section 2702 permitting privatization and clarify process for employee and union input.

13. RESTORING GOVERNMENT ACCOUNTABILITY BY IMPROVING THE REGULATION FOR PERSONAL SERVICES CONTRACTS AND OTHER SCHEMES THAT WEAKEN NORMAL EMPLOYER-EMPLOYEE DUTIES AND LIABILITIES REQUIRED BY TITLE 5 UNITED STATES CODE

Issue

Existing exceptions to the prohibition against personal services contracts have been poorly regulated and procurement officials have expanded their use of “other transaction authorities” when procuring services that should be performed by federal government employees to ensure appropriate accountability and transparency over governmental operations to the public.

Background/Analysis

The Section 809 Panel on “Streamlining and Codifying Acquisitions Regulations” have recommended ending the distinction between federal employees and contractors through elimination of the general prohibition against “personal services” contracts, thereby blurring the distinctions between federal government employees who take an oath of office from private contractors who are subject to completely different motivations based on advancing private interests to seek a profit.

- The confusion and unintended consequences posed by eliminating the distinction between contractors and employees include: Federal Tort Claims Act, Freedom of Information Act; Procurement Integrity Act, civil rights enforcement concerns; Military Extraterritorial Jurisdiction Act concerns; and tax liability confusions.
- Some Congressional staff see great promise in the Air Force’s so-called Kellerun Agile Methods for developing software code in a “blended workforce” of military and contractors because they believe this blending together of different workforce shortens the length of the requirement and acquisition processes, particularly when developing software.
- DoD has relied on exceptions authorizing personal services contracts to perform “inherently governmental” functions, the most egregious example documented in the Fay Report provided to Congress on the Abu Ghraib scandal: The Abu Ghraib scandal provides a case study on how the use of personal service contracts actually interfered with military unit integrity, command and control; mission performance; training requirements and sufficient background checks. These unfortunate outcomes all resulted from the quest for streamlined procurement of personnel with reduced and insufficient oversight on what they were doing. In essence, these statutory exceptions for personal services were a delegation from Congress to the private sector to perform functions that never should have been delegated in so loose a manner in a democratic republic.
- The theory of the section 809 panel of is that “self-regulation” is sufficient, as exemplified by FAR Subpart 3.11 which requires contractors to identify and prevent personal conflicts of interest of their employees performing acquisition functions “closely associated with “inherently governmental” functions. The problem with this is that the criteria and definition of “closely associated with inherently governmental functions and similar statutory categories is highly dependent on particular facts and circumstances and not broadly understood. GAO-16-46: “Further, components may be inaccurately reporting on the extent to which contractors were providing services that are closely associated with inherently governmental functions, a key review objective to ensure that DOD has proper oversight in place. In fiscal year 2013, the Army reported that nearly 80 percent of the \$9.7 billion it obligated for these types of services included closely associated with inherently governmental functions. In contrast, the Navy and other DoD agencies reported about 13 percent of the \$10.7 billion obligated for similar contracted services included such functions.”
- Decision makers and contractors are not held accountable for the mission failures and wasteful expense that might occur as a result of their actions to ignore the limitations related to using contractors to perform inherently governmental functions, closely associated with inherently governmental functions, critical functions, or the misuse of existing authorities for personal services in section 129b(d) or 1091 of Title 10.

Congressional Action

- Reject section 809 Panel recommendations, and any Departmental recommendations based on the 809 Panel's recommendations, to blur the distinction between contractors and federal employees.
- Direct a GAO review examining the use of existing authorities for personal services in sections 129b and 1091 of Title 10, public-private talent exchanges in section, and Kellerun Agile Methods, and whether abuses provide a basis for curtailing or repealing these statutory exceptions allowing for personal services contracts.
- Establish a False Claims Act private right of action for contractor liability related to prohibitive or regulated forms of contracts and establish an anti-deficiency act violation applicable to governmental decision makers for such contracts.

14. ENSURING STATUTORY DIRECTION TO PLAN, PROGRAM AND BUDGET CONTRACT SERVICES OVER THE FUTURE YEAR DEFENSE PROGRAM IS ACTUALLY IMPLEMENTED

Issue

The Department of Defense still has not fully implemented a contract services budget capturing all covered contract services as part of the President's Budget submission required by section 2329 of title 10, enacted in the FY 2018 NDAA; and largely dodged these requirements. Directive report language in the House FY 2020 Appropriations, Defense Subcommittee states: "Appropriated funds should not be used to fund service contracts that have not complied with the planning, programming, budgeting and total force management requirements of 10 USC sections 2329 and 2330a." Section 817 of the FY 2020 NDAA clarified Comptroller and CAPE responsibility for these programming and budgeting requirements. The impact of this non-compliance results in wasteful contract services spending that is not subjected to the same level of scrutiny as currently is applied to the DoD civilian workforce, who become the primary area for finding offsets and reductions. This only serves to incentivize further shifts to more costly contracts while constraining the civilian workforce.

Background/Analysis

- Congress initially tasked Service Requirements Review Boards (SRRBs) and the USD (Acquisition and Sustainment) to improve the planning, programming and budgeting for services contracts requirements over the Future Year Defense Program (FYDP) in section 2329 of Title 10, as enacted in the FY 2018 NDAA, and clarified in the FY 2019 NDAA.
- The Director, Cost and Program Evaluation (CAPE) is responsible for The Program Objective Memorandum (POM) process that prioritizes resources over the FYDP and the USD(Comptroller) is responsible for the budget submission developed from the POM process. Section of the FY 2020 NDAA clarifies that Comptroller and CAPE must step up to the plate and fully comply with these requirements.

- No contract services budget exhibit fully compliant with section 2329 of Title 10 requirements has been submitted to Congress. During Budget and Posture Hearings, little attention is provided by Congress over this spending which has been estimated by Congress, the GAO, DoD and the Defense Business Board to comprise at least one quarter of DoD's top line and cost double the amount spent for weapon systems.
- These problems with services contracts planning, programming and budgeting have not consistently been linked to the Department's financial auditability plans by the Department and some Congressional staff have allowed the Department to get by with that poor performance.

Congressional Action

- Enforce compliance with section 2329 by demanding fully compliant, comprehensive and timely contract services budget exhibits.
- Ask tough questions during Hearings about these expenditures and subject these exhibits to GAO and DoD IG reviews and audits.
- Retain SRRBs as implementers of the trade-off decisions made during the POM and Budget processes led by CAPE and Comptroller.
- Direct the GAO and DoD IG to audit compliance with Defense Appropriations directive report language to assess if there have been fiscal violations resulting in illegal outsourcing of work or expenditure of funds on services contracts that have not complied with section 2329 of Title 10.
- Withhold or reduce funding to degree DoD fails to document timely and full compliance in its budget submissions with section 2329 of title 10.

15. IMPROVING THE LETHALITY AND PERSTEMPO OF MILITARY BY REMOVING IMPEDIMENTS TO THE USE OF THE CIVILIAN WORKFORCE THROUGH IMPROVED STRATEGIC PLANNING FOR THE CIVILIAN WORKFORCE AS PART OF THE TOTAL FORCE (AC AND RC MILITARY, CIVILIAN AND CONTRACT)

Issue

While DoD claims as a top priority the improvement of the lethality of the military and the reduction of unnecessary expenses, the attainment of these goals is degraded by major cultural and business process impediments in the Appropriations process; Planning, Programming and Budgeting processes; Acquisition processes; and the processes for establishing and retaining civilian positions. Leverage two directed audits/studies relevant to these issues for additional improved Congressional oversight and statutory standards: 1. HASC Readiness Subcommittee markup (p. 255) audit on borrowed military manpower reporting in the readiness reporting

system; House Armed Services Committee (HASC) Readiness Subcommittee markup (p. 254) independent FFRDC study for optimizing total force management.

Background/Analysis

- DoD senior leader testimony to Congress, the DoD budget submission and associated Total Force Management Rationalization Plan, the Defense Business Board, the Congressional Budget Office, RAND and the Institute for Defense Analysis have all repeatedly recognized the imperative of improving the lethality of the “All Volunteer Military” fighting force.
- More efficiently using military to perform “military essential” functions; improved individual and unit military training; leveraging technological advances to reduce manpower demand and using the civilian workforce to more cost-effectively perform non-military essential missions are all important to the achievement of the goals of increasing lethality and reducing wasteful expense. Additionally, as operational demands increase, inefficient use of military for civilian functions reduces the available pool of military for deployment, thereby increasing the stress on a smaller pool of deployable military.
- Impediments include a lack of holistic reviews of the total force and value for growing the civilian workforce commensurate with military force structure growth to improve.
- The perception that military is a “free” source of labor was pointed out as a problem by the Defense Business Board, especially since (to the DoD and taxpayer) military is by far the most expensive form of labor – even more expensive than contractors. While the CBO advocates replacing “non-military essential” military with civilians to achieve savings/reduce the deficit; RAND and IDA have advocated this approach not only to reduce wasteful spending but also to improve military lethality and reduce stress on the force.
- The lack of understanding for the value of the civilian workforce to enhanced lethality is reflected in the resistance to pay parity or the use of government shutdowns and furloughs as a means of essentially holding the civilian workforce hostage to other agendas – failing to recognize how this tactic substantially damages the lethality of DoD capabilities when military end up being misused to perform needed civilian functions at a higher cost.
- Since the FY 2017 NDAA, longstanding prohibitions against managing the civilian workforce to Full Time Equivalent (FTE) caps were repealed and replaced with draconian language mandating offsetting any civilian growth in a given mission with arbitrary reductions in other missions, irrespective of workload, risk or cost. The FY 2020 NDAA section 1103 repealed the FY 2017 personnel caps, but the corresponding House and Senate Defense Appropriations language still only prohibits end strength caps rather than FTE caps. Indeed, the appropriators largely operationalize de facto FTE caps by cutting under-execution of projected civilian FTE, even when there are sufficient DoD

explanations. Additionally, SASC language that would have repealed 25 percent targets on Defense Agencies and Field Activities was stricken by Conferees, thereby retaining draconian personnel caps on these organizations.

- Periodically, borrowed military manpower emerges during uniformed leadership testimony, typically in the wake of hiring freezes or after other constraints on the civilian workforce have had their effect. A major loophole allowing for wholesale conversions of civilian positions to military irrespective of the impact on cost or lethality was significantly limited in section 1106 of the FY 2020 NDAA by requiring Defense Component head approval and “compliance with total force management policies” before converting civilian positions to military. Nonetheless, absent more clearly defined objective metrics enacted into statute extracted from the Department’s own longstanding policies for total force management, there remains significant wiggle room for costly mis-uses of military manpower to the detriment of stated objectives of greater lethality simply through Defense Component head approval.
- Recent challenges in attaining military recruiting goals make the well-reasoned substitution of civilians for non-military essential military an even more pressing issue.
- Ensure similar analyses are applied to the Reserve Component, including the appropriate mix between dual status military technicians and Active Guard Reserve personnel. The Air National Guard obtained authority to continue to reduce dual status military technician status and convert to AGR status. However, section 413 of the FY 2020 NDAA prohibits involuntary conversions and provides authority for increasing dual status military technician end strength to the degree there are insufficient voluntary conversions to AGR status. The Department has resisted applying fully burdened cost analyses to RC manpower, something they have been more willing to apply to the mix between AC manpower and the civilian workforce.

Congressional Action

- Repeal the 25 percent targets on Defense Agencies and Field Activities.
- Enact pay raise parity between the civilian and military workforces.
- Request status reports from USD (P&R) and the FFRDC performing the independent study on Optimizing Total Force Management on page 254 of the HASC Readiness subcommittee markup for the FY 2020 NDAA. Hold USD P&R to full compliance with the directive report language mandates and do not allow them to wriggle out of the requirement. Leverage interim findings for Hearing questions and consider obtaining expert testimony based on those findings.
- Establish a strategic planning framework establishing a minimum strength level for the civilian workforce linked to a military operating force structure sized for operational effectiveness, that is manned, equipped and trained to support deployment time and

rotation ratios needed to sustain the readiness and needed retention levels for Active, Guard and Reserve Component according to the judgment of the Joint Chiefs of Staff.

- Require the DoD, in developing the programmed civilian workforce level, to require the Secretary of Defense and each Defense Component Head to ensure that every proposal to change military force structure is accompanied with the associated civilian force structure changes needed to support that military force structure.
- Further provide that no appropriated funds may be used to reduce the civilian workforce programmed levels absent the appropriate analysis of the impacts of these on changes on workload, military force structure size, readiness and operational effectiveness.
- Finally, the provision should further provide that – in planning, programming, budgeting and implementing this plan, no appropriated funds may be used to convert work between the military, civilian employee and contractor workforce inconsistent with these analytical requirements.
- During Posture and Budget Hearings, start asking questions about the value of the civilian workforce and its direct and indirect relationships to optimizing military lethality, readiness, reducing stress on the force and other force management metrics.
- Require borrowed military manpower to again be reported in unit status readiness reporting feeding the Defense Readiness Reporting System, leveraging GAO audit on this issue directed in the FY 2020 NDAA, p. 255 of the HASC readiness markup.
- Ensure there are no involuntary conversions of military technicians to AGR status.
- Direct DoD to establish fully burdened cost DODI similar to DODI applied to AC and civilians. (DoD Instruction 7041.04, Estimating and Comparing the Full Costs of Civilian and Active Duty Military Manpower and Contract Support (July 3, 2013)).

16. CLARIFYING AMBIGUITIES IN THE “BUSINESS CASE” ANALYSIS REQUIREMENTS OF SECTION 375 OF NDAA FY 2020 TO ENSURE FAIR AND MEANINGFUL COST COMPARISON AND RISK ANALYSIS FOR THE GLOBAL HOUSEHOLD GOODS CONTRACT SOLICITATION ISSUED BY UNITED STATES TRANSPORTATION COMMAND (TRANSCOM)

Issue

Section 375 of the FY 2020 NDAA mandates a “business case analysis” by TRANSCOM to be reviewed by the GAO on the “Personal Property Program Improvement Action Plan” that was developed by the Personnel Relocation/Household Goods Movement Cross-Functional Team. The requirements for the report include specific metrics, but are ambiguous on the methodology for ensuring a fair comparison of the costs and risks between public sector or private sector performance of the function of global household goods management. Instead, section 375

merely prohibits execution of a Global Household Goods solicitation already issued by TRANSCOM until April of 2020, giving the GAO just 3 months to complete a review of the business case analysis and cost analysis.

