

AFGE 2019 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 substantial decline in living standards over the past decade.

The purchasing power of federal salaries has declined by **7.2%** 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	0%	n/a
Total	6.4%	13.6%

It is clear from the above that federal salaries are in dire need of adjustment, not only in order to improve living standards of federal employees, 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% 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 2019, the nationwide adjustment ECI-based adjustment should have been 2.1 percent. Locality payments should have closed remaining gaps to the law's definition of comparability, 5% 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 33%.

President Trump issued an Executive Order in December 2018 that prohibited any federal pay increase for 2019. In January, the House of Representatives passed the Federal Civilian Workforce Pay Raise Fairness Act of 2019, which provides a 2.6% pay adjustment for 2019, following the long tradition of military-civilian pay raise parity. The Senate is now considering the 2.6% adjustment.

For 2020, AFGE urges the Congress to provide a 3.6% federal salary adjustment. This amount, while modest relative to the size of the pay gap between federal and non-federal salaries, 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% 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 the 2.6% pay adjustment for 2019 contained in the Federal Civilian Workforce Pay Raise Fairness Act of 2019. 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. Provide a 3.6% pay adjustment for 2020 in order to allow federal employees to begin to recoup the substantial losses in purchasing power they have experienced after post-Recession pay freezes (2010, 2011, 2012) and nominal increases in the years thereafter. This amount reflects the 2.6% across-the-board ECI adjustment called for in the law as well as an additional 1% for locality pay.
3. 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 contributed more than \$246 billion toward 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 \$246 billion does not include the hardship that resulted from delayed paychecks, threats to credit ratings, and general disruption to the lives of federal employees and their families caused by the 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>2019 proposed pay freeze</i>	<i>\$51 billion</i>
<i>Total</i>	<i>\$246 billion</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 the perverted logic of austerity budget politics. The Budget Control Act of 2011 was a grave mistake, and the spending cuts it has imposed year after year have been ruinous for federal employees, for our economy and for the government services on which all Americans depend. Spending cuts hurt not only the middle class, the poor and the vulnerable, 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, then House Budget Committee Chairman Paul Ryan and then Senate Budget Chair Patty Murray negotiated over a budget that would repeal sequestration for two years in order to restore most agencies' funding levels above sequestration levels. Their primary differences were on which offsets should be used to pay for the two-year repeal of sequestration. Eventually, they agreed that one offset would be a \$6 billion hit to federal employee retirement, which was achieved by increasing pension contributions for employees hired after 2013 to 4.4 percent.

Using federal retirement to facilitate budget deals must not happen again. It was entirely unjustified and unjustifiable in 2013 and 2014 and the ongoing salary reductions first imposed during those years should be repealed. The \$246 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% 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 and the House proposed other possibilities : reducing cost of living adjustments for CSRS annuitants by half a percentage point and eliminating them altogether for FERS annuitants.

Calculating FERS Annuity Using The “High Five”: They proposed changing the formula for calculating FERS annuities so that it would be based on the average of the highest five years of salary, rather than the current “high three.”

Elimination of FERS Annuity For New Hires

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. The

House Republican Budget proposes to eliminate this crucial element of Law Enforcement Retirement benefits.

Eliminating Defined Benefit Pensions for New Federal Employees: The Heritage Foundation's "Blueprint for Reform"

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

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

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 efforts not only because of the violation of due process and property rights, but also because the forfeiture would rob alleged victims of the potential for monetary damages against the employee.

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 voucherizing 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% 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% of the weighted average premium; in practice, this has meant on average contribution of 70%.)

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. 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 2018, FEHBP premiums increased by over 4.0 percent per year. During the past two FEHBP premium setting years (2018 and 2019), 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 will be 20% less than the employee's increased 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 in Republican circles and has supporters in important Administration positions affecting federal employee pay and benefits.

The key part of the Heritage proposal, which has Republican support, is to shift more federal retiree health care costs away from FEHBP. Heritage proposes that all federal retirees be required to purchase Medicare Part B insurance even if they already have better FEHBP coverage, and can neither afford nor want to pay two insurance premiums instead of one. Mandatory Medicare Part B coverage would be useless to veterans who use the FEHBP in combination with 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 outpaces wages and salaries.

Congressional Action Needed to Address FEHBP Issues

- During the past 8 years, including the three year pay freeze, federal pay rose by just 8.3 percent (0 percent for 2011-2013, 1 percent for 2014 and 2015 and 1.3 percent in 2016, 2.1 percent in 2017, 1.9 percent in 2018, and a still undetermined amount in 2019). But in that same 8 year period, federal employees’ premiums are over 30 percent higher in dollar terms in 2019 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.

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

Stop Any Attempt to Curtail or Eliminate the Use of Official Time Within the Federal Government

Official time is the use of volunteer union representatives to conduct limited representational activities while in an official duty status. 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 official time—the administration issued an Executive Order to eliminate federal employees’ right to bargain over union representation.

The Executive Order prohibited official time for negotiated grievances on behalf of their labor organization, and prohibited official time for the purpose of representing employees in negotiated grievances. The Executive Order also set an arbitrary limit on the number of hours of official time that could be granted to union representatives. There was bipartisan opposition to the Executive Order and on August 29, 2018, a federal judge ruled that the aforementioned provisions of the orders were in violation of current law.

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 it annually to the Office of Personnel Management (OPM), which then compiles a government-wide report on the amount of official time used by agencies. In March 2017, OPM reported that the number of official time hours used per bargaining unit employee increased from 2.81 hours in FY 2012 to 2.88 hours in FY 2014, and that official time costs represented 1/10 of 1 percent of the total of federal employees’ salaries and benefits for FY 2014.

Official Time Makes the Government More Efficient and More Effective

Through official time, union representatives are able to work 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. 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 whatsoever to join the union, nor are they under any obligation to pay for that representation or pay any other fee to the union.*** When federal employees choose to join the union, they sign a form called an "1187" which establishes their union membership and sets up the payroll dues deduction. When federal employees choose to pay union dues, they utilize this process, one that was established by the agencies to facilitate deductions for many purposes, not just collecting union dues.

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.

In the 115th Congress, Representative Todd Rokita (R-IN) introduced H.R. 3257, the "Promote Accountability and Government Efficiency Act." If enacted, this legislation would have made all new federal employees "at will," would have eliminated employee due process rights, and

potentially prohibited all federal agencies from allowing voluntary payroll union dues deduction. AFGE strongly opposed this legislation.

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 no longer done by hand, but electronically, it costs the government virtually nothing to deduct union dues. The federal government currently provides payroll deductions for the following:

- Combined Federal Campaign (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 Associations
- 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.

Administration Plan for Government Reorganization

On June 21, 2018, the Trump Administration issued a document entitled “Delivering Government Solutions in the 21st Century -- Reform Plan and Reorganization Recommendations.” The report outlines, in very general terms, the Administration’s proposed plan for the reorganization of some government agencies and programs. Overall, the plan contains a total of thirty-two programs or initiatives that are considered a priority.

There is no accompanying proposed legislation to effect the plan, although various sections of the plan note the need for legislative action in order to fully implement the recommendations contained in the report.

In general, the Administration’s proposal seeks to eliminate, downsize or contract-out functions of various agencies. Although the overall plan seems to generally require legislative assent to effect, there are ways for the Administration to achieve some of its goals through downsizing, partial administrative reorganization, interagency agreements and contracting out.

Issue and Background - Maintain Important Federal Functions; Oppose Diminution of Programs That Benefit Citizens; and, Oppose Privatization and Contracting-Out

The Administration has proposed:

1. Merging the Departments of Education (ED) and Labor (DOL) into a single Cabinet agency, the Department of Education and the Workforce. As part of the merger, the Administration also proposes significant Government-wide workforce development program consolidations. The net result of the ED/DOL merger would be a greatly reduced agency lacking a focus on important programmatic missions currently performed by both agencies.
2. Moving the non-commodity nutrition assistance programs in the U.S. Department of Agriculture’s (USDA) Food and Nutrition Service into the Department of Health and Human Services (HHS)—which will be renamed the Department of Health and Public Welfare. This proposal is in furtherance of the Administration’s initiative to move most need-based programs into HHS and to specifically label the need-based programs as “Welfare.” This appears to be an attempt to mollify conservative groups that wish to bring back some sort of archaic stigma that attaches to the use of the word “welfare.”
3. Moving the Army Corps of Engineers (Corps) Civil Works out of the Department of Defense (DOD) to the Department of Transportation (DOT) and Department of the Interior (DOI) to consolidate and align the Corps’ civil works missions with these agencies. The realignment of the Civil Works programs of the Corps into DOT and DOI would have negative national security implications.

4. Reorganizing the USDA's Food Safety and Inspection Service and the food safety functions of HHS's Food and Drug Administration (FDA) into a single agency within USDA that would cover virtually all the foods Americans eat. This would effectively gut a large part of FDA, which is a premiere scientific agency, and confuse its mission with that of Agriculture, which is primarily focused on marketing of U.S. agricultural products rather than scientific food safety research.
5. Moving USDA's rural housing loan guarantee and rental assistance programs to the Department of Housing and Urban Development (HUD), reducing the Federal Government's role in housing policy.
6. Merging the Department of Commerce's National Marine Fisheries Service with DOI's Fish and Wildlife Service. This merger would weaken the administration of the Endangered Species Act and the Marine Mammal Protection Act in an attempt to benefit corporate interests.
7. Consolidating portions of DOI's Central Hazardous Materials Program and USDA's Hazardous Materials Management program into the Environmental Protection Agency's (EPA) Superfund program.
8. Merging Department of State (State) and U.S. Agency for International Development (USAID) humanitarian assistance programs. This proposal is clearly aimed at lessening USAID's significance in U.S. foreign policy and humanitarian assistance.
9. Consolidating the Overseas Private Investment Corporation (OPIC) and the Development Credit Authority (DCA) of USAID, into a new Development Finance Institution to "leverage more private-sector investment, [and] provide strong alternatives to state-directed initiatives." This proposal aims to eliminate both OPIC and part of USAID.
10. "Transform USAID through an extensive, agency-driven structural reorganization of headquarters Bureaus and Independent Offices," i.e., downsize, outsource and eliminate much of USAID.
11. Moving the policy functions of the Office of Personnel Management (OPM) into the Executive Office of the President (EOP), while devolving certain operational activities such as the delivery of various fee-for-service human resources, IT services, and background investigations – to other Federal entities (such as the General Services Administration (GSA)). This proposal effectively ends an independent civil service function for the federal government. Moving OPM policy functions into the EOP is direct politicization of personnel policy. The Administration's reorganization plan would designate the EOP as responsible for policy decisions in areas such as employee compensation, workforce supply and demand, and employee performance. The Administration's plan also refers to the existing framework of the civil service as "archaic." AFGE believes that the current framework of civil service rules and

regulations is anything but archaic. Rather, the current civil service is based on merit system principles and focuses on employees' skills, qualifications and experience instead of discriminating based on race, sex, gender or age. A "merit-based" civil service system is a cornerstone of all modern Western democracies. It ensures that technical expertise is brought to bear on performing agency missions, without the threat of overt partisan agendas driving day-to-day operations. Moving the OPM policy functions to the EOP will undermine this system.

Devolving the functions of OPM to the EOP and GSA sends a strong signal that the Administration has little regard for the career civil service. The Administration's proposal to spin off federal employee retirement examining and health insurance negotiations to a revamped GSA makes little sense and jettisons decades of accumulated subject-matter expertise in these areas.

The notion that the federal government would not have a single identifiable personnel office responsible for human capital functions is simply absurd and counterproductive.

12. Transferring responsibility for perpetual care and operation of select military and veteran cemeteries located on DOD installations to the Department of Veterans Affairs' National Cemetery Administration.
13. Reorganizing the U.S. Census Bureau, the Bureau of Economic Analysis, and the Bureau of Labor Statistics under Commerce. Together, these three agencies account for 53 percent of the U.S. Statistical System's annual budget of \$2.26 billion. This proposal is clearly designed to politicize the non-partisan economic data and statistical functions of the government into a more malleable operation. The Administration's own explanation states that this is designed to reduce "burdens" on businesses.
14. Consolidating the Department of Energy's (DOE) applied energy programs into a new Office of Energy Innovation.
15. Devolution of Activities from the Federal Government:
 - a) Selling the transmission assets owned and operated by the Tennessee Valley Authority and the Power Marketing Administrations within DOE, including those of Southwestern Power Administration, Western Area Power Administration, and Bonneville Power Administration. This is a massive privatization scheme.
 - b) Restructuring the U.S. Postal System to return it to a "sustainable business model" or prepare it for future conversion from a Government agency into a privately-held corporation. Another massive privatization scheme.
 - c) Reorganizing DOT to reduce transportation program fragmentation across the Government. Changes would include spinning off Federal responsibility for operating air

traffic control services, integrating into DOT certain coastal and inland waterways commercial navigation activities and transportation security programs, and reassessing the structure and responsibilities of DOT's Office of the Secretary. Yet, another massive privatization scheme.

16. Transforming the way the Federal Government delivers support for the U.S. housing finance system to minimize the risk of taxpayer-funded bailouts. Proposed changes, which would require broader policy and legislative reforms beyond restructuring Federal agencies and programs, include ending the conservatorship of Fannie Mae and Freddie Mac, reducing their role in the housing market, and providing an explicit, limited Federal backstop that is on-budget and apart from the Federal support for low- and moderate-income homebuyers.