Background/Analysis

- Section 375 is addressing the stresses that relocating military families during peak periods in the summer endure arising from lack of capacity in TRANSCOM to ensure efficient coordination between offices in handling moves and lack of technological upgrades to the information technology systems that track the movements of goods.
- However, these capacity problems are attributable, at least in case of the Army, to prior management decisions to downsize the in-house workforce as a cost-saving measure, which at one time used to have one Transportation Specialist assigned to each move. Additionally, the capability of the government to track each step of the move had been planned for but no longer exists in the government because of management decisions to stop the purchase of software upgrades so that the contractor can buy their own software.
- The impact on the in-house workforce is ambiguous, and will likely vary by Military Department, although the current workforce has been told there will be no net effect on jobs initially, but that the federal workforce will be engaged in contract specialist and quality assurance work in overseeing the contractor rather than the transportation specialist work they are currently performing. There are at least three problems with this:
 - Those military departments like the Air Force that have a uniformed transportation specialist career field may assess this issue differently than the Army that largely performs these functions with civilian employees.
 - It appears that neither the GAO nor TRANSCOM have performed as part of the business case a “closely associated with inherently governmental” or “critical” function risk assessment before contracting these requirements, a statutory requirement of sections 129a, 2330a, 2383, 2463 and current report language in the HASC markup of the FY 2020 NDAA. This is a particularly important concern because of the conflict of interest risks associated with a sole source contractor performing this function, and the risks if there is insufficient capability within the government to oversee the contract. For a “critical function”, as defined in section 2463 of title 10, “special consideration” is required for governmental performance of the function if there would be significant mission risk if the contractor defaulted in performance of the function.
- An “apples to apples” comparison of a “most efficient organization” between the government and private sector is not being performed by TRANSCOM or the GAO. Instead, the capabilities of a downsized in-house workforce deliberately starved of technological updates is being compared to a single sole-source contractor who TRANSCOM intends to fully invest in the requisite staffing and technology upgrades to address performance metrics required by section 375. In the absence of the A-76 process, DOD undertook a comparison of the organic and contract workforces in selected

functions across the Department using DoD Instruction 7041.04, Estimating and Comparing the Full Costs of Civilian and Active Duty Military Manpower and Contract Support (July 3, 2013) which they completed in April 2017 in response to an FY 2016 NDAA reporting requirement, and this effort was evaluated by the GAO-18-399, Civilian and Contractor Workforces: DoD's Cost Comparisons Addressed Most Report Elements but Excluded Some Costs. However, there is no indication that TRANSCOM, or the GAO, attempted to replicate a fully accounting of costs for purposes of section 375, a task that is arguably affected by the very short timelines for the section 375 analysis.

Congressional Action

- Clarify to the GAO and TRANSCOM that silence in section 375 about the critical function analysis requirements of section 2463 and closely associated with inherently governmental requirements of section 129a, 2330a, 2383 and 2329 are not to be disregarded in the business case analysis.
- Clarify to the GAO and TRANSCOM that they want an “apples to apples” cost comparison of a most efficient in house capability to a private sector capability, not the skewed comparison currently under use, and provide a reasonable extension in time to get the job done properly.

17. PROHIBITING USE OF APPROPRIATED FUNDS FOR TERM OR TEMPORARY HIRING FOR ENDURING WORK

Issue

HASC Readiness Subcommittee markup (pp. 255-6) for the FY 2020 NDAA directed a GAO audit to identify the scope of any misuse of term or temporary hiring authorities to perform enduring functions.

Background/Analysis

- Members have reported abuses in the use of term or temporary hiring authorities on a long term basis for enduring workload, particularly in the depots and in logistics related functions.
- GAO audit identifying the scope of this problem by location, occupational series, grade, and demographics (race, gender, organization, funding source) is due to Congress by March 1, 2020.
- GAO is also required to identify explanations for any disparities or abuses.
- Mis-characterization of work as enduring or temporary is often incentivized by efforts to circumvent budget control caps to increase Department's top line.

- Some mis-characterization is ideologically motivated to simulate less secure, at will work force conditions.

Congressional Action

- Prohibit use of appropriated funds for term or temporary authority for enduring work.

18. STUDY ON EFFECTS OF AI ON HUMAN CAPITAL PLANNING, SECURITY AND OPERATIONAL RISKS

Member jobs are being privatized, restructured, downgraded or eliminated as Artificial Intelligence (AI) technological changes are proposed and implemented in the workforce.

Background/Analysis

- AI does not replace the jobs or workload but merely enhances the ability to more efficiently perform that work.
- Operational and security risks can increase if expanded AI use does not consider and plan for these risks.
- Human capital planning should include planning for training the workforce on the appropriate leveraging of AI with risk mitigation strategies to prevent erosion of skills and mission failure.

Congressional Action

- Direct independent FFRDC study on the human capital strategies for leveraging AI without eroding workforce capabilities or incurring security or operational risks
- Study should include case studies where AI timelines slipped to right or where application of AI was appropriate or oversold
- Study should be coordinated with all stakeholders, including unions.

Department of Veterans Affairs

Introduction

Full staffing, strong workplace protections for rank and file employees and the unions that represent them, and a strong VA health care system that is the primary provider and coordinator of veterans' care are essential to the continued viability of the Department of Veterans Affairs (VA). In 2020, AFGE and its National VA Council (AFGE) will utilize opportunities presented by the Democratic House majority to restore rights to due process, collective bargaining and official time, establish and fund staffing mandates and fight privatization. AFGE will also seek comprehensive Congressional oversight of VA spending and mismanagement in the Veterans Health Administration (VHA), Veterans Benefits Administration (VBA) and other VA functions.

FIGHTING FOR A FAIR CONTRACT

From the onset of contract negotiations between the VA and AFGE it has been clear the Department has no intention of bargaining in good faith. For months negotiations have lagged on, with limited agreement on even the most noncontroversial of topics. On top of this bad faith effort at the table, the VA proposed a contract that would totally gut the rights of their workforce. This would eliminate VA workers' ability to represent each other in the workplace, blow the whistle on abuse, and have meaningful collective bargaining rights.

In response to the VA's extreme contract proposal, AFGE is working on a two-pronged legislative approach to combat the VA's negotiation strategy. First, AFGE has drafted a letter that was circulated by Congressman Anthony Brown (D-MD) and Congressman Donald Norcross (D-NJ) calling on the VA to negotiate in good faith, 128 bipartisan Members of Congress signed this letter before it was sent to Secretary Wilkie. AFGE was also successful in getting Senator Sherrod Brown (D-OH) to write a similar letter with his Senate colleagues. This letter garnered 35 signatures. Senate VA Committee Ranking Member Jon Tester (D-MT) also sent a letter demanding that the agency bargain in good faith.

Even with all of this pressure, the Department insisted on digging their heels in and pushing a tremendously anti-worker agenda. On Thursday October 24, 2019, the VA negotiating team declared that they are at impasse with the union. This comes after the parties had signed off on only 13 of the 70 articles up for negotiation. Shortly thereafter the Agency came back to the table but continued to not work toward meaningful resolutions. At the same time the VA provided notice to the union that they would begin implementing the President's illegal executive orders to curtail official time and take the union's office space.

As of the end of 2019, efforts to reach a fair agreement through the Federal Mediation and Conciliation Service had failed and the agency was aggressively moving to bring negotiations before the Federal Services Impasse Panel (FSIP). AFGE has submitted a challenge to FSIP jurisdiction and a decision is expected in March of this year.

In response AFGE worked with House VA Chairman Mark Takano's office to send a letter to Secretary Wilkie demanding he return to the bargaining table to negotiate a new contract and the implementation of these executive orders.

Congressional Action Needed:

- Oversight of the one-sided contract negotiation process
- Legislation to prevent a one-sided contract from being imposed on the workforce by the Federal Services Impasse Panel.
- Enact legislation to restore Title 38 official time rights

PRIVATIZATION OF VA HEALTH CARE

Impact of the VA MISSION Act of 2018

Last year was critical in the fight to protect the VA from outright privatization, and this year shows every sign that it will be just as important. As you are well aware, the VA MISSION Act created a private sector care program that would not expire. As a result of this effort, Congress set in motion a chain of events that created a “community care” program that threatens the absolute existence of the VA as we know it today. Supporters of the MISSION Act generated much fanfare last year claiming that this new law would allow veterans to receive better, more timely care and thus meet their needs better. AFGE and the NVAC argued from the beginning that this would lead to the canalization of the VA and its core services. Over the last twelve months our view has been validated.

Prior to implementing the new law, the VA opened different sections of the MISSION Act to public comments through the Federal Register. We took this opportunity to strongly weigh in with the Department and get them to change course. On the walk-in clinic section, we reiterated our objection against the extremely limited oversight the Department would have in place to police these walk-in providers. We also used data from a CVS pilot program to point out that walk-in clinics have not had success in treating mental health conditions. Compounding the redundancy of granting increased access to walk-in clinics is the fact that the VA itself already claims to have same day access at VA medical facilities. This is nothing more than a thinly veiled attempt to carve out essential functions of the VA and find a way for corporations to generate a profit.

On March 25, 2019, AFGE and the NVAC submitted additional comments on the extraordinarily broad access standards the Department proposed to comply with the new law. In February the Administration announced that the new access standards would replace the former distance/wait time rules with average drive time and reduced wait time. In our comments we argued that this new change is arbitrary and not based in factual reality. According to the VA’s own Economic Regulatory Impact Analysis the total number of veterans eligible to receive private sector care will increase from 8 percent to 39 percent as part of the MISSION Act’s access standards.

Equally troubling to AFGE and the NVAC is the fact that the access standards perpetuate a double standard for VA providers. The private sector does not have to meet the same or even similar access standards. There is no metric in place that guarantees a veteran who qualifies for a private sector referral will not be sent out into the “community” to wait or drive longer. Without

providing an equal playing field the VA is setting itself up to fail and continues the push toward outright privatization.

During the spring months there were significant episodes of Congress exercising its oversight authority of the VA and its handling of the MISSION Act. Both the House and Senate VA Committees conducted hearings to ask the VA whether or not the Department would be able to comply with the June 6 launch date for the new MISSION Act program. Despite this heavy criticism, the Department moved forward (arguably foolishly) to implement the community care program, even though the IT infrastructure was rushed.

One interesting data point from the MISSION Act has been the vacancy reporting from Section 505. Since this language requires quarterly updates on vacancy numbers, outside stakeholders have been able to get an accurate look at the true staffing issues facing the Department. It should come as no surprise to even casual observers of the VA that the present Administration has made no effort to fully staff the VA. For the last two quarters worth of data the total vacancy rate has been hovering around 50,000 – once slightly above and most recently slightly below. The MISSION Act and the failure to adequately address vacancies illustrates the Administration's larger agenda to dismantle the VA healthcare system and replace it with a poorly managed, non-coordinated, hodgepodge of corporate providers unaccountable to anyone.

In January of this year, the VA Office of Inspector General reported growing problems with timeliness of care under the Mission Act, including a nearly two-month delay for patient appointments in 2018. These wait times are likely to worsen as the number of referrals to outside providers increase under the Mission Act. The inspector general identified the incompetence of a prior VA contractor, and a chronic lack of VA staff to schedule outside referrals as key factors in this delay. AFGE will continue to fight at every turn against increased privatization and chronic short staffing of the VA workforce.

New legislative efforts to privatize veterans' mental health care

In 2020, AFGE will continue to oppose S. 1906/H.R. 3495, the Improve Well-Being of Veterans Act, as originally drafted. This legislation would allow private entities to receive grants from the VA to provide clinical care to veterans without any coordination or accountability to the VA. Instead, AFGE supports the Amendment in the Nature of a Substitute (ANS) to H.R. 3495 that was introduced by Committee Chairman, Representative Mark Takano (D-CA) and approved by the House Committee on Veterans' Affairs. This ANS would prohibit the use of grant dollars for clinical care and place much needed fiscal controls on grantees.

Outsourcing clinical care services to veterans at risk of suicide through the proposed grant program in the bills as originally drafted would undermine, not improve, veterans' well-being. Instead, veterans should receive this care through the VA's world-class health care system, including its highly regarded tele-mental health program, Veterans Crisis Line, Vet Centers and Community Care Network.

S. 1906 and H.R. 3495 as originally drafted would result in clinical care that is fragmented and that lacks specialization, provider competency, coordination and accountability. AFGE is also concerned that under these bills, as originally drafted, the maximum grant amount would be left

totally up to VA Secretary discretion, allowing undue influence by larger entities. In addition, they fail to require grantees to disclose the share of funds used on CEO salaries and other indirect costs. In contrast, the ANS contains strong fiscal controls and provides a seat on the advisory board to labor representatives of the front-line employees who deliver this care.

Congressional Action Needed:

- Oppose S. 1906/HR 3495 as originally drafted and instead support the Amendment in the Nature of a Substitute to H.R. 3495 introduced by Representative Mark Takano(D-CA).
- Enact legislation to repeal the AIR Act (BRAC) section of the law.
- Set a firm limit on the number of times a patient can use these “walk-in” clinics
- Impose a non-negotiable copay on visits above this threshold
- Increase appropriations for VA internal capacity building.
- Maintain a firewall between private “community care” funding and VA medical services/infrastructure.

RESTORING VA WORKPLACE RIGHTS

Title 38 Collective Bargaining Rights

The Title 38 collective bargaining rights law, 38 USC 7422 (“7422”) has been interpreted and applied by the VA in an arbitrary and unfair manner for many years. As a result, the employees covered by 7422 have not been able to bargain or grieve over a wide range of routine workplace issues grieved by other VA employees and health care professionals working at other agencies. In both 2003 and 2017, the White House voided commonsense Memoranda of Understanding (MOU) that had expanded Title 38 collective bargaining rights and improved labor management relations.

The current Administration continues to invoke the 7422 law to attack the rights of VA medical professionals to eliminate official time and prohibit the union from representing these employees at disciplinary appeals boards and professional standards boards.

In 2019, we secured reintroduction of House and Senate legislation to fix the 7422 problem. H.R. 1133 and S. 462, the VA Employee Fairness Act, introduced respectively by Representative Mark Takano (D-CA) and Senator Sherrod Brown (D-OH) would eliminate the three exceptions in current law that VA applies so broadly as deny every labor request to grieve, arbitration or negotiate over workplace matters, including schedules, overtime pay, professional education and many other matters that directly impact the ability of VHA to recruit and retain and strong health care workforce.

Fair requirements for reporting clinicians and personnel settlement agreements

AFGE supports laws and policies that allow VHA to take strong actions against clinicians who provide improper care to veterans. For the well-being of veterans, and to ensure that VA can recruit and retain a top-notch health care workforce, we must also guard against laws and policies that unduly punish good clinicians through overly aggressive and arbitrary personnel practices.

S. 221, the Department of Veterans Affairs Provider Accountability Act, as originally drafted would have reported VA Title 38 clinicians to state licensing boards and the National Practitioner Data Bank (NPDB) or very minor adverse actions unrelated to patient care, and would also have barred them – and every other VA employee - from entering into any settlement agreements (clear record agreements) to clear their personnel files. We secured significant improvements in the bill worked with staff of the original sponsor, Senator Cory Gardner (R-CO) and the improved version passed the Senate at the end of last year. Also, in 2019, a broader clinician House credentialing bill, H.R. 3530, the “Improving Confidence in Veterans’ Care Act,” introduced by Representative Michael Cloud (R-TX) was approved by the House VA Committee. H.R. 3530 as originally drafted contained overly broad reporting and clear record agreement provisions and amendments introduced by Representative Phil Roe (R-TN) weakened the bill further. H.R. 3530 as amended expanded its reach to every licensed VHA professional and gave the Secretary broad discretion to report clinicians to the NPDB. We will work to ensure that the better version passed by the Senate prevails in 2020.

We also hear concerns from clinician members that when an adverse event occurs at a VA medical facility, current policy results in some clinicians who were not engaged in any questionable care being reported to licensing boards and the NPDB. This is an issue that could hurt recruitment and retention and merits oversight and investigation by the Veterans’ Affairs Committees.

Preserving Hybrid Title 38 Collective Bargaining rights and Reforming Title 38 physician/dentist pay and leave policies

In 2019, Senator Jon Tester (D-MT) introduced S. 785, Commander John Schott Hanon Veterans Mental Health Care Improvement Act of 2019, that includes language to transfer VA psychologists from the Hybrid Title 38 personnel system to Title 38. AFGE strongly opposes this section of this bill because it would strip psychologists of their full collective bargaining rights, leaving them with little recourse against harmful personnel actions by management – a severe workplace problem already faced by VA physicians, dentists, registered nurses, physician assistants, podiatrists, optometrists, chiropractors and expanded-duty dental auxiliaries. The American Psychological Association and the Association of VA Psychologist Leaders are advocating for this change. Their public statements suggest that they believe that this change will improve psychologist pay, professional status, leave and hiring flexibility.