This would increase costs of borrowing for housing, and probably housing costs more generally.

17. Rethinking how the Federal Government can drive economic growth in concert with private-sector investments in communities across the Nation by coordinating and consolidating Federal economic assistance resources into a Bureau of Economic Growth at Commerce.
18. Transforming the U.S. Public Health Service Commissioned Corps into a "leaner and more efficient organization," including reducing the size of the Corps.
19. Establishing an accelerated process for determining whether one or more of the National Aeronautics and Space Administration's (NASA) Centers should be converted to, or host, a Federally Funded Research and Development Center (FFRDC). Another privatization scheme.
20. Consolidating the administration of graduate fellowships for multiple Federal agencies under the National Science Foundation in order to reduce the total cost of administering those fellowships.
21. "Optimizing the Federal real property footprint" by driving down lease costs, and disposing of unneeded real estate through a streamlined process.
22. Consolidating and streamlining financial education and literacy programs currently operating across more than 20 Federal agencies to avoid "unneeded overlap and duplication."
23. "Strengthening" the Small Business Administration (SBA) as the voice of small business within the Government by consolidating small business focused guaranteed lending and Federal contracting certification programs at SBA.

24. Consolidate protective details at certain civilian Executive Branch agencies under the U.S. Marshals Service. Threat assessments would be conducted with support from the U.S. Secret Service.
25. Consolidating the small grants functions, expertise, and grantmaking from the Inter-American Foundation and U.S. African Development Foundation into USAID beginning in FY 2019. The consolidation would be a significant step to reducing the number of Federal international affairs agencies that are operating today.
26. Transitioning Federal agencies' business processes and recordkeeping to a fully electronic environment, and ending the National Archives and Records Administration's acceptance of paper records by December 31, 2022.
27. "Transforming the way Americans interact with the Federal Government" by establishing a Government-wide customer experience improvement capability to partner with Federal agencies. This is a sophisticated way of saying that citizens will have less opportunity to interact with federal agency employees since more agency functions will be accessible only through computer technology.
28. Pursuing a Next Generation (Next Gen) Financial Services Environment as a new approach to Federal Student Aid (FSA) processing and servicing. Depending on the scope of changes contemplated, this initiative and the Administration's priorities, this is most likely a large-scale privatization scheme.
29. Solving the Federal cybersecurity workforce shortage by establishing a unified cyber workforce capability across the civilian enterprise. Depending on the scope of the changes contemplated, this initiative may be attempt to rely primarily on short-term federal personnel appointments.
30. Establishing a Government Effectiveness Advanced Research (GEAR) Center as a public-private partnership to help the Government respond to innovative technologies, business practices, and research findings. Not clear what is being established here. Has all the indications of being a privatization initiative.
31. Transferring the National Background Investigations Bureau from OPM to DOD. Note: This imitative is scheduled to be effective on October 1, 2019.
32. Expanding upon existing agency evaluation capabilities and push agencies to adopt stronger practices that would generate more evidence about what works and what needs improvement in order to inform mission-critical decisions and policies. This is an outright anti-regulatory scheme.

Congressional Action Needed to Address “Government Reorganization” Plans

- The so-called government reorganization plans outlined above, contain coded phrases for downsizing and weakening important agency programs and functions. In other instances, the Administration seeks to contract-out federal functions that have profit potential for private businesses.
- AFGE members should work with the Legislative staff to contact their representatives to let them know the importance of the potentially affected programs and to oppose schemes that will hurt citizens and federal employees. While AFGE fully supports effective and efficient government, the Administration’s “reorganization” proposal is a nod to monied interests and right-wing anti-government groups. These proposals collectively ignore the vital needs of citizens.

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." And 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.

Additionally, 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. (Note: a collateral effect from the impasse over the partial government shutdown temporarily delayed continuation of the government-wide appropriation language.)

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.

Congressional Action

- Continue the Public-Private Competition moratorium.
- 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 currently programmed a \$1.3 billion cut of DeCA over the Future Year Defense Program (FYDP), with a \$300M cut starting in the current fiscal year – all 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 \$4.8 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 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 NAF. (Note: FY2019 NDAA merely prohibits merger of DeCA and Exchanges during Fiscal Year 2019). The impact of these non-pay benefits on recruitment and retention for the “All Volunteer” military, and the impact of recent changes to business practices, on recruitment and retention should be assessed. Any business case analysis should include market surveys of military and their families to identify how these non-pay benefits are perceived and whether there are any unmet needs that Commissaries are uniquely situated to meet because of their location on post. The Deputy Secretary of Defense chartered an Enterprise Management of Community Services Task Force that has reportedly been briefing Armed Services Committee Staff on their further “reform” recommendations, presumably predicated on the “assumed efficiencies” already programmed by the Department of \$1.3 billion over the FYDP. The Department of Navy originally non-concurred and later concurred with critical comments the Task Force proposal, out of concerns that the cost savings were over over-stated,

Congressional Action

- Request an independent GAO review on prior and current Resale Reform efforts to ensure that the guard rails established by Congress to protect the value of the Commissary benefit to military patrons do not hemorrhage any further, with an initial report no later than 1 October 2019, and annual follow on reports over the course of the FYDP.
- 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).

Background/Analysis

The prior House Armed Services Committee Chair ignored compelling testimony from expert witnesses on Defense Agency organizations provided on April 18, 2018 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.

Committee staff claim that the final proposal that was enacted is 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% reductions. However, this wasteful activity with arbitrary targets could actually place important missions at risk. Overhead associated with the Chief Management Officer, a position redundant to that of the Deputy Secretary of Defense, would increase.

Congressional Action

- Repeal the 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.

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 FY2018 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 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.”

According to our expert, Richard Loeb, “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 FY2019 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

Sections 711 and 712 of the FY2019 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 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.

Background/Analysis

Section 711 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 712 establishes a framework for efficiencies and the enhancement of operational capabilities by converting costly “non-military essential” military medical and dental positions to civilian performance. Several studies by the Congressional Budget Office, the Institute for Defense Analysis, and RAND have estimated substantial savings and improved operational capabilities from military to civilian conversions. Ensuring that appropriate analysis and coordination occurs with the Military Department Surgeon Generals on identifying jobs with a readiness link is an important requirement.

Congressional Action

- Ensure proper oversight in specific cases where a closure or downsizing is recommended by DoD. Ensure sufficient actions have been taken to optimize civilian jobs growth to improve readiness and achieve efficiencies. It may be necessary for clarifying report language on the required analysis for skill sets related to readiness or appropriate for conversion to civilian performance. Clarify that activities in a medical treatment facility whose closure is considered are not eligible for transfer to private sector control so as to privatize current DoD workload. The workload should either have been eliminated or should be transferred to existing infrastructure as an efficiency. Otherwise, the purpose of the closure (i.e., reducing costs) would not be met.

7. IMPROVING THE CIVILIAN HIRING PROCESS BY ELIMINATING CAPS AND ALLOWING OVERHIRES; OPPOSE EXPANDED RELIANCE ON TERM OR TEMPORARY APPOINTMENTS OR DIRECT HIRE AUTHORITIES

Issue

Over the course of several NDAs various direct hiring authorities have been established as mechanisms to allegedly streamline the hiring process; some authorities have involved efforts to expand the use of term or temporary appointments. None of these measures truly deals with the root causes of hiring delays and they circumvent other Congressional objectives such as veterans' preference, hiring military spouses, allowing for internal competition for jobs and diversity of the workforce.

Background/Analysis

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.
3. Downsizing and centralization of human resources offices, in the name of "efficiency," which severs 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 process, which, nonetheless will impact the time it takes to fill many positions, whether or not direct hire authority is used.

Congressional Action

- Oppose section 809 Panel recommendations to consolidate and continue existing direct hire authorities.

- Repeal the 10 USC section 1580 Enhanced Personnel Management System For CyberSecurity and Legal Professionals in the DoD that establishes an “at will” workforce placing these important missions at risk.
 - Retain caps on existing direct hire authorities with time limits on their use, or repeal these authorities after GAO reviews of their impact on mission, diversity of the workforce and meeting veterans preference, military spousal employment and other congressional goals.
 - Repeal and clarify 10 USC section 129 language that currently mandates and encourages use of Full Time Equivalent caps on the civilian workforce.
- 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, our local at 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 as the procurement of commercial items is expanded from products to services.

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 an item to become 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.
- And most dangerously, industry and the Acquisition and Sustainment officials have been asked for their views on expanding commercial items treatment to services, such as installation services, maintenance services, repair services, training services and “other services” even if these services are transferred among separate subsidiaries or affiliates of a contractor.

Section 833(i) of the FY2019 NDAA established a delayed implementation date for these changes pending implementation plan input from the Defense Business Board, Defense Science Board, Section 809 Panel and the USD for Acquisition and Sustainment. Some members (such as Rep Speier and Rep Jones) recently expressed concerns about how a particular contractor mischaracterization of a procurement as a commercial item enabled them to engage in price gouging to the detriment of the government as an informed buyer. Labor is not part of the Defense Business Board and an independent assessment from the DoD IG on the impact of these commercial items changes on readiness and sustainment costs was not included in the review directed by Congress (which appears to be solely slanted in favor of industry).

In January 2019, the Section 809 Panel recently recommended radically revamping this framework even further in the direction of letting the seller define requirements for the Department through a framework of “Readily Available; Readily Available with Customization; and Defense-Unique Development, based on the false assumption that the Department of Defense was not exploiting the latest technological advances unless it lets the seller (or the so-called “dynamic market place) define more of what it needs. But a tactical operational environment may actually require fewer choices than what the so-called “dynamic market place” offers and a commercial product may pose greater cyber-security risks, or not operate to the standard required in a tactical environment; or not be standardized enough for training or maintenance purposes. The operator with experience in a tactical environment and not the seller or a program manager with incentives to expand program funding, should drive the requirement.

Congressional Action

- Delay implementation by at least one year and expand stakeholder input to include unions. Additionally, there should be an independent review by the DoD IG.
- Reject the Section 809 Panel recommendation to move further in the direction of letting the seller determine what the Department of Defense buys.

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

Issue

Statutory prohibitions against 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.

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 the Army 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, AF 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 FY2018 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. Consequently, 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 Appropriator's Sub-Committees, add provision prohibiting contracts that violate above statutes and require use of Army checklist. Within Government 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% 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% is optimistic.) Finally, both within DoD, and across the Government, the contractor inventory requirement is being implemented through a DFARS or FAR clause, rather than as a "requirement" included in the statement of work by Agency requiring activities as originally done by the successful Army effort.

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.

- 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.
- 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).
- 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 contracts an easily evaded shell game.
- 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 exist 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.

Congressional Action

- Repeal the \$3M threshold limitation.
- Repeal the limitation to just 4 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 to improve accuracy, completeness and reduce reporting burdens.

12. CLARIFYING THAT THE MORATORIUM ON PUBLIC-PRIVATE COMPETITIONS PURSUANT TO OMB CIRCULAR A-76 APPLIES TO NON-APPROPRIATED FUND EMPLOYEES AND TO CIRCUMSTANCES WHEN THE GOVERNMENT TRANSFERS REAL PROPERTY UNDER SPECIFIC STATUTORY AUTHORITY TO THE PRIVATE SECTOR

Issue

The public-private competition moratorium has not been applied to Non-Appropriated fund employees or to circumstances when real property is transferred to the private sector pursuant to utilities or housing privatization or during a Base Realignment and Closure (BRAC).

Background/Analysis

- The GAO in the Santry case (B-402827 dated August 2, 2010) held that the prohibition against converting DoD civilian employee work to private sector performance without first conducting a public-private competition based on a Most Efficient Organization (MEO) does not apply to Non-Appropriated Fund Employees.
- When ownership of utility systems infrastructure is transferred from federal government ownership to the private sector pursuant to the specific statutory authority provided in 10 United States Code section 2688, agency practice and Congressional oversight have not required the development of MEOs competed with the private sector otherwise required by section 2461 of title 10.
- When ownership of military housing is transferred from federal government to the private sector pursuant to the specific statutory authority pursuant to 10 United States Code section 2688, agency practice and Congressional oversight have not required the development of MEOs competed with the private sector otherwise required by section 2461 of title 10.
- During the course of a Base Realignment and Closure (BRAC) (currently not authorized except when a State or Territory Governor self-nominates an installation for closure pursuant to section 2702 of the Fiscal Year 2019 John McCain NDAA, the issue of first requiring a public-private competition of an MEO has not been specifically addressed by Congress.
- Accordingly, the moratorium against public-private competitions has not been applied to Non-Appropriated Fund employees or when real estate is transferred to the private

sector pursuant to utilities or housing privatization. However, the rationale for the moratorium is equally valid for these cases.

Congressional Action

- Clarify that the public-private competition requirement and the corresponding moratorium against public-private competitions applies to Non-Appropriated Fund employees; utilities and housing privatization; and during the course of a BRAC.

13. 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

- DoD has undergone five BRAC rounds from 1988 to 2005.
- The Cost of Base Realignment Actions (COBRA) model used by DoD has typically underestimated up front investment costs and over stated savings. See GAO 13-149. This occurred because:
 - There was an 86% 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 FY2019 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.
- Eliminate loophole in section 2702 permitting privatization and clarify process for employee and union input.