AFGE opposes Section 501(a) as currently written because psychologists in addition to losing rights to grieve and arbitrate over almost every workplace matter, would also lose rights to appeal to the Merit Systems Protection Board when terminated or disciplined. AFGE has been fighting to restore full collective bargaining rights for Title 38 clinicians for many years and thanks Representative Mark Takano (D-CA) and Senator Sherrod Brown (D-OH) for introducing

H.R 1133/S. 462, the VA Employee Fairness Act, last year. If converted to Title 38, newly hired VA psychologists would also face a 100 percent increase in the length of their probationary periods and would be subject to unfettered VA secretary discretion over performance evaluations, promotions, violations of pay-setting rules, schedules, continuing education benefits and leave. Rank and file VA psychologists would also lose overtime pay if the current physician “24/7” rule is applied to them.

Physician, dentist and podiatrist members already have deep concerns about the pay system that applies to them because the market and performance pay components of this system lack transparency and neutrality. Congress eliminated the market pay panel of peers several years ago and the performance pay is often based on arbitrary criteria and often not paid timely or in fair amounts. Again, due to extremely weak collective bargaining rights, Title 38 clinicians have no recourse when the agency violates its own pay rules. Rather than expand a broken pay system to psychologists, lawmakers should investigate ways to improve both the Title 38 pay setting system and the psychologist pay setting system under Hybrid Title 38.

Another weak physician/dentist personnel practice that should be fixed rather than expanded is its leave policy for those working alternative work schedules (AWS). Due to a broader leave policy change in 2019, emergency room physicians and hospitalists on AWS are no longer getting full credit for leave they accrue. To date, the Department has only agreed to fix this inequity retroactively.

AFGE stands ready to work with lawmakers on ways to make hybrid pay, hiring, recruitment and retention stronger through better human resources practices, pay incentives, loan assistance and other tools. This is a far more commonsense, inclusive solution than weakening the workplace rights of rank and file VA psychologists in exchange for illusory gains in pay.

Congressional Action Needed:

- Enact H.R. 1133/S.462, the VA Employee Fairness Act, to restore equal bargaining rights to Title 38 medical professionals
- Advocate for strong reporting and clear record agreement rights through legislation and agency policy for VA licensed health care professionals to ensure fair requirements for reporting adverse actions to state licensing boards and the National Practitioner Data Bank, and the right to fair policies for clearing entries from personnel file.
- Conduct oversight into current reporting requirements to insure that they do not adversely affect clinicians who were not engaged in improper patient care.
- Oppose Section 501 of S. 785, legislation to convert VA psychologists to Title 38 personnel system and other legislation that would eliminate collective bargaining rights of Hybrid Title 38 medical personnel as well as other adverse consequences. Instead, AFGE urges introduction of comprehensive psychologist recruitment and retention legislation to address pay, loan assistance and hiring and promotion practices.

- Reform and strengthen pay setting processes for VA physicians, dentists and podiatrists including restoration of an independent, transparent market pay panel and a fair process for setting performance pay criteria and determining performance pay awards.
- Conduct oversight into VA provider (physician, nurse practitioner, dentist, physician assistant, therapists) workload, work hours and leave policies.
- Enact legislation to ensure that VA physicians and dentists on alternative work schedules are covered by fair leave accrual policies that recognize all their hours of work.
- Enact H.R. 2581/S. 1357, Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act of 2019, legislation by Congresswoman Jan Schakowsky (D-IL) to set minimum nurse-patient staffing ratios at VA medical facilities and other public and private facilities.

Veterans Benefits Administration

National Work Queue

The National Work Queue (NWQ) was created with the intention of relieving the claims backlog and improving the pace of claims processing. However, its implementation has had a negative impact on veterans and frontline VA workers. AFGE agrees with a recent Inspector General’s (IG) report (VA OIG 17-05248-241) conclusion that eliminating specialization has had a detrimental impact on veterans with claims, particularly claims that are more complex and sensitive in nature. As the IG report explains, prior to the implementation of the NWQ:

“The Segmented Lanes model required Veteran Service Representatives (VSRs) and Rating Veteran Service Representatives (RVSRs) on Special Operations teams to process all claims VBA designated as requiring special handling, which included [Military Sexual Trauma (MST)]-related claims. By implementing the NWQ, VBA no longer required Special Operations teams to review MST-related claims. Under the NWQ, VSRs, and RVSRs are responsible for processing a wide variety of claims, including MST-related claims. However, many VSRs and RVSRs do not have the experience or expertise to process MST-related claims.”

Because of the level of difficulty in processing MST claims, AFGE supports returning MST and other former “Special Operations” cases including Traumatic Brain Injury back to a specialized lane or lanes in Regional Offices. The VA recently made this decision for Blue Water Navy Claims authorized by the “Blue Water Navy Vietnam Veterans Act of 2019,” and should continue on this path. Much like a doctor choosing to become a pediatrician and not being expected to be an expert in podiatry, not all VSRs and RVSRs should be expected to process highly specialized cases as well as others, and it is both a waste of resources and a disservice to veterans filing claims.

The VA must also modify the NWQ so that cases remain within the same regional office while they are being processed, and that VSRs and RVSRs are more clearly identified on each case file. This will allow for better collaboration between VSRs and RVSRs (as was done prior to the

implementation of the NWQ) and allow the staff of Veteran Service Organizations (VSO) to better assist their members.

Congressional Action Needed:

- Conduct extensive oversight of the National Work Queue and the challenges it creates for veterans and the VBA workforce including a study of the impact of transferring cases between Regional Offices while they are being processed.
- Introduce legislation to repair the NWQ by requiring specialized personnel including VSRs and RVSRs to process highly complex claims including Military Sexual Trauma and Traumatic Brain Injury.

Information Technology

Information Technology issues continue to plague VBA on a variety of fronts, negatively impacting VA's mission of serving veterans and AFGE members striving to fulfill that mission every day. These problems have been chronicled by the Government Accountability Office (GAO) on processing legacy appeals under the Appeals Modernization Act. In late 2018, there was a hearing excoriating the VA on the role of IT problems causing delays in the processing of education benefits and housing stipends for veterans connected to the Colmery Veterans Educational Assistance Act of 2017, better known as the Forever GI Bill. The committee has followed up on this issue since. AFGE is working with the committee to show how these delays negatively impact the ability of AFGE members to do their jobs, and how combined with the Accountability Act and ever-changing performance standards, these IT problems can result in unfair discipline for AFGE members.

Congressional Action Needed:

- Conduct oversight on the impact of IT malfunctions on both the performance ratings of VBA employees and number of employees removed or disciplined under the VA Accountability Act.
- Conduct oversight on the time allotted for employees to learn new IT systems and processes to ensure fair performance ratings and adequate training.

Compensation and Pension Exams

Compensation and Pension (C&P) exams are required for many veterans applying to receive benefits related to their military service from the VA. The VA started to contract out these examinations in the late 1990's and has steadily been increasing the number of contracted exams ever since. Today, roughly half of all VA disability exams are now contracted out by VBA instead of being processed by VA's own clinicians.

According to a recent GAO report (GAO-19-13, "VA DISABILITY EXAMS: Improved Performance Analysis and Training Oversight Needed for Contracted Exams (October 12, 2018),

VBA reported that the clear majority of contractors' quality scores fell well below VBA's target—92 percent of exam reports with no errors—for the first half of 2017. VA clinicians are far better-prepared and more likely to diagnose veterans correctly compared to private contractors without expertise in the unique and complex problems that veterans present. The VA should process C&P exams internally instead of hiring outside contractors, and fill vacancies to bring this vital function back into the VA.

Congressional Action Needed:

- Conduct oversight on the current status of contract C&P exams including a comparison between the quality, timeliness, and cost of contract exams and exams performed within the Veterans Health Administration.
- Insert language into the Mil-Con VA Appropriations bill limiting the contracting out of C&P exams.

Performance Standards

Performance standards exist to show employees what the expectation is of their performance and the criteria upon which they will be evaluated. These standards should be fair and attainable for all employees while retaining the flexibility to adjust for variable difficulty in an employee's workload.

While this should be the case, VBA management has found different ways over the years to alter their performance standards or fail to act in ways that negatively impact the employee and in turn negatively impact veterans. Some of examples of this include:

- The VBA's "#BestYearEver" Initiative, which was designed "[t]o improve production and achieve the #BestYearEver," has instituted counterproductive restrictions on excluded time. Excluded time is the time removed from an employee's production quota to account for situations that would make it more difficult to reach their production goal. The most basic example of this would be if an employee is expected to process 50 transactions a week (10 per day), and they are on work travel for a day, the travel day would be granted excluded time and make their quota 40 for that week.
- Under the #Bestyearever initiative, the use of excluded time would be drastically reduced for both training claims processors in new procedures and technology, how to process new types of claims, and the ability to give excluded time for an employee processing a particularly difficult or specialty claim. This sets up the employee to fail and hurts the veteran by sacrificing quality over quantity.
- VBA has created standards that do not fairly award claims processors credit for work that does not result in an approval of benefits, including deferring a case for further review. Employees should not be penalized for being assigned work that requires more information, and creates a system that serves neither the worker nor the veteran.

- In the name of efficiency, VBA has reduced the amount of time that Legal Administrative Specialists, who speak to veterans with questions about their claims, can speak to a veteran on the phone and still meet the criteria for an “outstanding” or “satisfactory” rating on a call. This system does not factor in calls with veterans who have highly complex questions or are disabled and need additional assistance to communicate. VA should not set standards that reward rushing veterans.
- VBA management has failed to universally hold five quality reviews monthly for claims processors. Failing to do this sets up the employee repeatedly make the same mistake, which will hurt the employee’s overall performance, and negatively impact the veterans who have a preventable mistake made on their claim.

Congressional Action Needed:

- Congress must increase oversight on the current status of VBA performance standards and if they are best serving veterans.

Federal Prisons

Increase Hiring and Staffing of Federal Correctional Workers

Issue—Congress must demand oversight and accountability in the recent increases of federal funding of BOP. In an attempt to remedy the serious correctional officer understaffing and prison overcrowding problems that continue to plague BOP prisons, the appropriations committees in both chambers have substantially increased the funding of the BOP. The BOP's staffing crisis continues with little to no increase in overall staffing, despite an almost \$750 million increase over the past two years. Any increase in funding must be expressly and specifically outlined, in detailed appropriations language, to be used only for the hiring of new correctional officers and new employees. Only strict oversight and controlling statutory and/or appropriations language can protect the funding entrusted to the BOP.

Background/Analysis—More than 175,000 prison inmates are confined in BOP correctional institutions today, up from 25,000 in 1980. More than 147,000 of those inmates are confined in BOP-operated prisons while approximately 17,000 are managed in private prisons. Staffing at our federal prisons has not kept up with this explosion in the federal prison inmate population.

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, CA; (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 Osvaldo 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 nearly 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, that correctional officer position could be filled by a case manager or secretary. 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.

This overuse of augmentation is also one factor leading to higher rates of attrition in the BOP. While 15 years ago employees would often work past their minimum retirement eligibility dates, the current trend is to leave the agency as soon as an employee is eligible to retire. This results in a rapid loss of experience and quality employees who keep our facilities safe and secure. The attrition rate has increased as the agency is having difficulty recruiting new employees. The hiring process in the BOP is unnecessarily lengthy and burdensome. The minimum of 90 days, and often much longer, it takes to bring a new employee on board is hindering the Bureau's efforts to hire critical positions. Having OPM grant direct hiring authority could speed up the hiring process at the facilities with the lowest compliments without lowering the stringent law

enforcement standards. This direct hiring authority could be limited and temporary until the facilities can elevate their staffing levels to a safer level.

Finally, federal correctional officers are some of the lowest paid federal law enforcement officers. In some states correctional officers make over \$10,000 more a year than their BOP counterparts. A substantial number of new officers get their foot in the door in the BOP, but once their probationary year is complete, they leave for a job in another federal agency whose law enforcement pay bands are much higher. BOP pay bands similar to the U.S. Marshals Service and the Border Patrol would be appropriate for the law enforcement professionals of the Bureau of Prisons. The BOP's current pay bands are GL-5, 6, 7, with a competitive GL-8. More appropriate would be GL-7, 9, 10, with a competitive GL-11.

Congressional Action—The Council of Prisons strongly urges the Administration and the 116th Congress to:

- Increase federal funding of the BOP Salaries and Expenses account and require BOP to hire additional correctional staff to return to at least 'mission critical' levels. Any increase in funding for new hires must be strictly enforced/controlled by appropriations language.
- Demand that BOP hire the necessary staff to fill custody positions instead of relying on augmentation.
- Change the pay band for the Bureau of Prisons to bring it in line with other similar federal law enforcement agencies such as the U.S. Marshals Service and U.S. Customs and Border Patrol.

Interdict / Eliminate Dangerous Contraband in our facilities (Drugs/Mail/Cellphones)

Issue—Federal prisons are being inundated with illegal and synthetic drugs and other contraband items that often cause harm to staff members. This uncontrolled drug introduction and use are the direct result of years of agency-wide staffing shortfalls and a deliberate reduction in inmate supervision.

Background/Analysis—Many BOP facilities have seen a major increase in the number and scale of contraband introductions in recent years, including cell phones and drugs, especially synthetic drugs such as K-2, Spice, and fentanyl, which create potentially life-threatening exposures to correctional staff. This epidemic is a direct result of the chronic understaffing plaguing BOP facilities. With less staff supervising more inmates, the inmates have become increasingly brazen in the amount and the means they use to get contraband, particularly drugs, into federal prison facilities.

One of the major ways synthetic drugs are getting into federal prisons is through the mail. As an example, in second half of 2019, approximately 40 federal prison employees from three different facilities were taken to local emergency medical facilities for their exposures to these substances. Last year, in response to numerous incidents of staff members being sickened by mail tainted with synthetic drugs, the Pennsylvania Department of Corrections instituted a new system in

which nearly all mail is sent to an off-site facility where it is opened, scanned, and emailed to prisons, much the same way mail is processed for Congress.

The current pilot program of scanning mail has been extremely successful in curtailing the introduction of these hazardous drugs. An immediate expansion of this pilot program, without delay, should be initiated to best protect the employees of the BOP.

Protect Employees from sexually aggressive/deviant inmate predatory behavior

Issue—As staffing levels have continued to fall, assaults on our staff by inmates have risen, including sexual assaults. The Bureau has failed to protect prison employees from sexually aggressive/deviant inmate predatory behavior and has willfully not held inmates accountable for this behavior and has failed to correct the calloused management culture across the agency that has let this persist. The Bureau of Prisons lack of enforcement/protections has led to multiple class actions suits and left employees with long lasting effects of their abuse.

Background/Analysis— In one recent high-profile incident in November 2019, the Occupational Health and Safety Administration (OSHA) issued a “Notice of Unsafe and Unhealthful Working Conditions” to the low-security Federal Correctional Institution Miami for assaults on staff members by inmates. The violation type was labeled Serious and stated that “The Agency head did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees, in that employees were exposed to the hazard of being assaulted by inmates with a history of violent behavior.” It then cited two specific incidents in which inmates, one “with a history of exhibiting sexually aggressive disruptive behavior,” assaulted prison staff members. These assaults at FCI Miami are hardly an isolated incident, however, and instead this is a systemic problem across the BOP and is due to the failure of the Bureau to both hold inmates accountable for their behavior and also due to the management culture the Bureau fosters.