14. COLLATERAL EFFECTS FROM IMPLEMENTING TITLE 32 MILITARY TECHNICIAN CONVERSIONS TO TITLE 5 CIVILIAN EMPLOYEES

Issue

The National Guard Bureau and some States are converting title 5 competitive service employees to excepted service (in Michigan) or to title 5 employees under the State of Michigan TAG and converting title 32 Military Technicians to Active Guard Reserve (AGR) status (in Ohio), and reportedly up to 3,000 MilTech positions are being converted to AGR status across CONUS and territories, in circumstances where three conditions have not been met: (1) the National Guard Bureau has not complied with statutory requirements to consult with labor unions regarding the utilization of title 32 Military Technicians; (2) the National Guard Bureau has not performed a valid fully burdened cost analysis as required by statute, in part because of the acknowledged absence of guidance on “fully burdened cost analysis” for the Reserve Components (RC); and (3) the National Guard Bureau has not performed a valid “military necessity” analysis required by statute consistent with the detailed criteria in DODI 1100.22.

A study performed by IDA for the USD(P&R) on August 2017 does not remedy these defects because its “fully burdened cost analysis” lacked the detailed audit trail provided in the earlier Center for Naval Analysis study that justified MilTech conversions to title 5 civilian based on a detailed analysis at the duty position level. Program and budgetary cost analyses can mask significant unforeseen costs that a proper fully burdened cost analysis provides. The effects of all these collateral actions would eliminate union representation of affected employees and deprive them of job protections under which they were hired.

Background/Analysis

- Section 574 of the FY2018 NDAA requires a process for defining Military Technician missions and requirements, in consultation with unions, resulting in a report to Congress NLT 1 Apr 2018 (currently delinquent).
- Prior Congressional direction to convert 20% of title 32 Military Technicians to title 5 civilian employees has been reduced to 12.6% in a compromise in response to push back

from the Governor's Association. AFGE and other labor unions had advocated for the maximum number of title 32 to title 5 conversions. At the same time, Congress increased the National Guard military End Strength.

- Section 517 of the FY2019 John McCain NDAA clarified that the National Guard Bureau had authority to manage all its workforce, including title 5 competitive and excepted service employees, addressing a criticism that the Guard had used against the title 32 MilTech conversions. At Selfridge AFB in Michigan, section 517 is being misused by the State TAG and Guard Bureau to convert competitive service title 5 civilian employees represented by unions to excepted service employees under title 5 not represented by unions.
- In the state of Ohio, title 32 Military Technician positions are being converted to AGR status, which moves these Guardsmen to less secure positions where they may arbitrarily lose their jobs every 3 years without any recourse. Initially these conversions are voluntary but if there are insufficient volunteers, this would require RIF procedures. We understand there are plans to convert MilTechs to AGRs nationwide by up to 3,000 positions.
- There is a general statutory limitation on converting title 5 civilian employees military performance, requiring a fully burdened cost analysis and career progression analysis and military necessity analysis, recently clarified in FY2019 NDAA section 933 and codified at 10 USC section 120a(g).
 - DODI 1100.22, "Policy and Procedures for Determining Workforce Mix" (April 12, 2010) provides the framework for determining "military necessity", sometimes called in policy documents by the term, "military essentiality." The criteria for a position military essential includes the following criteria: combat; military unique knowledge and skills; rotation base; and career progression.
 - DODI 7041.04, "Estimating and Comparing the Full Costs of Civilian and Active Duty Military Manpower and Contract Support" (July 3, 2013) provides the framework for determining the fully burdened costs of Active Component military only. (Note: a bona-fide "fully-burdened cost analysis" cannot be performed at the program level and must be based on specific positions as the skill and grade level of each position will substantially affect bonuses and other forms of compensation and costs.) The Department currently lacks adequate guidance for fully-burdened cost analysis for Reserve Component categories of manpower, a gap noted by the Reserve Forces Policy Board in a report: "Eliminating Major Gaps in DoD Data on the Fully-Burdened and Life-Cycle Cost of Military Personnel: Elements Should Be Mandated by Policy (January 7, 20133). Unfortunately, this recommendation was not acted on because of disagreements between AC and RC military proponents on the contents of this guidance. In the absence, of published guidance, there is great potential for

arbitrary and inconsistent analysis supporting any conversions of RC categories of personnel.

- In response to a Congressional reporting requirement in the FY2017 NDAA section 1084(C), the Institute for Defense Analysis performed a study for the USD(P&R) on August 2017 that evaluated the costs of various changed mixes of AGR, MilTechs, Non-dual status MilTechs and title 5 civilian employees providing full time support to the RC. Unremarkably the summary report points out that there are substantial cost increases when converting to AGR for both “fully burdened” and “program” costs for each alternative. The report states that “[u]nder a full conversion, the FY 2017 NDAA requirement alternatives sum to an annualized cost increase of \$782 million for the program and \$1,705 million fully-burdened.” Absent the audit trail for the reports analysis and conclusions, we are unaware of any analysis supporting the planned conversions of 3K MilTechs to AGRs that would meet the requirements of statute.

Congressional Action

- Exercise oversight and clarify in report language that National Guard authorities to manage its workforce do not include arbitrary conversions of title 5 competitive civilians to excepted service or realignment to State supervision in a way that impairs collective bargaining rights and that consultation with unions is a requirement.
- Additionally, clarify that any conversions of MilTech to AGR must comply with section 574 of the FY2018 NDAA labor consultation requirements and meet the analytical criteria of section 574 and title 10 United States Code section 129a for a rational basis for these actions, i.e., a detailed analysis supporting the conversion of each specific position based on the criteria for military necessity in DODI 1100.22 and fully-burdened costing. Congress should send letters to NGB apprising them of the need to comply with these statutory requirements.
- Clarify 10 USC section 129 in report language by directing that DODI 7041.04 be updated to include guidance for fully burdened cost analysis of RC categories of manpower.
- Finally, until guidance for “fully burdened cost analysis” for RC manpower is issued as currently exists for AC manpower in DODI 7041.04, Congress should consider suspending any further conversions to AGR to eliminate the risk of unforeseen costs of a substantial magnitude that typically are not picked up in programmatic and budgetary cost analyses.

15. 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 sand 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 sue 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 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, 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.

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

Issue

Current statutory directions to improve the planning and budgeting for contract services over the FYDP is tasked to the wrong office. The intended savings and efficiencies ill not be achieved unless the correct offices are held accountable.

Background/Analysis

- Congress 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 FY2018 NDAA, and clarified in the F&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.
- Unsurprisingly, the GAO has found that the SRRBs are not strategic at all and mainly focused on individual contract transactions from an acquisition strategy perspective, rather than prioritizing and approving services in comprehensive portfolio based manner to achieve efficiencies. See GAO-17-482, Defense Contracted Services: DoD Needs to Reassess Key Leadership Roles and Clarify Policies for Requirements Review Boards (Aug 2017).
- Additionally, the \$160 billion plus expended on contract services spending will continue to be insulated from CAPE-led POM drills targeting civilian authorizations and associated funding from reduction as long as contract services spending is handled as an acquisition silo and not competed against other requirements.

Congressional Action

- Clarify section 2329 of title 10 so that CAPE and Comptroller are held accountable for contract services programming and budgeting.
- Retain SRRBs as implementers of the trade-off decisions made during the POM and Budget processes led by CAPE and Comptroller.

17. IMPROVING THE LETHALITY AND PERSTEMPO OF MILITARY BY REMOVING IMPEDIMENTS TO THE USE OF THE CIVILIAN WORKFORCE THROUGH PAY PARITY, REMOVAL OF CIVILIAN FULL TIME EQUIVALENT CAPS AND 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.

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 available for deployment, thereby increasing the stress on a smaller pool of deployable military.
- Impediments include ignorance on the value of growing the civilian workforce commensurate with military force structure growth to improve this lethality, something that can only be recognized in more holistic reviews of the total force.
- 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.
- This cultural ignorance on 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 FY2017 NDAA, longstanding prohibitions against managing the civilian workforce to Full Time Equivalent 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. We tried to fix that

problem in the FY19 NDAA but the SASC majority rejected that effort. While Defense appropriations retained legacy language prohibiting managing the civilian workforce to an end strength, an end strength is different than a Full Time Equivalent cap, rendering this watered-down legacy language ineffective. Band aid attacks on the symptoms of this problem pertaining to delays in the civilian hiring process caused in part by this FTE cap regime are often offered up through direct hire authorities that completely misconceive the underlying problem and are completely irrelevant and unnecessary.

- 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.
- Recent challenges in attaining military recruiting goals make the well-reasoned substitution of civilians for non-military essential military an even more pressing issue.

Congressional Action

- Repeal the 10 USC section 129 FTE cap language.
- Enact pay raise parity between the civilian and military workforces.
- 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.

18. IMPROVING OVERSIGHT OF IMPACT OF RECENT ACQUISITION REFORMS ON THE ORGANIC INDUSTRIAL BASE

Issue

Various acquisition reforms have created incentives that weaken the organic industrial base by moving more work to private contractors. While this benefits contractors, it degrades readiness and efforts to reduce wasteful spending. Some “reforms” redefine the scope of “depot maintenance and repair” to move more work to the private sector, such as efforts to define “software maintenance.” Accordingly, Congress should take a pause on efforts to redefine “depot maintenance and repair” and reforms to increase public-private partnerships or expand reliance on commercial items until the impact of current reforms is fully understood. Congress needs additional depot maintenance and repair reporting to objectively assess these impacts, followed up by DoD Inspector General reviews. Additionally, the FY17 NDAA repealed the requirement that the “manpower estimate report” for major weapon system acquisitions accompany the independent cost estimate. This requirement should be reinstated to ensure better transparency and coordination of Total Force manpower planning decisions that impact the manpower requirements for operating, training for and sustaining major weapon systems.

Background/Analysis

- Decisions made in the weapon systems acquisition phase drive the long-term sustainment strategy and have an impact on the acquisition of vital components and subsystems. In 2017 Congress repealed the requirement in 10 United States Code section 2434 for a manpower estimate report of the military, civilian and contract support projected for operating, training, and maintenance requirements for major weapon system acquisitions. Only the independent cost estimate was retained under the Director, CAPE oversight, and the Under Secretary of Defense, Personnel and Readiness, was relieved of this responsibility. The MER had been initially established in the 1980s after the Bradley Fighting Vehicle scandals and the failure to fully account for the manpower required to operate and sustain that system. As a result of the MER process visibility, the Army decided to insource contract logistics support for its STRYKER Brigades to reduce operational risk. Eliminating this requirement virtually assures that the program manager and contractors developing a system will make these workforce mix decisions based upon a desire to make a particular acquisition appear to be “on track” and “affordable”, while benefiting the contractor “bottom line.” This can set up long term readiness and affordability issues while negatively impacting the organic industrial base, all with little transparency, oversight and Congressional awareness of the potential long term impacts.
- Currently, the Military Services provide Congress with a report on the dollars spent on depot level maintenance between the public and private sectors by military service in accordance with section 2464 of title 10. However, the Departments do not distinguish by major commodity group or provide actual spending over a several-year period or

projected spending that is also linked to direct labor hours and core military requirements. Recently, gaps in core skill areas have been reportedly ignored, which if left unaddressed could lead to greater risks to military readiness. In order to make a more informed decision about military readiness issues, the Armed Services Committees need this additional information.

Congressional Action

- Amend section 2434 of title 10 to re-establish the manpower estimate report requirement prior to each major milestone decision point.
- Amend section 2464 of title 10 for a more detailed accounting of depot maintenance and repair by commodity group.
- Direct DoD IG review of the impacts of the recent expanded definitions of commercial items on sustainment costs and the impacts on the readiness of the organic industrial base.

19. Ensuring Transparency Over U.S. Army Corps of Engineers Engagements With The National Academy of Sciences on its Congressionally-Directed Study of the Future Organizational Alignment of the Civil Works Program

Issue

The Secretary of the Army and OMB, without adequate coordination with Congress, tried to engineer through an Executive Order the divestiture and transfer of the Civil Works functions to the Department of Interior and Department of Transportation. It is important that Congress exercise oversight of the U.S. Army Corps of Engineer engagements with the National Academy of Sciences study on the future alignment of the Civil Works program.

Background/Analysis

- On July 30, 2018 the Secretary of the Army obtained the Secretary of Defense's approval of an Office of Management and Budget proposal to take specific actions to reorganize the U.S. Army Corps of Engineers, including the realignment of the Civil Works program outside the Army, to the Department of the Interior and Department of Transportation.
- The Conference Report to the Energy and Water Development and Related Agencies Fiscal Year 2019 appropriations bill would prohibit such actions during Fiscal Year 2019.
- America's Water Infrastructure Act of 2018 requires the Secretary of the Army to contract with the National Academy of Sciences to conduct a comprehensive two year

study on the future organization of the U.S. Army Corps of Engineers, including the impacts of any reorganization on its missions.

- The U.S. Army Corps of Engineers is critical to our nation's security, infrastructure, and environmental integrity:
 - USACE manages the Nation's water resources
 - USACE builds facilities for the Army and Air Force;
 - USACE provides engineering and environmental services for other agencies
 - USACE provides support around the world to Overseas Contingency Operations.