Congressional Action—Congressional oversight and hearings.

Pass Eric’s Law

Issue—Congress should pass Eric’s Law (S. 2264 and H.R. 3980) which is named for slain officer Eric Williams and which would permit the court to impanel a new jury if a jury in a federal death penalty case fails to reach a unanimous decision on a sentence.

Background/Analysis— Far too often law enforcement officers fall victim to violent assaults. Our officers put their lives on the line every day to keep our communities safe – and sometimes, they don’t come home. In the most extreme cases we have seen officers murdered by an inmate – like Correctional Officers Jose Rivera and Eric Williams.

There must be an adequate deterrent in place to show criminals that murdering a law enforcement officer will have serious consequences. If capital punishment isn’t on the table, how can Congress ask our officers to do these dangerous jobs and make these officers feel reasonably safe on the job? What deterrent is adequate for a repeated murderer?

Congressional Action—We urge Congress to pass this important legislation introduced by Senator Toomey (S. 2264) and Congressman Keller (H.R. 3980).

Pass the Thin Blue Line Act

Issue—Congress should pass the “Thin Blue Line Act” (S. 1508 and H.R. 99) which would make targeting and killing a law enforcement officer or first responder an “aggravated factor” in sentencing for a capital crime when a jury evaluates whether or not to impose the death penalty.

Background/Analysis—Congress must punish those who actively target and kill our members who are federal law enforcement officers. 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.

The Thin Blue Line Act will ensure that any time a member of the law enforcement community is targeted and killed; the murderer will have a greater chance of facing the death penalty.

Congressional Action—We urge 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 target and kill one of our brothers or sisters they will be facing the possibility of the death penalty.

Prohibit BOP from expanding the use of private prisons

Issue—Congress should prohibit BOP from expanding its use of private prisons, as they are not more cost effective than public prisons, nor do they provide higher quality, safer correctional services.

Background/Analysis—In August 2016, a Department of Justice Inspector General report found that prisons run by private companies have greater problems with contraband, inmate discipline and other issues than those run by BOP. According to the report, “In recent years, disturbances in several federal contract prisons resulted in extensive property damage, bodily injury, and the death of a correctional officer.” Shortly thereafter, in August 2016, AFGE and the Council of Prison Locals (CPL) were successful in lobbying the previous Administration to phase out its 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 into them. In February 2018, BOP issued a memo³ fulfilling their new stated goal of “increasing population levels in private contract facilities.” The memo directed BOP to “submit eligible inmates for re-designation” in order to transfer those inmates from low security BOP facilities to

³ “Leaked Memo: Trump Admin to Boost Use of Private Prisons While Slashing Federal Staff,” *Government Executive*, 1/25/18.

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.

The author of that memo, Assistant Director for Correctional Programs Division Frank Lara, retired a few months later and took a senior-level job at one of the biggest private prison operators, GEO Group⁴. On October 19, 2018, eighteen Senators and Members of Congress wrote to the DOJ IG asking him to investigate this potential conflict of interest.

AFGE and CPL 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, 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 research shows, BOP must abolish private prisons and reinvest those dollars into its fulltime law enforcement staff.

Congressional Action—AFGE strongly urges the Administration and the 116th Congress to prohibit BOP from meeting additional bed space needs by incarcerating federal prison inmates in private prisons.

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

Issue—Congress should continue to prohibit the privatization of BOP and FPI positions under OMB Circular A-76.

Background/Analysis—The “FY 2020 Consolidated Appropriations Act” (P.L. 116-93), which contains the FY 2020 Commerce-Justice-Science (CJS) Appropriations bill, includes a general provision—Section 210—to prohibit the use of FY 2020 funding for a public-private competition under OMB Circular A-76 for work performed by federal employees of the Bureau of Prisons (BOP) and Federal Prison Industries (FPI):

Sec. 210. 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.

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

⁴ “Federal Official Boosted Use of Private Prisons; Now He Has a Top Job at One” *Government Executive*, 8/29/18.

FPI are performing at superior levels and at a lower cost. It therefore would be ill-advised to privatize their positions merely to meet arbitrary numerical quotas.

It should also be noted that 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, AR; Yazoo City, MS; and Elkton, OH) 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.).

Congressional Action—AFGE strongly urges the Administration and the 116th Congress to continue to include the Section 210 language in the FY 2021 CJS Appropriations bill.

Transportation Security Administration

Title 5 for Transportation Security Officers

What is Title 5?

Title 5 is the section of the U.S. Code that sets the labor rights and protections for almost all federal workers, including:

- Collective bargaining rights with Federal Labor Relations Administration oversight, including exclusive representative elections, and collective bargaining rights;
- Enforcement of the prohibited personnel practices (discrimination based on age, race, national origin, religion, marital status, enforcement of legal recourse, political affiliation or retaliation for filing a discrimination, work safety complaint or whistleblower disclosure);
- Pay under the General Schedule, or GS, system, including overtime and night differential pay;
- The grading and classifications of positions;
- Worker protections under the Family and Medical Leave Act and the Federal Labor Standards Act, and
- Appeal rights of adverse personnel actions to the Merit Systems Protection Board (MSPB).

Why Are TSOs Denied These Rights and Protections?

The Aviation and Transportation Security Act, or ATSA, passed by Congress to correct inadequacies in aviation security identified after September 11, 2001 included a statutory footnote that granted the TSA Administrator the authority to set the terms and conditions of employment for TSOs.

What Does the TSO Workforce Lose Without Title 5 Rights?

- TSO pay is determined by the Administrator, not federal law. As a result, TSOs do not receive longevity pay or step increases.
- TSA does not follow the Fair Labor Standards Act that regulates overtime and work hours.
- TSA dictates the timeline for collective bargaining, and what matters are subject to bargaining.

- TSA refuses to negotiate for an objective grievance procedure like those at almost every federal agency with a union, including other components at the Department of Homeland Security, which are already under Title 5.
- TSA fires TSOs based on medical symptoms and diagnoses that do not affect their work performance.

Congress Should Pass Legislation Providing Statutory Title 5 (H.R. 1140/S. 944) to the Entire TSA Workforce for the Following Reasons:

- It is a matter of fundamental fairness that the entire TSA workforce be treated the same as other federal workers.

TSA has become a revolving door for TSOs: Between 2007 and July 2018 roughly the entire agency was replaced due to attrition. During this time 45,576 TSOs resigned from the agency. In 2017, one in five new hires quit within the first six months. These high attrition rates do not occur in other DHS components where the rank and file workforce are afforded workplace rights and protections and a transparent pay system under title 5 of the U.S. Code.

- The TSO workforce is underpaid. TSA created its own pay band system lacking the stability and transparency of the General Schedule pay system of compensation used by most federal agencies. In December 2019 the president issued an executive order providing for an average 3.1 percent pay increase for federal employees. TSOs were not covered by this order, but the TSA Administrator has, solely at his discretion, agreed to comply with that increase, which may vary by locality.
- TSA has promoted a Career Progression program, but there is no assurance of being promoted to a vacant, available position with higher wages for TSOs who complete training and certification requirements for various career paths. In March, 2019 the Department of Homeland Security's Office of Inspector General issued a report, "*TSA Needs to Improve Efforts to Retain, Hire and Train Its Transportation Security Officers*" TSA develop better recruitment and retention strategies, pay TSOs better, and provide better training and advancement opportunities.
- TSOs face constant training and changing of procedures and are required to pass more certifications than armed federal law enforcement officers. The screening workforce deserves a pay system that is fair and adequately reflects their training, complexities of tasks, and seniority.
- TSA's failure to adequately staff checkpoint and baggage screening areas leads to overworked officers and less security for the flying public. TSOs at some airports are subject to ongoing mandatory overtime due to short staffing, while other full time TSOs are working split shifts between two airports because of shortages. TSA has not reduced the average 252 days it takes from application to be a TSO to reporting for duty.

- AFGE is especially concerned that female TSOs continue to face denial of shift or line bids or delayed breaks due to chronic underrepresentation of women among the TSO ranks.
- Despite Congressional investments in screening technology and canines, all 2 million passengers departing on flights from U.S. airports daily must be screened by a person, not by canines or solely by use of technology.
- TSOs face discipline that is swift and severe without the ability to testify and challenge witnesses. There is no right to appeal to an objective body such as the Merit Systems Protection Board. TSOs do not have progressive discipline; they can be removed for unrelated violations, even though most violations are tardiness, uniform violations and failure to properly report illness or other unexpected absence.
- Over 44,000 TSA employees are denied the protections of the Fair Labor Standards Act and the Back Pay Act simply because their job classification is that of Transportation Security Officer and TSA has blocked the application of the law to them.

Misconduct, retaliation, and obstruction at TSA runs deep within the organization and is a direct result of the lack of accountability and transparency within TSA's personnel systems. The nation's security is enhanced when the workers who contribute to our protection have a personnel system that is fair, transparent, and consistent. For this reason, AFGE strongly supports reintroduction of the "Rights for Transportation Security Officers Act" (H.R. 1140), and the "Strengthening American Transportation Security Act" (S. 944), bills that are currently before Congress that would apply title 5 of the U.S. Code to the entire TSA workforce in the same manner as other security employees at the Department of Homeland Security (DHS).

The "FAA Reauthorization Act of 2018" required the formation of a TSA-AFGE Working Group to recommend reforms to TSA's personnel management system, including appeals to the Merit Systems Protection Board (MSPB) and grievance procedures. TSA did not utilize this Working Group as an opportunity to make many of the sensible changes to pay, discipline, grievance and fitness for duty changes proposed by AFGE Council 100 representatives.

Denial of common-sense statutory workplace rights and protections was unnecessary to stand up TSA in 2001, and it is wrong to continue this unfair system 18 years later.

Congress Should Appropriate Funding to Raise Low TSO Pay

The American public learned during the December 2018 – January 2019 shutdown that TSOs were among the lowest paid federal workers required to work without a paycheck for over one month. The average starting salary for a TSO is about \$32,600, and the average pay for a full-time TSO ranges from between \$35,00 - \$40,000 a year. The lower end of that scale is lower than the mandatory \$15 per hour minimum wage in some jurisdictions. TSO pay increases cannot continue to be the lowest priority for application of TSA appropriations.

The wages of TSOs with many years on the job remained low because of a number of actions taken by TSA. For a five-year period, there was no increase in TSO base pay. Because TSOs are not on the GS pay scale, they did not receive regular time-in-grade pay increases to reward their commitment to the job. TSA's various pay-for-performance offered meager pay raises for most TSOs and small bonuses that are not counted in base pay for determination of pensions. There are few promotion opportunities at TSA. TSOs are the only federal workforce facing the number and type of pay limitations put in place by the agency.

AFGE calls on Congress to appropriate dedicated funding in the FY 2021 DHS Appropriations bill to provide every TSO a pay raise. Congress must pass legislation that would apply title 5 to the TSO workforce, especially application of the GS system of compensation.

Congress Must Reform the Screening Partnership Program

Following the terrible events of September 11, 2001, the nation demanded that Congress improve the aviation security of the U.S. by federalizing the duties of screening passengers and baggage at airports. Most airport operators continue to depend on the experience, training and commitment of federal TSOs and are uninterested in the opportunity to convert to private contractors under the Screening Partnership Program (SPP). Unlike other efforts to convert federal jobs to contractors, the SPP does not require the contractor to demonstrate taxpayer savings or allow the federal workforce to compete in the bid. Current law shortens the period TSA can consider an SPP application, requires collusion with the airport operator on contractor choice and limits the Administrator's discretion to determine the appropriateness of privatizing screening at an airport. Jobs with an SPP contractor include salary stagnation, and fewer and more expensive benefits. Unlike the constant scrutiny of the TSO workforce, there is almost no transparency regarding attrition rates or security breaches at SPP airports.

During 2018, AFGE prevented attempts to privatize screening under the SPP at Orlando International Airport and San Luis Munoz Marin (San Juan) Airport. In 2019 AFGE also fought efforts by the St. Louis Board of Aldermen to expand screening privatization under the airport privatization program of the Federal Aviation Administration at St. Louis Lambert International Airport and an effort by the former Governor of Georgia for a state takeover of the nation's busiest airport, Atlanta Hartsfield Airport. Atlanta Hartsfield currently uses private contractors to monitor exit lanes in direct violation of federal law. The Georgia legislature has just convened its 2020 session and promoters of the takeover are trying again.

AFGE strongly supports reintroduction of legislation similar to the Contract Screener Reform Act, introduced by Representative Bennie Thompson (D-MS) during the 114th Congress. The Contract Screener Reform Act would apply transparency and accountability to the SPP. AFGE also calls on Congress to examine if the FAA's airport privatization program can open the door to private screening without consideration of national security risks.

H.R. 372, Honoring Our Fallen TSA Heroes

Currently, 99 members of the House have joined Representative Julia Brownley (D-CA) in the reintroduction of the "Honoring Our Fallen TSA Heroes Act." 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. We will continue our efforts to advance the bill in the House and for introduction in the Senate.

H.R. 1171/S. 472, Funding for Aviation Screeners and Threat Elimination Restoration (FASTER) Act

To fund aviation security, including the work of TSA, Congress passed an Aviation Passenger Security Fee. Since 2014, that fee is \$5.60 one-way and \$11.20 roundtrip. However, the increase that took effect in 2014 included a diversion of one third of the security fee funds to deficit reduction, costing \$19 billion over ten years. The FASTER Act would end that diversion and dedicate the fee entirely to aviation security operations. The funds would allow for more aviation security personnel, and checkpoint and baggage screening technology. The legislation would also allow the Administrator to pay TSOs in the event of a government shutdown. AFGE urges Representatives to cosponsor H.R. 1171 and Senators to cosponsor S. 472.

H.R. 4020, Checkpoint Safety Act

There have been a number of incidents of breaches of checkpoints, including armed individuals, and some costing TSOs and other airport personnel their lives. The “Checkpoint Safety Act” would provide additional rapid response by requiring that armed law enforcement officers be posted within 300 feet of checkpoints at all high-traffic airports. AFGE urges Representatives to cosponsor H.R. 4020.

Conclusion

AFGE is proud of our TSO membership. The TSO workforce is integral to aviation security defenses put in place to prevent a repeat of the act of terrorism against the U.S. Continued second class treatment of this workforce is not only detrimental to the agency and its employees, but also harmful to aviation security. Congress must pass legislation to ensure the TSO workforce has the same civil service protections as other federal workers and provide funding to compensate TSOs for the important service they provide in protecting the U.S.

AFGE urges Congress to:

- Repeal the statutory provision that authorizes the TSA Administrator to create a separate personnel system for the TSO workforce;
- Protect Homeland Security by applying civil service rights protections under title 5 of the U.S. Code to all TSA personnel;
- Prevent privatization of passenger and baggage screening currently performed by trained, experienced federal workers;
- Provide fair compensation to the TSO workforce by appropriating funds for a pay raise;

- Pass H.R. 1140 and S. 944 to extend the same rights and protections under title 5 of the U.S. Code and most Department of Homeland Security (DHS) employees to the Transportation Security Officer (TSO) workforce and all employees at the Transportation Security Administration (TSA) and place them on the GS pay scale;
- Support the Honoring our Fallen TSA Heroes Act;
- Support the Funding for Aviation Screeners and Threat Elimination Restoration Act; and
- Support the Checkpoint Safety Act.

Voter Rights, Civil Rights, and Judicial Nominations

Background

AFGE is a full and active partner in the traditional alliance between the civil rights and workers' rights movement. 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 Department protecting the federal workforce. AFGE leaders marched in Selma in 2015 and 2019 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. 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. 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. Since the beginning of 2019, bills to restrict voter access to the polls were introduced or extended in 14 states. The intent is clear: Political control will be maintained by denying the ballot to those who may vote in opposition.

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—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.

Voting Rights Advancement Act

H.R.4, the "Voting Rights Advancement Act of 2019," introduced by Representative Terri Sewell (Alabama), passed the House of Representatives on December 6, 2019. This bill will restore the Voting Rights Act of 1965 by outlining a process to determine which states and localities with a recent history of voting rights violations must pre-clear election changes with the Department of Justice. AFGE urges the Senate to pass S.561, the "Voting Rights Advancement Act of 2019," introduced by Senator Patrick Leahy (Vermont).

Make Federal Elections a Federal Holiday

AFGE supports legislative efforts to protect and extend the right to vote. Since the beginning of the year, 16 states have introduced voting reforms. In addition to extending early and Sunday voting, same day registration, eliminating voting roll purges, and restrictive ID requirements that are barriers to voting. AFGE calls on Congress to pass H.R. 294, the “Election Day Holiday Act of 2019,” introduced by Representative Anna Eshoo (California). This bill would establish the Tuesday after the first Monday in November in the same manner as any legal public holiday for purposes of Federal employment. This bill would create “Democracy Day”, a federal holiday to boost voter turnout on Election Day. According to the U.S. Census Bureau, in 2016 14.3 percent of the 19 million citizens who did not vote said they were “too busy” on Election day to cast a vote. Currently 20 states have varying laws allowing workers paid time off to vote. Voting is a constitutional right supported by federal law. Over 30 percent of federal workers are veterans, many of whom fought in Iraq, Afghanistan, and Syria to protect the voting rights of citizens in other countries. Contrary to the statements of Senate Majority Leader Mitch McConnell, legislation offered to make federal elections a federal holiday is not a “power grab” by one party. It is a “power grab” for democracy by U.S. citizens.

Equal Pay

H.R.7, the “Paycheck Fairness Act,” introduced by Representative Rosa DeLauro (Connecticut), passed in the House of Representatives on March 27, 2019. AFGE urges the Senate to pass S. 270, the “Paycheck Fairness Act,” introduced by Senator Patty Murray (Washington). The bill closes 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. A 2018 study by the American Association of University Women found that fulltime working women on average earn 80 percent of what men earn, and that the gap increases for working women of color. Working families can lose hundreds of thousands of dollars over the course of a woman’s lifetime due to the pay gap.

Discrimination Against Federal Workers with Targeted Disabilities

Employees with targeted disabilities represented by the American Federation of Government Employees, AFL-CIO (AFGE) deserve to have their workplace rights respected. Reports have shown that Federal government agencies are removing employees with targeted disabilities right before the end of their probationary period. Targeted disabilities are a subset of the larger disability category. The federal government has recognized that qualified individuals with certain disabilities, particularly manifest disabilities, face significant barriers to employment, above and beyond the barriers faced by people with a broader range of disabilities. These include developmental disabilities, deafness or serious difficulty hearing, and blindness. The Federal government should be a model employer of persons with targeted disabilities. Losing a job as a federal employee could plunge these disabled workers into financial peril: According to the 2017 Census Bureau Poverty and Income Report, the Official Poverty Rate for those with disabilities is 24.9 percent. The unemployment rate is 15.1 percent for persons with disabilities.

Only about 1/3 of persons with disabilities are working. There is no explanation of the disparity in retention between federal employees with targeted disabilities and other members of the federal workforce. It is important to ensure that workers with targeted disabilities are not victims of discrimination in the federal workplace. AFGE is working with Members of Congress to obtain data about the rates of persons with targeted disabilities removed at the end of their probationary period. If the worst is documented, AFGE will call upon Congress to strengthen protections for disabled federal workers.

Judicial Nominations

The U.S. Constitution provides the President the authority to nominate qualified individuals to the federal courts. Because federal judgeships are lifetime appointments, the role of the U.S. Senate is a responsibility to advise and consent on those nominees. AFGE publicly opposed the nomination of Brett Kavanaugh to the U.S. Supreme Court, and the nominations of Chad Readler (Readler) and Eric Murphy (Murphy) to serve on the Sixth Circuit Court of Appeals. AFGE will oppose federal judicial nominees who have shown hostility to federal worker collective bargaining and due process rights, fail to protect employees against discrimination on the job or have a documented history of voter disenfranchisement. AFGE will continue the stand against unqualified and biased federal judicial nominees.

AFGE urges Congress to:

- Pass legislation to protect the voting rights of each American, including a law establishing the day of federal elections as a federal holiday;
- Reject schemes to disenfranchise voters and create permanent majorities through gerrymandering;
- Oppose efforts by the Trump Administration to rollback civil rights enforcement;
- Conduct oversight about possible discrimination against federal workers with a targeted disability; and
- Oppose federal judicial nominees with a history of opposing civil and voter rights protections, hostility to workers and unions and those who are unqualified for a lifetime appointment to the federal bench.

Even as the U.S. has made remarkable progress to extend civil rights to all, work remains to ensure equal treatment under the law. AFGE is actively engaged in efforts to protect the right to vote and to have all votes counted, protection against discrimination in the workplace, and to speak out against nominees to the federal courts who are hostile to protection of rights and enforcement of justice.

Paid Parental Leave

H.R. 2500, the “Fiscal Year 2020 National Defense Authorization Act,” which was signed into law on December 20, 2019, included a provision granting twelve weeks of paid parental leave for civilian federal employees to care for a newborn, newly-adopted, or newly-placed foster child. The benefit will go into effect on October 1, 2020. This benefit extends to the nation’s 44,000 TSO workforce. However, it does not extend to FAA employees, non-screener TSA personnel and a few other federal employees. Democratic Leader Charles Schumer (New York) introduced S.3104, the “Federal Employee Parental Leave Technical Correction Act” to ensure all federal employees receive paid parental leave.

AFGE continues to advocate for the Federal Employee Paid Leave Act, introduced by Representative Carolyn Maloney (New York) and Senator Brian Schatz (Hawaii), to provide federal employees with twelve weeks of family leave for all instances covered under the Family and Medical Leave Act (FMLA). This includes paid leave to care for a newborn, newly-adopted, or newly-placed foster child; to care for seriously ill or injured family members; to tend to an employee’s own serious health condition; and to address the health, wellness, financial, and other issues that could arise when a loved one is serving overseas in the military or is a recently discharged veteran. No federal employee should have to choose between caring for a loved one and receiving a paycheck.

In September 2019, Senator Brian Schatz of Hawaii led a vote instructing the Senate to include federal employee paid family leave in the final FY 2020 National Defense Authorization Act. This non-binding vote failed by 47-48 with strong support among Senate Democrats and four Senate Republicans.

In 2015, President Obama issued a memorandum that 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, following 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.

Congressional opponents of paid family leave for federal employees have raised arguments largely based on cost. 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 families. Productivity is lost when a federal employee returns to work too soon without securing proper care for a loved one or when federal employees come to work when they are ill because they used all their sick leave during the caretaking of a loved one. A lack of paid family leave also negatively affects 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 family 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 family 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.

Congress Should Recognize the Benefits of Leave to Workers and Agencies

Federal employees are only able to accumulate a maximum of 30 days of annual leave, not an adequate amount of time for other potential instances covered under FMLA. 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 family 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 family leave. The alternatives suggested by federal employee paid family leave opponents are far too simplistic and unrealistic to adequately address the problem. Federal workers who take unpaid FMLA leave too often fall behind on their bills and face financial ruin.

AFGE believes that paid family leave 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 family leave. The federal government currently reimburses federal contractors and grantees for the cost of providing paid family leave to their workers. Surely if such practice is affordable and reasonable for contractors and grantees, federal employees should be eligible for similar treatment.

The Equality Act

H.R.5, the “Equality Act,” introduced by Representative David Cicilline (D-RI), passed in the House of Representatives on May 17, 2019. This bill will extend existing civil rights protections to LGBTQ Americans in the areas of employment, education, housing, credit, jury service, public accommodations, and federal funding. AFGE urges the Senate to pass S. 788, the “Equality Act,” introduced by Senator Jeff Merkley (Oregon).

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 or gender identification. Currently it is not violation of federal civil rights law to fire, deny housing, or educational opportunities to individuals simply because they are a member of the LGBT community – 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 extends 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 and calls for the Senate to pass S. 788, the “Equality Act,” introduced by Senator Jeff Merkley (Oregon).

Office of Personnel Management Guidance on Transitioning Employees

In 2014, President Barack 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. Guidance directing the fair and respectful treatment of transgender federal employees was removed from the Office of Personnel Management (OPM) website at the end of 2018. A new document entitled *Guidance Regarding Non-Discrimination Practices in Federal Employment* now posted on OPM’s website directs federal managers to only change gender references in the workplace after a transitioning employee provides legal documentation and does not safeguard the right of employees to use facilities of their identification. This policy change is unnecessary, harmful, and contrary to the policy of fair and equal treatment from the federal government as the model employer.

AFGE calls on OPM to restore the previous guidance safeguarding the dignity and inclusion of all federal workers and to end policies of division in the federal workforce.

Equal Employment Opportunity Commission

Civil Rights Advocates Must Stand Up to the Assault on EEOC's Mission to Stop Workplace Discrimination

February 2020 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 enforce civil rights laws, which protect against discrimination on the job based on race, religion, color, national origin, sex, age, disability and genetics. EEOC was established by the Civil Rights Act of 1964. Martin Luther King, Jr. was present at the signing of the Civil Rights Act. EEOC stands on the shoulders of those who marched and died for equality.

A fair shot in the workplace is the American Dream. In the #MeToo era, more workers are cognizant of their rights and need a robust agency to seek redress. EEOC is doing its job when it is keeping discrimination out of your job. It our jobs to keep EEOC on course, if it strays. That is the case today.

Civil rights are under attack. This administration has sought to slash needed funding and employees to carry out EEOC's mission. EEOC's current backlog reduction strategies rely on quickly closing around 30 percent of charges with dismissal and "right to sue" letters, rather than investigating charges of discrimination. EEOC ended FY 2019 with only 2,061 employees nationwide. Appointment calendars are booked for months out. It can take up to 60 minutes to get a call answered by the understaffed in-house call center.

The administration is even trying to make it harder for Federal employees suffering discrimination at work from getting help, by stripping their rights to a representative of their choice, which may include the union. Federal sector employees' due process is also threatened by closure quotas now included in administrative judges' performance standards.

For FY 2021, Council 216 will urge Congress to at least maintain EEOC's funding level of \$389.5M. Council 216 will wage a campaign with union and civil rights activists to fight against the administration proposal impeding Federal workers from getting help pursuing their EEO complaints. AFGE Council 216 will request that Congress review EEOC's performance system and backlog reduction strategies to determine any harmful impact on enforcement and benefits for the public. Council 216 will press EEOC to implement efficiencies that provide more frontline help to the public, stop employee and union attacks, and improve morale to reduce costly turnover.

Discussion

1. EEOC Should Not Strip Federal Employees Alleging Workplace Discrimination of the Right to the Representative of their Choice. Federal Employees Must Also Maintain Rights to Discovery and Full and Fair Hearings.

- *AFGE Council 216 will demand that Federal employees not lose rights to the representative of their choice, discovery and hearings as EEOC pushes Case Closure Quotas on AJs.*

The administration must be stopped from a dangerous new attack on Federal employees. In December 2019, EEOC served notice of a proposed change to regulation that would impede the ability of a Federal employee experiencing discrimination from continuing to be able to select the union as their representative. This proposal impacts Federal employees government-wide.

The longstanding current regulation allows a Federal employee pursuing a discrimination complaint to designate the representative of his or her choice- and if that person is a Federal employee they may assist on official time. If the proposed change is implemented, it will create an exclusion singling out and barring only a union representative from assisting on official time, but would allow official time for any other employee asked to represent. This would leave a Federal employee to select a random coworker, instead of a union representative knowledgeable in the EEO process. While theoretically, the employee may still choose a union representative, there would be obstacles to that person representing after hours, taking leave or leave without pay. Moreover, the prohibition singling out the Union would likely chill a complainant, already in a precarious position of filing against his or her own agency, from designating the union. The alternative would be to pay an attorney, which may be cost-prohibitive for many Federal workers.

Making it harder for Federal employees to raise EEO violations is especially cruel in light of the increased attention on worker mistreatment resulting from the #MeToo movement. Yet, somehow this administration believes Federal employees need less help – not more – in fighting discrimination cases. When employees are confronted with these sensitive issues at work, they must continue to have the unimpeded right to be accompanied and advised by a person they are comfortable with, which is the representative of their choice. AFGE Council 216 will fight with union and civil rights advocates to ensure Federal employees are not denied the ability to get representation from their union representative – a person they are aware is knowledgeable on representation and the process.

Concerned citizens should e-mail EEOC's Chair, Janet.Dhillon@EEOC.gov and tell her not to go forward with the proposed change to regulation, because EEOC should not be in the business of making it harder for Federal worker victims of discrimination to get help in pursuing their complaints. Also, demand a public hearing so that all affected voices may be heard.

AFGE Council 216 will also continue to protect Federal workers' rights to discovery and a full hearing. These rights are threatened by recent changes to administrative judge (AJ) performance plans. These plans contain arbitrary and unrealistic closure quotas that create a strong pressure to find more often in favor of agencies.

The standards direct AJ to make these numbers by relying on pilot initiatives that are a recipe for denying discovery. Discovery is the only way to keep the EEOC process fair. The standards also press unnecessary quick closures, such as through micromanaged summary judgment and bench decisions. Dismissals to meet the numbers may not meet due process. The standards also do not consider case complexity, varying caseloads, aged inventory transferred from other short-staffed offices, and lack of support staff.

Administrative Judges should retain judicial independence to categorize cases, provide for and manage the discovery process and not be forced to meet arbitrary numbers for case processing activities. Subpoena authority will continue to be sought to improve the due process afforded to both Federal sector claimants and Federal agencies.

EEOC has only an estimated 72 available Administrative Judges, with the figure likely to decline through attrition. AFGE Council 216 will continue to address the loss of EEOC AJs, caused by a lack of support staff, threats to judicial independence, and the absence of Administrative Law Judge (ALJ) classification available at other agencies. EEOC's budget increase should be used in part hire an adequate number of AJs and provide them support staff.

2. This Administration Each Year Has Requested Cuts to EEOC, Even as Workplace Discrimination is in the National Spotlight

- *AFGE Council 216 will urge Congress to adequately fund EEOC, and direct that EEOC hire frontline staff to serve the public.*

The #MeToo movement highlights EEOC's important work and leads people to the agency's door. Despite the administration requesting a \$1M cut for FY 2018 and being slow to acknowledge the #MeToo impact Congress thankfully met the moment by increasing EEOC's FY 2018 budget from \$364.5M to \$379.5M for EEOC to "address the increased workload associated with sexual harassment claims." After seven years of frozen budgets, this was a much-needed raise. For FY19, the administration requested what would have been a \$16M cut, but Congress showed its bipartisan commitment to civil rights, by continuing the increased funding level "to address harassment claims."

For FY 2020, the administration targeted EEOC with a \$23M cut, which would have caused devastating harm to civil rights enforcement. With EEOC's workforce then at a record low, the budget cut would have frozen hiring and through attrition slashed another 180 positions, including mediators, judges, intake representatives, and 50 investigators. The agency's budget justification conceded the result would be a "steady rise in pending inventory" as "there will be no replacement of staff." Again, Congress demonstrated support for EEOC's mission, rejected the dramatic cut and instead increased funding for FY 2020 by \$10M to \$389.5M.