Congressional Action

- Obtain a complete copy of the Secretary of the Army memo and all supporting documents approved by the Secretary of Defense on July 30, 2018. Congress should exert oversight to ensure an objective study is conducted without any pre-determined outcome.
- Additionally, during the course of the National Academy of Sciences study, Congress should request to be kept fully informed of all proposals and recommendations made to the National Academy of Sciences.

20. Section 809 Panel Portfolio Management Recommendations Presuppose that Most DoD Requirements Should be Determined by and Procured in the Private Sector with Limited Congressional Oversight Over Programs

Issue

The Section 809 Panel recently recommended redesigning the requirements process in the Planning, Programming, and Budgeting System based on expanding opportunities for private industry to sell their products and services to the Department through a portfolio management process, giving greater authority to the acquisition community to determine the actual requirement, as well as to reprogram funds across programs within a so-called "portfolio," with less authority afforded to the Military Departments in defining the requirements and less oversight by Congress over programs.

Background/Analysis

- The Section 809 Panel has not made the business case for granting additional reprogramming authority to re-program for so-called "portfolio managers" covering multiple programs.
- The Section 809 Panel has not made the operational case for forcing the Department to let the "dynamic market place" determine what its operational requirements are.

Doctrine, Organization, Training, Materiel, Leadership, Command, Personnel and Facilities (DOTMLCPF) must all be looked at holistically and not merely through an acquisition filter from the perspective of industry selling the Department its goods and services.

- Products from a commercial or “dynamic market place” may be more vulnerable to Cybersecurity risks than products or services fulfilled with military and federal government employees.
- Human factors integration in training and operating weapon systems and equipment must be considered based on tactical and operational environments and not simply the conditions existing in a normal so-called dynamic marketplace.” Equipment Standardization and Interoperability considerations are competing goals to that of letting the so-called “dynamic marketplace” determine requirements.
- The Section 809 Panel is populated with industry and former procurement officials and does not include expertise from the requirements and total force management communities of the DoD and is therefore biased solely to favor expanding procurement opportunities with the private sector.

Congressional Action

- Reject section 809 Panel recommendations for a portfolio management process that weakens Military Department authority, Congressional oversight over programs and displaces DOTMLCPF with the seller determining requirements.

Department of Veterans' Affairs

Introduction

Full staffing, strong workplace protections for rank and file employees and the unions that represent them, and enforcement of outsourcing laws are essential to the continued viability of the Department of Veterans Affairs (VA). In 2019, 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, and establish and fund staffing mandates. 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.

RESTORING VA WORKPLACE RIGHTS

2017 VA Accountability Law

Unjust firings of front-line employees and hostility in the workplace have worsened since enactment of the Accountability and Whistleblower Protection Act of 2017 (Accountability Act) on June 6, 2017 (P.L 115-182).

In the 115th Congress, the bipartisan VA Personnel Equity Act of 2018 was introduced to reverse the Accountability Act. In the new Congress, AFGE will seek reintroduction of this bill to restore the higher evidentiary standard (preponderance), reinstate response time frames, and bring back the ability of the Merit System Protection Board Administrative Judges to mitigate penalties. As mandated by the Act, VA began to publish firing data last summer.

AFGE will also continue to educate lawmakers and the public on the disproportionate impact of the Accountability Act on veterans and low wage employees, and its failure to hold more than a very small number of managers accountable for their misconduct or poor performance.

Official Time

In November 2017, the agency notified AFGE that it was eliminating all official time for every Title 38 employee in VHA, including every VA physician, registered nurse (RN), dentist, physician assistant (PA), optometrist, podiatrist, chiropractor and expanded-duty dental auxiliary. This action by the VA secretary is a violation of our collective bargaining rights in our negotiated agreement with the agency as well as statutory Title 38 collective bargaining rights discussed below. It has also interfered with the rights of employees to choose their union representative and disrupted ongoing grievances and arbitrations. Many managers have worsened the impact of this unfair and illegal act by refusing to grant reasonable requests for annual leave or schedule hearings after work hours to allow Title 38 union officials to carry out their representational duties.

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 has invoked the 7422 law to attack the rights of VA medical professionals in two instances: to eliminate official time as previously discussed and prohibit the union from representing these employees at disciplinary appeals boards and other agency forums.

In the past three Congresses, we have secured introduction of legislation to fix the 7422 problem by eliminating the three exceptions in current law that have been interpreted by the VA so broadly as to eliminate the rights to grieve, arbitrate or negotiate over schedules, overtime pay, professional education and other matters that directly impact the ability of VHA to recruit and retain a strong health care workforce.

Congressional Action Needed:

- Enact legislation to reverse the 2017 Accountability Act
- Conduct oversight on the full impact of the Accountability Act on veterans and low wage employees and require the VA to release all pertinent data on firing and other personnel actions carried out under the Act.
- Enact legislation to restore Title 38 official time rights
- Enact legislation to restore equal collective bargaining rights for Title 38 clinicians.

OTHER VHA WORKPLACE ISSUES

Congressional Action Needed:

- Reintroduce and enact legislation by Congresswoman Jan Schakowsky (D-IL) to set minimum nurse-patient staffing ratios at VA medical facilities.
- Enforce 2004 statutory rights to VA physician and dentist market pay and performance pay through oversight and new legislation.

- Conduct oversight into VA provider (physician, nurse practitioner, dentist, physician assistant, therapists) workload, work hours and leave policies.

PRIVATIZATION OF VA HEALTH CARE

In the wake of the “wait time scandal” at the Phoenix, Arizona VA Medical Center, Congress authorized a temporary program to allow veterans to go into the private sector to receive their care. This program, CHOICE, was set to expire in 2017. From the beginning, CHOICE proved to be a broken and ineffective program that failed to provide adequate access to quality care. As a result, the VA has been starved for resources because it has spent four years competing with CHOICE for funding. Instead of letting CHOICE expire and reinvest its funds into the VA, Congress opted to take this temporary program, expand it, retool it so that it is worse, and make it permanent.

The result of this new, permanent, expanded private sector care program came from the VA MISSION Act. This legislation, which became law on June 6, 2018, threatens the very existence of the VA. According to an article from ProPublica published on November 15, 2018, the VA MISSION Act will force the VA to “to cannibalize its own health centers to pay for private care.” For instance, the new law contains access standards that are so broad that any patient who feels they are receiving “substandard” care may leave the VA and go into the private sector.

Additionally, the VA MISSION Act removes previous barriers to the private sector – like the wait time and distance requirements in CHOICE – so that now patients have virtually unfettered access to the private sector. Despite Congress spending years demonizing the VA and its workforce in the name of “accountability” they failed to provide adequate oversight measures for private providers that would ensure patients are receiving the same quality of care outside of the VA as they would inside.

This lack of oversight is particularly troubling, and one of many issues that AFGE will continue to raise with Congress. With the oversight mechanisms so lax, it is likely that corporate health care providers seeking to expand their piece of the MISSION ACT pie will offer lower quality care without adequate standards for critical services such as treatment of PTSD, TBI, and Military Sexual Trauma. Compared to extensive PTSD training with intense supervision for VA’s own therapists providing PTSD treatment, VA is considering a 2-day course with no supervision for private sector therapists.

On Wednesday January 30, 2019, Secretary Wilkie announced the new MISSION Act access standards. Unfortunately, the new standards are exactly what AFGE and the NVAC have said they would be: fast-tracking the outright privatization of the VA. Specifically, the new standards say that if a facility has a 20 day wait time for primary and mental health care or 28 days for specialty care those patients are immediately authorized to go outside of the VA to see a doctor. Starting in June any patient who can prove that they must drive for an average of 30 minutes or more would also be sent to the private sector. This will devastate VA facilities located in rural areas and big cities with traffic problems.

Secretary Wilkie also announced that after three visits to walk-in clinics the VA “may” impose a copay on that care. According to analysis done by the New York Times these new access standards will balloon the number of patients eligible to go outside of the VA to receive care. According to the New York Times under these new standards between 20% and 30% of the current veteran population will be eligible to go outside of the VA.

AFGE was successful in getting some important language on staffing into the new law. Through our lobbying efforts we were able to get the text of H.R. 3459, “VA Staffing and Vacancies Transparency Act of 2017”, included as Section 505 of the VA MISSION Act. This language requires the VA to post, on a publicly available website, the total number of personnel encumbering positions, the number of people who have entered and exited the workforce in the last month, the total number of vacancies by occupation, and the total number of active job postings within the Department. After well over a year of being told the VA is doing better filling vacancies and that AFGE is overreacting, we now have definitive data from the agency confirming our original charge: that there are over 46,000 vacant positions that need to be filled.

Congressional Action Needed:

- Delay implementation of the new private “Community Care” program until the following criteria are met:
 - All private providers must meet the same access/quality standards as VA facilities.
 - Key stakeholders have adequate input into major MISSION Act provisions including standards on access and quality, market assessments, and service line remediation.
- 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.
- Reintroduce legislation to make a onetime appropriation of five billion dollars to hire VA health care employees and address infrastructure.
- Reintroduce and enact legislation by Congresswoman Jan Schakowsky (D-IL) to set minimum nurse-patient staffing ratios at VA medical facilities.

- Introduce and pass legislation that will create a staffing minimum at VA facilities that guarantees that the VA will not facilitate privatization through short-staffing.

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. 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 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 including the re-introduction of dedicated lanes for complex cases 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. 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 for their military service from the VA. 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 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 accurately 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.

Federal Prisons

Increase Hiring and Staffing of Federal Correctional Workers

Issue

Congress must increase federal funding of BOP to remedy the serious correctional officer understaffing and prison overcrowding problems that are still plaguing BOP prisons.

Background/Analysis

Over 184,000 prison inmates are confined in BOP correctional institutions today, up from 25,000 in 1980. Over 155,000 of those inmates are confined in BOP-operated prisons while approximately 10,000 are managed in private prisons. This explosion in the federal prison inmate population is the direct result of Congress approving stricter anti-drug enforcement laws involving mandatory minimum sentences in the 1980s.

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 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.

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

Congressional Action:

AFGE strongly urges the Administration and the 115th Congress to:

- Increase federal funding of the BOP Salaries and Expenses account requiring BOP to hire additional correctional staff to return to the 95% staffing percentage levels of the mid-1990s.
- Increase federal funding of the BOP Buildings and Facilities account so BOP can build new correctional institutions and/or renovate existing ones to reduce inmate overcrowding, particularly at the high and medium security institutions.
- Continue to include the report language in the Commerce, Justice, Science appropriations bill that provides a second officer staffing high security housing units at all times.
- Exempt the BOP staff from any furloughs or staff cuts that may result from a Continuing Resolution (CR) or lapse in funding.
- Demand that BOP hire the necessary staff to fill custody roles instead of relying on augmentation.
- Demand that BOP not close **any** facility while the Bureau remains overcrowded and understaffed.
 - Specifically, BOP must not close any Federal Prison Camps (FPC). Currently, BOP operates six FPCs: Alderson FPC (WV), Bryan FPC (TX), Duluth FPC (MN), Montgomery FPC (AL), Pensacola FPC (FL), and Yankton FPC (SD).
- Exempt BOP from any future furloughs that occur as a result of the Budget Control Act (BCA)/Sequestration. In 2013, BOP staff were exempted from the mandatory furlough that was to occur once every 14 days after the deaths of three correctional officers in a week in early 2013. DOJ shifted funds and came up with an additional \$150 million which allowed them to exempt BOP. Due to the critical nature of the work correctional staff perform, the same thing should be done for any future BCA-related mandatory furloughs.

PASS THE THIN BLUE LINE ACT

Issue

Congress should pass this legislation 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 was introduced in the 115th Congress as H.R. 115/S.1085, and we will work to make sure it is re-introduced in the 116th Congress. This bill 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

Private prisons are not more cost effective than public prisons, nor do they provide higher quality, safer correctional services, and Congress should curtail their use by BOP.

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 were successful in lobbying the previous Administration to change its policy on private prisons. The Administration provided updated guidance to BOP that it was 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 memo fulfilling their new stated goal of "increasing

population levels in private contract facilities.” 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 Group. His memo directed BOP to “submit eligible inmates for re-designation” in order to transfer those inmates from low security BOP facilities to private contract facilities. DOJ says that this decision was made “in order to alleviate overcrowding” in our federal prisons, but this is nothing more than a thinly veiled excuse to privatize government work and federal jobs.

AFGE and the Council of Prison Locals have long maintained that BOP must stop relying on private facilities to supervise and rehabilitate inmates. These facilities fail to provide adequate safety, security, and rehabilitative services as compared to their federal counterparts. Further, the real overcrowding at BOP exists at facilities that are classified as medium-and-above security levels. Pushing the least dangerous offenders into private custody does nothing to alleviate the real problem of overcrowding, 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. AFGE also encourages Congress to mandate the same level of transparency from private prisons that is required of BOP facilities, either through appropriations language or legislation. Finally, AFGE urges Congress to require BOP to adhere to language in P.L. 115-141 mandating that BOP submit a detailed report on the use of contract facilities.

SUPPORT THE FEDERAL PRISON INDUSTRIES (FPI) PRISON INMATE WORK PROGRAM

Issue

AFGE and the Council of Prison Locals strongly support the FPI prison inmate work program because it helps decrease the increasingly violent and dangerous environment in which BOP correctional officers and staff work.