EEOC's workload and barebones staff justify the need to maintain the funding increase and make EEOC hire frontline staff. In FY 2019 72,675 charges of discrimination were filed with EEOC. In FY 2019, EEOC received over 497,000 calls to the toll-free number, more than 33,000 emails, and over 200,000 inquiries in field offices, including 123,688 inquiries through the online intake and appointment scheduling system. Inquiries went up 11.1 percent from FY 2018. EEOC ended FY 2019 with a backlog of 43,580 cases.

Enforcing laws to prevent employment discrimination requires frontline staff. Unfortunately, EEOC continues to be understaffed, ending the year with only 2,061 employees. EEOC's overall workforce has plummeted from FY 2011's 2,453 employees. While Congress has wanted EEOC "to address sexual harassment," EEOC failed to properly invest in the most important resource to make this happen- frontline employees.

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 FY 2001 to approximately 548 available investigators (the last reported number, included in the FY 2019 budget).

These staffing shortages negatively impacts the public. EEOC is wrong when it promotes its digital charge system (DCS) as the answer to short-staffing. There must be adequate frontline staff to receive inquiries and process charges. When the DCS appointment system kicked off in FY 2018, the calendars immediately booked up for weeks out and has stayed that way, because there is not enough investigative staff to cover the appointments. During this time jobs are lost and retaliation cases surge.

Likewise, 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.

When frontline staff who depart are not replaced, these haphazard vacancies disrupt operations. Senior investigators and AJ's retire, and their cases get distributed to those few who are left, driving up individual caseloads. EEOC transfers thousands of old cases across the country from short-staffed offices to those with a few more bodies. Offices receiving the old cases simply close them to meet arbitrary performance requirements. The remaining few clerical staff may leave for promotional opportunities elsewhere. Professional staff spend valuable performing clerical duties.

For FY 2021, Council 216 will urge Congress to support EEOC's mission, by at least maintaining its \$389.5M budget. Council 216 will urge Congress to direct EEOC to hire and backfill frontline staff to serve the public.

3. As #MeToo Has Raised 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 backlog strategies and new performance system, which pressures staff to deter, downgrade, and close cases.*

Instead of hiring adequate number of staff, EEOC is slashing its backlog by relying on questionable strategies that provide less substantive help to the vast majority of those seeking assistance. EEOC's backlog consistently stood at over 70,000 cases for a decade, due to lack of resources. Historically, the backlog increased when staffing dropped. However, starting in FY 2017, despite fewer staff, EEOC began announcing miraculous reductions in backlog: for FY 2017, 16 percent reduction from 73,508 cases to 61,621 cases; for FY 2018, 19.5 percent reduction to 49,607 cases; for FY 2019, 12.1 percent reduction to 43,580.

How these cases were moved out and the impact on the public raises alarms. Each case in the backlog represents a worker waiting for EEOC. Justice delayed is a problem, but still better than justice denied.

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

Initiatives that did play a role were first cited in the OIG section of EEOC's FY 2017 performance and accountability report, "Acting Chair Victoria Lipnic, in July 2017, addressed the inventory issue by distributing a discussion memo to senior managers describing how to substantially reduce the inventory."

In FY 2017, EEOC began exploiting the PCHP triage system by pressing staff to designate more "C" cases. This leaves the vast majority of those seeking EEOC's help receiving a dismissal with a "right to sue" letter, without even a request for an employer position statement, in other words, left to find help on their own. Paired with the quotas in the new performance system, the result has been a press for cursory closures of older cases on the back-end and to triage out cases on the front-end by designating them as "C." As of FY 2017, offices were given goals for "C" categorization, e.g., around 30 percent.

Further, pushing staff to deter charges at intake depresses charge receipts. The agency has reported a jump in inquiries made by people who ultimately decide not to file a charge. Requiring staff to arbitrarily triage more complaints as "C" charges for dismissal, also reduces the number of "B" charges eligible for mediation and prevents parties from participating in EEOC's successful mediation program.

EEOC stats show these "strategies" are taking a toll on substantive case processing. Merit resolutions have declined from 20.3 percent in FY 2009 to 15.6 percent in FY 2019. In FY 2018, the last year reported on their website, also show a jump in "no reasonable cause" dismissals

compared to previous years. Monetary benefits secured for victims of discrimination also dropped in FY 2019.

Likewise, as discussed, EEOC's numerical case closure requirements 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.

EEOC no longer has an excuse for these schemes the agency used to claim were necessary due to lack of resources. Congress increased EEOC's budget. The House specifically recommended that increased funds be used in part to "increase front-line and investigative staff to reduce wait times for intake appointments." So now EEOC should restore frontline staff and allow them to do the work of stopping and preventing workplace discrimination. EEOC's focus should be on how many it helped not how many it turned away.

Private and Federal sector workers want a fair and timely complaint process, not just a quick closure. Council 216 will urge Congress to review EEOC's backlog reduction strategies and numerical requirements in evaluations to assess its impact on appropriate charge processing and service to the public. AFGE Council 216 will also urge Congress to continue oversight language regarding the numbers and requirements for A, B, and C charges.

4. EEOC Should Improve and Staff Its Digital Charge Initiatives to accomplish the Purported Goal of Efficiency.

- *AFGE Council 216 will urge that EEOC improve DCS to Support Constituents*

EEOC's Digital Charge System (DCS), which was rolled out nationwide in 2017 steers workers to use an online system. The system pushes workers through questions about their work situation. Workers must respond correctly to jurisdictional questions in order to file an online inquiry and schedule an interview through an online appointment system. Generally, expanding technology enhances efficiency and access. However, DCS is not particularly user friendly for the public or efficient for EEOC staff.

DCS can act as a deterrent to workers trying to get help from the EEOC, especially those who do not have computers, are not computer literate, do not speak English, or have intellectual or physical disabilities that would interfere with a self-help online process.

Some may self-select out due to booked appointments, the length of the process or being discouraged by the system indicating that they may be ineligible, even if that is not necessarily the case, e.g., the complexity of the 15-employee minimum. Those who try to walk-in to the office are often turned away and sent back to the DCS system.

DCS can generate more work for EEOC staff, undercutting any time-savings. DCS was built on a preexisting electronic record system (IMS) platform with separate which are not integrated. Staff spends time downloading, saving, and uploading from one system to the

other. Key paper forms are still required to be printed and mailed, though this will be changing. Hard copy documents often must be scanned, but there are not enough scanners. While a recently released database may assist, staff still expends time hunting down employer e-mail addresses. Because many individuals do not complete all online information sections, EEOC staff only receive barebone information before an interview.

Another digital system provides complainants the ability to track online, the status of their charge. But providing a way to track EEOC's bottlenecks, without solving them with adequate staff, often adds more calls that can delay and lead to constituent services calls.

EEOC must improve these digital systems so that they support frontline staff and serve the public. Even then, EEOC must prioritize frontline staff so that when the public pushes "send" there is someone at the agency to take the call or appointment. Finally, EEOC must retain access for those who do not use computers or cannot access one for online charge filing.

5. EEOC Should Implement Real Efficiencies and Cut Costs to Prioritize Frontline Services

- *AFGE Council 216 will request that Congress make EEOC implement efficiencies to prioritize frontline staff.*

EEOC has expanded online access but is missing efficiencies that would make a real difference in carrying out the mission.

- **EEOC Should Adopt a Real Efficiency: Dedicated Intake Staff**

AFGE Council 216 has long promoted a Full-Service Dedicated Intake Plan to address the efficient use of resources to benefit the public. The heart of the plan is utilizing trained senior investigator support assistants and other support staff in dedicated units to advance the intake process from pre-charge counseling through charge filing. Such units would also address the flood of intake appointments 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.

In FY 2019, EEOC finally took a key idea from the plan and hired five GS-8 Senior Information Intake Representatives, to assist at intake with the booked appointment calendars. More are needed for EEOC's 53 offices. But, EEOC should not impose unreasonable interview quotas that impact customer service and cause high turnover.

- EEOC Must Prioritize Frontline Staffing, e.g., Reducing Supervisor to Employee Ratio to 1:10

It is critical that EEOC push resources to frontline staff. Only 42 percent of field staff reported on the 2019 FEVS survey "sufficient resources (for example, people, materials, budget) to get

my job done.” This is well below the government average.

EEOC should reduce its current top-heavy supervisor to employee ratio. The EEOC’s Republican leadership in 2006 supported a 1:10 ratio, yet this reasonable goal has never been realized. The last time EEOC provided the information, the bloated ratio was one supervisor for every five employees. Flattening the agency would make it more efficient by focusing budget dollars on less costly frontline staff and would reduce micromanagement.

Any hiring should be used to backfill frontline vacancies that directly serve the public. Promoting staff to management without ensuring the resulting vacancies are backfilled exacerbates the impact of lack of front-line staff.

By filling more GS-13 Lead Systemic Investigator positions, EEOC could retain talent and match staff to its stated emphasis on systemic cases. The last time the Council is aware that EEOC increased the number of lead systemic investigators was in FY 2015 from 9 to 18 nationwide, but this remains a small number given the relevant workload and is less than one per office.

- **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 stopping attacks on its employees and union and improving working conditions and morale.

The 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. EEOC must support its vets and reservists by complying with USERRA and not botching the onboarding of veterans, such as providing appropriate military service credit for retirement and leave benefits.

AFGE Council 216 will continue its fight to address underlying issues on specific questions and offices with poor FEVS scores. EEOC field offices score ten percentage points below the 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 legal basis that EEOC enforces.

Despite being in the lowest quartile for work-life balance on the Best Places to Work in Federal Government rankings, EEOC terminated its Maxiflex pilot.

The agency’s OEO department is unresponsive and has made zero findings of discrimination in the last thirteen years. The Model Employer address and prevent EEO violations, not pretend that no allegation has merit. Labor and employee relations must comply with the Statute and CBA. By taking these measures, 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**

The EEOC should eliminate contracts for work that is or could be performed in-house. 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 offices. Also, EEOC could start an expanded voluntary telework program for mediators to extend their geographic reach.

EEOC pays contract OIT staff and contract paralegals for functions that can be performed in-house. EEOC wastes money for managers to travel to meetings and for office visits when they could instead use video teleconference (VTC).

The Union's Accomplishments

In 2019, 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 work this year:

1. AFGE Council 216 is fighting to stop EEOC from enacting a proposed change to government-wide rule that would impede Federal workers suffering discrimination from continuing to get help from the representative of their choice, including the Union. Concerned activists must join this fight.
2. For FY 2019, AFGE Council 216 successfully fought against the administration slashing EEOC budget by \$23M and reducing staffing through attrition, which would have dramatically affected the agency enforcement abilities. Instead, Congress supported EEOC with a \$10M increase.
3. Council 216's advocacy that the #MeToo movement increases demand for the agency, resulted in FY 2020 report language for more resources including to address sexual harassment.
4. AFGE Council 216 provided written testimony for the House CJS Subcommittee open witness hearing urging increased budget and staff.
5. For FY 2020, House and Senate Appropriators included oversight language for EEOC's A, B, C categorization procedures, to address pressure for "C" cases that are quickly closed with a dismissal and right to sue.
6. Both House and Senate Appropriators have recommended retaining oversight of any reorganization.
7. AFGE Council 216 successfully negotiated CBA groundrules.

8. AFGE Council 216 conducted a CBA survey of the bargaining unit to get input prior to negotiations, which received an excellent response rate.
9. AFGE Council 216 is at the negotiating table fighting for a strong CBA for our bargaining unit.
10. AFGE Council 216 has participated in the Red for Feds movement to show support for a strong CBA and fight back against the EOs.
11. AFGE Council 216 has reinvigorated its “Council 216 AFGE-Members Only” Facebook page to provide timely updates and build our union community.
12. AFGE Council 216 continues its vigorous battle for the agency to provide reasonable accommodations for disabled employees, properly honor FMLA requests, and help vets get military service credit for their leave and retirement benefits.
13. AFGE Council 216 negotiated the impact of the recent rollout of the nationwide appointment system.
14. AFGE Council 216 negotiated the impact of the shutdown on affected performance standards for administrative judges and mediators.
15. AFGE Council 216 continued to promote the Union’s National Intake Plan. EEOC finally adopted one element of the plan by hiring five higher graded Investigator Support Assistants (ISA) to assist with the high intake workload demands in its 53 offices. The Union is pressing for more slots.
16. AFGE Council 216 continues to press EEOC to improve its internal harassment program, including a neutral harassment coordinator.
17. AFGE Council 216 fights every day to improve the working conditions that have led to overall poor morale and negative responses to certain key questions in the annual Federal Employee Viewpoint Survey.

AFGE Activists should urge their lawmakers:

- Stop EEOC from stripping representation rights for Federal discrimination victims nationwide. EEOC should rescind its proposal to to impede Federal complainants from getting assistance from the representative of their choice, including the union. Concerned citizens should e-mail EEOC’s Chair, Janet.Dhillon@EEOC.gov and tell her not to go forward with the proposed change to regulation, because EEOC should not be in the business of making it harder for Federal worker victims of discrimination to get help in pursuing their complaints. Also, demand a public hearing so that all affected voices may be heard.

- To request FY 2021 EEOC funding of at least \$389.5M, to maintain FY 2020's increase to address sexual harassment and increase frontline staff.
- To direct EEOC to hire frontline staff to provide real and timely help to the public.
- To review EEOC's backlog reduction strategies and numerical requirements to determine the impact on the public, including deterring and closing cases and reducing cases eligible for mediation.
- To reduce costly turnover by improving poor morale reported on Federal surveys, including stopping attacks on its own employees and Union, providing accommodations, FMLA, timely acting and finding EEO violations.
- For EEOC to implement Council 216's Dedicated Intake Plan to provide timely and substantive assistance to the public, alternatively to at least hire additional GS-8 ISA dedicated intake staff.
- To direct EEOC to flatten the supervisor to employee staffing ratio to 1:10. EEOC's last reported the ratio to be 1:5.
- 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.

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.

AFGE calls on Congress to reintroduce and pass legislation to recruit, retain and reward federal workers with the bilingual skills necessary to serve our nation’s increasingly diverse population.

The “One America, Many Voices” Act

It has been almost 10 years since the One America, Many Voices Act was introduced in Congress. The One America, Many Voices Act would ensure that all federal workers who use their multilingual skills in the workplace on a regular basis are fairly compensated by amending 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 some employees to use multilingual skills who are paid at the same rate as other employees that are not required to use such skills. Multilingual skills are essential for federal agency mandates to serve the diverse public. These mandates are only met with the skills of employees who can communicate effectively with Limited English Proficiency populations. Without legislation like the One America, many Voices Act, 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 the civil service as a career option if they were to receive adequate compensation for their much sought-after language skills.

Many federal agency offices are in areas with a large and growing population of citizens with limited English proficiency, 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 116th Congress. This historic group of lawmakers include 52 members of Congress and 16 members of the Senate who are immigrants or the children of immigrants. It could be said they both look and speak like America. The skills of a federal workforce that uses multilingual skills to provide a more efficient government and better services to the public are advanced by the passage of legislation like the One America, Many Voices Act.

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

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 and has not been reintroduced or updated since that time.

New legislation is needed to enhance and update the FECA program, thereby ensuring the program meets the needs of both employees and taxpayers. Legislation should 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, 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 - $66 \frac{2}{3}$ percent - for totally disabled beneficiaries, regardless of whether the beneficiary has eligible dependents. Currently, totally disabled beneficiaries without an eligible dependent are compensated at $66 \frac{2}{3}$ percent of their gross wages at time of injury and those with dependents are compensated at 75 percent - an augmentation of $8 \frac{1}{3}$ percent.

The rationale for eliminating the FECA augmented payment provided by the HSGAC 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 $8 \frac{1}{3}$ percent augmentation for totally disabled federal employees with dependents recognizes – unlike the single $66 \frac{2}{3}$ percent rate - the greater financial needs of beneficiaries with dependents than those without.

The GAO’s analysis of the “single rate of $66 \frac{2}{3}$ 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 $66 \frac{2}{3}$ 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 $66 \frac{2}{3}$ percent” proposal. At the same time, the 2010 median wage replacement rate for FECA beneficiaries without dependents would remain the same: 77.7 percent.

¹Federal 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

The need for more meat and poultry inspectors

Issue—There is a critical need for more meat and poultry inspectors to help protect our nation’s food supply.

Background/Analysis—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 hiring more meat and poultry inspectors, in addition to other priorities, would help those hardworking inspectors better accomplish the FSIS mission.

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. In addition, the USDA records show that the number of inspection procedures by permanent FSIS inspectors has declined.

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.

Congressional Action—We urge Congress to increase funding for FSIS for the purpose of hiring additional staff.

Issue—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.

Background/Analysis—

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.

Issue—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.

Background/Analysis—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 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 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 there has been no word on the potential costs of antimicrobial chemical sprays on FSIS inspectors and plant workers.

Congressional Action—Congress should request a GAO 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.

Issue—The need to provide individuals with minor impairments the opportunity to work as FSIS inspectors.

Background/Analysis—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.

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

Background

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 in other agencies. 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 far lower 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 a mandatory retirement age of 57, the federal government makes 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, 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 are assigned on a regular and recurring basis.

3. 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 an unreduced 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 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 (FEGLI) immediately after they retire.

In contrast, employees without LEO status are not eligible for continued FEHBP or FEGLI 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

AFGE continues to support H.R.1195/ S.473, the “Law Enforcement Officers Equity Act,” introduced by Representative Peter King (New York) and Senator Cory Booker (New Jersey). This bill would 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.

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 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.

Congressional Action Needed:

- AFGE strongly urges the 116th Congress to pass H.R.1195/ S.473, the “Law Enforcement Officers Equity Act,” 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 law enforcement officer.

Census Bureau AFGE Council 241 Legislative Issues

Census Bureau Funding

Congress passed a Fiscal Year 2020 “minibus” package that funds the Census Bureau at the Senate-passed levels for the Periodic Censuses and Programs account at \$7.3 billion, which includes \$6.7 billion for the 2020 Census. This new funding level is \$1.4 billion more than the Administration’s funding request. AFGE urges Congress to ensure that the Census Bureau ensures a fair and accurate 2020 Decennial Census on April 1, 2020, so that everyone is counted, as the Constitution requires.

AFGE is working with the Census Task Force headed by the Leadership Conference and Members of Congress to secure adequate funding for the Census Bureau in future funding bills.

AFGE supports adequate funding for the Periodic Censuses and Programs (PCP) account, which covers the 2020 Census, and the related American Community Survey. AFGE also supports funding the Current Surveys and Programs at Census Bureau.

AFGE was successful in maintaining status quo funding and avoiding the draconian cuts in the President’s Budget to significantly deplete the Census Bureau of resources as it ramps up for the 2020 Decennial Census. AFGE is continuing to work with relevant Committee members to ensure AFGE Census Bureau employees have the necessary resources to complete fair and accurate Censuses.

AFGE represents over 1,500 members at the Census Bureau in Maryland, Kentucky and Arizona. Our employees ensure accurate and comprehensive data collection and analysis which informs research and federal, state and local funding initiatives. Census Bureau work ensures fair political representation from Congress down to local school boards—and the prudent distribution of federal aid to states and communities each year. The Census Bureau data are central to sustaining democracy and facilitating informed decision-making. The Census Bureau programs are irreplaceable sources of data for key economic indicators and socio-economic characteristics that support government and private sector decision-making.

Congressional Action Needed:

- Continue educating Members of Congress and staff about the important work Census Bureau employees do for the American public and to advance civil and human rights. Advocate for full funding and staffing for Census Bureau employees to perform the mission of the agency.

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 which 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 aircraft, 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.

H.R. 931, the "Firefighter Cancer Registry Act," introduced by Representative Chris Collins (New York), was signed into law on July 7, 2018. This bill directs the Center for Disease Control (CDC) and the Secretary of Health and Human Services (HHS) to develop and maintain a voluntary "Firefighter Registry" to collect comprehensive data on relevant history and occupational information of firefighters to be linked to state cancer registries that already exist.

AFGE continues to advocate H.R. 1174 and S. 1942, the "Federal Firefighter Fairness Act," introduced by Representative Salud Carbajal (California) and Senator Tom Carper (Delaware). This bill creates a presumption of disability for firefighters who have expenses related to death or disability benefits as a result of heart disease or cancer after working as a federal firefighter. AFGE continues to gain cosponsors for these bills.

AFGE continues to advocate for fair retirement benefits for federal firefighters. Representative Gerry Connolly (D-VA-6) introduced the bipartisan H.R.1255, the "Federal Firefighter Pay Equity Act," for retirement benefits to include mandatory overtime hours. AFGE continues to garner cosponsors for this legislation.

AFGE advocated for healthy and safe personal protective equipment for firefighters and worked with Senator Jeanne Shaheen (D-NH) to address the presence of PFAS chemicals in firefighting personal protective equipment and firefighting foam. Language was included in the final National Defense Authorization Act (NDAA).

H.R.1327, the “Never Forget the Heroes: Permanent Authorization of the September 11th Victim Compensation Fund Act” was signed into law on July 29, 2019. This bill will fund the September 11th Victim Compensation Fund of 2001 through FY 2090.

Legislative Action:

1. Reintroduce and gain cosponsors for the Federal Firefighter Fairness Act. This bill would consider heart disease and cancer presumptive disabilities as a result of fighting fires. Death and disability payments would be covered by the employer.

Issues Facing Federal Retirees

Cost-of-Living-Adjustment (COLA)

In the 115th Congress, for the first time ever, the President’s and House majority’s budget proposals would have eliminated the COLA for current retirees and all future FERS (Federal Employee Retirement System) retirees and cut the COLA for CSRS (Civil Service Retirement System) retirees by 0.5 percent per year. The President’s budget proposal for Fiscal Year 2020 again included these cuts. This would lead to long-term erosion of retirees’ income. For instance, based on the past 20 years of COLAs in FERS and CSRS, this is how the changes would look for someone who retired with an average high three income of \$50,000:

FERS – 62YO – 30 Yrs / No COLA			CSRS – 60YO – 25 Yrs /COLA cut 0.5% Yr	
1998	\$16,500	\$16,500	\$23,125	\$23,125
2018	\$23,362	\$16,500	\$35,075	\$32,341

Also related to cost of living, the COLA is calculated differently for FERS retirees than it is for CSRS retirees. Under current law, CSRS and Social Security COLAs are calculated based on the Consumer Price Index. The FERS COLA is the same if the CPI is 2 percent or less; if the CPI is 2.01-3.0 percent, the COLA is 2 percent, and if the CPI increase is more than 3 percent, the FERS COLA is 1 percent less than the CSRS COLA. Congressman Gerry Connolly (D-VA) introduced H.R. 1254, the Equal COLA Act, to bring the FERS COLA up to the same amount as the CSRS COLA. AFGF supports this legislation.

Legislative Action:

1. Oppose any COLA cuts to federal retirement for active and retired employees.
2. Cosponsor and support H.R. 1254, the Equal COLA Act.

Cuts to Social Security

In addition to FERS, CSRS and TSP benefits, which are detailed in the Federal Retirement section, retirees under the Federal Employees Retirement System (FERS) and some who are under the Civil Service Retirement System (CSRS) are also beneficiaries of Social Security and will be adversely affected by budget proposals before Congress.

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;

- Raise Social Security’s full retirement age — already rising from age 66 to 67, to 69 or 70 — which would cut benefits across-the-board for all new retirees.
- Privatize Social Security, turning our guaranteed earned benefits over to Wall Street in the form of 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 eliminating or raising the cap on earnings subject to payroll tax.

AFGE supports expanding benefits through legislation, including:

- 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.

Legislative Action:

- 1) Senators Bernie Sanders (D-VT) and Elizabeth Warren (D-MA) and Representative John Larson (D-CT) formed the Expand Social Security Caucus in 2018, with a goal of achieving the above described provisions. Senators and Representatives should be asked to join the Caucus if they have not done so already.
- 2) Support legislation to expand Social Security benefits and extend solvency, including bills such as Rep. Larson and Sen. Richard Blumenthal’s (D-CT) Social Security 2100 Act, (H.R. 860/S. 269) and Sen. Sanders’ and Rep. Peter DeFazio’s (D-OR) Social Security Expansion Act (H.R. 1170/S. 478) to improve benefits and the solvency of Social Security.

GPO/WEP

AFGE supports the elimination of the Government Pension Offset and the Windfall Elimination Provision, which cut Social Security benefits for federal government retirees and their survivors 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, school district and municipal public employees. For 74 percent of

affected spouses, the benefit is reduced to zero. These provisions have had the effect of disproportionately reducing the Social Security benefits Americans have earned. Many CSRS retirees have enough earnings to qualify for Social Security, but unless this is addressed, they will receive little or no benefit.

Legislative Action:

1. AFGE supports legislation to eliminate GPO and WEP. In the 116th Congress, this legislation is H.R. 141/S. 521 authored by Rep. Rodney Davis (R-IL) and Sen. Sherrod Brown (D-OH). Both bills have a substantial number of cosponsors and should be given Committee and floor consideration.

Social Security Field Office and Teleservice Center Funding:

Since 2010, the Social Security Administration (SSA) has endured deep budget cuts that have severely hampered employees' ability to help ensure financial security and stability to Americans in old age and disability, and survivors in times of crisis. Through 2019, nearly 70 field offices and all SSA contact stations were closed, and all remaining offices have reduced hours to the public, resulting in record high backlogs in claims, appeals and wait times on the national call-in line and a loss of over 2,000 field staff. Meanwhile, the demand for in-person services increases as the baby boom generation continues to reach retirement age. AFGE is encouraged that the FY 2020 funding bill included language specifying \$100 million in funds to restore funding for field staff, reduce or end field office closures and support frontline operations.

Legislative Action:

AFGE supports Congresswoman Gwen Moore's (WI) legislation, H.R. 2901 the Maintain Access to Vital Social Security Services Act to require the Social Security Commissioner to operate and staff sufficient field offices and employ adequate staff to provide convenient and accessible services to the public and minimize wait times. The Commissioner would have to seek public input before any future office closure. We encourage members of Congress to cosponsor the bill and publicly oppose any office closures in their states or districts.

Medicare

Most federal retirees become eligible for Medicare at age 65. Many opt not to enroll in Medicare Part B for out-patient medical services because they are also covered by the Federal Employees Health Benefits Program (FEHBP). Because of FEHBP coverage, federal retirees would be less adversely affected by proposals in Congress to eliminate traditional Medicare and turn it into a voucher program as has been proposed in budgets over many years, including FY 2020.

The hospital coverage, Medicare Part A, along with the rest of the program, could be turned into 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.

AFGE opposes legislation that would raise the Medicare eligibility age from 65 to 67, further straining the Medicare system by skewing to an older, less healthy cohort. Budget proposals have included higher hospital co-payments and substantial increases in deductibles. AFGE opposes these proposals that shift significantly more out-of-pocket costs to beneficiaries.

AFGE will also watch out for any efforts to amend the tax law in a manner that pushes costs for back breaks for wealthier Americans onto Medicare beneficiaries.

Legislative Action:

1. Oppose budget cuts and eligibility age increases in Medicare.
2. Carefully monitor efforts to expand Medicare (i.e. Medicare for All)

Medicaid

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 support for the elderly and people with disabilities, providing about 62 percent of all such services.

The House passed a budget in 2018 that would have capped Medicaid and turned 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. While these proposals were in the president’s budget, new leadership in the House did not advance them in 2019.

There have been numerous attacks on the Affordable Care Act. While some of its underpinnings remain, Congress agreed to a tax plan that eliminated the “individual mandate” which created a broad universe of insured individuals that determines pricing of insurance. Older adults not yet eligible for Medicare, aged 50-64, are already experiencing sharp 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.

Additionally, the erosion of the ACA may affect AFGE families. While members and retirees usually enjoy FEHBP coverage, dependents such as grandchildren or aging parents in the household could lose their coverage and find that basic preventive services, coverage of pre-existing conditions and 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.

Legislative Action:

1. Oppose cuts to Medicaid and the ACA through budget proposals and stand-alone legislation and supports efforts to strengthen and broaden access to quality affordable health care.

Office of Personnel Management

Issue— Abolishing the U.S. Office of Personnel Management

Background/Analysis— The Office of Personnel Management (OPM) is an “independent establishment in the executive branch” with a director who is “appointed by the President, by and with the advice and consent of the Senate.” It is not a Cabinet agency. As a central personnel agency, OPM carries out numerous functions related to human resources (HR) management for much of the executive branch.

In June 2018, as part of a government-wide reorganization plan, the Trump Administration proposed to realign numerous OPM functions, and in March 2019 they provided further details in their budget justification to Congress. AFGE quickly got to work fighting this wrong-headed proposal, and as a direct result of the hard work of AFGE, led by Local 32 which represents the employees at OPM, who staged a rally, made phone calls and visits to Capitol Hill, we successfully blocked the Trump administration from dismantling OPM and politicizing the agency’s human resources policy functions.

Under the Trump Administration’s proposal, Employee Services (ES), which performs HR policy functions, would be placed under the Executive Office of the President (EOP); the Retirement Services (RS) program office would be moved over to the renamed “Government Services Administration” (GSA, formerly the “General Services Administration”); and Human Resources Solutions (HRS), which provides HR products and services to agencies on a reimbursable basis through individual program offices and user-centric IT systems that automate agency core HR functions, also would be transferred to the renamed GSA.

Due in large part to AFGE and Local 32, the 2020 National Defense Authorization Act that became law in December 2019 included a provision blocking the proposed merger of OPM with GSA, who, as the government’s real estate agency, has a mission that is completely different from that of OPM. Under the bill, an independent third-party organization – the National Academy on Public Administration (NAPA) – will be contracted to do a comprehensive study on OPM and the challenges facing the agency and make recommendations for how to address those challenges. NAPA has one year to conduct the study and write their report. Then OPM has six months after the study is completed to report to Congress its views on the findings and make recommendations for changes. The NAPA report is also required to include the views of outside stakeholders, including AFGE, and OPM is required to submit a business case for any changes they want to make in their response to the report. Congress would still have to approve any future merger or reorganization.

However, even though Congress blocked sending most of OPM’s operations to GSA, OPM management is continuing to hold meetings on the so-called merger and is taking actions to undermine OPM’s workforce. For example, OPM has many vacant positions which the agency’s leadership is refusing to fill. This is forcing individual employees to perform duties of three more full time vacant positions. Additionally, the Director of OPM is not engaging with employees or the union, including setting up barriers to keep employees and managers from

emailing her and not holding town hall meetings as previous Directors have done to provide employees with information about the direction of the agency.

Congressional Action— While AFGE, led by the efforts of Local 32, was successful in blocking the Administration from attempting to merge OPM with GSA until at least 2021, we urge Congress continue to perform rigorous oversight over OPM and its Director and in particular any actions the agency may be continuing to take to administratively move functions from OPM to GSA or the EOP.