Background/Analysis

The FPI prison inmate work program is an important management tool that federal correctional officers and staff use to deal with the huge increase in the BOP prison inmate population. It helps keep over 11,000 prison inmates productively occupied in labor-intensive activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides strong incentives for good inmate behavior, as those who want to work in FPI factories

must maintain a record of good behavior and must have completed high school or be making steady progress toward a General Education Development (GED). Additionally, inmates who participate in FPI programs are 24% less likely to recidivate after their sentence ends.

The FPI program also puts money back into local economies. According to their 2017 Annual Report, 96% of its resources are reinvested into local economics through local procurement of raw materials, equipment, transportation, and staff salaries. This figure is further broken down to show that 50% of FPI's procurements are made to small businesses, women-owned businesses, and service-disabled veteran-owned businesses. FPI has a clear and tangible benefit to correctional workers, local economies, and inmates.

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

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

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

Congressional Action:

- Congress should continue to expand existing and include new inmate work program authorities in conjunction with all aspects of reentry, as well as the new criminal justice reform law, the First Step Act.

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 Consolidated Appropriations Act of 2018 (P.L. 115-141), which contains the FY 2018 Commerce-Justice-Science (CJS) Appropriations bill, includes a general provision—Section 210—to prohibit the use of FY 2018 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). Here is the exact language:

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 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 remainder of FY 2019 funding and for the FY 2020 CJS Appropriations bill.

Title 5 for Transportation Security Administration

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 Labors 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 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.
- TSA fires TSOs based on medical symptoms and diagnosis that do not affect their work performance.

Congress Should Pass Legislation Providing Statutory Title 5 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 the 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. 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 2017, the average TSO pay increase was \$244, or about \$9.38 a paycheck.
- 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.
- TSOs face constant training and changing 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.

- 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.
- AFGE currently is litigating 19 cases of retaliation against TSOs who filed discrimination complaints against the agency.
- 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, and Strengthening American Transportation Security Act, bills introduced during the 114th and 115th sessions of 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).

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 almost 17 years later.

Congress Should Appropriate Funding to Raise Low TSO Pay

The U.S. 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 2020 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. AFGE is also fighting 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.

AFGE strongly supports reintroduction of legislation similar to the Contract Screener Reform Act, introduced by Representative Bennie Thompson 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, thirty-five members of Congress 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.

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 statutory provision that authorize 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; and
- Provide fair compensation to the TSO workforce by appropriating funds for a pay raise.

AFGE urges Congress to:

- Pass legislation that would 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).

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 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.

AFGE calls on Congress to pass legislation to reinstate the full protections of the Voting Rights Act that supports election protection and security.

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 legislation during the 116th Congress that would make federal election day a federal holiday. According to the U.S. Census Bureau, in 2016 14.3% 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% 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

AFGE will continue to support the Paycheck Fairness Act. The bill would close loopholes that hinder the Equal Pay Act’s effectiveness, prohibits employer retaliation against employees who share salary information among colleagues, and ensures that women who prove their case in court receive awards of both back pay and punitive damages. A 2018 study by the American Association of University Women found that fulltime working women on average earn 80% 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%. The unemployment rate is 15.1% 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. In the past year AFGE has publicly opposed 3 of President Trump's nominations to the federal courts: The Supreme Court nomination of Brett Kavanaugh, 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 (Justice Kavanaugh) or have a documented history of voter disenfranchisement (Readler and Murphy). President Trump has again nominated both Readler and Murphy to fill openings on the Sixth Circuit Court of Appeals. 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

Introduction

AFGE calls on the House and Senate to recognize the value of this benefit to the federal workforce and working families. The Federal Employee Paid Parental Leave Act (FEPPLA) should be advanced in the 116th Congress and sent to the President's desk for signature.

The Federal Employee Paid Parental Leave Act or FEPPLA will be introduced in the House by early supporter Rep. Carolyn Maloney (D-NY). If enacted, FEPPLA would update federal leave policies by directing federal agencies to advance twelve weeks of paid leave for the care of a newborn, newly-adopted, or newly-placed foster child. Enactment of FEPPLA is necessary because despite the protections of the Family and Medical Leave Act (FMLA), federal workers are among those who must choose between a paycheck and meeting their family obligations because they currently have no paid parental leave.

President Obama's 2015 memorandum 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.

The House and Senate versions of FEPPLA would provide federal employees twelve weeks of paid parental leave upon the birth, adoption or fostering of a child. In past versions the Senate has extended this benefit to the nation's 44,000 TSO workforce. This year's Senate version will likely include this same benefit.

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

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

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

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

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

Congress Should Recognize the Benefits of Leave to Workers and Agencies

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

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

AFGE believes the Paid Parental Leave Act will result in the retention of talented workers who would otherwise leave federal government work for private sector jobs because of the availability of paid parental leave. The federal government currently reimburses federal contractors and grantees for the cost of providing paid parental leave to their workers. Surely if such practice is affordable and reasonable for contractors and grantees, federal employees should be eligible for similar treatment.

The Equality Act

Introduction

Despite recent significant advancements, Congress has failed to pass legislation to ensure that all workers—federal and others—are treated equally. AFGE will fight for equality until those rights are achieved because we agree with former Attorney General Loretta Lynch that “the founding ideas that have led this country—haltingly but inexorably—in the direction of fairness, inclusion and equality for all Americans” will prevail.

AFGE calls for Congressional action on the Equality Act during the 116th Congress.

The Equality Act

The pursuit of justice has not always been easy or popular, but AFGE stands true to a basic tenet of fairness: all individuals should be judged by the same criteria. Accordingly, AFGE strongly opposes employment discrimination based on sexual orientation 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, reintroduced by Representative David Cicilline (D-RI) in the House, and Senator Jeff Merkley (D-OR) in the Senate, provides important federal protections to our fellow Americans. 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.

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.

Stopping Attacks on the Civil Service and Preserving Due Process Rights

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

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

AFGE calls on Congress to protect the public by protecting federal worker due process rights.

What is “Due Process”?

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

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

The importance of maintaining a nonpartisan, apolitical civil service in an increasingly partisan environment cannot be overstated. First, most federal jobs require technical skills that cannot

simply be obtained through non-merit based appointment. Second, career employees must be free to perform their work in accordance with objective professional standards. Those standards must remain the only basis for evaluating employee performance or misconduct.

Due Process Rights for Employees at the Veterans Administration and Transportation Security Administration

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

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

The Evolution of Civil Service Protections

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

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

The Role of the MSPB

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

Civil Service Due Process: The Facts

The CSRA does not give unfair advantages to federal employees.

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

It is very important to note that following an agency's adverse decision against an employee, the agency's decision is automatically effected (e.g., the employee is removed from the agency's payroll the day of issuance of the decision or within several days following the decision).

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

AFGE supports the reintroduction of legislation during the 116th Congress in the House and Senate that restores MSPB appeal rights to federal workers found ineligible to occupy a noncritical sensitive position. In 2014 the U.S. Supreme Court refused to hear the appeal of the Federal Circuit decision in the case of *Kaplan v. Conyers* (*Conyers*) upholding the ability of federal agencies to deny employees the ability to appeal agency decisions that they are no longer eligible to hold their jobs if the positions are changed from noncritical nonsensitive to noncritical sensitive. AFGE member Rhonda Conyers, an accounting clerk at the Defense Finance and Accounting Service (DFAS), was deemed ineligible to occupy her position even though the duties did not change and she had years of exceptional performance evaluations. Positions were designated noncritical sensitive by procedures established by the Office of Personnel Management and Office of the Director of National Intelligence without documenting how the interest of national security is furthered by denial of due process, the estimated number of positions subject to reclassification or the cost of repetitive background investigations. Without Congressional intervention, thousands of hardworking public servants may be subject to arbitrary, unfair, or discriminatory, adverse actions without meaningful review.

Conclusion

AFGE strongly opposes legislative, judicial, and/or any administrative attempts to deny untold numbers of federal workers their due process rights. The civil service must not return to the "Spoils System" of the 19th century. Federal appointments should be based on merit and objective standards. In addition, continued service should be objective and merit-based, with

full due process rights to ensure that arbitrary, capricious and politically motivated retaliation cannot occur.

The PAGE Act and MERIT Act introduced during the last Congress are examples of the most extreme attempts to politicize the civil service taking us back to the 19th century before enactment of the first federal worker protections in 1883. The services that federal employees provide are too important to the America public to allow this legislation to advance again.

Every day, federal workers provide vital services to their communities and the nation. Civil service due process rights enable proficient and experienced federal employees to boldly perform their duties and to patrol our borders, provide our veterans with the care they have earned, ensure that senior and disabled individuals receive their essential support, keep our travelers safe, and maintain military readiness.

AFGE urges Congress to:

- Protect statutory and Constitutional civil service due process protections;
- Restore civil service due process protections to the federal workers at the Veteran's Administration and extend equal due process protections to Transportation Security Officers at the Transportation Security Administration; and
- Restore due process appeal rights to incumbent federal workers found ineligible to occupy noncritical sensitive positions.

Equal Employment Opportunity Commission

AFGE Council 216 Will Urge Congress to Maintain A Budget Increase and to Direct EEOC to Restore Staffing and Allow its Employees to Provide Real Help—Not be Pressed to Close and Turn Away Cases

Summary

AFGE's National Council of EEOC Locals, No. 216, is proud to represent investigators, attorneys, mediators, administrative judges and other Equal Employment Opportunity Commission (EEOC) staff who contribute to job creation by enforcing Title VII of the Civil Rights Act of 1964 and other key civil rights laws, which protect against discrimination on the job based on race, religion, color, national origin, sex, age, disability and genetics.

Congress supported EEOC in the wake of the #MeToo movement with \$15M to address sexual harassment. However, the EEOC continues to allow staffing levels to decline even as harassment charges have increased.

Inadequate frontline staffing harms the EEOC's ability to carry out its civil rights mission. EEOC ended FY18 with only 1,968 FTEs nationwide. EEOC appointment calendars are booked for weeks out. Just to have a call answered by the in-house call center can take 60 minutes. The public waits months for EEOC to process a case.

EEOC ended FY18 with a backlog of 49,607 cases. This is a terrible number of individuals stuck waiting. EEOC touts its 19.5% backlog reduction from the previous year. But it should raise alarms over how EEOC could shed so many cases from its backlog, without deterring filings and dumping cases. Unfortunately for the public, both shortcuts are encouraged by EEOC's new evaluation system. For FY19, Federal sector employees' due process is threatened by new performance standards for administrative judges that for the first time include required closure quotas.

For FY20, Council 216 will urge Congress to at least maintain EEOC's funding level of \$379.5M, which is the same level as the FY18 increased funding. AFGE Council 216 will request that Congress review EEOC's new performance system and backlog reduction strategies to determine any harmful impact on enforcement and benefits for the public. AFGE Council 216 will press EEOC to implement real efficiencies e.g., the Union's dedicated intake plan, reducing supervisor to employee ratio, cutting management travel, eliminating contracts for work that can be performed in-house, and to stop employee and union attacks and improve morale to reduce costly turnover.

Discussion

1. While Congress Supported EEOC with a Much Needed \$15M Increase to Address Sexual Harassment, EEOC Let Staffing Levels Fall to a Record Low, Even as Demand and Wait Times Increased

- *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. Congress thankfully met the moment by increasing EEOC's budget from \$364.5M to \$379.5M for EEOC to "address the increased workload associated with sexual harassment claims." After seven years of frozen or cut budgets this was a much needed raise.

For FY19, Congress again showed its bipartisan commitment to civil rights, with both House and Senate appropriators recommending continuing FY18's \$15M increase "to address harassment claims." This was despite EEOC requesting \$363M and being slow to acknowledge the #MeToo impact. The Council will urge Congress to at least maintain the increased \$379.5M funding level for FY20 and direct EEOC to prioritize hiring frontline staff.

EEOC's workload and dwindling staff justify the need to maintain the funding increase and hire staff. In FY18 76,418 charges of discrimination were filed with EEOC. Sexual harassment charges increased 13.6 percent. According to EEOC, staff responded to a "significant increase" in demand "reflected in over 554,000 calls and emails to the EEOC and more than 200,000 inquiries concerning potential discrimination claims. The launch of a nationwide online inquiry and appointment system as part of the EEOC's public portal resulted in a 30 percent increase in inquiries and over 40,000 intake interviews."

Enforcing laws to prevent employment discrimination requires frontline staff. Unfortunately, and inexplicably, despite FY18's budget bump, EEOC suffered a net staffing loss of five percent, ending the year with 1,968 employees. Due to hiring freezes, attrition, and "separation savings," EEOC's workforce has plummeted from FY11's 2,453 employees. While Congress wanted EEOC "to address sexual harassment," EEOC failed to 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 FY01 to approximately 505 in FY18. EEOC's FY19 budget reported that there would be an overall net loss of investigators due to attrition to a projected record low of only 497.

These staffing shortages negatively affect the public. EEOC ended FY18 with a backlog of 49,607 cases. EEOC's dismal average case processing delay was last reported to be 10 months. During this time jobs are lost and retaliation cases surge.

EEOC is wrong when it pretends its digital charge system (DCS) is the answer to short-staffing and ignores the need for adequate frontline staff to receive inquiries and process charges. When the DCS appointment system kicked off in FY18, the calendars immediately booked up for weeks out, because there is not enough investigative staff to cover the appointments.

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 retire and their cases get distributed to those few who are left, driving up 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 time at the copier, scanner, postage meter, performing administrative duties and covering the front desk.

The partial government shutdown that began on December 22, 2018, closed the EEOC. No case processing occurs while EEOC's frontline staff are furloughed. As past shutdowns have shown, EEOC's cases pile up and age. It is also anticipated that due to the length of the shutdown, attrition will worsen as more employees than anticipated retire or leave for other jobs.

For FY20, Council 216 will urge Congress to support EEOC's mission, which has been in the spotlight, by at least maintaining its increased budget of \$379.5M. Council 216 will urge Congress to direct EEOC to hire and backfill frontline staff to serve the public.

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

- *AFGE Council 216 will call for a review of EEOC's backlog strategies and new performance system, which pressures staff to deter, downgrade, and close cases.*

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 of discrimination charges has stubbornly stood at over 70,000 cases for a decade. Except for 2011-2012, when new frontline staff came on board, the backlog typically increases each year. Yet, with fewer staff, in FY17, EEOC announced a miraculous 16 percent reduction in the backlog from 73,508 cases to 61,621 cases. For FY18, EEOC is touting that it further slashed its backlog 19.5% to 49,607 cases.

How this was accomplished 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 new digital charge system, but this should eliminate paper – not cases. The agency also points to prioritizing the backlog and sharing strategies between offices, but these are not new.

According to the OIG section of the EEOC's FY17 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 FY17, EEOC exploited 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."

Starting in FY17, offices were given goals for "C" categorization, e.g., 35%. In FY18 the pressure intensified, as offices are supposed to hit a certain quota of "C" charges at intake.

EEOC stats show these "strategies" are taking a toll on substantive case processing. In FY17, the last year reported on their website, EEOC's merit resolutions and settlements declined. The statistics also show a jump in "no reasonable cause" dismissals.

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

Likewise, EEOC's new performance evaluations pressure administrative judges to rush initial conferences, eliminate discovery, and issue summary judgment and bench decisions that short-circuit the rights of Federal complainants, particularly those without counsel, and for the first time sets a numerical case closure requirement.

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 \$15M to address sexual harassment. So now EEOC should restore frontline staff and allow them to perform the work of stopping and preventing workplace discrimination.

Private and Federal sector workers want both a fair and timely complaint process, not just a quick closure. AFGE Council 216 will urge Congress to push the pause button on numerical requirements in EEOC's new rating system until a review can assess its impact on appropriate charge processing and service to the public. AFGE Council 216 will also urge Congress to continue oversight language directing it to report the number of A, B, and C charges for each of the last 5 fiscal years.

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

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

In October 2017, EEOC went nationwide with Phase 2 of its Digital Charge System (DCS), which steers workers to use an online system. The system pushes workers through questions about their work situation. If criteria are met, these workers can file an online inquiry and schedule an interview through an online appointment system. Generally, expanding technology enhances efficiency and access. However, 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 to 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. DCS rolled out without a version for mobile devices, which has only recently been improved. Workers must respond correctly to jurisdictional questions regarding statute of limitations and employee thresholds to proceed.

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 timesaving efficiencies. DCS was built on a preexisting electronic record system (IMS) platform with separate systems, which are not integrated. Staff spend too much time downloading, saving, and uploading from one system to the other. Key paper forms are still required to be printed and mailed. Hard copy documents often must be scanned, but there are not enough scanners. EEOC staff also expend time hunting down the correct employer e-mail address. Because many individuals do not complete all online information sections, EEOC staff only receive barebone information before an interview.

Another new digital system provides complainants the ability to track online, the status of their charge. Providing a way to track EEOC's bottlenecks, without solving them, adds more calls that delay processing and likely is leading 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 gain access to one for online charge filing.

4. 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 is expanding online access, but missing efficiencies that would make a real difference. EEOC should prioritize frontline services, by cutting unnecessary expenses/travel and working smarter.

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

AFGE Council 216's Full Service Intake Plan addresses the efficient use of resources and the backlog, both of which benefit the public. The heart of the plan is utilizing trained investigator support assistants (ISAs) and other support staff grades (GS-5 through GS-9) in dedicated units to advance the intake process from pre-charge counseling through charge filing.

Such units 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 to reduce backlog and wait times.

AFGE Council 216 first submitted the plan eight years ago. EEOC's failure to implement the plan or even a pilot remains a missed opportunity, which continues to harm the public. Finally this year, EEOC took one idea from the plan and hired five GS-9 ISAs for intake to assist with the booked appointment calendars. EEOC should hire many more to handle walk-in traffic and in-person interviews in all of its 53 offices.

- **EEOC Must Prioritize Frontline Staffing**

It is critical that EEOC implement real efficiencies and push resources to frontline staff. Only 36.9 percent of field staff reported on the 2018 FEVS survey "sufficient resources (for example, people, materials, budget) to get my job done." This is well below the government average. First, any hiring should be used to backfill frontline vacancies. Promoting staff to management without ensuring the resulting vacancies are backfilled exacerbates the impact of lack of frontline staff.

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

Third, a budget neutral way for EEOC to increase frontline staff is to 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. Yet, 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.

Finally, EEOC should smart staff offices to rely on building blocks of staff. For instance, no EEOC office should have less than one full investigative team or block, which would consist of a supervisor or team leader, ten investigators, two investigator support assistants, and one OAA support person. Smart staffing can best utilize hiring to efficiently address priorities in offices that will continue to suffer arbitrary vacancies caused by attrition and the impact of the anticipated hiring freeze.

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

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

EEOC demonstrates disdain towards its labor management obligations. Repeatedly EEOC has intentionally disregarded its statutory obligation to negotiate impact and implementation, including, over its controversial new performance standards, a new table of penalties, and unilateral changes to voluntary dues processing. In each of these instances, the Union filed unfair labor practices and the FLRA issued complaints. An ALJ even ruled in favor of summary judgment against EEOC on the table of penalties violation, with a scathing decision that was upheld in a final order by the Authority.

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

Despite the Authority Order, EEOC is still not in full compliance.

Despite a federal judge’s ruling in August blocking most of the President’s three anti-worker executive orders (EOs), the EEOC notified AFGE Council 216 that it is on a fast track to implement several portions of the orders.

Ironically, EEOC has cherry-picked sections that contradict its public positions. EEOC is moving ahead full throttle with a harsh new disciplinary policy. The agency’s notice to the union refers to troubling sections of the executive orders that condone disparate treatment, stating in part: “...conduct that justifies discipline of one employee at one time does not necessarily justify

similar discipline of a different employee at a different time.” This is the opposite of the advice EEOC gives the public and investigates employers and litigates for disparate discipline.

In addition, agency management cited provisions of the executive order that put further limits on the use of official time, which enables union representatives to meet with employees and managers during the workday to address and resolve workplace issues. It plans to discipline union officers if the agency believes the time was not used properly. Other areas EEOC cherry-picks abrogate provisions of the CBA, in contravention of the EOs.

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. Another issue is EEOC 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 sends out a flurry of emails to drive up FEVS participation rates. However, EEOC must focus year-round on substantive areas that impact morale and retention.

The Equal Employment Opportunity Commission’s mission is to protect workers from workplace harassment, discrimination, and retaliation. But for years EEOC has scored 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.

Also, EEOC is ranked 25 out of 25 mid-size agencies in the work life balance category. Yet, the agency discontinued a popular Maxi-flex pilot this year rather than using positive evaluation results to extend it.

The agency’s OEO department is unresponsive and has made zero findings of discrimination. The Model Employer must be proactive both to address and prevent these EEO violations. By doing so, EEOC can benefit from reduced turnover costs, greater employee engagement and innovation, and other efficiencies of a satisfied workforce.

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

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

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

EEOC habitually pays contractors to evaluate its work practices. The reviews can and should be performed by the Office of Inspector General (OIG).

EEOC wastes money for managers to travel to meetings and for office visits even though offices are equipped with video teleconference (VTC) ability, new television monitors and updated IT capabilities.

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

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

AFGE Council 216 will continue to ward off various schemes that threaten Federal workers' rights to discovery and a full hearing. The most recent threat comes from new administrative judge (AJ) performance plans that create a strong pressure to find more often in favor of agencies. The plans contain arbitrary and unrealistic closure quotas. This is the first time that specific numerical requirements have been included in the plan. Again, the Agency did not provide notice and an opportunity to negotiate the impact.

The standards direct AJs to make these numbers by relying on vague and untested pilot initiatives that were released in the middle of FY17. The pilot initiatives are a recipe for denying discovery. Discovery is the only way to keep the EEOC process fair. The new standards also press unnecessary quick closures through micromanaged summary judgment and bench decisions. The standards do not consider the complexity of cases, varying caseloads, and lack of clerical and paraprofessional support.

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.

EEOC has only an estimated 96 Administrative Judges, and with very few additional hires, the figure is likely to decline. AFGE Council 216 will continue to address the loss of EEOC AJs, caused by a lack of support staff, paralegals, or writing attorneys, threats to judicial independence, and the absence of Administrative Law Judge (ALJ) classification available at other agencies.

EEOC concedes that the pilot initiatives are to account for the growing workload assumed by a shrinking cadre of AJs. Yet, the Agency is also charged with addressing sexual harassment complaints in the Federal sector. Therefore, EEOC's budget increase to address harassment should be used in part to backfill and hire an adequate number of AJs and provide them support staff.

AFGE Council 216 supports changes that can be accomplished under the regulations and statutes. AFGE Council 216 will continue to urge the Chair to ensure EEOC AJs are competitive with judges at other agencies by addressing classification and regulatory issues that deny these employees the judicial independence necessary to adjudicate and provide appropriate relief for Federal sector claimants. Subpoena authority will continue to be sought to improve the due process afforded to both Federal sector claimants and Federal agencies.

The Union's Accomplishments

In 2018, AFGE Council 216 aggressively raised awareness with Congress and the civil rights community of what EEOC needs to succeed. The promise of America is not fulfilled when discrimination prevents people from working and supporting their families.

Results of AFGE Council 216's efforts this year:

1. For FY18, AFGE Council 216 fought for adequate funds and succeeded in getting EEOC a \$15M increase to address sexual harassment, the first budget increase in 7 years. EEOC requested flat-funding and was slow to acknowledge that the #MeToo movement was increasing demand on the agency that enforces those laws.
2. For FY19, AFGE Council 216 fought to maintain the \$15M increase. Both the House and the Senate appropriators have recommended EEOC maintain its increased funding level of \$379M. For FY19, EEOC requested \$363M and a net staffing loss.
3. FLRA upheld summary judgment on unfair labor practice charge filed by AFGE Council 216 against EEOC for refusing to negotiate the impact of a new table of penalties.
4. AFGE Council 216 provided written testimony for the House CJS Subcommittee open witness hearing urging increased budget and staff.
5. For FY19, the Senate Appropriators have recommended oversight reporting requirements involving EEOC's A, B, C charge numbers.
6. Both House and Senate Appropriators have recommended retaining oversight of any reorganization.
7. AFGE Council 216 has participated in the Red for Feds movement and demanded to bargain the impact and implementation of EEOC's attempts to implement portions of the Executive Orders.
8. AFGE Council 216 has bargained Impact and Implementation MOUs regarding a new Directive on Details and Transfers, Furloughs, and the Digital Charge System. AFGE Council 216 continues to fight to complete bargaining on Performance Standards and

has filed negotiability appeals regarding Midterm bargaining and a new Table of Penalties.

9. AFGE Council 216 continues its vigorous battle for accommodations for disabled employees, whose requests have been fought, ignored, or delayed by the agency. Likewise, AFGE Council 216 fights for the agency to properly honor FMLA requests. AFGE Council 216 has helped vets get military service credit for their leave and retirement benefits.
10. AFGE Council 216 insisted on a survey that proved the popularity and efficiencies of the Maxi-flex pilot that EEOC ended rather than extended.
11. AFGE Council 216 kept up the pressure on EEOC's administration to act on 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.
12. AFGE Council 216 continues to press EEOC to improve its internal harassment program, including a neutral harassment coordinator.
13. AFGE Council 216 responded with comments to EEOC's internal Reasonable Accommodation directive, urging a neutral disability program coordinator who reports to the Chair, an authentic interactive process, and an independent appeal process.
14. AFGE Council 216 worked for an in-house survey of the Digital Charge System to support improvements to make it a more efficient system.
15. AFGE Council 216 fights every day to improve the working conditions that have led to overall poor morale and poor responses to certain key questions in the annual Federal Employee Viewpoint Survey.

AFGE Activists should urge their lawmakers:

- To request FY20 funding for EEOC of at least \$379M, to the maintain FY18 increase to address sexual harassment.
- To direct EEOC to hire frontline staff to provide real and timely help to the public.
- To pause EEOC's backlog reduction strategies and numerical requirements in new performance plans until they can be reviewed to determine the impact on the public, including deterring and closing cases and reducing cases eligible for mediation.
- To 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, extending the Maxi-flex pilot, and fixing its Labor and Employee Relations Division that does not support employees.

- To require EEOC to fully implement Council 216's Cost-Efficient Intake Plan to provide timely and substantive assistance to the public or at least hire additional higher-graded ISAs to assist with intake.
- 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.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, DISTRICT 14

District of Columbia Issue Paper

Personnel Management

Issue

Violence Against D.C. Government Employees

Background/Analysis

D.C. Government Workers provide essential services to the residents of the District of Columbia ranging from snow and trash removal, to controlling traffic at intersections and enforcing the parking rules and regulations for the city. For years, those same employees have been subjected to being verbally and physically abused, spit on, shot at and assaulted by the public without any recourse. Currently, there is no legislation on the books to protect D.C. Government employees from the growing number of violent attacks mounted against them.

City Council Action

AFGE is requesting that City Council create legislation to make the act of assaulting D.C. Government workers punishable by fine and/or imprisonment.

Federal Employees' Compensation Act

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

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

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

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

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

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

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

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

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

AFGE opposes Title V because it:

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

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

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

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

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

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

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

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

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

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

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

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

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

Food Safety Inspection Service

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.

Issue

There is a 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 no 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 addressed.
- 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 are safe and wholesome. Rather than slowing down and ensuring good sanitation, the industry wants to ramp up the use of 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 Needed:

- 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.
- These FSIS inspector positions require a successful passing of a pre-employment fitness exam.

Individuals with minor impairments who successfully meet the above requirements should be provided the opportunity to work as an FSIS inspector. It should not matter if the individual is overweight or a U.S. veteran 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

(3) Are assigned on a regular and recurring basis.

The definition under FERS adds the further requirement that the duties of the position “are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals.”

The Importance of LEO Status

LEOs are entitled to many benefits that reflect the government’s acknowledgement of their unique status. Under 5 U.S.C., Section 8336(c), a federal LEO with a minimum of 20 years of service at age 50, or 25 years of service is eligible to retire with 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 (FGLI) immediately after they retire.

In contrast, employees without LEO status are not eligible for continued FEHBP or FGLI coverage after early retirement unless the retirement was a result of a downsizing, Reduction in Force (RIF), or offered in some other context under Voluntary Early Retirement Authority (VERA). Additionally, annuities for federal law enforcement officers and firefighters are calculated according to a substantially more generous contribution formula than that used for regular FERS employees.

Under FERS, LEOs also receive a “special retirement supplement” (SRS) if they retire when they are under age 62. This SRS provides an approximation of their Social Security benefit if they had retired at an age when they were eligible for Social Security retirement benefits. Legislation was recently signed into law that eliminated the early withdrawal penalty fee for LEOs who retire early after age 50. Congress passed this legislation in recognition of the fact that LEOs are often forced to retire before they become eligible to receive Social Security retirement benefits or can make withdrawals from their Thrift Savings Plan (TSP) without a financial penalty.

Early retirement without financial penalties, as well as the aforementioned benefits available to retired LEOs serve as recruitment and retention tools and reflect the government’s interest in having “young and physically vigorous” individuals in law enforcement positions. All federal law enforcement personnel deserve equal treatment. The inequities in pay and benefits across law enforcement agencies lead to high turnover after law enforcement professionals are trained because they are recruited by other agencies that give them full respect, status, pay, and benefits.

Expansion of LEO Statutory Definition

During the 115th Congress, Representative Peter King (R-NY) and Senator Cory Booker (D-NJ) introduced H.R. 964 and S. 424, respectively, the “Law Enforcement Officers Equity Act,” which proposed to amend the definition of the term "law enforcement officer" to include federal employees whose duties include the investigation or apprehension of suspected or convicted individuals and who are authorized to carry a firearm; employees of the Internal Revenue Service (IRS) whose duties are primarily the collection of delinquent taxes and the securing of delinquent returns; employees of the U.S. Postal Inspection Service; and VA police officers.

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 legislation to amend 5 U.S.C. Section 8401 to include FPS officers, and police officers from the VA, DoD, and the U.S. Mint in the definition of an LEO.

Census Bureau AFGE Council 241 Legislative Issues

Census Bureau Funding

The Census Bureau received \$1.056 billion in forward-funding in the FY 2018 Commerce Justice Science Appropriations bill, for 2020 Census activities, which allowed for certain Census Bureau employees to return to work during the partial government shutdown which began on December 22, 2018.

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 \$3.821 Billion for the Census Bureau, slightly above the administration's request of \$3.801 billion. This includes \$3.551 billion is for the Periodic Censuses and Programs (PCP) account, which covers the 2020 Census, and the related American Community Survey. AFGE also supports funding of the \$270 million for the Current Surveys and Programs at Census Bureau. The administration proposed a \$21 million cut, but both House and Senate Appropriations Committees went with the higher number in mark-ups last summer.

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 educate relevant Committee members on the impact of underfunding as it affects both vulnerable populations and local economies, and the effect this underfunding will have on our members' abilities to do their jobs.

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.

In January 2019, the Senate confirmed Steven Dillingham to be the Census Bureau Director. Mr. Dillingham responded to questions submitted by AFGE and agreed to work with the union and

give the union leadership at Census Bureau a seat at the table to promote a healthy work environment at the Census Bureau.

FEDERAL FIREFIGHTERS

Fighting Cancer Incidents Among 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.

It is for these reasons that Representative Chris Collins (R-NY) has introduced H.R. 931, the "Firefighter Cancer Registry Act" of 2017. 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. H.R. 931 will also establish and improve collection infrastructure of nationwide monitoring of incidents of cancer among firefighters. If enacted, H.R. 931 will require the collection, consolidation of public health information related to cancer incidence, and trends among firefighters.

The newly established Firefighter Cancer Registry would collect firefighters' relevant history, including occupational information (work history), demographic information, individual risk factors, and number of years on the job. Too many firefighters live with and die of cancer every

year. With this new cancer registry, researchers and medical professionals will be able to gather more pertinent data to help treat and prevent illnesses common among firefighters across the nation in order to better understand why firefighters have higher rates of cancer and offer preventative solutions.

Legislative Action:

1. Advocate for higher funding to implement the Firefighter Cancer Registry Act which became law in September 2018.
2. 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% per year. 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% or less; if the CPI is 2.01-3.0%, the COLA is 2%, and if the CPI increase is more than 3%, the FERS COLA is 1% less than the CSRS COLA. Congressman Gerry Connolly (VA) introduced H.R. 7165, the Equal COLA Act, in the 115th Congress to bring the FERS COLA up to the same amount as the CSRS COLA. The legislation should be introduced in the 116th Congress and is supported by AFGE.

Legislative Action:

- 1) Oppose any COLA cuts to federal retirement for active and retired employees.
- 2) Cosponsor and support the Equal COLA Act when it is introduced.

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 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 — currently rising from age 66 to 67, to 69 — 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% 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 (VT) and Elizabeth Warren (MA) and Representative John Larson (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 such as Rep. Larson and Sen. Richard Blumenthal’s Social Security 2100 Act, H.R. 1902/S. 2671 and Sen. Sanders’ Social Security Expansion Act, S. 427 in the 115th Congress 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 and municipal public servants. For 74% of affected spouses, the benefit is reduced to zero. These provisions have had the effect of disproportionately reducing the Social Security benefit Americans have earned. 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 115th Congress, this legislation was H.R. 1205/S. 915 authored by Rep. Rodney Davis (IL) and Sen. Sherrod Brown (OH). It had substantial co-sponsorship and should be reintroduced in the 116th Congress.

Social Security Field Office and Teleservice Center Funding:

Since 2010, the Social Security Administration (SSA) has endured deep budget cuts that have severely hampered SSA's once proud achievement of providing Social Security Administration (SSA) employees help ensure financial security and stability to Americans in old age and disability, and survivors in times of crisis. Through last year, 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 800# and a loss of over 2,000 field staff. Meanwhile, the demand for in-person services increases as the baby boom generation reaches retirement age. AFGE is seeking funds to restore funding for field staff, reduce or end field office closures and provide reliable funding to meet public needs into the future.

Legislative Action:

- 1) AFGE supports Congresswoman Gwen Moore's (WI) legislation, 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. In the 115th Congress, this was H.R. 7146 and will be reintroduced early in the 116th Congress. We encourage members of Congress to cosponsor and publicly oppose any office closures in their states or districts.
- 2) AFGE supports legislation introduced in the 115th Congress by Senator Sanders and Congressman Larson, S. 3147/H.R. 6251, the Social Security Administration Fairness Act. This bill would end the capricious, and sometimes politicized funding of the administration of SSA by setting the agency's administrative funding at 1.5 percent of overall benefit payments. This would allow SSA to eliminate the appeals backlog, provide sufficient resources for SSA to serve the public, and the bill would implement a moratorium on closures of field office and contact stations. We encourage members of Congress to cosponsor the legislation when it is reintroduced in the 116th Congress.

Medicare

Most federal retirees become eligible for Medicare at age 65. Because many opt not to enroll in Medicare Part B, which covers most out-patient medical services and is also covered by the Federal Employees Health Benefits Program, federal retirees would be less adversely affected by

proposals in Congress to eliminate traditional Medicare and turn it into a voucher program. This has been proposed in budgets over many years, including for FY'19.

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

When the 115th Congress passed the tax overhaul, it was thwarted in its effort to pass \$410 billion of the cost on to Medicare. AFGE will watch out for any efforts to amend the tax law in a manner that taps into Medicare to pay for it.

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.

Further, there have been numerous attacks on the Affordable Care Act. While some of its underpinnings remain, Congress has agreed to a tax plan that eliminates the "individual mandate" which creates a broad universe of insured individuals that determines pricing of

insurance. Older adults not yet eligible for Medicare, aged 50-64, may experience 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 as well.

Additionally, the erosion of the ACA may affect AFGE families. While members and retirees usually enjoy FEHB coverage, dependents such as grandchildren or aging parents in the household could lose their coverage and find that 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.

Pretrial Services Agency for the District of Columbia AFGE Local 1456 Legislative Issues

Issue: Support Legislation that would grant collective bargaining rights to the non-judicial personnel of the District of Columbia Superior Court and the District of Columbia Court of Appeals.

The District of Columbia Comprehensive Merit Personnel Act currently excludes non-judicial personnel of the District of Columbia Superior Court and the District of Columbia Court of Appeals from collective bargaining coverage, D.C. Code § 1-602.01 (a). The Court Social Services Division staff within the District of Columbia Superior Court, supervises juveniles who have committed criminal offenses. The lack of bargaining rights in the workplace has put community safety at risk.

Balance and Restorative Justice (BARJ) is a concept that has been translated into an after-school program for the juvenile offender population in the pre-adjudication, pre-disposition, and post disposition phase of the case. Probation Officers operate the BARJ Monday through Friday from 4:00pm-8:30pm and Saturday from 10:00am-2:00pm. The following outlines the impact on employees, juveniles, and community safety:

1. There is no screening process to determine the appropriateness of participating youth. There are youth with various Axis I diagnosis who are not able to function in a group setting, but are ordered or forced to be in this setting. As a result, the youth become volatile.
2. On average, six out of 10 youth participating in BARJ has an Individualized Education Program (IEP) or some sort of educational accommodation. Unfortunately, these accommodations are not maintained in the BARJ setting.
3. Employees are not trained to interact with or de-escalate volatile behaviors. Employees are forced to retreat in situations where youth become violent.
4. The youth often assault one another and have physically assaulted staff in this setting when attempts to intervene occur. There are threats made against employees without remedy or consequences.
5. Female employees have been sexually harassed while working BARJ; again, without remedy or consequences. One instance was so serious that it was brought to the attention of a judge in DC Superior Court who made a request through the Office of the Attorney General (OAG) for charges to be brought. The youth was eventually found incompetent and should not have been placed in BARJ, but without a screening process, this cannot be determined absent an incident or crime.

6. Employees (Probation Officers (POs)) are forced to cook and serve dinner every evening without any certified food licenses. While these duties are not included in the current job description, POs who voice concerns about performing this duty have been targeted by management.
7. Employees (POs) have been injured while operating BARJ. Employees have gotten burned while preparing meals without being advised of their right to workers' compensation (if covered) as cooking is not in the current job description.
8. Employees (POs) are directed to create a module for various groups, including drug education, life skills, and anger management and are directed by management to run these groups in the BARJ without any training or certifications..
9. The youth (10-15) are released from BARJ at the same time 8:30 pm at night and they often commit crimes against one another ranging from simple assault to assault with intent to kill. The youth have also committed crimes against the community which include, but are not limited to shoplifting, fare evasion, robbery (cell phone related), burglary, and theft. At one point, a store manager in the community pled with the probation office to address the behaviors of the youth being released into the community all at the same time. This is a practice that has not changed despite pleas from the community.
10. Employees (POs) are not provided a meal break when working BARJ. BARJ operates from 4:00 pm-8:30 pm and POs work from 3:00 pm-11:00 pm during their BARJ tour of duty. The youth are scheduled to arrive by 4:00 pm and POs are scheduled to be present in the program from 3:00 pm-8:30 pm. During this time, POs prepare meals until the arrival of the youth. Upon dismissal of the youth at 8:30 pm, POs are scheduled to conduct curfew visits from 8:30 pm-11:00 pm; with no meal hour and/or two fifteen minute breaks built into this BARJ schedule.
11. POs also operate BARJ (without any supervisor or management present) one Saturday per month from 10:00 am-2:00 pm. In order to achieve this, POs are directed to flex the original 40 hour per week Monday-Friday work schedule 4 hours once per month to accommodate the Saturday schedule. POs are not offered overtime or compensatory time for working on a weekend.
12. POs operating BARJ lose on average approximately 36 hours per month, which in turn impacts the time spent on preparing court reports, inputting entries into court databases, meeting with youth and families to address concerns with the conditions of release/probation, meeting with community stakeholders to identify and implement services beneficial to the rehabilitation of the court-involved youth. This further affects the potential for success and deeply affects the community.

There is no direct evidence that youth participation in BARJ has reduced recidivism and aided in the rehabilitation of the court involved youth. There are instances however, where BARJ participation and operations have hindered rehabilitation and furthered juvenile delinquency as the youth are often outside of the home past their court-ordered curfew times.

Probation Officers are public servants who are tasked with the rehabilitation of juveniles and reducing recidivism among this population in the District of Columbia. Community interaction includes home visits, school visits, and curfew visits as an intricate part of achieving the mission of the District of Columbia Superior Court. More importantly, appropriate training is necessary in order to successfully complete the duties assigned; however, POs hired from 2009 to the present have not been afforded an opportunity to participate in training required to ensure an understanding of applying the knowledge, skills, and abilities required to supervise to the juvenile population.

Office of Personnel Management

Issue

Reorganizing 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.

The Trump Administration’s plan proposes to realign these OPM functions: 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.

In suggesting the possible realignment of ES, the proposal seeks to “centralize policy decisions” and “drive strategic management of the workforce” characterized by and “committed to: A holistic view of the Federal workforce; Assessment of innovations and contextual changes that drive the future of work; Data-driven policy development; Data analytics and strategic workforce management; Agency policy advice and change management assistance; and Identification and advancement of leading practice throughout the Federal Government.” In general, the RS and HRS proposals: “would yield an organization with a focus on providing Government-wide services and solutions associated with the full Federal employee lifecycle.”

- OPM/ES: Includes Recruitment and Hiring, Pay and Leave, Senior Executive Service (SES) and Performance Management, Partnership and Labor Relations, Veterans Services, Chief Learning Officer, OPM Human Resources, Strategic Workforce Planning, and Talent Management.
- OPM/RS: This proposal would affect the two programs administered by RS: the Civil Service Retirement System (CSRS) and the Federal Employees’ Retirement System (FERS). Currently, CSRS and FERS benefits are mandatory entitlements authorized in statute: Chapter 83 (CSRS) and Chapter 84 (FERS) of Title 5 of the U.S. Code. This office determines eligibility and administers benefits for almost 2.6 million federal retirees and their survivors under CSRS and FERS; these pension systems cover the majority of the

civilian federal workforce. Both CSRS and FERS include retirement, disability, and survivor components. CSRS and FERS benefits are financed through a dedicated federal trust fund, the Civil Service Retirement and Disability Fund (CSRDF).

- OPM/HRS: Realignment of HRS to GSA could include the transfer of (1) five separate program areas that encompass multiple institutions and programs, and (2) six separate IT systems.

Statutes

- OPM's statutory authority is codified in Chapter 11 of Title 5 of the U.S. Code and establishes OPM as an "independent establishment in the executive branch" (5 U.S.C. §1101); provides for a Director, Deputy Director, and Associate Directors (5 U.S.C. §1102); vests the Director with specific functions and responsibilities (5 U.S.C. §1103); and provides for delegation of authority for personnel management (5 U.S.C. §1104). To the degree that implementation of the proposal entails the transfer of functions currently vested by statute in OPM or its Director to another agency, OPM's organic act might need to be amended.
- Other statutes reference OPM and its director. For example, 5 U.S.C. §8461 specifically sets out the "Authority of the Office of Personnel Management." Therefore, it seems likely that the retirement proposal would require statutory amendments throughout Chapters 83 and 84 of Title 5 in order to remove/edit references to OPM and the OPM Director (and potentially replace them with references to the new GSA).

Under OPM's current statutory authority, the director generally has administrative discretion to organize the agency to carry out its functions. For example, in October 2017, the agency established new and restructured existing internal units. Changes included creating the new Office of Strategy and Innovation, establishing a new Employee Services/Outreach, Diversity, and Inclusion center, establishing the agency's internal Human Resources office as a stand-alone staff office, and realigning the USAJOBS program office from the Office of the Chief Information Officer to HRS and the Office of Actuaries to Healthcare and Insurance.

The proposal stated that the placement of other OPM offices and functions would be determined later. These other offices and functions may include some 16 remaining agency functions (including Merit System Accountability and Compliance) that are included on OPM's current organizational chart. In the absence of further details on this reorganization proposal, it is unclear whether there would be any additional changes to the composition and staffing levels of the current ES, RS, and HRS workforces.

The proposal does not discuss the magnitude or integration of the possible realignment of HRS functions to GSA. Regarding magnitude, realignment could involve transferring all, or only some, of HRS program areas and IT systems (and related functions, staff, and funding) to GSA. Regarding integration, HRS program areas could be maintained as separate units within GSA,

merged into a single GSA unit, or divided among multiple GSA units. Further, the proposal does not discuss potential impacts of the proposed realignment on HRS's funding structure. HRS is primarily financed through OPM's revolving fund, which can only be used for specific types of activities. Consequently, the following remains unclear:

- (1) Whether GSA possesses the statutory authority to use its existing revolving funds to finance HRS functions, and any statutory changes required to provide that authority;
- (2) How, and what portion of, OPM's revolving fund might be transferred to GSA to finance HRS functions; and
- (3) Additional appropriations, if any, needed to finance HRS staffing and activities upon transfer to GSA.

Congressional/Administration Action:

AFGE is requesting the following from the Administration:

- GSA/OPM provide the statutory authority for moving Revolving Fund/Trust Funds from OPM to cover these functions if transferred to GSA.
- GSA provide any statutory changes required to provide that authority to move OPM organizations to GSA.
- GSA/OPM provide information on what portions of OPM might be moving to GSA.
- GSA/OPM provide the timeline of all OPM organizations that will be moving to GSA.
- OPM/GSA provide what OPM organizations are moving to GSA.
- OPM/GSA provide the magnitude of realignment on the OPM organizations being transferred to GSA.
- OPM/GSA provide the chart of funding, other than the OPM Revolving Fund/Trust Funds, to support a move of OPM organizations to GSA.
- OPM/GSA provide a plan for the integration of IT related functions, staff, and funding for the transfer of OPM functions to GSA.
- OPM/GSA provide information on the transfer of functions to GSA. Will this be a merger into a current GSA organization or will OPM organizations be separate within GSA?

- The potential impact of the proposed realignment on current HRS funding. HRS is slated to start the transition to GSA on April 1, 2019.

Social Security Council 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. Already 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, we will be urging Congressional Committees to hold hearings intended to shine a spotlight on SSA's illegal actions.

The single most effective action Congress can take, however, would be to use its power of the purse to threaten budget cuts unless the agency reopens negotiations and commits to an equitable process for dispute resolution such as mediation/arbitration by an independent individual selected jointly by both parties. Given the fact that the House of Representatives has a Democratic, labor friendly majority, this strategy is being explored.

Full Funding of SSA Field Offices in FY 20 Labor-HHS Appropriations Bill

Years of inadequate budgets for SSA have taken their toll, causing the agency to lose 12 percent of its staff since 2010, close field offices, and shorten office hours, even as it faces record-high workloads.

While implementing spending reductions, SSA has also saved money by making cuts in customer service, increasing automation, and reducing the number of Social Security statements that it sends to the public. But these efficiencies can't make up for the fact that SSA serves an additional 1 million beneficiaries each year. As workloads and costs grow and budgets shrink, SSA's service has worsened by nearly every metric. Further cuts would force the agency to freeze hiring, furlough employees, shutter more field offices, and/or further restrict field office hours, leading to yet longer wait times for taxpayers and beneficiaries who need help.

SSA's operating budget shrank 11 percent from 2010 to 2017 in inflation-adjusted terms, just as the demands on SSA reached all-time highs as baby boomers reached their peak years for retirement and disability. Budget cutting has squeezed SSA's operating budget from an already

low 0.9 percent of overall Social Security spending in 2010 to just 0.7 percent in 2016. The cuts have hampered SSA's ability to perform its essential services, such as determining eligibility in a timely manner for retirement, survivor, and disability benefits; paying benefits accurately and on time; responding to questions from the public; and updating benefits promptly when circumstances change.

SSA's 2017 appropriation provided the same funding for operating expenses as in 2016, plus \$90 million in dedicated additional funding to hire the staff and make technological improvements needed to reduce the backlog in hearings for disability benefits. This extra money helped, but the Agency actually needed over \$150 million of additional appropriations to fully implement the backlog reduction plan.

For these reasons, it is essential that SSA field offices receive a large increase in funds to repair the damage that has been done over the past several years due to short sighted budget cuts.

Establish a Separate Line Item for Field Offices

In order to be certain that SSA field offices receive the funds necessary to maintain all existing offices, replace closed offices, hire staff lost over the past decade, and reassure the public that critical services to beneficiaries will remain available, it is essential that the Appropriations Committees provide funding not only for SSA's Limitation on Administrative Expenses, but also for the full cost of field office and Teleservice Center operations. Last year, the House Appropriations Committee included language in its Committee Report that moved in this direction. It said: "Within the total for LAE, the Committee provides not less than \$3,475,000,000 for Field Offices and not more than \$1,750,000,000 for Information Technology."

Unfortunately, this language was not included in the final conference report and is therefore not binding on SSA. For FY 2020, our goal is to include this language in the Labor-HHS Appropriations Conference Report thereby making clear to the agency that it must fund the field offices at the level established in the bill. Needless to say, the final number must be high enough to support all field office activities as well as provide an inflationary increase of at least \$400 million.

The Social Security Administration Fairness Act (H.R. 6251, S.3147)

This legislation was introduced last year by Rep. John Larson (D-CT) in the House and Senator Bernie Sanders (I-VT) in the Senate. A list of current cosponsors is below.

The legislation does several things, but the most important provision is one developed with the assistance and support of Council 220. It would remove funds for SSA from the Labor-HHS Appropriations bill and treat SSA just as the rest of the Social Security program is treated for budgetary purposes. The effect of this change would be that the agency would no longer be forced to compete with hundreds of other well-deserving programs for its money. The only

basis for determining annual funding would be the needs of the program and the availability of trust fund money.

Currently, under budget rules, each year the Appropriations Committees receive an allocation of funds for all of its programs. The Committee then divides that number and allocates specific amounts to each appropriations subcommittee. Each subcommittee determines its program spending decisions based on that allocation. Thus, increasing spending for one program will require offsetting spending reductions elsewhere within the subcommittees allocation. This is why SSA must compete with all other Labor-HHS programs for its funding and why it is so difficult for the agency to get what it needs.

The difference between SSA and all these other programs is that SSA derives its funding not from general tax revenues – as is true of the other programs – but from the Social Security Trust Funds. It is on this basis that we are urging Congress to enact this, or a similar version of the Social Security Fairness Act.

Cosponsors of Social Security Administration Fairness Act:

Senate: Bernie Sanders (VT) Sponsor

1. Cory Booker (NJ)
2. Elizabeth Warren (MA)
3. Jeff Merkley (OR)
4. Brian Schatz (HI)

House: John Larson (CT) Sponsor

1. Rep Barragan, Nanette Diaz [D-CA-44] - 6/27/2018 *
2. Rep Boyle, Brendan F. [D-PA-13] - 6/27/2018 *
3. Rep Brady, Robert A. [D-PA-1] - 6/27/2018 *
4. Rep Cicilline, David N. [D-RI-1] - 6/27/2018 *
5. Rep Dingell, Debbie [D-MI-12] - 6/27/2018 *
6. Rep Espaillat, Adriano [D-NY-13] - 6/27/2018 *
7. Rep Garamendi, John [D-CA-3] - 6/27/2018 *
8. Rep Gonzalez, Vicente [D-TX-15] - 6/27/2018 *
9. Rep Green, Gene [D-TX-29] - 6/27/2018 *
10. Rep Hastings, Alcee L. [D-FL-20] - 6/27/2018 *
11. Rep Higgins, Brian [D-NY-26] - 6/27/2018 *
12. Rep Kaptur, Marcy [D-OH-9] - 6/27/2018 *
13. Rep McGovern, James P. [D-MA-2] - 6/27/2018 *
14. Rep McNerney, Jerry [D-CA-9] - 6/27/2018 *
15. Rep Napolitano, Grace F. [D-CA-32] - 6/27/2018 *
16. Rep Norton, Eleanor Holmes [D-DC] - 6/27/2018 *
17. Rep Payne, Donald M., Jr. [D-NJ-10] - 6/27/2018 *

18. Rep Pingree, Chellie [D-ME-1] - 6/27/2018 *
19. Rep Raskin, Jamie [D-MD-8] - 6/27/2018 *
20. Rep Schakowsky, Janice D. [D-IL-9] - 6/27/2018 *

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 Member 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 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 FY2018 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.

National Endowment for the Arts (NEA) and National Endowment for the Humanities (NEH)

Adequate Funding and Protection From Being Eliminated From the Federal Budget

AFGE worked with Congresswoman Chellie Pingree (D-ME) to fight an amendment to the Interior Appropriations Bill to defund the National Endowment for the Arts and Humanities. We are also working with Senator Tom Udall's office toward full funding for the National Endowment for the Humanities (NEH) and the National Endowment for the Arts (NEA).

AFGE plans to participate in the 2019 Arts Advocacy Day lobbying with a coalition of arts unions organized by the Department of Professional Employees, AFL-CIO. AFGE works with this coalition to elevate the visibility of arts unions and asks for full funding for NEH and NEA.

Congressional Action:

- Continue to fight against amendments in the Labor HHS Funding bill to eliminate the NEA and NEH.