Social Security Legislative Priorities for the 116th Congress (2019-2020)

Congressional Intervention in Collective Bargaining Crisis

Although Congress rarely intervenes in labor/management disputes, the current situation with respect to bargaining over the union contract is so outrageous and illegal, that Congress must be convinced to step in. However, Congress has already passed a law requiring that labor and management conduct contract negotiations in good faith. Therefore, a legal challenge remains the most direct avenue for reversing management's efforts.

This does not mean that Congress cannot play an effective role in bringing pressure to bear on the Trump Administration and SSA to rethink their approach to contract negotiations. Letters have been written to SSA and signed by many lawmakers calling the agency to task for its bad faith and unwillingness to consider union proposals. In addition, urge Congressional Committees to hold hearings intended to shine a spotlight on SSA's illegal actions.

We call upon Congress to exert its appropriations authority to compel the Agency to reopen negotiations and commit to an equitable process for dispute resolution such as mediation/arbitration by an independent individual selected jointly by both parties.

Congressional Investigation of Agency Security

Due to the nature of the Agency's work, personally identifying information (PII), including social security numbers, dates of birth, full legal names, addresses, etc., is visible on employee work stations at all times. Agency employees work under the expectation that there is a reasonable expectation of privacy at their work stations and operate accordingly.

SSA regulations require that all visitors to Agency offices be escorted at all times. This is a reasonable rule given the access to PII readily available to all visitors to SSA facilities. This regulation has been enforced lackadaisically by management. Contractors, vendors, landlords, cleaning crews and other visitors to SSA offices have been documented roaming freely around the facility without an escort. A significant data breach is a single bad actor away from happening.

Drawing attention to the risk the decision not to enforce the visitor escort regulation is the union's only way to ensure the safety of the American public's personally identifying information. Congress should inquire why SSA managers are not performing the key function of keeping the American public's information safe and secure and include a directive to enforce this regulation in future Agency-related legislation.

Limiting Disability Case Review

Continuing Disability Review (CDR) is a necessary part of SSA's function. In order to reduce fraud and abuse of the system, persons receiving Social Security Disability payments have their cases reviewed on a recurring basis. The Administration is attempting to promulgate a rule that would require review every six months of all cases deemed "Medical Improvement Likely."

In order to complete a CDR, those receiving benefits are required to complete a 10+ page, detailed form, which requires information from medical providers and from the recipient. A single error in the form can result in loss of benefits. Those receiving disability payments are, by definition, the part of our population most challenged by performing day-to-day tasks. Asking this population, or the parents and caregivers responsible for their care, to take responsibility for a cumbersome and difficult process on a six-month basis is unfair and cruel.

Increasing the number of CDR cases that SSA processes without adding staff or additional overtime hours will increase the backlog of casework across the Agency. It will lead to an increase in requests for assistance from Congressional offices that are already spread thin working on constituent casework. Congress should direct SSA not to further encumber disability recipients with unnecessarily repetitive CDR.

Changes to Telework

On October 27, 2019, the Social Security Administration informed SSA's Operations components (field offices, teleservice centers and data operations center) that all telework would end by November 22, 2019. Despite contractual and legal requirements, the agency did not provide a business rationale for ending telework.

On January 27, 2020, SSA informed non-Operations components, including the Office of Hearings Operations, that telework would be reduced in most components and that any employees currently using telework would have to submit a new telework agreement by February 7, 2020.

SSA has always had the ability to suspend or limit telework if it identifies pressing public service needs and to ensure offices are adequately staffed.

In a July 2017 Office of Inspector General report, employees utilizing telework in Operations positions indicated:

- 68 percent completed more work when teleworking,
- 78 percent feel more satisfied with their jobs since the implementation of telework,
- 90 percent indicated no difference in communication with a supervisor when needed, and
- 67 percent indicated no problems accessing SSA's systems.

Equally important, the report found that telework productivity and customer service in Field Offices, Teleservice Centers and the Office of Disability Adjudication and Review was not markedly different between those employees performing telework and those in the office.

Benefits of Telework:

Better Emergency Preparedness

Agencies are better able to operate through short and long-term emergencies such as weather events or natural disasters.

Better Performance

Most agencies have identified telework as helping to increased productivity to meet performance goals.

Healthier Workers

Telework reduces stress and burnout and contributes to a more positive work-life balance. It is attributed to a reduction in use of sick leave.

Lower Turnover

In high cost areas, telework allows agencies to hire well-qualified individuals who live farther from the office in more affordable neighborhoods. OPM reports 75 percent of teleworkers said telework increased their desire to stay with the agency.

Lower Costs

Telework saves on office space. The General Services Administration reported \$24.6 million in savings on office space and \$6 million in energy costs. Employees save on commuting and parking costs.

Cleaner Environment

Telecommuting means few cars on the road, saving in fuel and emissions. Teleworkers at the Patent and Trademark Office in the Washington, DC area saved driving 93 million miles in one year.

The FY 2020 Ominbus Appropriations for the Social Security Administration included the following report language, which to date has gone unheeded:

“Telework.-SSA is urged to develop a telework plan for Operations employees as quickly as practicable and to brief the Committees on the status of efforts to reinstate telework within 60 days of enactment of this Act.”

AFGE Request of Congress:

- 1) Pursue reinstatement of telework as requested in the Appropriations report language;
- 2) Require agencies to track and report to Congress and to employee unions the productivity differences between telework and in-office work;

3) Prohibit limitation or revocation of telework as a retaliatory practice.

Environmental Protection Agency

AFGE continues to fight against attacks against collective bargaining rights. In June 2019, the Environmental Protection Agency (EPA) continued its unprecedented assault on federal employees' union rights by imposing a unilateral, anti-worker management directive in place of a negotiated collective bargaining agreement. The illegal directive violates the rights and protections that Congress specifically guaranteed to public-sector employees. By ignoring workers' union rights, the EPA jeopardizes the mission of the agency, the environment, and the American public's health.

This directive impacts EPA employees who handle mission-critical cases, including emergency and long-term hazardous waste cleanup, prosecution of environmental crimes, enforcement of clean air and clean water laws, and cleanup of oil spills and toxic substances. EPA workers dedicate their lives to the agency's mission: "to protect human health and environment." This directive endangers that mission and every dedicated EPA employee's voice on the job.

EPA management's illegal directive

- Eviscerates the grievance procedure, stripping workers of important due process and depriving employees of a way to hold rogue managers accountable;
- Removes union members from their voluntary union membership without their consent;
- Evicts union representatives from office space and severely restricted time they can devote to meetings with employees and management to eliminate problems or obstacles in the workplace;
- Slashes telework options and makes other work schedule changes that increase EPA's carbon footprint and hurt EPA employees who commute long distances because they can't afford to live close to their offices;
- Imposes the new illegal directive for seven years.

Senator Gary Peters (D-MI) and Senator Tom Carper (D-DE) led a letter with over 40 other Senators to Administrator Wheeler urging EPA to come back to the bargaining table with AFGE and negotiate in good faith.

Representatives Paul Tonko, Anne Kuster and Frank Pallone are in the process of finalizing a sign-on letter in the House of Representatives. AFGE will work with these House offices to garner support for this sign-on letter when it is ready for circulation.

Appropriations

The Senate Interior and Environment Appropriations Subcommittee bill includes \$9.011 billion for EPA, an increase of \$161 billion above the FY 2019 enacted level and \$2.911 above the President's budget request. The House Interior and Environment Appropriations Subcommittee bill included \$9.52 billion which is \$672 million above the fiscal year 2019 enacted level and \$3.42 billion above the President's budget request.

AFGE continues to advocate for \$11 billion for EPA but applauds Congress for funding the EPA above the President's request and above FY 2019 enacted levels.

EPA Laboratory Closures

Houston, Texas Laboratory

The Houston, Texas EPA Laboratory is slated to close in 2020. The Region 6 Environmental services Laboratory is a hub of soil and water testing for the surrounding region. The Administration has proposed relocating all EPA members at the laboratory to Ada, Oklahoma. On July 12, 2019 Representative Al Green (D-TX) led a letter to Administrator Wheeler opposing the closure of the Region 6 EPA Lab in Houston. Representatives Sylvia Garcia, Lizzie Fletcher and Sheila Jackson Lee also joined the letter.

AFGE is closely monitoring lab closures across the country including in in the following regions: Gross Ile, Michigan; Chelmsford, Massachusetts; Athens, Georgia and Wheeling, West Virginia.

AFGE EPA Roundtable in Dearborn, Michigan

On Friday October 11, 2019 Representative Debbie Dingell held a roundtable for AFGE EPA employees to come discuss employee rights issues at EPA. AFGE EPA Local 704 members discussed the recent closure of the Gross Ile laboratory and the relocation of the EPA employees to the Ann Arbor National Vehicle Emissions Testing Laboratory. They discussed the issues with the air quality and their difficulty receiving adequate testing and accurate building information to ensure their employees are safe and healthy.

At the roundtable AFGE Local 704 employees also discussed the issue around the imposed management directive and how that impacts union officers' ability to protect their employees from potentially hazardous workplace conditions. AFGE continues to work with Representatives Dingell, Tlaib and McCollum to raise awareness and conduct oversight of these issues with Administrator Wheeler.

National Energy Technology Laboratories (NETL)

NETL Facilities are Under the Threat of Consolidation

AFGE represents engineers and scientists at National Energy Technology Laboratories across the country. NETL has three main campuses in Pittsburgh Pennsylvania, Morgantown, West Virginia and Albany, Oregon, which are under continued threat of consolidation and closure. NETL partners with universities and private institutions at hundreds of sites across the country.

Congressional Action Needed:

- AFGE is working to keep the top line increase in funding for NETL in the Energy and Water Subcommittee Appropriations Bill as well as the inclusion of report language that prohibits consolidation of NETL laboratories.

Additionally, AFGE is working with Congresswoman Rosa DeLauro (CT) in the House to introduce an amendment into the Labor HHS Appropriations bill to appropriate \$200 million for equipment, repair, renovation and reconfiguration of the National Institute of Occupational Safety and Health (NIOSH) facilities across the country in next year's Labor HHS Bill.

AFGE supported the Fossil Energy Research and Development Act and worked with Committee staff to draft compromise language to fund innovative research, technology development, workforce development projects, manufacturing partnerships and most importantly revitalization, recapitalization and minor construction of the Laboratory infrastructure. We are working with our AFGE NETL members and key Members of Congress to address significant downsizing occurring at NETL by not back filling positions as feds leave the workforce, either through retirement or other job opportunities and increased contracting out of NETL positions.

Federal Emergency Management Agency (FEMA)

FEMA Funding and Advocating for Pay and Fair Hiring Practices

AFGE represents employees at FEMA whose mission is to make victims whole again after natural disasters.

Congressional Action Needed:

- Urge Congress to amend language that allows Cadre of On-Call Response/Recovery Employees (CORE) employees to become full time employees without the standard hiring practices and advocate for raising the Pay Cap Waivers for FEMA employees so that FEMA employees can be compensated for hours worked in disaster zones.

AFGE helped get FEMA overtime/premium pay restoration for employees responding to 2017 disasters included in the FY 2018 Omnibus funding bill. As FEMA employees work to rescue survivors of the California wildfires, AFGE is educating Congress and working to ensure FEMA employees are paid for the work they do and that pay issues are addressed in the long-term.

AFGE continues to work with Congress to ensure the safety and protection of FEMA workers in the form of adequate funding for them to perform their job in a safe and healthy manner. Additionally, AFGE is working to address language included in the FAA Reauthorization bill that would promote CORE employees to full time employees without going through the routine hiring process.

H.R. 2157 the “Additional Supplemental Appropriations for Disaster Relief Act, 2019” was signed into law on June 6, 2019. It became Public Law No: 116-20. The bill includes \$19 billion in funding for natural disaster relief and recovery. The bill allocates \$8.9 billion in aid to Puerto Rico for disaster recovery as they are still addressing the aftershocks of Hurricane Maria. AFGE will continue to advocate for robust funding for disaster relief in order for FEMA to adequately protect and serve the American people in the face of national disasters.

AFGE FEMA members also support Congressional oversight of Stafford Act spending.

Contracting Out of FEMA Positions

FEMA has been contracting out Permanent Full Time (PFT) title 5 employment to subcontractors. For example, flood plain management and Federal Insurance & Mitigation Administration (FIMA) positions are being contracted out without proper labor-management negotiation processes taking place.

Bureau of Labor Statistics

AFGE represents employees at the Bureau of Labor Statistics (BLS), which provides objective data essential to the US economy, including the Consumer Price Index (CPI), productivity and employment data and analysis. The Bureau of Labor Statistics (BLS) National Office Headquarters has been located at the Postal Square Building (PSB) in Washington, D.C. since 1992. The GSA building lease will expire in May 2022. The Office of Management and Budget (OMB) has announced that BLS headquarters will be relocated from Washington, DC to the Suitland Federal Center (SFC) to be co-located with the Bureau of Economic Analysis (BEA) and the Census Bureau.

The Administration also outlined its proposal to reorganize the U.S. Census Bureau, the Bureau of Economic Analysis, and the Bureau of Labor Statistics under Commerce with the Census Bureau in their 2018 Reorganization Plan. The Administration informed BLS employees that the purpose of the move was for cost savings and formally declared elsewhere that its intent was to remove BLS from the Department of Labor and merge BLS into the Commerce Department.

The Bureau of Labor Statistics (BLS) provides accurate, objective and reliable economic data essential to the US economy, including the Consumer Price Index (CPI), the Employment Cost Index, unemployment levels, employment projections, productivity and labor costs, pay rates, benefits, and import and export price indexes, among others. BLS has been a strong and stable institution since 1884 and an integral part of the US Department of Labor since 1913. The Administration risks the reliability of this data and the integrity of BLS with its reckless plan to extract BLS from the US Department of Labor (USDOL), physically relocate it from the Postal Square Building (PSB) in DC to Suitland, MD and merge it into the Department of Commerce and the Bureau of Census, in a complex where there is insufficient facilities and resources to effectively house BLS. The relocation would gravely impair BLS's ability to achieve its mission and provide the economic information on which policy makers, investors, employers, unions and workers depend. The Administration has signaled its interest in influencing and interfering with executive branch data collecting and reporting. The Administration's assault on BLS is a continuation of its disruption of government services similar to its moving the Department of the Interior's Bureau of Land Management to Colorado, moving key USDA offices to Kansas City, merging the Office of Personnel Management (OPM) into the General Services Administration (GSA), and even interfering with truth-based reporting of hurricanes by the National Oceanic and Atmospheric Administration (NOAA).

AFGE BLS Local 12 provided a letter to the Secretary of Labor stating its strong opposition to the move. **AFGE Bureau of Labor Statistics Local 12 met with Representative David Trone's office on October 29, 2019 to express their concern.** AFGE strongly urges Congress to slow or stop the planned move of BLS to Suitland and its removal from the U.S. Department of Labor be halted. AFGE urges Congress to work with the agency to develop other reasonable alternatives for cost-savings, including a reduced footprint in its current location, and that the analysis used by GSA and USDOL be an accurate reflection of the real costs of any proposed move.

Local 12 is conducting a cost benefits analysis to assess if the planned relocation is cost effective. Local 12 is working to obtain a copy of the GSA feasibility study to assess the planned reduction of space currently occupied by Census and BEA and reconfiguration for the BLS Headquarters will be adequate for all three agencies accomplish their missions.

The Labor, Health and Human Services Appropriations Bill in FY 2019 appropriated \$40 Million for the relocation of the Bureau of Labor Statistics. AFGE strongly urges Congress to delay and stop the relocation of BLS headquarters.



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO