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. Federal employees in both pay systems are underpaid relative to their non-federal counterparts and have experienced a decline in living standards over the past decade.

Federal wages and salaries need a substantial adjustment both to restore the living standards of federal employees and to help agencies recruit and retain a federal workforce capable of carrying out the crucial missions of our government. Not only are federal employees paid less than their counterparts in the private sector and state and local government, but their wages and salaries do not begin to keep up with the cost of living. This practice is penny-wise and pound foolish, undermining agencies' best efforts at recruitment and retention and imposing tremendous costs associated with hiring and training. Throughout the government, experienced and highly effective federal employees reluctantly leave federal service in order to obtain higher wages and salaries from other employers.

White Collar Pay

The Federal Employees 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 BLS Occupational Employment Statistics data.

FEPCA set a schedule for gradual closure of gaps until 2002 when full comparability payments would be made, with full comparability defined as five percent below market rates. However, remaining pay gaps still average around 27%. In fact, no administration or Congress has provided pay adjustments according to the law's schedule for closing locality pay gaps since 1994.

For 2026, AFGE urges the Congress to provide at least a 4.3% pay adjustment for federal employees. The formula used to arrive at 4.3% for 2026 follows FEPCA's calculation of the relevant ECI (September 2023 to September 2024) plus an additional 1.0% to be distributed among the localities. The ECI adjustment would be 3.3% (ECI of 3.8% minus half a percentage point). The locality adjustment for 2026 should be at least 1%. Locality adjustments are meant to further the process of reducing the locality pay gap that currently averages in excess of 27% nationwide and help to maintain the purchasing power of federal employees.

The proposed 4.3% adjustment for 2026 is modest relative to the size of the pay gap between federal and non-federal wages and salaries, and low compared to the lost purchasing power federal employees have suffered over the past decade. However, an increase of 4.3% would demonstrate respect for the hard work and dedication of federal employees and start to make up for losses imposed during previous budget battles.

Perhaps most important, it would do more for recruitment and retention of the next generation of federal employees than any of the changes to hiring practices being contemplated. Direct hiring and excepted service hiring, both of which undermine the competitive service and the apolitical civil service, would be entirely unnecessary if federal wages and salaries were closer to market rates. Meaningful progress toward closing the federal-nonfederal pay gap not only does right by the civil service, it protects the system's integrity for future generations.

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.

The white-collar system uses BLS data to determine non-federal rates and thus the gap between federal and non-federal pay. However, the blue-collar system relies on surveys conducted by local teams that include union and management representatives from the agency in the local wage area with the largest number of blue-collar employees. These local survey teams are prohibited from using any data from local building trades union 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 guarantees 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 the 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. On the upside, it assures that no hourly worker's pay adjustment is less than the adjustment received by GS workers in that locality. The establishment of this floor on annual increases for

FWS workers was a tremendous AFGE accomplishment. But the imposition of a ceiling in the annual Financial Services General Government Appropriations bill, which has been in effect for decades longer than the floor, actually reduces the size of the annual pay adjustment that some WG workers would receive if that ceiling were not in place. As such, AFGE supports retaining the floor but lifting the ceiling on annual pay adjustments for FWS workers.

The issue of equalization of local pay area boundaries is separate and apart from the issue of pay adjustment caps. 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, Penn., are paid according to salaries in the New York City locality because according to census commuting data, Monroe County is part of the overall New York City labor market. However, 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 recruiting and retaining a talented federal workforce. The pay gap calculations have been ridiculed as "guesstimates" despite being based on BLS data using sound and objective statistical methods. These arguments are window-dressing for a much more malicious agenda.

Advocates of replacing the GS locality system with a so-called pay-for-performance system actually propose to reallocate federal payroll dollars in ways that will disadvantage lower paid employees and introduce favoritism and politics into the allocation of federal pay.

The outlines for a new system have received backing from conservative think tanks and contractors eager for the opportunity to administer the new systems. They have proposed paying higher salaries to those at the top of the current scale who are supportive of the current administration and lower salaries to those considered disloyal, or are in the middle and bottom. This reallocation would occur through a formal system that considers both market data by occupation and individual performance, and an assessment of support for a particular political agenda. Although the reallocation is not explicit, in the absence of a large increase in the overall federal payroll, some salaries would have to be reduced to pay for increases for those at the top. In the first Trump administration, political appointees used the Federal Salary Council and the Pay Agent to advance just such a plan.

The National Security Personnel System (NSPS), a short-lived experiment in "performance pay" in the Department of Defense during the George W. Bush administration, provides ample evidence 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 Pentagon managers over pay adjustments produced larger raises for white males and much lower raises for everyone else. 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.

Contractors posing as "good government" groups have also argued against paying federal employees market-rate wages and salaries by claiming that non-salary benefits should be included when comparing private and public sector compensation. 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 employer[1] should not be grounds for denying federal employees pay adjustments that allow them to keep up with the cost of living.

The virtues of the current system are rarely acknowledged. A December 2020 study by the Government Accountability Office (GAO) confirmed that the federal pay system does a far better job of avoiding pay discrimination by gender than private-sector pay systems, which allow broad discretion in pay-setting and pay adjustments. The GAO study[2] found that the gender pay gap in the federal government was 7 cents on the dollar as of 2017. Similar studies of the private sector reveal a gender pay gap of 18 cents on the dollar, more than double that of the federal sector. On average, for every $35,000 earned by males, women in the private sector are paid $28,700 and in the federal sector are paid $32,550. Of course, these gender-based differences should not exist at all, but the federal government has made more progress than the private sector in closing these gaps.

This relative advantage in the area of pay equity is not the only systemic virtue of the current pay system. Its structure is designed to create a good balance among several factors: market sensitivity, career mobility, internal equity, flexibility and recognition of excellence. All of these are attributes of a functional pay system if the system receives adequate funding. However, budget politics, "bureaucrat bashing," and a lack of understanding of the statistical processes used to compare federal and private sector pay combine to deprive a very fair system of the funds it needs to operate well. There is no fundamental problem with the GS system that adequate funding would not solve.

Congressional Requests:

1. Provide at least a 4.3% federal pay increase for 2026, as described in H.R. 493 and S. 126 The adjustments set forth in these bills aim to bring federal pay more in line with private sector pay. In the 35 years since the passage of FEPCA, the nationwide average pay gap has barely budged. This year, Congress should act to make at least some progress on closing the pay gap for purposes of market comparability, retention, recruitment, and to help restore the living standards of federal employees.

2. Resist the calls for pay "reform" that will introduce politics into the federal pay-setting, and inevitably reduce pay and benefits for federal employees who are in the middle and lower grades of the General Schedule. Any system that rewards those at the top by providing less.

To those suspected of failing to support the administration's political agenda or are at the bottom and middle of the pay system should be strongly opposed, no matter how compelling the obfuscating rhetoric of modernization might sound.

3. Codify the directive report language from previous National Defense Authorization Acts and require equalization of non-Rest of US local pay area boundaries between the Federal Wage System and the General Schedule. Eliminate the cap on pay adjustments for Federal Wage System employees found in Section 737 of the Financial Services and General Government Appropriations bill so that the prevailing wage system can operate as intended.

CONGRESS MUST PROTECT FEDERAL EMPLOYEES' RIGHT TO CHOOSE PAYROLL DEDUCTION OF UNION DUES

Federal Employee Payroll Deduction of Union Dues

By law, federal employees in union bargaining units must choose whether to join the union and pay dues. Federal employees only pay dues if they choose to join the union, and, because the federal government operates under an open shop collective bargaining arrangement, federal unions cannot collect "fair share fees" for those employees who choose not to join.

The open shop collective bargaining arrangement was first established 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. However, the employees in that bargaining unit are under no obligation to join the union, nor to pay any fees to the union.

If a federal employee chooses to join the union, they then have the option of having their dues deducted through the automatic payroll system. The mechanism by which union dues are automatically deducted from employee paychecks is no different than the automatic payroll deductions available to federal employees for items like health insurance premiums, charitable contributions, or a host of other payments.

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

2. U.S. Government Accountability Office, "GENDER PAY DIFFERENCES: The Pay Gap for Federal Workers Has Continued to Narrow, but Better Quality Data on Promotions Are Needed," GAO-21-67 (https://www.gao.gov/assets/720/711014.pdf)

When federal employees choose to join the union, they sign a form which establishes their union membership and sets up automatic payroll dues deduction. When federal employees choose to pay union dues, most utilize this process, which was established by the agencies to facilitate deductions for many purposes - not just collecting union dues.

Legislative Background

During the 113th Congress, Rep. Mark Meadows (R-N.C.) and Sen. Tim Scott (R-S.C.) introduced legislation (H.R. 4792 / S. 2436) to prohibit federal agencies from allowing federal employees to pay union dues through automatic payroll deduction. In 2013, Senator Scott also offered a Senate floor amendment to eliminate payroll deduction of union dues. This amendment was rejected, 43 to 56. During the 114th Congress, Rep. Tom Price (R-Ga) introduced H.R. 4661, the "Federal Employees Rights Act," which likewise proposed elimination of automatic payroll deduction of federal union dues.

In the 115th Congress, Rep. Todd Rokita (R-Ind.) introduced H.R. 3257, the "Promote Accountability and Government Efficiency Act." 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.

In the 118th Congress, Representative Ralph Burlison (R-MO) introduced the inappropriately named "Paycheck Protection Act," H.R. 4971, which would prevent agencies from making "automatic" dues deductions from employees' paychecks despite the fact that union members have requested such deductions.

Additionally, AFGE succeeded in defeating an amendment to the FY'24 Financial Services and General Government Appropriations bill offered by Representative Andy Ogles (R-TN) that would have blocked implementation of a Federal Labor Relations Authority (FLRA) rule to set a regular schedule for when federal union members could cancel their union dues. With intensive lobbying by AFGE, the amendment was defeated by a vote of 223-196, with 19 Republicans voting with all Democrats to reject this amendment.

Dues Deduction Does Not Significantly Increase Costs for the Federal Government

Opposition to payroll deduction of union dues is sometimes justified with the false premise that elimination of payroll deduction would produce cost savings to the government. However, because payroll deductions are performed electronically, it costs the government virtually nothing to deduct union dues. The federal government currently provides payroll deductions using the same mechanism for the following:

- Combined Federal Campaign (Charities).

- Federal, state, and local taxes.
- Federal Employees Retirement System annuity funding.
- Thrift Savings Plan (TSP) contributions and TSP loan repayments.
- Federal Employees Health Benefits (FEHBP) and Federal Employees' Group Life Insurance (FEGLI) premiums.
- Supplemental private dental, vision, and long-term care insurance (these are not financed at all by the government, just facilitated through payroll deductions for premiums).
- Court-ordered wage garnishment for alimony and child support, bankruptcy, and commercial garnishment.
- Flexible spending accounts for payment of health costs not covered by insurance.
- Collection of debts owed to the United States.
- Professional Association dues.
- Personnel account Allotments (savings accounts).
- IRS Paper Levies.
- Military Service Deposits.

There is effectively no cost whatsoever to the government when federal employees request automatic union dues deduction from their paychecks.

Dues Deduction is the Law

Furthermore, as stated in 5 U.S. Code § 7115 - Allotments to representatives, the federal government must allow for dues deduction. The statute is below:

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

> *(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or*

(2) the employee is suspended or expelled from membership in the exclusive representative.

(c)

(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)

(A)The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

(B)Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1203.)

Conclusion

AFGE strongly opposes any efforts 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' ability to form and join unions. Congress must protect federal employees' right to join a union and have their dues automatically deducted from their paychecks if they so choose.

DOGE

I. The Department of Government Efficiency (DOGE)

As has been widely reported, President Trump has enlisted powerful allies in his war against the federal government, most notably by appointing Elon Musk and former Republican presidential candidate Vivek Ramaswamy to run the Department of Government Efficiency (DOGE), an entity that, despite its name, is NOT a federal agency but instead a private commission that President-elect Trump established for the purpose of advising the Office of Management and Budget (OMB) on how to cut trillions of dollars in federal spending. Despite lacking formal authority, DOGE will, at least initially, have considerable influence over administration and congressional policy simply because Musk and Ramaswamy, two outsized personalities with virtually unlimited resources to promote their agenda and demonize their critics, lead it.

What Does DOGE Plan to Do?

In explaining their mission in the *Wall Street Journal* op-ed, Musk and Ramaswamy stated that they will focus on three major kinds of reforms: 1) regulatory rescissions, 2) administrative reductions and 3) cost savings. The AFGE Legislative Department expects DOGE to focus on:

1. Identifying existing federal regulations that, as DOGE argues, go beyond congressional authorizations;

2. Promoting a culling of the federal workforce by undertaking "reductions in force" that circumvent federal civil service protections, relocating federal agencies outside Washington, DC, and requiring employees to come to the office five days per week; and

3. Cutting federal budget outlays by refraining from spending appropriated funds, ending federal spending for programs that are not currently authorized by Congress, and highlighting perceived "waste" and "fraud" within federal programs, particularly with respect to government contracts.

This work will ostensibly be based on several recent Supreme Court cases, as well as a belief that the Supreme Court will approve many presidential actions challenged in the judiciary.

What Powers Will DOGE Have?

DOGE will not have official government powers. As an unofficial entity, DOGE itself does not have authorities to issue rules, rescind regulations, terminate federal employees or enforce federal laws. But, behind the scenes, DOGE is expected to wield significant influence. According to its leaders, DOGE will identify issues and make recommendations to the White House, agency leaders, and Congress for action. In particular, DOGE leaders say they will work closely with the existing Office of Management and Budget, the agency charged with budget development, oversight of agency performance and financial management, and coordination of federal regulations. It is expected that the issues that DOGE draws attention to will receive intense focus by Congressional Republicans.

Further, the House Oversight and Accountability Committee, which remains under Republican control, announced that it intends to create a subcommittee that would work directly with DOGE. Presumably, this coordination would serve as a channel for DOGE to make recommendations that result in congressional investigations and/or legislative proposals.

Limitations and Concerns

During the presidential transition, DOGE's stated mission hit all the favorite "buzzwords" of small-government champions. However, it is not clear what the DOGE output will comprise. DOGE is likely to have the greatest impact in making recommendations to suspend or rescind federal regulations. Separate from the work of DOGE, President Trump is expected to push a significant deregulatory agenda. This deregulatory agenda may include changing civil service rules, defunding or restricting resources to the Environmental Protection Agency and rolling back Biden Administration priorities, like fuel efficiency standards and regulation of power plant emissions. DOGE proposals that align with the existing deregulatory efforts are likely to be welcomed and implemented, especially since President Trump has promised to test the bounds of authority to direct federal agency regulatory changes with little input from Congress.

DOGE leaders have also proposed a rather unprecedented strategy. Specifically, they have enumerated plans to identify regulations that potentially run afoul of two recent Supreme Court decisions: *West Virginia v. Environmental Protection Agency* (which holds that agencies do not have the authority to issue regulations dealing with "major" economic or policy questions unless Congress specifically authorizes them to do so) and *Loper Bright v. Raimondo* (overturning the long-standing *Chevron* decision holding that federal courts must defer to an agency's interpretation of statutes containing ambiguous or no authorizing language related to the issue at hand). Musk and Ramaswamy say that, once they identify regulations that purportedly violate the rulings, they will present a list of such regulations to President Trump, who may then, via executive order, pause their enforcement and commence a process to rescind them. It is likely that such efforts will be challenged in court.

However, with respect to cost-cutting, DOGE may face more challenges. The U.S. federal budget is more than $6 trillion, with the majority of that spending directed to entitlement programs like Social Security, Medicare, and Medicaid. These programs are popular, and proposals to limit them would surely face fierce political pushback. Moreover, with respect to federal discretionary spending, Trump Administration efforts to refuse to spend appropriated funds on government programs will also likely face legal challenge under the Impoundment Control Act, though the DOGE leaders have expressed confidence that the current Supreme Court will support such efforts.

Congress also plays a significant role in federal spending, by authorizing and ultimately appropriating funds for federal agencies and federal programs. While the Republican-controlled Congress will very likely work in lockstep with the Trump White House, it is equally likely that Republican members of Congress will be uncomfortable with delayed payments and spending cuts to programs favored by constituents. In particular, government contractors are likely to push back against proposals from DOGE leaders to temporarily suspend payments to contractors while large-scale audits are conducted. Such suspensions could run afoul of the 1982 Prompt Payment Act and, depending on the duration and the amount of nonpayment, may cause the government to be in material breach of their contracts. Members of Congress may dislike their constituents struggling to meet payroll and stay afloat during the envisioned audits. Similarly, White House efforts to curtail federal procurement characterized (fairly or unfairly) as wasteful may find friends in Congress and in the public to ensure continuing federal funding supporting their contracts.

OFFICIAL TIME IS ESSENTIAL TO FEDERAL GOVERNMENT EFFICIENCY AND PRODUCTIVITY

Official Time in the Federal Government

Official time is a legal term that describes time spent by federal employees who volunteer to be union representatives as they carry out representational duties required by the Civil Service Reform Act of 1978.

The Civil Service Reform Act of 1978 requires federal employee unions to represent all federal employees in a bargaining unit, including those who choose not to pay union dues. Because of this requirement, the law also gives unions the right to bargain over amounts of official time. The law states that the amount of official time granted by a federal agency to volunteer union representatives should be granted in amounts that are "reasonable, necessary, and in the public interest." (5 U.S. Code § 7131).

Official time gives federal agencies and their employees the means to quickly and effectively use employee input to address mission-related challenges and resolve workplace conflicts. Employees are only able to use official time if they have received prior approval from management.

For decades, both parties have supported the use of official time, while repeated legislative attempts to eliminate official time have been defeated with strong bipartisan support.

How Official Time Works

In the federal government, employees join a union and pay dues only if they choose to do so. However, federal employee unions are required to provide services to all employees in union bargaining units, even those employees who choose not to join the union and pay dues. Nevertheless, federal unions are forbidden from collecting any dues from non-members for the services the union must provide.

In exchange for the legal obligation to provide services to those who pay dues as well as those who choose not to, 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 for a duration of time that the labor organization and agency agree is reasonable, necessary, and in the public interest.

Legally permitted representational activities are limited to:

- Creating fair promotion procedures that require that selections be based on merit, 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 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 that 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 report basic information on official time annually to the Office of Personnel Management (OPM), which then compiles a governmentwide report on the amount of official time used by agencies. In 2017, OPM reported that the number of official time hours used per bargaining unit employee was 2.97 hours in FY 2016, and that official time costs represented just 0.1% of the total of federal employees' salaries and benefits. With severe restrictions on the use of official time, which OPM then dubbed "Taxpayer Funded Union Time," that number fell to 1.96 hours per bargaining unit employee in FY 2019, or one-third less representational time per employee.

Official Time Makes the Government More Efficient and More Effective

Using official time, union representatives work with managers to improve quality, productivity, and efficiency across the government. These improvements 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 efficiency in a competitive market. The same is true in the federal government. No effort to improve governmental performance will be successful if labor and management maintain an adversarial relationship.

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 effectively.

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 agencies – for instance, the joint design of training for employees on work-related subjects, or the introduction of new programs and work methods.

Union representatives also use official time for routine problem-solving of workplace issues – for instance, agency health and safety programs operated under the Occupational Safety and Health Administration (OSHA) for 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, a labor-management effort to improve agency product quality and procedural efficiency. For instance, union representatives have used official time to work with the Department of Defense to complete a department-wide performance management system and improve hiring practices within the department.

Official time also gives federal employees the ability to provide protection against discrimination or unfair treatment. Any prohibition on the use of official time eliminates these basic, much-needed protections.

Official Time During the First Trump Administration

In 2018, President Donald Trump issued an executive order to eliminate federal employees' right to bargain over official time. The order prohibited official time for the purpose of pursuing grievances or representing employees in negotiated grievance procedures. It also set an arbitrary limit on the number of hours of official time that agencies could grant union representatives. Congress soundly rejected the executive order with statements of bipartisan opposition.

On August 29, 2018, a federal judge ruled that the executive order was in violation of current law; however, the administration successfully appealed this decision to the U.S. Court of Appeals for the D.C. Circuit, which ruled that the District Court did not have jurisdiction to rule on the lawsuit. Thus, the executive order remained in effect until 2021, when the Biden administration revoked the anti-official time order to restore federal employees' collective bargaining and representation rights.

Legislative Action on Official Time

During both the 117th and 118th Congress, no official time legislation came to the floor for a vote in the House or Senate.

Congressional Action in the 118th Congress:

- S. 1053 – "IRS Customer Service Improvement Act" by Senator Mike Braun (R-IN): Ban the use of official time at the Internal Revenue Service during five months of the year that are considered tax season.

- S. 3955 – "Taxpayer-Funded Union Time Transparency Act" by Senator Joni Ernst (R-IA): Require the heads of federal agencies to submit to Congress an annual report regarding official time authorized under title 5, United States Code, and for other purposes. A companion bill, H.R.7692, was introduced in the House of Representatives by Rep. Scott Franklin (R-FL).

- Senators Jim Lankford (R-OK) and Marcia Blackburn (R-TN) launched an inquiry in December 2023 regarding the Office of Personnel Management's decision to take certain reporting of agencies' use of official time off its website. They were joined by eight other Republican Senators. In the letter, they were critical of any use of official time.

- In March 2023, the House voted 207-223 to reject a Perry-Foxx amendment that would have symbolically attacked official time by prohibiting union workers on official time from allegedly engaging in social media censorship. Sixteen Republicans voted no on the amendment.

Congressional Action in the 117th Congress:

- H.R. 2793 - "Official Time Reporting Act" by Rep. Jody Hice (R-GA): Require OPM to report to Congress on the use of official time, how much is granted to personnel, the actions for which it is granted, and the total compensation of those utilizing official time.

- H.R. 1902 - "Do Your Job Act of 2021" by Rep. Dan Bishop (R-NC): Completely repeal official time as allowed under title 5 U.S. Code.

- S.Con.Res. 5 by Sen. Rand Paul (R-KY): During consideration of FY 2022 budget reconciliation, Sen. Paul proposed Senate Amendment 375 to eliminate all official time. The amendment did not receive a vote in the Senate.

- On July 30, 2021, Sen. James Lankford (R-OK) and others sent a letter to OPM and 54 agency heads calling for an accounting of what he dubbed "taxpayer-funded union time." The letter, which was co-signed by Senators Richard Burr (R-NC), Ron Johnson (R-WI), Rand Paul (R-KY), Mitt Romney (R-UT), and Mike Braun (R-IN), called for the job titles and total compensation of every employee utilizing this misnamed activity.

- In FY 2022, AFGE urged the inclusion of language in Financial Services and General Government (FSGG) Appropriations bill that would require agencies to bargain in good faith and give unions the opportunity to fairly negotiate the use of official time. The House-passed FY 2022 FSGG bill included the language: "None of the funds made available by this or any other Act may be used to prevent Federal workers from— (1) using official time for union activities; (2) teleworking for telework deemed positions or when the health or safety of an employee is in question; or (3) using space in Federal buildings for union activities."

Congressional Action Prior to the 117th Congress:

- On April 29, 2015, Rep. Jody Hice (R-GA) offered an amendment to the Military Construction-Veterans Affairs Appropriations bill to eliminate official time for all Department of Veterans Affairs (VA) employee union representatives. The House of Representatives soundly rejected the amendment by a vote of 190-232, with all Democrats and 49 Republicans voting against the elimination of official time within VA. However, official time is brought up by its opponents in Congress in each Congress.

Conclusion

AFGE calls on Congress to uphold current law and oppose any attempts to eliminate federal employee unions' ability to fulfill their legal obligations to represent all members of a bargaining unit, regardless of their membership status. Official time is the means by which unions accomplish this important function. Further, AFGE asks Congress to prevent any U.S. President from abrogating the law and/or collective bargaining agreements that include guarantees of specific amounts of official time. 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.

TELEWORK AND REMOTE WORK

President Trump's top goal with respect to the federal workforce is the elimination of telework and remote work provisions in collective bargaining agreements. Throughout the 2024 presidential election, Donald Trump expressed outright hostility to federal telework options. Despite numerous studies and surveys consistently showing that telework and remote work agreements increase agency productivity, improve customer service, and boost employee morale, there is a widespread and growing belief among Members of Congress – *in both the Republican and Democratic parties* – that telework has outlived its usefulness and that a return to "traditional" in-office work is long overdue. District of Columbia Mayor Muriel Bowser has contributed to the negative perception of federal telework, falsely arguing that it is largely responsible for high office vacancy rates in downtown DC that in turn have hurt the local economy.

To push back on the growing negative perception of telework on Capitol Hill, AFGE's legislative team spent a considerable portion of its time during the 118th Congress (2023-24) educating senators and representatives about how telework and remote work fit into the collective bargaining process, why claims that it has led to high vacancies rates in federal office buildings are false, and what benefits telework delivers to taxpayers. These efforts bore significant fruit insofar as AFGE was able to prevent every measure targeting telework from becoming law in the 118th Congress. Unfortunately, the outlook for 2025 is discouraging; with Republicans hostile to the federal workforce in general and telework in particular now controlling both the White House and Congress, protecting telework agreements will be extremely difficult.

Threats to Federal Telework in 2025

There is little doubt that President Trump will use every power at his disposal to target telework agreements. The key question is to what extent can Trump unilaterally abrogate existing collective bargaining agreements to roll back telework provisions that have been negotiated in good faith between agency managers and federal labor representatives. Trump could, for example, invoke "national security" to strip telework from collective bargaining agreements. He could also refuse to renew telework agreements as they come up for review.

The bottom line is that telework in 2025 is threatened on two fronts: (1) by President Trump who, with a stroke of a pen or through novel and controversial interpretations of Title 5, could upend any number of provisions in collective bargaining agreement and (2) by the Republican-

controlled 119th Congress, which will embrace any legislative vehicle it thinks can become law to unwind existing collective bargaining agreements, be it through the fast-track reconciliation process that Republicans are expected to use to extend sweeping tax cuts that were enacted in 2017, amendments to annual appropriations bills, or free-standing bills that directly target federal collective bargaining agreements.

Just how hostile the environment will be for telework in 2025 will be showcased when key Republicans in Congress who are arch critics of telework begin their promised investigations into telework agreements for federal employees. Most notably, House Oversight and Accountability Committee Chairman James Comer (R-KY) announced plans to hold a hearing on federal telework early in the 119th Congress.

Comer's upcoming hearing is expected to address a range of questions on federal telework — but perhaps most notably, committee members will scrutinize recent telework agreements between agencies and federal unions. Martin O'Malley, former commissioner of the Social Security Administration, was asked to testify after Republican committee members raised questions about SSA's recent telework agreement with AFGE. Comer said the upcoming hearing with O'Malley will "shed light on why so much of the federal workforce is currently at home, and federal agency offices are largely vacant."

The Department of Government Efficiency (DOGE)

To put it bluntly, defeating President Trump's determination to eliminate federal telework will be difficult. Trump has enlisted powerful allies in his war against telework, most notably by appointing Elon Musk and former Republican presidential candidate Vivek Ramaswamy to run the Department of Government Efficiency (DOGE), an entity that, despite its name, is NOT a federal agency but instead a private commission that President-elect Trump established for the purpose of advising the Office of Management and Budget (OMB) on how to cut trillions of dollars in federal spending. Despite lacking formal authority, DOGE will, at least initially, have considerable influence over administration and congressional policy simply because Musk and Ramaswamy, two outsized personalities with virtually unlimited resources, lead it.

Musk and Ramaswamy wrote in a November *Wall Street Journal* op-ed that they plan to require federal employees to return to the office five days a week.

"Requiring federal employees to come to the office five days a week would result in a wave of voluntary terminations that we welcome: If federal employees don't want to show up, American taxpayers shouldn't pay them for the Covid-era privilege of staying home," Musk and Ramaswamy wrote.

Musk and Ramaswamy's return-to-office plans are consistent with what AFGE and other federal unions expected following Trump's election in November. More than 66% of the more than 1,000 federal employees who participated in a *Federal News Network* post-election pulse survey said they expected the Trump administration to sharply reduce telework and remote work.

Bills Targeting Telework in the 119th Congress

Several Members of Congress have already introduced or soon will introduce federal telework bills, all aiming to make changes to the government's telework program – whether it is by requiring federal employees to return to the office, or adding more data and accountability standards designed to cast telework in the worst possible light. Many of these bills were first introduced in the 118th Congress.

Leading critics of telework in the 119th Congress are Sen. Jon Ernst (R-IA), Sen. Rand Paul (R-KY), Rep. James Comer (R-KY), and Rep. Scott Perry (R-PA). Significantly, the intensifying hostility toward federal telework agreements is becoming increasingly bipartisan. While Congressional Republicans were, in the months following the end of the covid crisis, generally alone in calling for drastic changes to telework, during the 118th Congress there was a considerable uptick among Democrats who expressed reservations about the role of and need for telework in a post-pandemic world. It is virtually certain that more than a few House and Senate Democrats, and perhaps significantly more, will be inclined to support some legislation that takes aim at telework. AFGE's urgent task is to impress on these members that the principle at stake is not telework but the integrity of collective bargaining agreements reached in good faith between agency managers and federal union representatives. If Congress or the Trump administration can override telework policies in a collective bargaining agreement, they can override any provision in a collective bargaining agreement, rendering it of little value and making a mockery of all the rights that Title 5 is supposed to confer on the civil service.

1. **Telework Transparency Act:** In the 118th Congress, the AFGE Legislative Department spent considerable time fighting the bipartisan Telework Transparency Act, introduced by Sen. Gary Peters (D-MI) and Sen. Joni Ernst (R-IA), that would direct federal agencies to provide up-to-date information on federal telework, while also assessing factors like productivity, office space, and recruitment and retention. To assist agencies with the bill's proposed requirements, the Office of Personnel Management would set rigorous data standards and protocols for agencies as they track employees' participation in telework. The bill's underlying flaw is that it starts from the premise that telework's utility has to be justified according to demanding criteria that are not used to measure in-office work. AFGE repeatedly pointed this flaw out to Sen. Peters, Sen. Ernst, and their staffs. Among the concerning provisions of the bill as introduced was a requirement that agencies increase utilization of "office building space" to "not less than 60 percent" as well as establish what are called "automated telework tracking systems" as well as extensive performance indicators related to telework. However, AFGE was able to negotiate improved provisions in the bill, including changing how space was defined in order to give more flexibility to federal agencies and exclude common areas and spaces used for service, manufacturing, and other purposes. In addition, the bill now takes account of workers involved in field work and off-site training so that they are not unfairly penalized in space use calculations. In the end, the bill never made it to the Senate floor, but AFGE is certain it will advance in some form in the 119th Congress.

2. **The REMOTE Act:** the Requiring Effective Management and Oversight of Telework Employees, introduced by Sen. Ernst, would require federal agencies to use software to gather data on the adverse effects of telework in the federal government by monitoring employees' computer use. The legislation would also require agencies to issue reports and provide key information for individual performance reviews.

3. **SHOW UP Act:** On February 1, 2023, after bypassing normal committee processes, the House voted 221-206 to approve H.R. 139, the "Stopping Home Office Work's Unproductive Problems Act of 2023" (SHOW UP Act). This bill, sponsored by Representative James Comer (R-KY) and other mostly conservative Republicans, would nullify federal agency telework policies that were developed after 2019 and would force agencies to order employees back to offices to the same exact degree as before the pandemic. AFGE and other labor unions, including the AFL-CIO, strongly opposed this bill, in part because it would seek to override existing collective bargaining agreements (including many that were developed during and after the pandemic through negotiation).

4. **Utilizing Space Efficiently and Improving Technologies Act (USE IT Act):** introduced by Rep. Scott Perry (R-PA), this bill was the most significant threat to telework that was considered in the House in the 118th Congress. The bill would mandate the use of "sensors" to measure federal building utilization and would decree that all buildings, regardless of their exact uses, have a utilization rate of at least 60%. If agencies fail to meet that arbitrary threshold, buildings would be sold off, consolidated, or disposed. The bill failed to differentiate among the many diverse facilities within federal buildings, which may include warehouses, maintenance facilities, public meeting spaces, cafeterias, and so forth – nor did it account for the many federal workers whose jobs require field work as well as in-office activities. AFGE strongly objected to the bill, joined by the AFL-CIO. On March 12, 2024, the House narrowly passed the USE IT Act by a vote of 217 to 203.

5. **The Federal Employee Return to Work Act:** introduced by Rep. Don Newhouse (R-WA), this bill would remove locality pay for any federal employee who teleworks at least one day a week. Federal teleworkers would instead only receive their base pay rates. In the 118th Congress, the bill was referred to the House Oversight Committee, but did not see any further action.

6. **Telework Amendments in Appropriations Bills:** AFGE opposed several amendments to limit funding for, and in some cases eliminate telework at several agencies. For example, AFGE opposed an amendment to H.R. 4365, the "Department of Defense Appropriations Act, 2024," introduced by Representative Harriet Hageman (R-WY) to arbitrarily and without justification prohibit regular telework and remote work for Defense Department civilian employees and contractors. Longstanding policy has, with considerable success, directed DoD agency managers and personnel to collaboratively develop and implement telework policies that address the specific needs of agencies and further their missions. Importantly, the workplace flexibility that telework enables has improved DoD's capacity to maintain continuous operations in the event of a natural or national security crisis. It has also helped DoD agencies recruit and retain talent, be more productive, and reduce traffic congestion and emissions. Not insignificantly, remote work and telework are particularly important for military spouses who are frequently deployed to remote places with few job opportunities but can otherwise contribute to the federal civilian workforce. This amendment did not receive a recorded vote. It was approved by voice vote in the House but was not a part of the final FY24 appropriations bill.

PRESERVING AND DEFENDING THE COMPETITIVE CIVIL SERVICE

In late October 2020, President Trump issued an Executive Order (EO)[1] creating a new Schedule F in the excepted service. The EO creating Schedule F, which was never implemented, would have permitted the transfer of tens and potentially hundreds of thousands of positions from the competitive civil service into the excepted service. These newly transferred excepted service positions would have been "at will" positions, with no tenure protections, regardless of employees' prior years of service or quality of performance.

Newspapers were filled with stories about the Schedule F plan, most decrying it as a politicization of the career civil service.[2] Trump has reiterated his plan to establish Schedule F in a second term. If that occurs, it is likely that many long-time federal employees will themselves effectively be serving as political appointees, subject to removal without cause or any due process rights. Nor can federal workers expect much relief from Congress if President Trump again chooses to implement Schedule F. Congress has failed to adopt any law

prohibiting new personnel schedules like Schedule F, while some Republican leaders have vocally supported the scheme.

In one hopeful development, following lobbying by AFGE, in November 2023 the Republican House narrowly rejected a funding bill amendment that would have blocked OPM from issuing a rule designed to thwart future administrations from reinstating Schedule F. Fifteen Republicans joined Democrats to defeat the amendment, thus allowing OPM rulemaking to proceed. Although OPM was able to complete rulemaking in April 2024, there is little doubt the Trump administration will seek to reverse the rule, which among other provisions preserves existing tenure protection for civil servants who are forced onto Schedule F.

In addition to the Trump Schedule F plan, there remain many continuing threats to the competitive civil service. The threat posed by expansion of the excepted service is multi-faceted. It emerges when agencies seek and exercise excepted service hiring authority for positions where competitive service hiring authority exists – that is, in cases where there is no rationale inherent to the position that justifies an excepted service designation. These cases expose the dangers of the excepted service. In order to understand how the excepted service threatens the competitive service, it is necessary to clarify the differences between the two.

What is the Competitive Civil Service?

The competitive civil service consists of all civil service appointments in the executive branch other than Senate-confirmed presidential appointments and other positions excepted by statute, or a presidential or Office of Personnel Management (OPM) determination.[3] In contrast to the competitive service are positions placed into the excepted service.[4] The excepted service is in many ways an alternative framework that is a legacy of the patronage system.

After the competitive service was created and expanded for almost one hundred years, positions not placed into the competitive service were known as excepted or unclassified positions, i.e., excepted from the competitive service (also sometimes referred to as unclassified jobs).

[1] EO 13957 dated October 21, 2020

[2] Washington Post, "Trump's newest executive order could prove one of his most insidious," October 23, 2020.

Positions in the competitive service have full civil service tenure and due process rights after completion of a probationary period. "Competitive service" status confers the ability to compete for or transfer to any other competitive service position for which an employee qualifies without further examination by the U.S. Office of Personnel Management (OPM) or any agency. Until relatively recently, virtually all initial appointments, i.e., generally a person's first appointment into a position in the competitive service, were filled only after an applicant had been competitively "examined" by OPM or an agency with delegated examining authority. The examination requirement[5] was designed to achieve four objectives:

1. Ensure there is actual documented competition for jobs in the civil service by publicly posting openings.

2. Ensure that only qualified or highly qualified people are appointed after a thorough examination of a candidate's knowledge, skills and abilities to perform the work of the position(s).

3. Ensure diversity in the most efficient way by enabling large numbers of candidates to be evaluated in the least burdensome way by having their knowledge, skills and abilities assessed as general "competencies" that can generate referrals to multiple jobs rather than placing the burden on job applicants to apply for similar jobs; and

4. Ensure that qualified veterans[6] are given appropriate credit for consideration in filling positions.

What is the Excepted Service?

The alternative to the competitive service is the excepted service. Prior to passage of the

GOVERNMENT SOURCING

When the government decides whether to have its work performed in-house by federal employees, or outsourced to be performed by private contractors, several factors must be considered. To prioritize the interests of American citizens in the efficient use of government funds, federal agencies should:

1. Manage by budgets and workloads instead of arbitrary constraints on the size of the federal employee workforce.

2. Review service contracts (which have never been systematically examined) for potential savings.

3. Fix the cost factor problems in OMB Circular A-76.

---

[3] 5 U.S.C. § 2102
[4] 5 U.S.C. § 2103
[5] *See* generally 5 U.S.C., Chap 33
[6] 5 U.S.C. § 2108

4. Use the revised OMB Circular A-76 to determine if particular functions should be converted from federal employee performance to contractor performance (contracting out) and vice versa (insourcing).

5. Complete service contract inventories and review them for insourcing opportunities.

The looming threat to reduce the federal workforce may lead to agencies cutting federal employee positions even if their work still needs to be performed and their budgets aren't cut. To solve this problem, agencies will do what they've always done: use private
Government services can be provided by two sources: federal employees or private contractors. Some work of the federal government should only be done by federal employees, including work that is inherently governmental, closely-associated with inherently governmental, critical, or mission-essential.

Functions that are commercial can be performed by either source, setting costs aside. However, federal statutes and executive branch policy (OMB Circular A-76) state that functions performed by one source can't be converted to the other source unless the agency completes a mandatory competition process to determine whether or not the change would save taxpayer money while still providing the same services.

Because of glaring flaws in the OMB Circular A-76 competition process and a general lack of enforcement, Congress made compliance with the competition process a statutory requirement and added additional requirements while changing others. Failure to address the flaws and increase enforcement led Congress to ban OMB Circular A-76 competitions beginning in 2009. The problems with the current version of OMB Circular A-76 are that it doesn't identify what costs should be included and how to measure them, and it doesn't provide a system for tracking costs and calculating actual savings. These flaws are detailed in a 2006 DoD Inspector General report and two 2007 GAO reports:

a. In GAO-09-14, GAO found that several agencies (including DoD, USDA FS, and DoL) did not develop comprehensive estimates for function costs.
b. In GAO-08-195, GAO stated that "OMB guidance on how to calculate savings does not specify all of the costs that should be included in the calculations."
c. In D-2003-056, the DoD Inspector General reported that ""DoD had not effectively implemented a system to track and assess the cost of the performance of functions" and "the overall costs and the estimated savings may be either overstated or understated."

d. In GAO-08-195, GAO reported that the USDA's Forest Service lacked sufficiently complete and reliable cost data and did not consider certain substantial costs in its savings calculations."

REFORMING THE A-76 PROCESS

The following changes should be made in the OMB Circular A-76 process so that it can be used again.

- Increase the Conversion Differential. The conversion differential of 10% of in-house personnel costs (which is intended to capture non-quantifiable costs, such as disruption and decreased productivity, and prevent conversion based on marginal savings) should be increased to take into account the costs of conducting A-76 studies, including preliminary planning costs, consultants costs, costs of federal employees diverted from their actual jobs to work on privatization studies, transition costs, post-competition review costs, and proportional costs for agencies' privatization bureaucracies (both in-house and out-house).

- Conversion Differential and Study Length. For studies that last longer than 24 months, the minimum cost differential should be doubled to reflect the additional costs of conducting the study. The A-76 circular is based on the assumption that standard competitions would last no longer than a year except in unusual circumstances. The conversion differential should be increased to take into account the cost of longer A-76 studies.

- Overhead. Eliminate the arbitrary 12% overhead charge on in-house bids. OMB Circular A-76 imposes an overhead of 12% of personnel costs on the in-house bid. In the competitive process, all significant in-house costs are researched, identified, and supported except for the overhead charge. It is very possible that some expenses are counted twice: listed separately as indirect costs and included in the 12% charge. As the DoD IG stated:

    a. The use of the 12% (in-house) overhead factor affected the results of the cost comparison and (DoD) managers were not empowered to make a sound and justifiable business decision.
    b. In the competitive sourcing process, all significant in-house costs are researched, identified, and supported except for overhead.
    c. Unless DoD develops a supportable rate or an alternative method to calculate a fair and reasonable rate, the results of future competitions will be questionable.

- Vacancies. Prohibit the filling of vacant commercial federal employee positions with contractors as well as entering into a contract to provide the services that had been provided by those employees without first conducting an A-76 study.

- Support In-house Providers. Require agencies to provide winning in-house bidders (i.e, Most Efficient Organizations) with all resources obligated by the awards so that they can perform the function as intended.

- Enforcement. Establish a nonpolitical entity to enforce public-private competition laws and regulations, allowing a forum for affected employees to bring challenges to agency actions with the authority to require agency compliance before contracting can occur. OMB officials acknowledge that they have insufficient resources to enforce the A-76 Circular.

- Agency Tender Resources. Require agencies to provide adequate resources to the in-house team competing in an A-76 study, including function experts and full-time legal counsel with expertise in procurement and the public-private competition process.
- Illegal Preference for Contractors. Remove language in the A-76 Circular that expresses a bias towards the use of contractors instead of government personnel.

- Ask Employees. Federal employees are bursting with ideas as to how to make their work more efficient and effective. They should be consulted during the function review process so that they can identify opportunities for improvement.

- No Predetermined Savings. Agencies should not program in a savings assumption or an arbitrary downsizing number until a competition decision has been made.

OTHER REFORMS

- Internal Reorganization. Agencies should be encouraged to use internal reorganizing, such as Business Process Reengineering (BPR), in lieu of OMB Circular A-76 privatization reviews to achieve improvements in the delivery of services.

- Contractor Inventories. Agencies should complete service contract inventories so that they can track specific contracts as well as contracts generally.

- Insourcing. Agencies should develop and implement plans to actively insource new and outsourced work, particularly functions that are closely associated with inherently governmental functions, that were contracted out without competition, or are being poorly performed.

- No Direct Conversions. Agencies should enforce government-wide prohibitions against direct conversion of government work performed by federal employees to contractor performance.

CONTRACTOR INVENTORIES

Any true accounting of the size of the "government workforce" must include the vast number of federal contract employees. Estimates are that the contractor workforce is anywhere from three to six times the size of the 2.1 million civilian federal employee workforce. As such, any arbitrary cuts or downsizing quotas imposed on the federal employee workforce must be coupled with a corresponding cut in service contract costs.

Because the federal government's service contract workforce is larger and more expensive on a per employee basis than its federal employee workforce, any effort to achieve savings in how agencies provide services necessarily requires a reduction in contract services spending. Federal agencies govern by budgets and workloads. If they have functions to be performed and funding to pay for those functions, then agencies should be able to use federal employees or contractors, depending on the law, policy, cost, and risk.

There is little that agencies don't know about their federal employees, and it is imperative that agencies are able to identify and control contractor costs to the same extent that they can already identify and control federal employee costs.
However, agencies historically have not tracked service contracts. Agencies are required by statute to develop inventories of their service contracts to make them visible, but agencies have not yet complied. In 2021, GAO stated that agencies don't know how much contractors cost, the requiring organization (ultimate customer), the location where the work is performed, and the funding sources in the appropriations process.

FUNCTIONS THAT MUST BE PERFORMED IN-HOUSE

The federal government must keep for itself those functions necessary to carry out its missions and maintain control over all government actions. The purpose of government is to protect the rights of the people, and Americans have a right to the services that the government promises to provide using taxpayer dollars. In addition, the federal government has an obligation to American taxpayers to perform its functions efficiently and effectively. This duty remains with the government, whether or not the government uses the private sector to perform some parts of the functions.

Overriding Concerns

Previous efforts to define the term "inherently governmental" have focused on the characteristics of particular functions. While these definitions have been somewhat useful, there are other overriding concerns that should first be considered before turning to.

Technical Expertise/Institutional Memory

Agencies must develop and retain the technical expertise and institutional memory needed to manage and provide all functions necessary to meet their missions. This expertise is not limited to that needed merely to oversee contractor performance but also to make decisions for the agency about those functions and to perform those functions if necessary. In addition, no function should be contracted to the private sector if to do so would endanger the future technical capacity and institutional memory of the agency.

In the private sector, the rush to outsource functions considered routine has left many companies without the in-house expertise to effectively communicate with the contractors hired to do those functions. Too much outsourcing leads an entity to lose sight of what it needs from a function and how those goals can be achieved. Many private companies, and state and local governments,

have insourced work in recent years so that they own the expertise rather than relying on someone else to tell them both what they need and how much it will cost.

Federal agencies should undertake this same process. In the mad dash to hire contractors to perform tasks that, at first glance, may seem to be commercial, agencies have been drained of in-house expertise in a multitude of functions. In-house technical expertise in all functions performed by an agency, in addition to contract management skills, is necessary to perform essential management functions. Most federal government contracting horror stories start with inadequate agency knowledge of the technical aspects of the work and unreasonable reliance on contractors to oversee themselves.

Risk

No function should be contracted out if it poses too great a risk of creating a contractor monopoly or interfering with an agency's ability to perform its mission. Agencies face two kinds of risk when contracting for a function. First, if an agency relies too heavily on contracting to perform a function, it is possible that a contractor, by virtue of its work for an agency, could develop an exclusive expertise so that the agency cannot perform the function without a particular contractor. Second, the agency is ultimately responsible for performing a function, even if the selected contractor fails. The agency must determine the impact of contractor failure and whether it could interfere with the agency's mission. Contract oversight is useless if an agency can't penalize poor performance by removing the contractor without negatively impacting the mission. An agency must be able to reconstitute a function in-house if a selected contractor cannot satisfactorily perform the function.

Transparency and Accountability

No function should be contracted out if contractor performance could cause confusion to the public about whether or not the government is acting. As President Obama stated in a January 21, 2009, memorandum, transparency is important because it promotes accountability and provides information for citizens about what their government is doing. In order to determine what the government is doing, the public must be able to discern when the government is or is not acting.

Decision-making

Agencies must maintain sufficient in-house capability to be thoroughly in control of the policy and management of the agency. In so doing, government officials must be involved in the decision-making process to a greater degree than merely making the final policy decision on the basis of analysis and/or advice by a contractor or contractors. Agency officials must approve the analytical process leading to the decision options and use discretion and make the value judgments throughout the process.

Development and Maintenance of the Federal Workforce

Human resources must be treated as a critical business function, not just an administrative process. Agencies must place great importance on acquiring, developing, and retaining employees with the knowledge, skills, abilities, and experience needed to meet agencies' missions.

Contractor Oversight

Agencies must ensure that they have the ability to oversee contracts, including the ability to: Agencies must maintain an in-house workforce in every function in case of contractor failure and to provide a useful benchmark for determining whether contracted services are being provided at a reasonable cost and level of quality.

Integration with Inherently Governmental Functions

Some functions, while perhaps considered to be commercial in the abstract, are so integrated with inherently governmental functions that they cannot be separated. If poor performance by a contractor would interfere with the agency's mission, then these functions should not be performed by contractors.

Specific Training/Experience/Expertise Needed

Many functions needed by the government require unique training, experience and/or expertise that can only be acquired by performing the function. Even if retired or former federal employees might be currently available to perform the function as contractor employees, these functions should not be contracted out, because the government would cease to develop employees with the experience/expertise needed to perform the function in the future.

Particular Circumstances

No function should be contracted out until the agency examines the particular circumstances in which the function is performed and whether segregating that function will negatively impact agency flexibility and efficiency. In many situations, agencies utilize federal employees to perform more than one function. For example, at the United States Military Academy at West Point, the employees who perform custodial work are often used to assist in performing public works functions when the custodial workload allows. Segregating the custodial workforce from the public works workforce would negatively impact agency flexibility and efficiency.

The following are examples of functions which should never be outsourced to the private sector:

Information

- All activities involved in responding to FOIA and Privacy Act requests, including records maintenance.
- Management and security of classified material.
- Information technology governance.

- Access to individuals' private information.

Communication

- Representing an agency before the public, including preparing or presenting testimony; participating in hearings; preparing executive-level correspondence; attending conferences on behalf of the agency; conducting community relations; responding to questions or requests for information or services (e.g., call centers); communication with foreign governments; communication with state or local governments; waste, fraud, and abuse hotline operators; public affairs; park rangers; and museum operations.

- Representing an agency before any other governmental entity, including drafting or sending inter-agency communication.

- Representing an agency before Congress, including congressional affairs, preparing or presenting testimony before Congress; and preparing or presenting required reports.

Rules and Regulations

- Drafting regulations, policies, or other rules
.
- Interpreting or enforcing laws, regulations, policies, or other rules.

- Providing legal advice to government officials.

Rights, Privileges, Payments, Collections, and Entitlements

- Federal licensing and permitting.

- Determining eligibility to participate in any entitlement or benefit program.

- Immigration officers and investigate assistants.

- The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds.

Physical Security

- Physical security of military installations and other federal buildings.

- Firefighters and police officers.

- Operation and maintenance of locks and dams on navigable waterways
.
- Prisoner detention, guarding, and transport.

Financial Management

- Financial management, including budget preparation and drafting, internal auditing, and asset management and disposal.

- Determining budget policy, guidance, and strategy.

Procurement

- Acquisition planning and related support activities.
- Contract oversight and administration, including market research, developing statements of work, developing solicitations, technical evaluation of contract proposals; managing contractors; quality assurance; evaluation of contractor performance, and investigations of waste, fraud, and abuse.

- Any situation that could allow a contractor to access confidential business information, information on individuals, and/or any other sensitive information.

Military

- 50% of depot-level maintenance and repair.

- Core logistics capability necessary to ensure a timely and effective military response to mobilizations.

Management

- Program management and support.

- Services that involve or relate to reorganization and planning activities.

- Conduct of public-private competitions.

- Classifying functions as inherently governmental or commercial (including preparation of a FAIR Act inventory) and determining which functions or portions of functions are suitable for possible private sector performance.

- Determining federal program priorities or budget requests.

Personnel

- All functions related to all aspects of human resources, including hiring, labor management relations, and reductions-in-force.

- Creation of position descriptions and/or performance standards for federal employees.

- Representing an agency before government personnel, including labor relations and supervision.

- Any situation where the function performer might be assumed to be a government official.

- Agency EEO and health and safety compliance.

- Background investigations and security clearances for federal employees and contractor employees.

FEDERAL RETIREMENT

Introduction

Since 2011, federal workers have involuntarily contributed more $300 billion to deficit reduction. One source of this unwarranted contribution is the cumulative effect of three years of pay freezes followed by nominal pay adjustments far below the amounts called for by law. Federal employees hired in 2013 have also faced mandatory increases in employee pension contributions of 2.3% of salary; for those hired after that year, the mandatory increases amount to an additional 3.6% of salary more than what federal employees hired before those dates pay into the Federal Employee Retirement System (FERS). There was no increase in retirement benefits associated with these salary reductions; the effect has only been to shift costs for retirement from the government to workers in the name of fiscal austerity. Congress has never revisited this tax placed on federal salaries in 2011, even though the tax cuts that led to this tax increase were temporary and have yet to be renewed.

These increases in mandatory pension contributions for federal employees hired after 2013 make it all but impossible for lower-graded federal employees to take full advantage of the government's defined contribution retirement benefit. That is, federal employees whose salaries have been reduced to finance a flat defined benefit often must forgo the full 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 for decades into the future.

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 imposed year after year have been ruinous for federal employees, and for the government services on which all Americans depend.

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

Background

At the end of 2013, the then House and Senate Budget Committee negotiated over a budget that would repeal sequestration for two years in order to restore most agencies' funding levels above sequestration levels. Their primary differences were on which offsets should be used to pay for the two-year repeal of sequestration. Eventually, they agreed that one offset would be a $6 billion hit to federal employee retirement, which was achieved by increasing mandatory pension contributions/salary reductions for employees hired after 2013 to 4.4% of salary. Reducing federal workers' retirement security should not be used to facilitate budget deals. It was entirely unjustified and unjustifiable in 2013 and 2014, and the ongoing salary reductions first imposed during those years should be repealed. The $300 billion forfeited by the middle- and working-class public servants who make up the federal workforce has been an unconscionable tax increase on 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 the wealthiest Americans 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 will harm the budget and economy in the long term. 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. As the deficit has ballooned 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 further increase federal employee retirement contributions so that employees pay fully half of the cost of the FERS defined benefit amounts, which would result in a 6.2% pay cut 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% of American workers who receive a defined benefit from their employer are not required to make any "contribution" from their salaries for this benefit.

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 a dollar of retirement income to a federal worker is higher than that for a private-sector worker.

Federal employees should not be forced to pay this differential, and the unique circumstances of the federal retirement system must be taken into account in all situations where federal retirement benefits are compared to those in the private sector and state and local government.

Congressional Requests:

- Oppose all efforts to cut federal retirement benefits in the context of reconciliation including proposals that raise all FERS employee contributions to 4.4% of salary, elimination of the FERS Supplemental, changing the formula for FERS annuities from a High 3 base to a High 5 base, requiring new hires to pay up to 20% of salary for FERS or forfeit all of their federal employee due process rights.

- Support legislation that repeals the draconian increases in employee contributions to retirement for those hired after 2012.

- Oppose efforts to expand the government's ability to force employees to forfeit their earned pensions apart from those currently in law.

- Support the Federal Retirement Fairness Act. Introduced last Congress by Derek Kilmer (D-WA), this bill will allow former seasonal and temporary federal employees the option to 'buy back' retirement contributions to retire on time. It will be reintroduced with a new sponsor soon in this Congress.

- Support H.R. 491, the Equal COLA Act so FERS retirees are not punished by receiving a COLA that is less than CSRS and Social Security and less than the cost- of-living increase calculated under the law. This legislation will soon be reintroduced in the Senate.

FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Federal Employees Health Benefits Program

The headlines focused on the fact that federal employees' and retirees' average premiums would increase by 13.5 percent in 2025. In 2024, the average premium increase was 7.7% so putting these two years together means a terrible period of premium inflation.

Part of the increase in premiums is due to the fact that in 2024, FEHBP joined the practice of large private sector and state and local government health insurance programs and required coverage of some fertility treatments. The two treatments are artificial insemination (IUI) and IVF-related prescription drugs. There is large variation among the plans, which is already exacerbating the problem of risk selection that already plagues FEHBP and makes the whole program more expensive than it should be in actuarial terms. For example, some plans will require enrollees to pay half of fertility costs, while the Blue Cross Blue Shield Standard option, the largest FEHBP plan and the most expensive PPO plan, will provide $25,000 per year for various fertility treatments, however they won't charge the cost for IUI or Artificial insemination

or fertility drugs against this amount. BCBS Standard now has a $25,000 annual maximum for assisted reproductive technologies. Also, because of variations in state laws, the plans that are state-specific have some unique fertility benefits, as do several HMOs.

In 2025, there will also be higher limits on healthcare-related "tax preferred" or tax avoidance accounts. FEHBP has numerous High Deductible plans that deposit non-tax monies into Health Savings Accounts (HAS). Several of these plans have increased the maximum amounts that they will pass through to HSAs. The IRS set a $3,300 limit for Flexible Savings Accounts (FSAs) in 2025.

The Federal Employees Health Benefits (FEHB) Program, which covers more than eight million federal employees, retirees, and their dependents, is the nation's largest employer-sponsored health insurance program. FEHB Program is also a target of those who would force federal employees to forfeit their earned benefits to finance deficit reduction. The attacks on FEHB Program are likely to continue in Congress this year as part of any focus on deficit reduction. AFGE strongly opposes dismantling either the FEHB Program or Medicare, including by replacing the current premium- sharing financing formula with vouchers.

Issue and Background - Maintain Quality and Control Escalating Employee Costs for the FEHB Program

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

In order to lower the overall costs of the program, the Office of Personnel Management (OPM), the federal agency administering the FEHB Program, has been promoting employee enrollment into lower premium plans, e.g., the Blue Cross/Blue Shield Blue Focus plan. While this plan and other lower premium plans may appeal to those seeking to pay lower upfront costs, the plans offer inferior benefits, and very high out-of-pocket costs. For employees and their families who experience high overall health care costs in a given year, these plans are a very bad choice.

It is vital to federal employees that the government's current premium sharing formula for the FEHB Program be maintained, and that the share of cost attributable to employee-paid premiums be kept as low as possible. In addition, all plans should be required to offer comprehensive benefits.

That is, the FEHB Program must continue to be financed with the government's paying a percentage of premiums, not a flat rate or cash voucher, and every plan must cover essentially the same set of comprehensive benefits.

The largest FEHB Program plans contract with OPM on a fixed price re-determinable basis with retroactive 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 FEHB insurance companies' interests to keep costs and profits high and benefits low.

That is why it is imperative that FEHBP plans be subject to the government's Cost Accounting Standards. The government cannot verify the experience claims of FEHB carriers without these standards, yet due to lobbying and threats of exit from the program, the insurance companies, alone among federal contractors, have continued to be exempt from adherence to these cost accounting standards. AFGE will continue to monitor OPM's administration of the FEHB Program and urges all members to actively engage with their Congressional representatives to ensure that any attempts to scale back the government's FEHB Program share of premiums be defeated.

Issue and Background - Turning FEHB Program into a Voucher System

Some have recommended changing FEHB Program into a "premium support system." This is a euphemism for vouchers and has been proposed as part of the reconciliation package for 2025. Those bent on reducing the compensation of federal employees suggest that because the government covers a set percentage of an employee's health premium, FEHB participants have an incentive to choose higher-priced health plans.

Under the compensation-cutting proposals, the government would offer a standard, i.e., fixed dollar amount, federal contribution towards the purchase of health insurance and employees would be responsible for paying the rest. The Republican Study Committee has 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 the FEHB Program 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 the FEHB Program 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 FEHB Program 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 voucher-based 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.

FEHB Program – Employee Share of Premium Increases

Among the 144 FEHB plans that participate in the program there are substantial differences in premiums and premium increases for 2025. In 28 plans, self only premiums will decrease. Five plans had no increase in premiums, and 69 plans had increases below the 13.5% average. Forty-two plans had premium increases above the 13.5% average.

As has been the case in past years, the premium increases that employees and retirees are required to pay are larger than the increases in the government's share. As such, for 2025, enrollee premiums have increased by an average of 11.2% while the government's increase will be a maximum of 10.1%.

With last year's pay increase of just 2 percent, FEHBP premiums imposed on employees more than ate up the entire raise. For example, in the most popular plan, the Blue Cross Standard plan for a family, for example costs $370 in employee contributions $424 per pay period in 2025, a 14.5% increase. That amounts to $1,924 per year, so for any federal employee who earns $100,000 per year or less, the BCBS Standard plan will mean a pay cut because that increase more than ate up the 2% raise.

Issue and Background - Scaling Back FEHB Program for Retirees

Yet another attack on the FEHB Program is likely to be continued by conservatives and their allies, based on a Heritage Foundation proposal. Again, the proposal will likely be justified on the basis of the "urgent need" for deficit reduction.

The key part of the Heritage proposal is to shift more federal retiree health care costs away from the FEHB Program. Heritage proposes that all federal retirees be required to purchase Medicare Part B insurance even if they already have better FEHB Program coverage and do not have either the means or the desire to pay two insurance premiums instead of one. Mandatory Medicare Part B coverage would be useless to veterans who use the FEHB Program 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.

The Postal Reform bill recently enacted by Congress establishes a bad precedent regarding FEHB and Medicare Part B premiums. Under the Postal Reform law, as of January 1, 2025, all newly retiring Postal Service employees (with some few exceptions) were required to pay Medicare Part B premiums to maintain the Postal Service equivalent of the FEHB Program.

Congressional Requests Needed to Address FEHB Program Issues

1. FEHB Program'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. AFGE urges lawmakers to reject all efforts to change the premium support system into a voucher system.

2. Any attempt to change FEHBP eligibility criteria for federal retirees should be rejected.

FEDERAL WORKPLACE AGENCIES – FLRA/MSPB

Federal Labor Relations Authority

Several little-known federal agencies play an outsize role in the daily lives of federal employees. The Federal Labor Relations Authority (FLRA) is an independent agency that administers the Federal Service Labor-Management Relations Statute which governs federal workplace collective bargaining. The Authority investigates and adjudicates disputes involving unfair labor practices and decides matters of representation and negotiability. A functioning FLRA is essential to maintaining the collective bargaining rights of federal employees. The FLRA also has responsibility for alternative dispute resolution, training programs, and overseeing the Federal Service Impasses Panel as well as related boards for the Foreign Service. The Authority was authorized in 1978 and is governed by a three-member Senate-confirmed panel; unfair labor practices are investigated by a Senate-confirmed general counsel.

While the Authority is a neutral body designed to function as an honest broker between labor and management, in recent decades its role has been needlessly politicized. To the extent that a well-functioning FLRA facilitates the role of unions in the federal sector and promotes stability in labor-management relations, some Republicans have viewed the agency with skepticism or hostility. It has become difficult to confirm FLRA members and the general counsel. In recent years, several well-qualified nominees for the Authority have seen their nominations languish or die in the Senate or have withdrawn their names from consideration. In addition, Congress has attempted to insert itself into agency rulemaking; in 2023 the House narrowly rejected an appropriations amendment that sought to block an FLRA rule creating a predictable schedule for when federal employees could terminate union dues – a transparent attempt to weaken labor unions.

In July 2024, the Senate confirmed Anne Wagner as a member of the FLRA, bringing the agency to full strength, including two individuals appointed by President Biden. However, in 2025, one of the current member's terms is set to expire, which could open the door to a new anti-worker majority on the panel.

Congress' failure to adequately fund the FLRA poses a dire threat to its future. The FLRA is a small agency of 116 full-time equivalent (FTE) employees whose work directly affects 2.1 federal civilian employees. Few agency budgets have been as neglected as the FLRA; its FY 2023 enacted budget of $29.4 million is less in absolute dollars than its $29.6 million budget in FY 2004. During this 20-year period, the agency was forced to shed nearly half its own workforce. Accounting for inflation, the FLRA would need a budget in excess of $48 million today simply to break even with its funding of two decades ago. Budget shortfalls have already forced the closure of regional offices in Texas and Massachusetts. The agency is mired in a backlog of hundreds of unfinished cases; its alternative-dispute-resolution office has only two FTEs covering the entire government.

Congressional Requests:

- Ensure that future nominees to the Authority will decide matters fairly and objectively and not be a rubber stamp for anti-worker initiatives.

- Fully fund the FLRA's annual budget including increases to offset the effect of inflation over many years.

Merit Systems Protection Board

The Merit Systems Protection Board (MSPB) is another little known federal quasi-judicial agency with an important mission. Established by the Civil Service Reform Act of 1978, the MSPB took over certain responsibilities of the former Civil Service Commission for hearing employee appeals of adverse actions as well as performing studies of the merit system. The MSPB employs administrative judges who hear cases and issue decisions, subject to review by a three presidentially appointed, Senate-confirmed members.

In most cases, personnel appeals from bargaining unit employees are handled under the terms of collective bargaining agreements that provide for arbitration rather than hearings before the MSPB. However, it remains important for all federal workers that the MSPB is fully staffed and functioning as a neutral decision maker.

The MSPB is responsible for detailed decisions interpreting civil service laws, including "precedential decisions" that are binding on future boards, MSPB administrative judges, and the arbitrators who adjudicate disputes involving union-represented employees. Thus a corrupt, inefficient, or incompetent MSPB is a direct threat to federal employees, including managers and rank-and-file employees alike. In addition, in some limited cases, decisions by arbitrators in union appeals may be subject to MSPB review, if an arbitrator has incorrectly applied civil service laws or regulations.

Although the MSPB has been viewed as a challenging forum for employees to successfully appeal an agency decision, some Republicans have nonetheless treated the agency to neglect or hostility, simply because it plays any role in protecting employee rights from agency abuse. Nominations to the Board, which were once routine and uncontroversial, now result in party-line confirmation votes. Recent bills in Congress would make federal employees at will and weaken or eliminate the appeals process for removals. During the first Trump administration, the Board was virtually eviscerated. From 2017 to 2022, the Board lacked a quorum and was thus unable to decide appeals, leading to a backlog of thousands of unresolved personnel cases. From early 2019 onward, the Board had no members at all.

Fortunately, the Biden administration successfully appointed three members to the Board, bringing it to full strength and allowing it to make significant strides on its case backlog. The seven-year term of Board members should ensure that the MSPB continues to have a quorum throughout the Trump administration. However, Congress should refrain from tinkering with the

Board's role, for example by weakening the evidentiary standards for adverse actions, arbitrarily limiting the periods for appeals, or eliminating the MSPB's ability to mitigate unjustly harsh penalties for minor transgressions.

Congressional Requests:

- Congress should refrain from unfounded attacks on the MSPB, which is important for issuing decisions and policies affecting the entire civil service, including bargaining unit members. Congress should not disturb the existing process for handling personnel appeals.

PAID PARENTAL LEAVE

AFGE supports the reintroduction of the Federal Employee Paid Leave Act. This bill was introduced in the 118th Congress by Representative Don Beyer (D-VA) in the House and Senator Brian Schatz (D-HI) in the Senate. The legislation would provide federal employees with twelve weeks of paid family leave for all instances covered under the Family and Medical Leave Act (FMLA).

This includes paid leave to care for a newborn, newly adopted, or newly placed foster child; to care for seriously ill or injured family members; to attend to an employee's own serious health condition; and to address the health, wellness, financial, and other issues that could arise when a loved one is serving overseas in the military or is a recently discharged veteran. No federal employee should have to choose between caring for a loved one and receiving a paycheck. This bill would be a step in the right direction to help provide support to working families.

Congressional opponents of paid family leave for federal employees have raised arguments largely based on cost. Unrealistic assertions about the ability of federal workers to accumulate and save other forms of paid leave continue. But the cost of failing to extend this benefit to families is clear. Productivity is lost when a federal employee returns to work too soon without securing proper care for a loved one or when federal employees come to work when they are ill because they exhausted all their sick leave taking care of a loved one. A lack of paid family leave also negatively affects the government when a good worker, trained at taxpayer expense, decides to leave federal service for another employer, often a government contractor, who does offer paid family leave.

There is widespread agreement among employers that improving the quality of life for working families is a good policy. Growing numbers of private employers, including taxpayer-funded federal contractors, and most governments across the globe have acknowledged the benefits that accrue to employers when workers are provided paid family leave.

Congress Should Recognize the Benefits of Leave to Workers and Agencies

Congress should recognize the difficulties federal workers face in accumulating annual leave. In most cases, federal employees are only able to accumulate a maximum of 30 days of annual leave, not an adequate amount of time for other potential instances covered under FMLA. By

most conservative estimates it would take a federal worker who takes two weeks of annual leave and three days of sick leave per year close to five years to accrue enough sick and annual leave to receive pay during the 12 weeks of family leave allowed under FMLA. Even if a federal worker never got sick and never went on vacation it would take over two years to accumulate enough leave to cover 12 weeks of family leave. The alternatives suggested by federal employee paid family leave opponents are far too simplistic and unrealistic to adequately address the problem. Federal workers who take unpaid FMLA leave too often fall behind on their bills and face financial ruin.

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

DEPARTMENT OF AGRICULTURE

FILL VACANCIES AMONG FOOD INSPECTION STAFF TO HELP PROTECT OUR NATION'S FOOD SUPPLY

Background/Analysis

The Food Safety and Inspection Service (FSIS) is the public health agency within 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. Created in 1981, FSIS is federally mandated to continuously monitor the slaughter, processing, labeling, and packaging of the billions of pounds of meat and poultry products that enter the market each year.

Unfortunately, FSIS is suffering a serious shortage of inspectors, a shortage that is threatening our nation's food supply. This shortage is straining the inspection system to the point of breaking. There have been an increasing number of recalls of products under FSIS jurisdiction due to the lack of inspection.

For years, FSIS has acknowledged difficulties in recruiting and retaining personnel, resulting in double-digit inspector vacancy rates in many districts. Without a robust workforce of federal inspectors, important monitoring and reporting of foodborne pathogens will not occur, preventing timely interventions to preserve public health. In order to protect the public and workers, FSIS needs a full contingent of inspectors in every plant.

AFGE's National Joint Council of Food Inspection Locals, which represents over 6,000 FSIS inspectors, believes that hiring more meat and poultry inspectors by increasing salary and recruitment efforts, in addition to other priorities, would help hardworking inspectors better accomplish the FSIS mission.

Congressional Requests

- Congress should support efforts to overcome the longstanding problem of recruiting and retaining employees by increasing the starting wage for inspectors. Most inspectors start as a GS-5, which is below the starting wage for employees at the packing plants they inspect. AFGE's FSIS Council recommends starting at GS-7 and offering the same retention bonuses that are offered to public health veterinarians (who are not bargaining unit employees).

- Congress should increase FSIS's budget for full-time employees, which would allow for all plants to have a full complement of government inspectors at all times.

- Congress should mandate that FSIS increase its outreach and recruiting efforts to fill all current vacancies of food inspectors and consumer safety inspectors.

SLOW DOWN SLAUGHTER LINE SPEEDS AND PUT THE SAFETY OF WORKERS AND THE AMERICAN PUBLIC FIRST

Background/Analysis

During the previous Trump administration, the FSIS increasingly favored deregulation that allowed increased line speeds for all slaughtered species and in turn removed many federal inspectors from the lines. This has drastically increased profits for meatpacking companies and in turn decreased safety for inspectors, workers, consumers, and animals.

Congressional Requests

- Congress should pass legislation to mandate slower line speeds in meatpacking plants and prohibit the inspection systems that have allowed these increased and unsafe line speeds including the New Poultry Inspection System, the New Swine Inspection System, the Egg Products Rule and Beef Slaughter line speed waivers. Last Congress, AFGE supported the Safe Line Speeds in COVID–19 Act, introduced by Rep. DeLauro Rosa (D-CT) and Sen. Cory Booker (D-NJ).

- AFGE supports the Industrial Agriculture Accountability Act, which would prevent dangerous line speeds. This bill was introduced last Congress as S. 272/H.R. 805 by Sen. Booker and Rep. Jim McGovern (D-MA) with 14 cosponsors in the House.

- AFGE supports legislation introduced by Rep. Greg Casar (D-TX) that would improve our food safety system. The Agricultural Worker Justice Act (H.R. 4978 last Congress) would prevent dangerous line speeds, and the Fairness for Small-Scale Farmers and Ranchers Act (H.R. 4979 last Congress) would increase recruitment and retention efforts at FSIS.

- AFGE also supports the Protecting America's Meatpacking Workers Act (S. 270/H.R. 798 last Congress), led by Senator Booker and Rep. Ro Khanna (D-CA), which would also increase funding for FSIS and prevent dangerous line speeds.

INCREASE FUNDING AND IMPROVE WORKING CONDITIONS IN THE AGRICULTUREL RESEARCH SERVICE (ARS)

Background/Analysis

The Agricultural Research Service is critical to researching solutions to help our nation's farmers. ARS ensures America remains a leader in agriculture and provides a growing population with safe and healthy foods produced using environmentally sustainable methods. According to a study by the USDA's Economic Research Service (ERS), each dollar spent on agricultural research in the United States generates an average of $20 in benefits. This is one of the highest returns of any public research investment.

However, lack of funding has led to less spending on research and deteriorating facilities. For example, at the Beltsville Agricultural Research Center (BARC) in Beltsville, Maryland, which is the largest agricultural research facility in the world, water has been pouring into buildings. Walls are moldy and ceilings have collapsed with debris scattering all over the floor. The deteriorating building conditions are making working conditions unsafe for people in the complex and threatening valuable research. Restoring the ARS facility in Beltsville to its status as the flagship for agriculture research would help attract and retain top-quality scientists, support cutting-edge science, and foster innovation for our nation at a time when food insecurity is at an all-time high.

Congressional Requests

- AFGE strongly supports increased funding for ARS, including President Biden's request for $41 million for urgently needed infrastructure improvements at the Beltsville Agricultural Research Center (BARC) in Beltsville, Maryland.

FEDERAL BUREAU OF PRISONS (BOP - Council 33)

Background

The Federal Bureau of Prisons (BoP) is the largest federal law enforcement agency in the nation. Its mission is as broad as it is vital to the safety of America's communities.

More than 157,000 inmates (and consistently rising) are currently incarcerated in our facilities, many of which are still overcrowded. Today, however, the crisis facing the BOP is one of staff shortages.

The hiring freeze enacted in 2017, drastically affected the Bureau's ability to maintain safe staffing levels. These dangerous staffing levels strained agency resources and infrastructure to the breaking point. Every day, hundreds of correctional officers are forced to work mandatory overtime to cover posts not filled, while yet more administrative staff are also augmented from their regular duties to cover other unfilled correctional posts. This also includes staff with primary responsibility of programing (Education, Psychology, Drug Treatment) and other areas to reduce recidivism which directly impacts the implementation of the First Step Act.

The responsibilities for BOP staff continue to increase as new duties grow out of the passage of the 2019 First Step Act. Thousands of inmates now require additional case management, education, training, and basic life skills for which the staffing is being diverted to cover vacancies in security and correctional posts.

The Federal Bureau of Prisons also faces daily challenges from traditional correctional flashpoints such as contraband. The introduction of contraband, such as synthetic drugs, to include fentanyl, through the prison mail system and drones, are a growing concern and requires the additional investment of time and resources. It will also require the willingness to look to new strategies to combat the problems.

The following is our blueprint to fix the most pressing issues facing the Bureau of Prisons today. A plan that draws from the day-to-day experiences of our over 30,000 bargaining unit members who day after day risk their lives working inside federal prisons.

Staffing

- In January 2016, Bureau of Prisons staffing numbers were at 43,369 staff. In December of 2023, following several years of self-imposed Bureau of Prisons staffing reductions, the staffing numbers were 34,936. This is a decrease of over 8,400 staff.

- Each year, the Bureau of Prisons has nearly 5,000 employees eligible to retire.

- Each of the past four (4) years, the President (Trump FY 20 & 21 and Biden FY 21 & 22) has requested that there be 20,466 Correctional Officers budgeted in the BOP. Each of these years, this was the number enacted in the Omnibus. The BOP continues to lower the number of Correctional Officers each year, creating a staffing catastrophe and creating

treacherous and unsafe working conditions. There are currently 12,306 Correctional Officers in the BOP, a shortage of 8,140 officers.

	President's Request Officers Total Officers	Budget Enacted Total Officers	Bureau of Prisons Total Officers	Correctional Reduced by BOP
FY2021	20,466 Officers	20,466 Officers	13,760 Officers	(- 6,706)
FY2022	20,466 Officers	20,466 Officers	13,032 Officers	(- 7,434)
FY2023	20,466 Officers	20,466 Officers	12,731 Officers	(- 7,735)
FY2024 (CR)	20,446 Officers	20,446 Officers	12,306 Officers	(- 8,140)

- With the current staffing levels in the Bureau of Prisons, the First Step Act cannot be successfully enacted. Programming areas, such as Education, Recreation, Psychology, and Re-Entry are often closed so the programming staff can be used to backfill shortages of Correctional Officers. This process is known as Augmentation. This reduces access to programming, recreation, and education initiatives, which are key to maintaining safe facilities and reducing recidivism. While the Agency is making efforts to comply with the Executive Orders, our staffing numbers have and will continue to decline without intervention from Congress.

- Augmentation and mandatory overtime have become the "norm" for the agency. The over reliance of augmentation has been identified by OIG and GAO in separate reports. This will continue to be detrimental to the safety and security of the institution and communities as well as programming until adequate staffing levels are reached.

Increase Hiring and Staffing of Federal Correctional Workers

- **Pay**. The Council believes that the staffing crisis can only be resolved by addressing the pay band issue. The current pay structure within the Bureau is significantly lower than that of other Federal Law Enforcement Agencies, including the US Marshals, Immigration and Customs (ICE), and Border Patrol. Additionally, the Bureau's pay scale is non-competitive with state and local law enforcement positions and even private sector jobs. Without addressing this pay disparity, the Bureau will continue to struggle to attract and retain employees. The BOP must be required to increase pay bands.

- **35% Salary Increase**. Over the past several years, the BOP has explored retention incentives for hard-to-staff locations as well as locations that fall below 85% staffing percentages. We understand that pay bands are difficult and a lengthy process to change, therefore, the council is requesting a 35% Special Salary Table be created for all Bureau of Prison Employees. This 35% increase was ordered by a judge in MDC Brooklyn and has shown to be successful in stabilizing the freefall in staffing and increased hiring in all disciplines, with a 50% increase. We feel by implementing a Special Salary Table bureau

wide this would allow us to retain qualified employees while attracting a wider pool of applicants. Any increase in funding must be expressly and specifically outlined, in detailed appropriations language, to be used only for the hiring and retaining of correctional officers and employees. Congress must demand oversight and accountability for the recent increases in federal funding of BOP, corresponding with the continual lowering of Correctional Officers. The BOP's staffing crisis continues with no increase in overall staffing, despite an almost $1 billion increase over what was requested the past three years. Any increase in funding must be expressly and specifically outlined, in detailed appropriations language, to be used **only for the hiring and retaining of correctional officers and employees**.

Hiring Freeze/Future Government Shutdown

- A hiring freeze for bureau of prison law enforcement officers would have devastating consequences for the agency's ability to maintain safety, security, and effective rehabilitation programs. With staffing shortages already a pressing issue, halting new hires would exacerbate the existing burden on current employees. We have not recovered from the 2017 hiring freeze which is outlined in our numbers above. Since the 2017 freeze the bureau of prisons has been unable to stabilize the staffing compliments for most of our prisons.

- With the constant looming threats of government shutdowns, it is imperative that our correctional officers continue to get paid during any lapse of appropriations. The council is in support of any legislation that would carve out funding for all essential employees.

Cuts By Doge

- Cuts to funding would result in a significant loss of law enforcement officers within the Bureau of Prisons (BOP), leading to understaffed facilities and increased workloads for remaining officers. This would compromise their ability to maintain security and order.

- With fewer officers on duty, the safety of BOP law enforcement personnel would be severely jeopardized. Officers would be more vulnerable to assaults, incidents, and dangerous situations, as they would be unable to adequately supervise and control inmate populations.

- Reductions in funding would limit critical programs designed to de-escalate conflict and improve inmate behavior. Without these programs, the risk of violent outbreaks, riots, and assaults on staff would rise dramatically.

- With fewer officers and resources, BOP would struggle to respond effectively to crises—such as riots, medical emergencies, or escape attempts—putting staff, inmates, and most importantly the community at greater risk.

- Officers already face high-stress environments. Further cuts to funding would increase job strain, burnout, and mental health challenges.

- Funding cuts would limit access to vital training programs that equip officers with the skills and knowledge needed to manage complex situations, maintain control in volatile environments, and improve their own safety.

- The uncertainty and increased risks associated with funding cuts would likely lead to higher turnover among current officers and difficulties in recruiting new law enforcement professionals, further exacerbating staffing shortages.

- Reduced funding would impede the BOP's ability to maintain programs focused on inmate rehabilitation, security upgrades, and facility maintenance, ultimately damaging the overall effectiveness and safety of correctional institutions.

- Weakening the BOP's ability to function properly would threaten public safety. Overcrowded, understaffed and underfunded prisons may release inmates prematurely or fail to prevent recidivism, leading to greater risks to communities.

- Cuts to funding would erode public trust in the government's ability to safely manage correctional facilities, risking a loss of confidence in the justice system's overall integrity.

- If cuts are needed there are places that could be reviewed or addressed. Cuts should not affect the facilities and the staff working inside the prisons.

Restrictive Housing Units

- The first thing that must be acknowledged when writing about the topic is that inside our prisons, everyone is a convicted criminal with an established pattern of rejecting society's rules. For this reason, our prisons and penitentiaries are inherently dangerous environments.

- Inside the walls of our federal prisons, correctional officers confront sociopaths, murderers, rapists and sexual predators, members of prison and street gangs, international and domestic cartels and terrorist groups. Especially in our most dangerous, highest security prisons, we are dealing with a concentration of individuals society has demand unmanageable and unfit for the basic privileges of law-abiding citizen.

- As America's prisons evolved to accommodate more dangerous and violent offenders, housing assignments and programs became necessary to protect society, correctional staff, and the average offender from their more deviant and predatory counterparts.

- Currently there has been a focus to limit the use or outright ban the use of Special Housing Units. The Council vehemently opposes any legislation that removes this necessary tool to protect staff and other inmates.

- We have several special units designed to use best practices supported by decades of clinical studies and volumes of empirical data. These programs protect offenders, correctional staff, and society, while allowing staff to run safe and efficient correctional facilities and prepare most offenders for their eventual return to society. Some of these special program units are:

    - Special Housing Units (SHUs -- the jail in the prison)
    - Special Management Units (SMUs -- for the most organized, disruptive, and dangerous repeat offenders)
    - Secure Mental Health Units (SMHUs --for violent offenders with mental health disorders)
    - Secure Administrative Unit (SAU) – designed to house individuals who have a serious mental illness and require a secure setting due to significant security concerns.
    - Reintegration Housing Units (RHUs or RUs -- Specialized units to return the most antisocial offenders to a more social environment/general population)
    - Special Confinement Unit (Death Row)
    - Administrative Maximum-Security Unit (ADX -- for the most dangerous and violent human beings on the planet)
    - ADX Step Down Unit (to attempt to reintegrate the most violent offenders into a more social environment within a controlled environment)
    - Single-cell assignments are typically used for the most violent offenders.

Introduction of Drugs and Contraband

- Fentanyl, K2, Suboxone, Ecstasy, Synthetic Cocaine, and other illegal substances are introduced into our Bureau of Prisons Facilities through the mail every day. This has caused a growing number of staff members to suffer accidental exposure from these substances. In the past year alone, numerous Federal Prison employees were taken to local emergency medical facilities for their exposures to these life-threatening substances.

- Drugs and other contraband are consistently being introduced into BOP facilities through the use of Drones.

- The Council of Prison Locals supports the funding and creation of a program whereby all mail is opened, scanned, and emailed to inmates, much the same way mail is processed for Congress.

- The introduction of cell phones circumvents the safety and security of our institutions by allowing inmates to contact potentially dangerous people without going through the phone monitoring that is in place for the safety of staff and the general public.

Prosecuting Assaultive Inmates

- Every day multiple Federal Law Enforcement Officers are assaulted across the Bureau of Prisons. Most of these cases are not picked up and leads to the inmate not facing outside prosecution. Federal Laws for prosecution of these inmates by AUSA Attorneys must be enforced.

- Assaults are not always initiated by aggressive physical contact. Frequent assaults occur when inmates hurl bodily fluids and waste at Officers and Staff.

- Congress needs to eliminate a management culture that believes being assaulted by an inmate is "Part of the Job". Procedures needed to be drafted wherein being assaulted by bodily fluids are considered a crime.

- Pressure needs to be applied to the Attorney General to prosecute these confined federal inmates that assault Federal Correctional Staff.

- The Council of Prison Locals hopes laws can be passed to end the perception that the inmates do not need to be prosecuted because they are already in prison.

PAY OUR CORRECTIONAL OFFICERS FAIRLY ACT (H.R. 3199)
The Pay Our Correctional Officers Fairly Act would revise locality pay rates for employees of the Bureau of Prisons (BOP) located outside of an established General Schedule locality pay area in order to ensure competitive and fair pay.

FIGHTING PTSD ACT (H.R. 472) (S. 645, Passed UC on March 2, 2023)
A bill to require the Attorney General to propose a program for making treatment for post-traumatic stress disorder and acute stress disorder available to public safety officers, and for other purposes.

IMPROVING ACCESS TO WORKERS COMPENSATION FOR INJURED FEDERAL WORKERS ACT (H.R. 618, S. 131)
To amend chapter 81 of title 5, United States Code, to cover, for purposes of workers' compensation under such chapter, services by physician assistants and nurse practitioners provided to injured Federal workers, and for other purposes. "This law will recognize the nurse practitioners, allowing their signature to be accepted under the law, allowing claims and treatment to move forward much faster."

PRISON CELLPHONE JAMMING ACT (S. 1047, H.R. 2380)
This bill provides that the Federal Communications Commission may not prevent a State or Federal correctional facility from utilizing jamming equipment, and for other purposes.

LIEUTENANT OSVALDO ALBARATI STOPPING PRISON CONTRABAND ACT (S. 5284)

The legislation would elevate the charge of smuggling a contraband cellphone into a federal prison from a misdemeanor to a felony

PRISON STAFF SAFETY ENHANCEMENT ACT (S. 5062)
A bill to address sexual harassment and sexual assault of Bureau of Prisons staff in prisons, and for other purposes.

SAFER PRISONS ACT OF 2024 (S. 3817)
A bill to increase the criminal penalties for assaulting a Bureau of Prisons correctional officer.

LEOSA REFORM ACT (H.R. 354, S. 1462)
This bill broadens authority for certain law enforcement officers to carry concealed firearms across state lines and other areas and for other purposes.

THIN BLUE LINE ACT (H.R. 130, S. 459)
This bill expands the list of statutory "aggravating factors" in death penalty determinations, to also include the killing or targeting of a law enforcement officer, firefighter, or other first responders.

HONORING CIVIL SERVANTS KILLED IN THE LINE OF DUTY ACT (S. 3029, H.R. 5883)
This bill increases benefits to survivors of federal employees who die in the line of duty. Specifically, the bill increases the death benefit for federal employees from $10,000 to $100,000 and increases the funeral benefit from $800 to $8,800. Both amounts must be adjusted annually for inflation.

LEO FAIR RETIREMENT ACT (H.R. 1323)
A bill to amend title 5, United States Code, to provide that for purposes of computing the annuity of certain law enforcement officers, any hours worked in excess of the limitation applicable to law enforcement premium pay shall be included in such computation, and for other purposes.

PRISON STAFFING REFORM ACT OF 2023 (H.R. 6711)
A bill to direct the Director of the Bureau of Prisons to conduct a comprehensive review of understaffing across the Bureau, and for other purposes.

ELIMINATE NON-APPROVED DEVICES AND CONTRABAND ELECTRONICS LIMITING LINKS TO SOCIETY IN CONFINED ENVIRONMENTS FOR LONGER LASTING SAFETY (END CELLS IN CELLS) (H.R. 3949)
A bill to amend the Communications Act of 1934 to provide for additional prohibitions and enhanced penalties for providing or possessing wireless communications devices in detention facilities, and for other purposes.

DIRECT HIRE ACT (H.R. 6628)
A bill to provide direct hire authority to the Director of the Bureau of Prisons.

INTERDICTION OF FENTANYL IN POSTAL MAIL AT FEDERAL PRISONS (H.R. 5266)
A bill to require the Director of the Bureau of Prisons to develop and implement a strategy to interdict fentanyl and other synthetic drugs in the mail at Federal correctional facilities.

PREVENTING VIOLENCE AGAINST FEMALE INMATES ACT (H.R. 1490, S. 752)
This bill aims to protect women by prohibiting the Bureau of Prisons (BOP) from housing prisoners with persons of the opposite sex, with certain exceptions, and further require any state receiving certain federal funds to house prisoners according to their biological sex.

FERS COST-OF-LIVING-ADJUSTMENT (COLA) (H.R. 866, S. 3194)
This bill revises the formula used to calculate the cost-of-living adjustment for annuities paid under the Federal Employees Retirement System.

FEDERAL PRISON ACCOUNTABILITY ACT (H.R. 4138, S. 2284)
A bill to require the Director of the Bureau of Prisons to be appointed by and with the advice and consent of the Senate.

FEDERAL PRISON OVERSIGHT ACT (S. 1401, H.R. 3019)
The bill will require the Department of Justice's Inspector General (IG) to conduct comprehensive, risk-based inspections of the BOP's 122 facilities to identify problems that affect incarcerated people and staff and to provide recommendations to address them.

ERIC'S LAW (H.R. 3449, S. 529)
This bill, which is named for slain officer Eric Williams, amends the Federal Criminal Code to modify procedures with respect to Capital Sentencing Hearings. If a jury at a Capital Sentencing Hearing does not reach a unanimous recommendation on the defendant's sentencing, the court may order a new special sentencing hearing and impanel a new jury. If the new jury at the special sentencing hearing does not reach a unanimous recommendation on the defendant's sentence, the court is prohibited from imposing a death sentence.

FAIRNESS IN FENTANYL SENTENCING ACT (S. 878)
The bill amends the Controlled Substances Act, and the Controlled Substances Import and Export Act by modifying the drug quantity thresholds that trigger a mandatory minimum prison term for a defendant who manufactures, distributes, imports, exports, or possesses with intent to distribute fentanyl.

Current Bills We Oppose

END SOLITARY CONFINEMENT BILL (S. 3409)
A bill to end the use of solitary confinement and other forms of restrictive housing in all Federal agencies and entities with which Federal agencies contract.

PROMOTING REENTRY THROUGH EDUCATION IN PRISONS ACT 2023 (PREP ACT) (S. 3380)

To amend title 18, United States Code, to establish an Office of Prison Education, and for other purposes.

FEDERAL EMPLOYEE LOCALITY ACCOUNTABILITY IN RETIREMENT ACT (S. 26)
The bill proposes excluding locality pay from the calculation of retirement benefits for federal employees hired after its enactment.

CENSUS BUREAU COUNCIL 241

Background

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. Census Bureau data are central to sustaining democracy and facilitating informed decision-making. Census Bureau programs are irreplaceable sources of data for key economic indicators and socio-economic characteristics that support government and private sector decision-making.

Funding

AFGE supports full funding for the Census Bureau at $1.606 billion for Fiscal Year 2025. The Biden Administration's FY2025 budget request for the Census Bureau was $1.578 billion, which was a $195 million increase from the FY2024 enacted level of $1.383 billion and a $93 million increase from the FY2023 actual level of $1.485 billion. Currently, all federal agencies, including the Census Bureau are being funded by a continuing resolution (CR) at Fiscal Year 2024 levels. AFGE continues to urge Congress to prioritize robust funding for the Census Bureau to ensure employees can successfully ensure the integrity and security of surveys and data. AFGE urges Congress to ensure that the Census Bureau has adequate resources to produce fair and accurate censuses including the American Community Survey and the Economic Survey.

AFGE continues to educate 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.

Threats to Census Bureau in Project 2025 and the New Administration

Recommendations from Project 2025 that could be carried forward in the new administration would harm the integrity of the decennial census and other federal data collection efforts and politicize and weaponize federal data collection by blocking the government from collecting

certain data while establishing intrusive new data collection in other areas to achieve partisan goals.

Project 2025 recommends allocating "additional political appointee positions" to the Census Bureau. The blueprint for the new administration seeks to politicize the Census Bureau by replacing experts with political appointees to "increase efficiency and align the Census Bureau's mission with conservative principles."

Further, Project 2025 and its likely aftermath seek to eliminate advisory committees, and replace current members with loyalists, to focus census outreach efforts in conservative communities. Project 2025 indirectly calls for lower Census Bureau funding through improved financial management, cost reductions, increased efficiencies, and a full audit of the 2030 Census life-cycle cost estimate. Significant cost-cutting could result in inaccurate data and continued (if not worse) undercounting of underserved and overlooked communities and populations.

The proposed Fiscal Year 2025 funding level for the Census Bureau in the relevant House appropriations bill would underfund the Census Bureau at a time when funding should ramp up for 2030 Census research and planning. Inadequate funding for the Census Bureau makes it difficult for employees to conduct fair and accurate data collection.

D.C. GOVERNMENT

DEFEND EXISTING DC RIGHTS

Background/Analysis

The Home Rule Act of 1973 gave DC limited home rule authority and its first mayor and city council after previously being ruled by three federally appointed commissioners. However, section 601 of the act reserved significant authority for Congress, it "reserves the right, at any time, to exercise its constitutional authority as legislature for the District." The act also established a process by which Congress may review and disapprove of most laws enacted by DC before they take effect.

Last July, Sen. Mike Lee (R-UT) introduced S. 4696, the BOWSER ACT, to overturn DC's home rule. The bill only had three cosponsors and even in this new Congress, Republicans would need a filibuster-proof Senate majority to abolish home rule as a stand-alone bill. It is important to keep Democrats united in opposition to prevent any overturn of Home Rule from being slipped into a must pass bill. But Trump and Republicans may still try to take effective control of the city within the context of the Home Rule Act.

Under the Home Rule Act, there have been frequent incursions into local politics by Republicans. For example, Congress appointed a board to oversee DC's finances from 1995 and 2001. In 2023, Congress used a disproval resolution to overturn reforms to the city's criminal code passed through the DC City Council and signed into law by the mayor. Through the appropriations process, Congress has blocked funding to implement the taxing regulation for legalized marijuana since 2015.

Donald Trump has threatened to "take over" DC if elected, calling the city a "nightmare of murder and crime." Emboldened by a decisive victory and full control of Congress, he will likely seek to control a city that supported him with less than 10% of its vote. The fiscal control board was never eliminated; it just went dormant. Once in office, with a stroke of the pen President Trump can declare a fiscal or crime emergency and reinstate the five-member board with control over DC's finances and oversight of its laws.

There are also fears that President Trump will federalize the police force. Trump and his aides developed a plan for the federal government to take over DC's police force during the 2020 Black Lives Matter protests. A 2021 memo by DC's attorney general suggested the president has the power to federalize DC's police, deputize the National Guard with law enforcement powers in D.C., and activate military and federal law enforcement agencies such as the U.S. Park Police. The District's attorney general could try to block a takeover of police, but would likely be unsuccessful because of DC's non-statehood status. And even if initially blocked from federalizing the DC police, President Trump would still have the option to invoke the Insurrection Act.

Project 2025 also made some DC-specific recommendations: that Congress deregulate and expand a private school voucher program, prohibit schools from teaching critical race theory, prohibiting benefits based on race, and giving Secret Service the ability to enforce laws in the district. Following the Project 2025 recommendations, gun laws, immigrant rights to vote in local elections and get a driver's license, the right to an abortion, minimum wage laws and other social issues could also be under attack by a Republican Congress that controls the appropriations process.

House Republicans seeking to increase federal control of the District have proposed introducing legislation to remove DC's limited self-government. AFGE will oppose any plan that would further restrict the District's autonomy, including the use of Congressional Disapproval resolutions to overturn laws enacted by DC's government.

SUPPORT STATEHOOD FOR THE DISTRICT OF COLUMBIA

Background/Analysis

The United States of America is a nation that was founded on the belief that all people are endowed with certain inalienable rights and that to secure these rights, governments are instituted, deriving their just powers from the consent of the governed. The rights of the residents of the District of Columbia are abridged when the Congress imposes its will on local matters while D.C. residents are denied voting representation. The residents of D.C. are Americans who bear all the responsibilities of citizenship, but who do not enjoy all the rights of citizenship.

With around 680,000 residents, the District has a larger population than two states (Wyoming and Vermont). One in five residents of the District of Columbia – more than 140,000 in total – work for the federal government and yet do not have equal representation in the government for which they work. Statehood will ensure that residents of the District of Columbia enjoy full rights and is a matter of simple justice. Any solution short of statehood would simply continue

the two-tiered system of citizenship the residents of the District of Columbia have endured for 200 years.

In 2020 and again in 2021, the House has passed legislation, H.R. 51, to make D.C. a state and preserve a constitutionally required Federal District that enshrines the area that houses the three branches of our federal government, our iconic monuments, and the National Mall. Last Congress, H.R. 51 had 211 House cosponsors and S. 51 had 46 Senate cosponsors. The bills were reintroduced in the 119th Congress and currently have 161 House and 41 Senate cosponsors. AFGE is reaching out to members to seek additional cosponsors. While the bill is unlikely pass this Congress, we will work to continue to build support for passage when the political environment becomes more favorable.

Congressional Requests

- AFGE urges Congress to pass H.R. 51/ S. 51, the "Washington, D.C. Admissions Act."

DEPARTMENT OF DEFENSE

Issue – Protecting the Competitive Service and Ensuring Adaption to Organizational and Technological Changes

The skills, talents, and experiences of federal employees are routinely undervalued. While the U.S. Department of Defense (DOD) is under pressure to meet the demands of an evolving security space that includes near-peer rivals and threats from non-state actors, these demands cannot come at the cost of its competitive service workforce, whom are often on the frontlines to meet the needs of America's servicemembers. In addition, the workplace is changing with the growth of artificial intelligence. Managers who are responsible for human capital planning in practice often look for ways to bypass Title 5 hiring requirements to fill individual jobs.

Examples of how managers do this include expanding the excepted service using the Cyber Excepted Service as a model. By limiting competition through direct hire by exclusively focusing on-time hires rather than expanding the pool of candidates under consideration, improving the skills of job candidates, and expanding the use of term and temporary hires. This is incompatible with effective talent management and upskilling the workforce through human capital planning.

If the merit-based federal hiring system as embodied in Title 5 is to remain the principal way to recruit civilian employees throughout the federal government, including the Department of Defense, there must be an insistence that fair, objective, and nonpartisan tools be used for evaluating the skills of job applicants.

Background/Analysis:

1. Section 1109 of the FY 2020 NDAA consolidates various direct hire authorities established on a piecemeal basis over the course of several NDAAs into a single provision, which sunsets on September 30, 2025.

2. The National Security Commission on Artificial Intelligence, the Government Accountability Office (GAO) and Defense Department have all recognized that the Department has significant skills gaps in various Scientific, Technological, Engineering, Mathematical, and Manufacturing (STEMM) fields as well as acquisition, financial management, cyber, artificial intelligence, and foreign language skills. Recruiting in these fields is critical to meeting current and future threats to national security.

3. These skills gaps have persisted despite the increasing discretion Congress has steadily granted to the Department of Defense in recent years to deviate from Title 5 hiring requirements and instead use so-called "pay for performance" demonstration projects for the acquisition workforce. There are already existing authorities that provide the Defense Department with direct hire authorities for depot maintenance and repair, the acquisition workforce, cyber, science, technology and engineering or math positions, medical or health positions, childcare positions, financial management, accounting, auditing, actuarial, cost estimation, operational research, and business administration.

4. DOD leadership has sought, and often obtained, exemptions from the government-wide processes administered by OPM that are intended to ensure an apolitical civil service in recent years. The Defense Department has sought these authorities purportedly for greater management flexibility, often to the detriment of retaining highly skilled employees recruited by the Department.

5. There are less expensive alternatives to fill skills gaps, if only the Department, with the assistance of a reinvigorated OPM, were to revive the objective assessment tools that had been successfully used before to generate larger lists of qualified and diverse candidates.

6. AFGE's position has generally been to oppose direct hiring because exceptions to full and fair open competition for jobs have been used to circumvent consideration of internal candidates for jobs, weaken diversity, and exclude otherwise qualified candidates from consideration. Sometimes in the past AFGE has supported, purely on an exception basis, direct hire for depots but has seen these authorities later illegitimately expanded to cover areas such as installation support services in public works offices.

7. Direct hire authorities serve the narrow interests of hiring managers who know specifically whom they want to hire by cutting off competition and shortening the length of the hiring process. However, these authorities undermine recruiting the best qualified candidates from a diverse pool and largely perpetuate a closed system of hiring in the federal government, where getting hired means knowing someone on the inside.

Congressional/Agency Action:

- Oppose creating additional direct hire authorities or expansions of the excepted service.

- Remind Members of Congress that current law already authorizes the Department of Defense to bypass the Title 5 hiring process when circumstances warrant it.

- Urge Members of Congress to invest in the skills and knowledge base of the current DOD civil service workforce.

Issue – Preventing Conversion of Defense Department Positions to Private Contractors

In some instances, DOD civilian employee positions are being replaced by contractors. This is done primarily by not filling vacant civilian positions and redirecting the funds towards service contractors to perform the same duties. Civilian employee jobs can also be replaced by assigning DOD federal employee functions to active or reserve military. These types of acts are detrimental to military readiness, lethality, overall efficiency, and effective human capital planning.

Background/Analysis:

1. 10 USC § 2461 prohibits converting Defense Department civilian employee job requirements to private sector performance without first going through a public-private competition.

2. Section 325 of the FY 2010 NDAA identified flaws of public-private competitions created under Office of Management and Budget (OMB) Circular A-76 and implemented within the Defense Department, imposing a "temporary" moratorium until these conditions are addressed.
3. Congress in recent years has directed the Department of Defense to establish compliance mechanisms and certifications for every services contract that they were not replacing civilian employees.

4. The Department appears to be ignoring not only the public-private competition moratorium but also recent Title 10 and congressional clarifications that prohibit arbitrary personnel caps on the DOD civilian workforce.

Congressional Action:

- Strengthen Congressional oversight by enacting statutory requirements that services contracts be transparent in the Defense Department's planning, programming, budgeting, and execution system in response to GAO findings.

- Retain and enforce compliance with current language in 10 USC § 129 prohibiting personnel caps on the civilian workforce absent an appropriate analysis of the impact on workload, stress on the force, military force structure, operational effectiveness, readiness, lethality and the fully burdened costs of the total force of military, civilian employees and contracted services.

- Provide examples to Congress of civilian positions not being filled by federal hires after vacancies occur but rather replaced with contractors in defiance of the public-private competition moratorium.

- Continue the public-private competition moratorium until such time as the flaws in A-76 are corrected and contractor inventories complete.

Issue – Department of Defense Childcare

AFGE represents Non-Appropriated Fund (NAF) DOD employees providing childcare services to military families (and civilian employees on a space-available basis) in Child Development Centers located on military installations. There is a longstanding waiting list for childcare services at military child development centers due primarily to the low levels of compensation for childcare workers. The availability of quality childcare is important to recruitment and retention of both military and civilian workers.

Background/Analysis:

1. Since at least 1989, with the enactment of the Military Child Care Act, Congress has recognized that reliance on non-appropriated funds would limit Child Development Centers' ability to attract and retain quality personnel and to make necessary repairs and upgrades to facilities and equipment. Congress has authorized the use of appropriated funds to supplement non-appropriated funds to improve DOD childcare services.

2. Child Development Center wait list management is a major concern on large bases and high-demand areas. DOD's current target for how long a family is on a wait list is 90 days. Some family advocacy groups have advocated for higher wait list priority for certain active-duty service members over DOD civilian employees. Since February 1, 2020, wait list management prioritizes access for military families over federal civilian workers.

3. In 2022, the Under Secretary of Defense for Personnel and Readiness released a memorandum, "Implementation of a $15 Per Hour Minimum Pay Rate for Nonappropriated Fund Employees," directing all DOD NAF employees' pay be adjusted to at least $15 per hour. The new minimum compensation rate starts pay at $17.39 per hour.

4. Recent NDAAs have required studies on various childcare issues. Most recently, the FY2023 NDAA required the Defense Department to study compensation for DOD childcare providers, which released an interim report in January 2024. The study found DOD childcare providers generally pay higher than for similar childcare work around the country.

5. In the FY2025 NDAA, Congress included a provision, Section 583, that requires the Department of Defense to pay employees who are directly involved in providing childcare a competitive salary based on the market's metropolitan statistical area. The FY2025 NDAA also included language that would establish procedures for interstate reciprocity for professional licenses, making it easier to reestablish careers following a move.

6. Going into 2025, it is important to monitor how the FY25 NDAA's language will be implemented and ensure that childcare providers' salaries and benefits are very competitive.

Issue – Commissaries and Exchanges

Congress in recent years has debated adopting statutory language that would prohibit military commissaries and exchanges from selling products grown or manufactured in China. AFGE strongly opposed this provision and was pleased that conferees did not adopt prohibition language for commissaries and exchanges.

Background/Analysis:

- Members of Congress who supported the provision to prohibit the sale of any goods manufactured, assembled, or imported from China at commissary stores and military exchanges did so believing that it would punish China for its increasingly provocative behavior. In fact, the provision, if it had been included in the National Defense Authorization Act, would have harmed members of the armed forces and their families while failing to meaningfully punish China for its geopolitical provocations.

- If a prohibition was put in place by Congress and military families were no longer able to purchase certain products they want at their base exchanges and commissaries, they would simply buy them online or at off-base retailers. China would be no worse off. However, the impact on military families would be substantial, resulting in a loss of their tax-free shopping privileges and exchange and commissary discounts – effectively reducing their benefits and net income. Moreover, the exchanges and commissaries would have to eliminate thousands of well-paying jobs that are often filled by military spouses and veterans, imposing additional economic burdens on military families and the communities in which military bases are located.

- A prohibition would have a devastating impact on exchanges and likely result in closures of exchanges and other on-base community support programs.

- The FY2025 NDAA included a provision, Section 641, that would prohibit the sale of fresh or chilled garlic originating from China.

Congressional Action:

- As Congress begins consideration of the FY2026 National Defense Authorization Act, it is very likely that the committees of jurisdiction will restart debate on prohibiting the sale of Chinese-origin goods in exchanges and commissaries.

- AFGE members should explain to their Members of Congress that a prohibition on China's made and grown goods would not impose additional costs on China. A

prohibition would only impair the ability of the exchanges and commissaries to meet the purchasing needs of military families, threaten the viability of exchanges and commissaries, and hurt the women and men who are employed by them.

Issue -- Expansion of "Commercial Item" Definitions have Weakened Organic Industrial Base Support and Government Command and Control of Weapon Systems

In recent years, Congress has expanded the definitions of "commercial items" in ways that could easily mischaracterize many weapon systems and components as "commercial" and thereby inappropriately shift the sustainment workload from the organic industrial base to the private sector. Military leaders could potentially lose command and control, and depots could lose the ability to perform maintenance efficiently and effectively on new weapon systems. Government access to technical data rights and cost or pricing data could be diminished and the ability of the government to insource contract logistics support could also be affected.

Background/Analysis:

- 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 marketplace.

- A single determination made by any contracting officer anywhere in the world designating an item as commercial 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.

- The Senate version of the FY2025 NDAA included a provision, Section 828, that would have prohibited the Defense Department from entering into a contract for the procurement of a good or service unless the contractor agrees to provide fair and reasonable access to all repair materials, including parts, tools, and information. Military contractors pushed back vigorously against this provision and it was removed from the final FY25 NDAA that Congress passed in December, 2024.

Congressional Action:

- Call on Congress to give the Defense Department the "right to repair" on all procurement contracts, similar to Senate FY25 NDAA, Section 828.

- Ask for additional GAO, Defense Department Inspector General (IF) and Federally Funded Research and Development Center (FFRDC) studies on the impact of recent

acquisition reforms on sustainment and readiness costs, focusing on "right to repair" issues in depot and operational environments for the military departments.

- Members should work through their uniformed leadership through the Joint Requirements Oversight Council (JROC) to ensure the issues of cybersecurity risks, access to technical data rights, interoperability concerns and Doctrine, Organization, Training, Materiel, Leadership and Education, Personnel and Facilities (DOTMLEPF) issues are properly considered. Additionally, work through the acquisition and sustainment community which should be particularly concerned about the effects of the preference for commercial products and services on escalating sustainment costs.

Issue – Protecting Quality Health Care for Military Members and Their Families

The Department is downsizing military medical treatment facilities by shifting beneficiaries to private healthcare (TRICARE) for any functions performed by military structure that does not deploy into combat zones.

Background/Analysis:

- In 2017, Congress directed the Department of Defense to reorganize the Defense Health Program and provided authority to convert military medical structures to civilian performance. To that end, Congress repealed requirements that military department surgeons general report to Congress on the impact on readiness and quality of care before privatizing any military medical structure.
- The effects of this action have been detrimental, degrading the quality and level of health care provided to military beneficiaries and their families because the local markets simply lack the capacity to provide necessary care.

Congressional Action:

- Take stronger action to ensure compliance with existing statutory prohibitions against converting Defense Department civilian jobs to contract by clarifying DOD needs to issue an updated policy and start complying with the public-private competition moratorium and existing statutory prohibitions against arbitrary personnel caps and reductions that do not consider workload, cost and readiness impacts.

- Revamp the proposed legislation, the Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act, last introduced in 2023, into something that addresses the objections of rural hospitals and provides better incentives such as scholarship programs for attracting and retaining talent. Consider the Cyber Scholarship program established as a model for addressing medical skills gaps.

Issue – Opposing Another Round of Base Realignment and Closures (BRAC) or a Fiscal Commission

Over the past five decades, Congress has periodically granted temporary authorities – known as a Base Realignment and Closure (BRAC) – that have established an independent commission for the review and approval of basing changes submitted by the Department of Defense.

Background/Analysis:

- The FY2024 National Defense Authorization Act (P.L. 118-31), Section 2702, placed a prohibition the Defense Department conducting an additional BRAC round. These provisions have been included in the annual NDAA for over a decade.

- The FY2025 National Defense Authorization Act (P.L. 118-159), the latest NDAA enacted into law, did not include a prohibition on DOD conducting a new BRAC round.
- There have been five rounds of base closures: 1988, 1991, 1993, 1995, and 2005.

- Some notable think tanks and policy organizations, including the Heritage Foundation, have called on Congress in recent years to authorize a new BRAC round to reduce costs.

- The Cost of Base Realignment Actions (COBRA) model used by the Defense Department has typically underestimated upfront investment costs and overstated savings (see GAO-13-149). This occurred because:

    - There was an 86 percent increase in military construction costs in the last BRAC round caused by requirements "that were added or identified after implementation began."
    - DOD failed to fully identify the information technology requirements for many recommendations.
    - There was no methodology for accurately tracking recommendations associated with requirements for military personnel.
    - GAO found that stated objectives of consolidating training so that the military service could train jointly failed to occur in two-thirds of the realignments for this purpose.

- BRAC has also been used as a suggested model for a potential fiscal commission that some policymakers have advocated as an approach to reduce federal spending.

Congressional Action:

- Do not authorize another BRAC round or alternative to BRAC, such as a federal government-wide fiscal commission. Carry forward FY2024 NDAA Section 2702 to prohibit the Defense Department from conducting a new BRAC round.

DEPARTMENT OF EDUCATION

Protecting the Department of Education

President Trump and his supporters have proposing abolishing the U.S. Department of Education, which provides essential support to America's students and 13,000 school districts nationwide. School funding and policy decisions are largely conducted on the state and local level, but the Department of Education provides crucial support to schools in low-income districts throughout the country. Students with disabilities in particular benefit tremendously from resources that cash-strapped school districts would otherwise struggle to provide. The Department also administers key assessment and data collection, critical to ensuring accountability and allowing good schools to become great schools. It provides professional development for teachers and conducts key educational research and innovation grants. The Head Start program administered by the Department currently supports over 800,000 preschool-aged children.

The Department's Federal Student Aid office administers billions of dollars in essential financial aid annually; millions of students would be at risk of not being able to afford college without the Department. The Department runs FAFSA (Free Application for Federal Student Aid**)**, the application process for students to apply for financial aid. By coordinating a standard application process, both students and colleges benefit. Once the financial aid is awarded, the Department manages the federal student debt portfolio.

Public education has always been critical to the economic, political, and social welfare of the nation and the Department of Education plays a crucial role supporting our schools, universities, students and their families.

Legislative Action:

- Oppose any effort by the Trump Administration to slash and eliminate the Department of Education, oppose legislation in Congress to eliminate the Department.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

As EEOC Marks its 60 Year Anniversary, the Civil Rights Agency Needs Resources to Stop Discrimination from Costing Jobs

AFGE's National Council of EEOC Locals, No. 216, is proud to represent investigators, attorneys, mediators, administrative judges and other Equal Employment Opportunity Commission (EEOC) staff who enforce civil rights laws in the private and federal sectors, which protect against discrimination on the job based on race, religion, color, national origin, sex, pregnancy, age, disability and genetics. EEOC's workers, including 30% of whom are veterans, serve from 53 offices located throughout the country.

EEOC employees have been on the frontlines of civil rights enforcement for sixty years, since the agency, which was created by the Civil Rights Act of 1964, opened its doors in 1965. Congress and Presidents of both parties have charged EEOC with enforcing laws to protect American workers from discrimination: Equal Pay Act (Kennedy); Civil Rights Act (Johnson); Americans with Disabilities Act (G.H.W. Bush); Genetics Information

Nondiscrimination Act (G.W. Bush); ADA Amendments Act (G.W. Bush); Lilly Ledbetter Act (Obama); and the bipartisan sponsored and passed Pregnant Workers Fairness Act (Biden).

EEOC needs adequate frontline staff to prevent workplace discrimination, which can harm the economic security of America's working families. Discrimination charges, inquiries, appointments, and calls have all increased significantly. Yet, EEOC's staffing remains low and below the staff ceiling, ending FY24 with only 2,246 Full Time Equivalents (FTE's) nationwide. Short staffing can result in the public experiencing delays in getting help. More frontline staff is needed to handle the growing volume of public demand.

Summary of Priorities:

For FY25 and FY26, AFGE Council 216 will urge Congress to increase EEOC's budget and certainly not to impose cuts that would harm civil rights enforcement. EEOC should hire up to at least the staff ceiling of 2,347 FTEs, focusing on frontline staff, especially positions the demand for intake appointments. The Union will advocate for efficiencies that help the public and promote working conditions that prevent costly turnover. The Union will continue to press EEOC to focus on promoting civil rights in the private and Federal sector workplaces rather than internal closure metrics. The Union will fight for Federal workers to maintain their rights to file and have their discrimination complaints adjudicated by EEOC administrative judges.

Discussion

1. **Congress should support EEOC funding for FY25 and FY26**
    - *AFGE Council 216 will urge Congress to protect EEOC's budget.*

EEOC's needs resources to accomplish the mission. For FY24, EEOC received level funding, which was $25M below the administration request. During continuing resolutions EEOC remains at level funding. Any potential cuts to EEOC for FY25 or FY 26 would have a devastating impact on civil rights enforcement. When EEOC is starved of resources historically it has relied on "do more with less" strategies, which centered on perfunctory case closures rather than providing substantive help to the public. EEOC needs adequate resources to handle rising inquiries and charge filings and to enforce the recently enacted Pregnant Workers Fairness Act. For FY25 and FY26, a budget increase would allow EEOC to ensure adequate frontline staff to provide effective help when workers face discrimination on the job.

2. **EEOC Needs Frontline Staff to Meet Demand**
    - *AFGE Council 216 will urge Congress for resources for EEOC frontline staff*

Historically, EEOC is small understaffed and underfunded agency, despite the huge mission of ensuring a fair shot in the workplace. EEOC ended FY24 with just 2,246 FTE's nationwide. Compare this to EEOC's workforce of 2,505 FTE's in FY11. EEOC's work is too important to have fewer hands-on deck now than it did then.

Increasing frontline staff is warranted based on EEOC's rising workload and additional laws it is charged with enforcing. According to EEOC's FY24 Financial Report, "In fiscal year 2024, the EEOC received over 640,000 inquiries . . . The number of inquiries has increased by double-digit percentages over the last three fiscal years." In the last three reported fiscal years charges of discrimination workers have filed with the EEOC have risen from 61,331 in FY21 to 73,485 in FY22 and to 81,055 in FY23. The FY23 Financial report referring to the modest hiring accomplished that year stated, "[t]he addition of new employees in mission critical positions was essential and must be followed by additional investments to ensure that the EEOC has resources commensurate with its task." These investments in hiring frontline staff are needed now to keep up staffing levels to meet public demand. American working families depend on EEOC for a fair shot at getting and keeping a job for their economic security.

For FY25 and FY26, AFGE Council 216 will urge Congress to direct EEOC to hire frontline staff at least up to the staff ceiling of 2,347 FTEs.

3. **Congress Should Direct EEOC to Hire Key Frontline Positions**
    - *AFGE Council 216 will urge Congress to direct EEOC to hire staff who serve the public*

Available hiring should be targeted on frontline staff, who directly serve the public. Staffing shortages have a direct impact on the public's ability to get real help. Adequate frontline staff is needed to receive inquiries, conduct intake interview appointments, and process charges from workers asserting employment discrimination.
For example, there continues to not be enough investigative staff to cover appointment demand. Members of the public primarily begin the process by completing an online inquiry, but then are directed to schedule an appointment for an intake interview. However, the appointment calendars are booked up for months. During this wait, jobs are lost, and retaliation cases surge.

AFGE Council 216 has long promoted the efficiency of hiring dedicated intake staff. Utilizing trained paraprofessionals for intake would help handle the high demand for intake appointments. These Senior Investigator Support Assistants (SISA) can advance the intake process from pre-charge counseling through charge filing. With more SISAs, investigators, who now must stop investigating their cases to regularly rotate into intake, would be able to focus on processing their caseload. Yet EEOC has only ten of these SISAs nationwide. EEOC should hire 100 SISAs, at least one for each of the 53 offices and more for larger offices with higher intake.

Likewise, EEOC's in-house call center is typically staffed by approximately 32 intake information representatives (IIRs) providing live assistance to thousands of callers, with the huge volume of inquiries rising. A small increase in the number of IIRs would reduce wait times. Additionally, it would be more efficient if these IIRs could be trained up to ISAs and SISAs, so they could not only answer or forward inquiries, but also be able to advance the intake process.

Hiring more investigators would alleviate the unfortunate practice of transferring cases, which is bad for workers, employers, and EEOC staff. EEOC will transfer up to thousands of charges from short-staffed offices to those with a few more personnel. This drives up the caseloads and overwhelms the investigators in receiving offices. For the public, this means new staff learning their cases and managing them away from the geographic location of the workers and employers. Rather than using a band aid, the cure is for all EEOC offices to be fully staffed, so they can manage their own caseloads.

Additional support staff such as Investigative Support Assistants (ISA) and Office Automation Assistants (OAA) would allow EEOC to handle calls, mail, data input, and email more efficiently and relieve professional staff of clerical work that detracts from their primary duties.

EEOC's mediation program has a 25-year history of success. Mediators reduce office caseloads and processing times. After a multi-year freeze, EEOC finally began hiring mediators in FY21, but more are still needed.

For FY25, AFGE Council 216 will urge Congress for EEOC to prioritize hiring these and other frontline positions that directly serve the public.

4. **Ensure Model Work Practices to Avoid Costly Turnover**
    - *AFGE Council 216 will fight for a good workplace for EEOC's own employees*

Fostering good morale and working conditions promotes retention. Turnover costs the Agency in recruitment and training. Turnover is bad for the public and inefficient because it creates staffing and knowledge gaps that negatively impact services. Maintaining civil service protections is critical to maintaining a fair workplace. Fear of reprisal for protected activity at EEOC remains above the government average as tracked by the Federal Employee Viewpoint Survey. EEOC employees whose job it is to enforce laws against discrimination should be protected in raising their own concerns. Workplace flexibilities are important to keeping EEOC competitive in recruiting and retaining talent in the modern employment market.

5. **Federal Employees Must Maintain Rights to Seek Redress for Discrimination from Administrative Judges at EEOC**
    - *AFGE will fight for Federal workers to have access to the EEOC*

AFGE Council 216 will also continue to protect Federal workers' rights. Federal workers are entitled to the same rights to a workplace free from discrimination as private sector employees. EEOC is the premier civil rights agency. EEOC coordinates the federal government's nondiscrimination efforts. EEOC's Administrative Judges (AJs) conduct hearings and adjudicate Federal employee's discrimination complaints. For decades EEOC's hearings units have carried out these functions. EEOC and its staff are the subject matter experts on this nation's civil rights laws barring discrimination in employment, including at Federal agencies. It would be inefficient to break off EEOC's authority with regard to Federal employees. It would also be a disservice to Federal employees to not have the same benefit as private sector employees to the EEOC, the knowledge base of its staff, and the agency's experience of the laws and procedures.

AFGE will urge Congress:

- For FY25, to enact a budget increase for EEOC from $455M (FY23/FY24) to the budget request of $488M, but in no event to cut funding for FY25 or FY26.

- To direct EEOC to hire frontline staff up to at least the 2,347 FTE ceiling.

- To foster retention and avoid costly turnover through civil service protections, workplace flexibilities, and addressing fear of reprisal.

- To maintain federal employee rights to full and fair adjudication before EEOC Administrative Judges.

- To hire EEOC dedicated intake staff, including at least 100 Senior Investigator Support Assistants.

ENVIRONMENTAL PROTECTION AGENCY
AFGE COUNCIL 238

In the current legislative session, Congress should:

- Ensure that Collective Bargaining Agreements and Memorandums of Understanding of federal employee unions are recognized and respected.

- Support remote work and opportunities, as these work flexibilities save money, aid recruiting efforts and, importantly, reduce greenhouse gas emissions.

- Resist efforts to relocate EPA offices.

- Fully fund EPA's appropriations in FY 2025-26.

- Address the continuing staffing shortfall in core programs at the Environmental Protection Agency.

- Avert a government shutdown in FY 2025.

- Protect government employees from political pressure by supporting scientific integrity.

Background

The members of AFGE Council 238, the Environmental Protection Agency's largest union at over 8,500 strong, commend our lawmakers' determination to protect federal workers, limit harmful toxic pollution and avert the worst effects of climate change. Through the Inflation Reduction Act (IRA) and the Bipartisan Infrastructure Law (BIL), EPA has been made more

effective at protecting the nation against environmental pollution. EPA employees stand ready to address the most pressing environmental problems of our generation, as we have demonstrated over our 50-year track record at the Agency.

For Fiscal Year 2025, we highlight the following requests.

Union Rights: Ensure that Collective Bargaining Agreements and Memoranda of Understanding of federal employee unions are recognized and respected.

In 2024, AFGE Council 239 finalized a new collective bargaining agreement - the first fully bargained agreement since 2007. The Agreement includes important provisions that protect EPA employees on the job, including telework, remote work, diversity/inclusion, scientific integrity, official time and maintaining union offices in federal buildings. Preserving employee labor rights and benefits promotes retention at EPA and is crucial to staying competitive with private industry.

In 2019, the previous Trump Administration rescinded the EPA Council 238's Collective Bargaining Agreement and imposed a management directive in its place. The directive rolled back many of the protections the union had previously bargained with management. The Federal Labor Relations Authority under the Trump Administration did not overturn this injustice.

Congress should work to support collective bargaining agreements and approve FLRA appointees who will recognize the value of collective bargaining and the agreements which accrue from the process of bargaining between federal unions and management.

Remote Work and Telework: Congress should preserve current levels of remote work and telework

Congress should support remote work and telework opportunities at EPA as a cost savings and recruiting measure and, importantly, to reduce greenhouse gas emissions. Expanding remote work and telework saves crucial Agency funds. Investing in telework and remote work attracts the best and the brightest while retaining the highly educated, highly trained workers at EPA. During the COVID-19 pandemic, many federal employees worked remotely to protect the health of their families and their communities. EPA employees were praised by EPA management, even under the Trump administration, for their effectiveness working remotely, processing more environmental permit applications during the first year of the pandemic compared to a standard year working in offices.

As federal agencies began to return to work in offices, in light of how effective EPA was during the COVID-19 pandemic, AFGE bargained with the Agency to allow EPA employees to continue to expand telework flexibilities and initiate a remote work program that allows full-time telework. After only one year under the new agreements, the Agency tried to limit their scope by eroding employee telework and disapproving a large swath of applications for remote work. As acknowledged in the agreement itself, offering remote work helps recruit needed expertise to EPA, including from the highly sought-after STEM applicant pool. Despite the agency's initial

appreciation of the benefits of telework to the agency, the union has been forced to arbitrate - and win - cases for EPA workers that advance the full scope of remote work bargained by the union.

The Agency has reported that, after expanded telework and remote work was ruled out in job offers, applicants have been turning down EPA's offers of employment. As it stands, fully one quarter of job offers tendered by EPA are not being accepted. And within EPA, we see more experienced EPA employees transferring to offices where expanded telework and remote work are offered. Fully 85 percent of federal employees say increased telework flexibilities have benefited their quality of life. Federal employees know that the benefits go beyond personal convenience. Over three-quarters believe their productivity is better when they work at home. Most say they took the extra time they had without a commute to learn new skills. And when it comes to the bottom line of productivity, nearly 70 percent of federal employees say there was no difference between working remotely or being in-person.

Importantly, reducing EPA's office footprint is both an environmental and a cost savings measure. More employees remote working and teleworking created opportunities to reduce agency office space. Office utility costs have also dropped. Federal departments allowing expanded telework and remote work were able to shed a considerable part of the financial burden posed by transit costs. The Department of Education, for example, saved over $3 million on transit costs alone.

Finally, remote work and telework increase the amount of employees working outside of Washington, D.C. and around the nation, distributing federal employees and federal jobs throughout the 435 congressional districts.

We applaud the previous Administration's efforts to build a clean transportation future by announcing, in December 2023, new public and private commitments to boost the use of electric vehicles for federal travel, save taxpayer dollars, and tackle the climate crisis. But increased telework and remote work, which reduce the number of travel trips for federal employees overall, should be included in calculations of how federal employees limited greenhouse gas emissions in the Biden Administration.

AFGE opposes legislation to roll back telework in the federal government. If Congress reintroduces the "Return to Work Act," which in the last Congress was H.R. 101, HR-107 which seek to require agencies to return telework to pre-pandemic practice and the "SHOW UP Act" which in the last Congress was H.R. 139. AFGE will resolutely oppose all bills limiting the ability to collectively bargain telework options.

These anti-telework bills require a return to pre-pandemic telework policies and a review of office usage and eligibility for locality pay. They ignore widespread data supporting the benefits of telework and will reduce the environmental gains and cost-savings that have already accrued.

EPA Reorganization: Resist efforts to relocate EPA offices, including EPA's DC Headquarters.

Relocating any current EPA office, including its headquarters outside of the nation's capital, could be catastrophic for the agency. Congress should resist any efforts to relocate current EPA offices. As has been seen by previous efforts to move federal offices, an Agency's mission can be severely compromised because staff resign rather than upend their lives to move to a far-away location. Also, the cost of relocating an office is prohibitive. Often the justification used to support a plan to relocate a federal office is incomplete and provides little reasoning to support the contention that the move will save taxpayers millions of dollars.

We ask that Congress oppose any efforts to relocate EPA headquarters or its regional offices/laboratories.

EPA Funding: Congress should fully fund EPA in FY 2025-26.

Congress should maintain a level of appropriation that supports full protection for the American people and preserve the gains made by EPA under previous appropriations. EPA's 2023 funding of $10.4 billion finally began to address years of declining EPA resources, after a 2022 budget that was half the size in real dollars of EPA's budget 40 years ago. However, EPA's fiscal 2024 funding dropped the Agency's environmental program account by $108 million and the science account by $44 million compared to 2023 levels.

This cut does not align with the views of the American public. The vast majority of voters want a strong EPA. Nationwide, 76 percent of those who voted for the incoming Trump Administration and 88 percent of all voters oppose attempts to weaken the Environmental Protection Agency.

The 2023 EPA appropriation took a small step forward, helping to rebuild the Agency and restoring its ability to implement and enforce the laws protecting our nation's environment. However, the 2024 cut in funding reversed some of the progress made and did not continue the trend to fully fund the Agency. Much necessary work in protecting the environment remains unfunded, and to tackle the challenges the nation faces, Congress must fully fund the EPA at $11.2 billion.

EPA Staffing: Congress should take steps to address the continuing staffing shortfall in core programs at the EPA, including retaining technical employees.

EPA has been suffering from a significant staffing shortfall that continues to thwart Agency action. EPA's mission has grown enormously, and environmental challenges continue to escalate; however, EPA's ability to hire and retain staff has not yet rebounded above pre-2014 levels.

EPA workers are implementing key provisions of groundbreaking regulatory efforts to protect the American people and our planet. The country depends on these efforts to help avert the worst effects of the climate crisis. But EPA career employees report they are under the greatest pressure they've ever encountered due to the increased responsibilities assigned to EPA. EPA's 15,130 full-time employees (FTEs) are not enough to meet the increasing demands *and* continue to accomplish EPA's core mission. To meet the current needs, EPA must expand its ranks to

20,000 workers. This is especially important considering 20 percent of EPA's workforce is eligible to retire.

In the past two years, Congress has added many new responsibilities to EPA's plate through the Bipartisan Infrastructure Law (BIL) and the Inflation Reduction Act (IRA). The BIL – a once-in-a-generation investment in our nation's infrastructure and competitiveness – enables us to rebuild America's roads, bridges and rails, expand access to clean drinking water, tackle the climate crisis and advance environmental justice. The IRA invests in clean energy and jobs, while lowering energy costs for families and slashing climate pollution in the U.S. by an estimated 40% by the end of the decade. $90 billion was provided by Congress under the BIL and the IRA for climate projects.

EPA's core programs continue to protect the American people from the effects of toxic pollution. Staff must write and implement highly complex rules that are expected to reduce the most devastating effects of toxic pollution. And EPA staff must shepherd any new rules through complex regulatory hurdles.

Expert, highly trained EPA staff must act with maximum speed to avert public health emergencies like the East Palestine, Ohio train derailment in 2023.

Environmental justice communities continue to suffer from outsized toxic burdens that need to be addressed, so continuing EPA's expanded enforcement is critical to the future of people living in highly polluted areas. Federal environmental enforcement is an important EPA "core" program and a case in point. EPA's enforcement office is now staffing up after years of funding declines. Nearly 300 enforcement positions were added in FY 2023 after EPA underwent a decade of budget cuts and lost about 950 enforcement jobs. Because EPA's appropriations have started to reflect the need to fully staff the Agency, the number of EPA's civil cases against polluters has rebounded. This year, EPA initiated 1,751 civil enforcement actions, nearly a hundred more than the year before and its most in a year since 2018. EPA brought in over $700 million in penalties, fines and restitution from environmental law violators in fiscal year 2023, a 57 percent increase from the prior year. EPA also reached 1,791 civil settlements, with 55 percent of those cases centering on facilities in communities with "potential [environmental justice] concerns." Inspections climbed in 2024 to over 8,500, a 9 percent increase from fiscal 2023 and an almost 40% increase over 2022. This extraordinary progress was due to the added staff hiring enabled by the higher appropriation for staffing enacted by Congress.

However, EPA's enforcement is not nearly at the levels seen prior to 2018, when the industrial output and population stood below the nation's current expanded footprint. Since 2008, the nation's gross domestic product has grown from about $14 trillion to just under $29 trillion in 2024, an over 50 percent increase. If EPA staffing had grown commensurate with the economy over that period, the agency would need about 25,000 permanent employees. Importantly, investment in EPA staffing levels quickly generates significant progress in protecting the nation's air, land, and water. Congress should support the FTE level of at least 20,000 Agency employees to preserve EPA's path to continuing our nation's progress.

Schedule F: Congress should take steps to block the implementation of Schedule F.

Congress should reject any legislation that erodes civil service protections and leaves federal employees more susceptible to dismissal or hiring based on political preference.

Government Shutdown: Congress should take steps to avert a government shutdown in FY 2025.

Prior to the deadline for the current continuing resolution, Congress should act to swiftly avoid a federal government shutdown.

A shutdown occurs when there is neither a full-year spending bill nor a continuing resolution (CR) in effect for a department or agency whose budget has an expiration date. For many parts of government, that expiration date occurs at least once annually at the end of the fiscal year, which runs from October 1 to September 30. If a CR or a full-year deal is not in place, EPA will lack approved annual funding from Congress, requiring EPA to "shut down." When there is a shutdown, EPA must:

- Stop all projects and activities as quickly as possible.
- Furlough employees whose work activities have not been exempted or excepted from the shutdown.
- Halt pay for all government employees and contractors, except if they are exempted; and
- Sign no further contracts for goods and services.

Because many federal workers are off-the-job during a government shutdown, many vital services are stopped or slowed, disturbing the day-to-day life for many Americans. Shutdowns are a horrible waste of the taxpayers' money. It takes weeks of planning to cease operations and more wasted time and effort to get projects moving again once a shutdown ends. Congress must work swiftly to avoid any lapse in funding for federal agencies.

Sound Science: Protect Employees from the Erosion of Integrity in Scientific Research

Congress must support scientific integrity in the work of federal employees and protect EPA scientists and engineers from political interference when conducting technical reviews and research. Past cases of management's undue influence on employee scientific findings in the Office of Chemical Safety and Pollution Prevention show that more protections are necessary to insure the integrity of EPA's decision-making. We support the Scientific Integrity Act, H.R. 4893, a bipartisan measure to strengthen evidence-based policymaking by prohibiting political interference with the scientific research and data federal agencies use to craft programs and regulations to protect public health, improve consumer and worker safety, ensure clean air and drinking water.

In 2024, our collective bargaining agreement finalized an independent, impartial avenue to address claims of retaliation if EPA employees pursue sound scientific conclusions.

To guarantee the integrity of science at EPA that will protect the American people and EPA staff, Congress must:

- Combat political interference in scientific decisions at EPA and work to alleviate the pressure on scientists when upper management fails to support sound science.

- Support the strong and independent capacity in our collective bargaining agreement that provides for adjudicating claims of alteration and suppression of science.

- Protect scientists against retaliation within EPA if and when lapses in scientific integrity are reported.
- Support the Scientific Integrity Act, if it is introduced again in the 119th Congress.

FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)

Background

The Federal Employees' Compensation Act (FECA) is administered by the U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP) and currently covers roughly three million civilian federal employees from more than 70 different agencies. When a death, injury, or illness occurs on the job, FECA provides payments for (1) loss of wages, (2) loss of a body part or its use, (3) vocational rehabilitation, (4) death benefits for survivors, (5) burial allowances, and (6) medical care for injured employees. The FECA program is particularly important for inherently dangerous occupations – Bureau of Prisons correctional workers, U.S. Customs and Border Protection officers, federal firefighters, and other federal law enforcement officers. Its importance expanded during and in the wake of the COVID-19 pandemic.

Improving Access to Workers' Compensation for Injured Federal Workers Act

AFGE supports the reintroduction of the "Improving Access to Workers' Compensation for Injured Federal Workers Act in the 119th Congress. In the 118th Congress, H.R. 618 / S. 131 was introduced by Representative Tim Walberg (R-MN) and Senator Sherrod Brown (D-OH). This bill would allow injured federal workers to get the appropriate care they need from state-licensed physician assistants and nurse practitioners. Currently, injured federal workers can only receive the care they're entitled to if it's provided by a physician, and only a physician can certify a worker's compensation claim. Given the challenges some patients have in accessing their federal workers' compensation benefits, allowing these providers to be reimbursed for the care they provide workers compensation patients within the scope of their practice is an important first step in improving access to FECA benefits for federal employees.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Background

Across the last several administrations, the Federal Emergency Management Agency (FEMA) has struggled to recruit, train and retain employees. According to a May 2023 GAO report, FEMA had approximately 11,400 disaster employees at the beginning of fiscal year 2022.

AFGE Federal Emergency Management Agency (FEMA) Local 4060 represents over 3,000 federal and District of Columbia permanent full-time employees. In the aftermath of one of the most active disaster seasons in recent history, AFGE FEMA members have responded to hundreds of disasters, including the greater Los Angeles wildfires; Hurricane Helene in North Carolina and Tennessee, and Hurricane Milton in Florida.

FEMA urban search and rescue officers search for survivors and non-survivors in natural disasters. FEMA safety officers ensure downed power lines do not electrocute survivors and toxins in flood waters do not infect communities. FEMA firefighters and police officers work hand in hand with state and local emergency management agencies to ensure crime is mitigated and fires do not harm survivors. FEMA claims adjusters work to make victims whole after their homes have been destroyed. FEMA logisticians compile data and predict when and where future disasters will occur. FEMA grant and contract officers ensure needs are met in the aftermath of destruction.

FEMA employees are hired through a rigorous, competitive, merit-based examination process that includes application of veteran's preference. The number of permanent full-time employees needed to carry out successful emergency management and preparedness cannot be short changed. FEMA employees are over-worked, under-resourced, understaffed, and frequently deployed to disaster zones without adequate recuperation time.

In 1988 the Stafford Act created two sets of non-permanent employees to be hired during disasters: these include (1) Cadre of On-Call Recovery/Response Employees (CORE) and (2) Disaster Response Workers (DRW) Temporary Workers. CORE and DRW employees are brought on using an expedited hiring process during disasters.

Stafford Act employees are used to supplement permanent employees, which too often results in vacancies for permanent full-time positions going unfilled for extensive periods of time. The agency keeps Stafford Act employees on for much longer than their two-to-four-year contracts. Stafford Act employees should be deployed to disaster zones for a specified amount of time to respond to a specific disaster. These positions were not designed to work with or replace permanent full-time employees on non-disaster work; however, because there is such a need for permanent full-time employees at FEMA, it is not uncommon for Stafford Act employees to work outside of their job descriptions.

Staffing: Hiring More Permanent Full-Time Employees

The FEMA workforce is essential to making victims whole again after natural and human-created disasters and ensuring that the Americans affected by natural and human-made disasters can return to normalcy and rebuild their lives. Continued low staffing hinders recruitment and

retention of this workforce which is not only detrimental to the agency and its employees, but also harmful to the American public recovering from natural disasters. Congress must not only appropriate funds to hire more full time FEMA employees, but it must also ensure these new FEMA employees have the same civil service protections as other federal workers to recognize the service they provide in helping victims recover from tragedy. AFGE continues to work with the House and Senate Homeland Security Committees to create a path toward permanent full-time employment for Stafford Act employees, so that all agency employees have workplace rights and ensure that FEMA is more disaster ready.

Union Rights for Stafford Act Employees

FEMA is unable to keep in-house talent at the agency. Stafford Act employees do not have full union rights and protections which help improve workplace safety, labor management relations and communication in the workplace. When Stafford Act employees experience issues in the workplace, they often feel as though they have little to no rights. Title 5 permanent full-time employees do have these workplace rights and protections and work with the union to help them ensure that they have what is needed for them to successfully fulfill their job duties with dignity and respect. The union cannot represent most Stafford Act employees when they experience workplace discrimination and harassment. AFGE continues to lobby in support of full FEMA funding and advocating for member pay and fair hiring practices. AFGE continues to 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.

Safety on the Jobsite

FEMA employees responding to Hurricane Helene and trying to aid victims experienced harassment and mistreatment on the job due to the nature of the high stress and substantial loss facing the Hurricane survivors. AFGE continues to urge Congress to ensure the health and safety of frontline workers serving and protecting the American public.

FEDERAL FIREFIGHTERS

AFGE represents federal firefighters at DoD, VA, and other agencies across the country. Too many firefighters are living with and dying from cancer in the United States every year.

Firefighters are frequently exposed to smoke, toxic chemicals, and debris which can cause cancer. These civil servants and American heroes deserve the highest quality data and best public health solutions to help prevent and treat work-related illnesses.
Federal firefighters put their lives on the line every day to protect and serve the American people. Most federal firefighters are located at military facilities. These federal firefighters have

specialized training to respond to emergencies involving aircraft, ships, artillery, and ammunition. Federal firefighters at the Department of Veterans Affairs serve civilians and veterans including chronically ill and bedridden patients. Federal firefighters provide emergency medical services, crash rescue services, hazardous material containment, and fight fires. The National Institute of Occupational Safety and Health (NIOSH) has conducted studies about the prevalence of cancer among firefighters; however, these studies have had two critical flaws: 1) the sample sizes were too small; and 2) they do not include many minority populations. This limited NIOSH's ability to draw productive statistical conclusions from their data. More comprehensive public health data must be collected to develop solutions to preventing the high rates of cancer in firefighters.

The Centers for Disease Control and Prevention's (CDC) National Program of Cancer Registries (NPCR) provides support for states and territories to maintain registries that provide high-quality data. Data collection systems like cancer registries help identify and diagnose work related illnesses. For instance, registries help bring attention to the fact that professional groups like firefighters are not getting much needed cancer screening tests, and that more efforts are needed to decrease the likelihood of illness.

AFGE supports the reintroduction of the "Firefighter Pay Equity Act," which in the 118th Congress was introduced by Representative Gerry Connolly (D-VA) with the bill number H.R. 1235.

This bill would modify certain pay calculations that are used to determine retirement and annuity benefits for federal firefighters. Specifically, the bill adjusts the method of determining the average pay of a federal firefighter by adding one-half of a firefighter's basic hourly rate multiplied by the number of overtime hours included as part of such firefighter's regular tour of duty. It also requires the Office of Personnel Management to issue regulations that cap the number of hours in a regular workweek, which may not exceed 60 hours per week.

DEPARTMENT OF HOMELAND SECURITY

DHS Collective Bargaining Agreements

Of great concern to AFGE and other federal unions is whether and to what degree Trump appointees across the executive branch will invoke "national security" to void existing collective bargaining agreements and strip federal employees of their workplace rights and protections. DHS agencies with collective bargaining agreements – most prominently TSA, Customs and Border Protection, USCIS – may be especially vulnerable, but which specific DHS agencies is not, at this time, clear.

Notably, if Trump DHS appointees selectively invoke national security to void contracts at those DHS agencies they dislike or distrust, while maintaining contracts at DHS agencies it considers "friendly" to the administration's immigration agenda, significant legal questions will be raised regarding whether DHS has applied "national security" fairly and consistently with respect to the abrogation of agency contracts. If, for example, "national security" is invoked to abrogate

USCIS's agreements but not CBP's agreements, the question the AFGE Legislative Department will be immediately as Members of Congress is what makes USCIS an agency with a core national security function and not CBP?

DHS Labor-Management Forums

The Biden administration re-established Labor Management Forums at DHS and its component agencies to promote increased discussion, transparency, and resolution of labor issues across the Department. Agency-level forums and the Department-level forum me regularly throughout the Biden administration, fostering collaboration and communication. The future of labor-managements forums at DHS and other federal agencies is in doubt, given that the first trump administration largely disbanded them.

U.S. BORDER PATROL

Staffing

A notable and rare exception to President Trump's general hostility toward federal agencies is the U.S. Border Patrol. During the 2024 presidential campaign, Trump promised to hire 10,000 more Border Patrol agents and improve pay and benefits as part of his plan to crack down on immigration. However, fulfilling this hiring goal may prove difficult, even if Congress appropriates all the money that Trump seeks for CBP.

Despite Trump's pledge to recruit more Border Patrol agents, the reality is that across the last several administrations, the Border Patrol has struggled to recruit, train and retain agents. For example, shortly after taking office in 2017, Trump directed the Border Patrol to add 5,000 agents. By the time he left office in 2021, the Border Patrol had actually shrunk by 1,084 agents. Current staffing is nearly 3,000 below the target set in 2023 by Congress.

Attrition has outpaced hiring since 2021, according to a September 2024 report from the Government Accountability Office (GAO) documenting the CBP's chronic staffing shortages. Long hours, harsh working conditions and relatively low pay have kept turnover high for decades at the Border Patrol. A 2023 audit found that 88% of border stations were understaffed. Advertising and other recruitment efforts under both Trump and Biden yielded disappointing results. During the first Trump administration, CBP entered into a $297 million contract with a firm to recruit, vet and hire 5,000 Border Patrol agents. The administration canceled the contract after three years because by then the company had delivered only 36 new hires. Border Patrol staffing peaked at 21,444 agents in 2011.

As of June of 2024, Border Patrol staffing was just over 19,000, according to the GAO – well short of the 22,000-target set in 2023 by Congress. Since January 2024, the Border Patrol has offered $20,000 bonuses for new hires who complete training and three years of service, plus $10,000 if they agree to serve in a remote location. During the campaign, Trump promised a $10,000 signing bonus and 10% raise for Border Patrol agents.

The shortages did not start when President Biden took over in 2021. At the start of the Biden administration, there were 19,740 agents, 88 fewer than when Trump was sworn in. In the second half of Trump's first term, the Border Patrol hired more than 3,500 agents but lost more than 3,100 to attrition, according to the GAO. This tracks with projections issued early in Trump's first term by his first CBP commissioner, Kevin McAleenan – that the Border Patrol would have to hire more than 26,000 new agents to expand by 5,000, due to turnover.

U.S. CITIZENSHIP AND NATURALIZATION SERVICE

Few agencies within the Department of Homeland Security will be more affected by the Trump administration's pledge to toughen border security and restrict immigration than USCIS, particularly its asylum division in which many AFGE members are employed.

Even before President Trump took office, USCIS faced significant challenges. USCIS, which employs 14,500 personnel, including 2,500 employees in its Refugee, Asylum, and International Directorate, is still struggling to recover from the hiring freeze it implemented during the COVID-19 pandemic, when the agency faced the prospect of furloughing most of its workers as normal funds collected through fees dried up. Congress eventually intervened with supplemental funding, but not before the hiring pause depleted the agency.

While the freeze was in place, USCIS lost more than 10% of its asylum officers. It now employs approximately 800 officers in that role as of May 2024, 250 of whom were in training, with the agency unable to fill over 1,000 positions because of the extreme demands of the job. For the agency to keep up with its asylum processing workload, it is estimated that more than 3,000 officers are needed.

President Biden in fiscal 2023 requested Congress reorient USCIS funding to be more appropriations-based, asking for $900 million and funding to hire 1,000 asylum staffers. Congress provided just $243 million and, significantly, stipulated that the funding not be used on asylum backlog reduction. Congress gave the agency $281 million in fiscal 2024, but USCIS said it could not spend the money on hiring asylum officers because the money arrived too late in the fiscal year, and it had no guarantees lawmakers would offer a similar appropriation to fund the hires in future years.

It is important to note that USCIS receives no revenue from asylum processing, instead only generating money from fees it charges for other immigration services under its jurisdiction such as naturalization and work visas. These fees stayed stagnant between 2016 and 2024. In January 2024, the agency finalized a plan to increase some of its fees and projected it would raise an additional $313 million annually. Nevertheless, USCIS projects that the revenue will be insufficient to keep pace with growing demands or reduce the existing asylum backlog.

The Trump administration's vow to restrict immigration will be particularly noticeable in changes it makes to the asylum process. Simply put, DHS will do everything it can to hobble its Refugee, Asylum, and International Directorate. This may involve, among other actions: (1) declaring that asylum officers are "critical to national security" and thus no longer subject to existing collective bargaining agreements; (2) starving USCIS of funds it needs to do its work and pay its employees, which would likely trigger a lawsuit that the Trump administration has indicated it is willing to engage in; (3) revising existing asylum regulations to make the work of asylum officers all but impossible to carry out. The effect on employee morale, recruitment, and retention will be devastating. In a real sense, the administrative, funding, and workplace changes that the Trump administration makes at USCIS, supported by the Republican-controlled Congress, will cast into sharp relief how its blueprint for remaking the rest of the federal government. With some exceptions, the Trump administration has a hostile view of federal agencies and the civil service, and perhaps no single agency within the federal government is disliked more by the Trump administration than USCIS, which it considers largely responsible for the immigration challenges that have beset the U.S, in recent years.

As challenging as the environment is for USCIS in 2025, it must be pointed out that the agency is also responsible for processing employment-based immigration applications that are critical to U.S. businesses seeking labor. To the extent the Trump administration seeks to sharply curtail all forms of legal immigration to the U.S. by severely restricting USCIS's mission, budget, processes, and workplace conditions, not just the asylum division's, the consequences for the U.S. economy will be severe and the pushback that it will experience from the tech industry, farms, and lodging and hospitality companies will be unrelenting. This may have the effect of mitigating the worst policies that USCIS could adopt in the next year.

Facing a hostile administration and Congress with respect to USCIS, the Legislative Department will work closely with AFGE members representing asylum officers to make sure Members of Congress appreciate the work of asylum officers and, especially, understand that any administration decision to revoke their collective bargaining agreements by invoking "national security" makes no sense and is not supported by the legal record.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

AFGE continues to lobby in support of full 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. AFGE continues to 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 continues to work with Congress to ensure adequate funding for the safety and protection of FEMA workers.

TRANSPORTATION SECURITY ADMINISTRATION

TITLE 5 FOR TRANSPORTATION SECURITY OFFICERS

What is Title 5?

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

- Collective bargaining rights, including exclusive representative elections, subject to oversight by the Federal Labor Relations Authority.

- Establishing a list of 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) as well as mechanisms to correct violations.

- Pay under the General Schedule (GS) system, including overtime and night differential pay.

- The consistent grading and classification of positions based on job duties.

- Worker protections under the Family and Medical Leave Act and the Fair Labor Standards Act.

- The right to appeal adverse personnel actions to the Merit Systems Protection Board (MSPB).

Why Are TSOs Denied These Rights and Protections?

The Aviation and Transportation Security Act (ATSA) was passed by Congress to correct inadequacies in aviation security identified after 9/11. The law created the federal Transportation Security Administration (TSA) and a force of federal uniformed security screeners, the Transportation Security Officers (TSOs). The law included a statutory footnote that granted the TSA administrator unusually broad authority to set the terms and conditions of employment for TSOs, including pay.

What Does the TSO Workforce Lose Without Title 5 Rights?

- Until June of 2021 when then-Homeland Security Secretary Alejandro Mayorkas, at the direction of President Biden, ordered TSA Administrator David Pekoske to align TSA's pay with the General Schedule and bargain a new contract providing many of the protections of Title 5, TSOs have been working under a system with no guaranteed collective bargaining rights and a lower and less progressive pay system.

- TSO pay is still determined by the administrator, not federal law. As a result, until 2023, pay has been below that of comparable federal jobs and TSOs did not receive longevity pay or step increases. Bonuses provided by TSA were arbitrary and unfairly dispersed.

- 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. The Biden/Mayorkas directive provided for the bargaining of a new contract to reflect title 5 protections at this time, which was signed by both parties in May, 2024 but it is not in law.

- Throughout its 22-year history, until 2023, TSA refused to negotiate an objective grievance procedure like those at almost every federal agency with a union, including other components of the Department of Homeland Security, which are already under Title 5.

- Under executive orders of the previous president, TSA forced employees into a contract that undermined the union's ability to represent its members and maintain membership. Without changes in the law, the TSO workforce is still subject to the whims of the White House and the return of the previous president. Both the May 2024 CBA and the new pay scale are at risk.

- TSA has a long history of firing TSOs based on medical symptoms and diagnoses that do not affect their work performance.

Congress Should Pass Legislation Providing Statutory Title 5 Rights Including the GS Pay Scale to the Entire TSA Workforce for the Following Reasons:

- In the 116th Congress, the House passed H.R. 1140, Rep. Bennie Thompson's "Rights for Transportation Security Officers Act" by a bipartisan vote of 230-171. The bill was also added to H.R. 2, the "INVEST Act" which also passed the House but failed to be considered by the Senate. Sen. Brian Schatz (D-HI) introduced identical language in the Senate, S. 944. The bill garnered 34 cosponsors, many more than in the previous Congress, but the Senate did not take up the bill. AFGE will be encouraging co-sponsorship and an active push to gain Title 5 rights and better pay for TSOs.

- In the 117th Congress, Rep. Thompson introduced the "Rights for the TSA Workforce Act" (H.R. 903), which gained 227 cosponsors including 13 Republicans. The bill passed the House on May 20, 2022, by a vote of 220-201. All Democrats and four Republicans voted for its passage. Some Republicans withheld their support, pointing to a Covid bonus in the bill for frontline personnel, including TSOs. The corresponding Senate bill S. 1856 by Sen. Brian Schatz (D-HI) garnered 45 cosponsors, but no Republican support. The House included the House-passed language of H.R. 903 in the National Defense Authorization Act (H.R. 7900) but the Senate refused to include these provisions in the final bill.

- In the 118th Congress, legislation was introduced in the House and Senate, H.R. 8370 and S. 4334 but did not receive committee consideration and did not become law. We attempted include those provisions in the Federal Aviation Administration

reauthorization and the National Defense Authorization Act. These efforts have not yet been successful, largely due to the composition of the key committee in the Senate – Commerce, Science and Transportation – and the Republican majority in the House, which is composed of members who mostly do not support federal employee collective bargaining rights.

- It is a matter of fundamental fairness that the entire TSA workforce be treated the same as other federal workers. TSA has stemmed some TSO turnover as a result of the new pay scale for which we fought, but between 2007 and 2018, roughly the entire agency was replaced due to attrition. During this time, 45,576 TSOs resigned from the agency. In 2017, one in five new hires quit within the first six months. These high attrition rates do not occur in other DHS components where the rank- and-file workforce have workplace rights and protections and a transparent pay system under Title 5.

- The TSO workforce has long been underpaid. TSA Administrator Pekoske testified that the difference is about 30 percent and advocated for increased pay before the Congress and in national television interviews. When the new pay system was launched in July 2023, Administrator Pekoske joined TSOs at National Airport for a celebration of the average 30 percent increase.

- The FAA Reauthorization Act of 2018 required the formation of a TSA-AFGE Working Group to recommend reforms to TSA's personnel management system, including providing for appeals to the Merit Systems Protection Board (MSPB) and grievance procedures. TSA did not utilize this Working Group as an opportunity to make many of the sensible changes to pay, discipline, grievance, and fitness-for-duty determinations proposed by AFGE Council 100 representatives. The agency only agreed to some nominal changes that went into effect in 2020.

- It was wrong for Congress to deny TSA employees commonsense statutory workplace rights and protections in 2001, and it is wrong to continue this unfair system more than 22 years later.

What changed under the Biden Administration?

- On June 3, 2021, Homeland Security Secretary Alejandro Mayorkas issued a directive to TSA Administrator David Pekoske ordering the agency to expand collective bargaining rights for the screening workforce, provide access to the Merit System Protection Board (MSPB) for appeals of adverse actions, and to place TSOs on the GS pay scale. The agency acted on the MSPB provisions quickly, but said they needed more funds for the pay and bargaining.

- With the passage of the FY 2023 Omnibus Appropriations Act in late December 2022, we experienced our first major breakthrough. The bill included $398 million to migrate TSA to a General Schedule equivalent pay scale, starting July 2, 2023, and funds for collective bargaining. Shortly after passage, TSA Administrator David Pekoske issued a letter to TSA employees informing them their pay would go up in July and he issued a

new determination to begin bargaining on terms that include the expanded bargaining directed by Secretary Mayorkas. For most TSOs, pay went up by about 30 percent. The agency also bargained a new contract with AFGE Council 100 mirroring many provisions of title 5. That contract was ratified in May 2024.

- Before this breakthrough, TSA operated its own pay band system lacking the stability and transparency of the General Schedule pay system used by most federal agencies. TSOs were not automatically covered by federal employee pay increases, but the TSA administrator agreed, solely at his discretion, to comply with increases, including the most recent increase of 2.0 percent. There is still nothing in statute that guarantees this new pay.

In March 2019, the Department of Homeland Security's Office of Inspector General issued a report, *TSA Needs to Improve Efforts to Retain, Hire and Train Its Transportation Security Officers*, which said TSA should develop better recruitment and retention strategies, pay TSOs better, and provide better training and advancement opportunities. The FY 2023 omnibus appropriations bill changed that trajectory so long as funds continue to be appropriated for the increased pay. We still face an uphill battle with right-wing groups and many members of Congress who accept the notion that the GS pay scaled is "flawed" or "antiquated." Pushing to make this pay permanent is a high priority and the best way to achieve that is by enacting title 5 rights, which include the GS pay scale.

The American public learned during the December 2018 – January 2019 government shutdown that TSOs were among the lowest paid federal workers as they were required to work without a paycheck for over one month. The average starting salary for a TSO was only about $32,600 ($15.62/hour), and the average pay for a full-time TSO ranged between $35,000 and $40,000 a year. Depending on schedules, the lowest end of the current scale was lower than the mandatory $15 per hour minimum wage in some jurisdictions.

- The new pay scale took effect on July 2, 2023, for current and new TSA employees. It is imperative we advocate persistently for that pay level to be a regular part of appropriations bills.

- Congress must pass legislation that would apply title 5 to the TSO workforce, including statutory inclusion of the GS system of compensation.

What can we expect under the new administration?

The incoming administration is largely following the playbook of "Project 2025" which calls for the privatization of the TSA workforce and revocation of union rights. They also call for fewer benefits for all federal employees, including the federal workforce. It is imperative we work with member of Congress in both parties to oppose such efforts and maintain a public TSO workforce with full benefits and rights.

TSA COMMUTING FAIRNESS ACT

TSOs often have long commutes to their airports, especially at larger airports near big cities with high cost of living. Because they are required to report to work very early and work very late, public transportation is not always an option, even where it is available. Even when they arrive on airport property, TSOs have another commute – sometimes taking 45 minutes or more to get from remote parking lots and transit stations to their duty posts. Bipartisan legislation, H.R. 8662, the "TSA Commuting Fairness Act" passed the House by a voice vote late in 2024 but did not receive consideration in the Senate. The bill would have required the administrator of TSA to submit to Congress a study on the feasibility of treating as on-duty hours the time TSOs spend in transit to their regular duty locations. The study might include monitoring telephone locations and would result in direct compensation or a form of service credit toward retirement, among other considerations. AFGE supported this legislation and seeks its reintroduction in the House and introduction in the Senate in the 119th Congress.

HONORING OUR FALLEN TSA HEROES

Rep. Julia Brownley (D-CA) reintroduced the "Honoring Our Fallen TSA Heroes Act," H.R. 871 in 2023, originally resulting from the death of a TSO while on duty in 2013. The bill did not become law and did not have a Senate companion. In the 119th Congress, we will seek reintroduction in the House and Senate. The legislation would grant 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.

FUNDING FOR TSA

To fund aviation security, including the work of TSA, Congress passed an Aviation Passenger Security Fee. Since 2014, that fee is $5.60 one-way and $11.20 roundtrip. However, the increase that took effect in 2014 included a diversion of one third of the security fee funds to deficit reduction, costing $19 billion over 10 years and starving TSA of essential resources. In June 2023, House Homeland Security Committee Ranking Member Bennie Thompson (D- MS) introduced H.R. 3394, the "Fund the TSA Act." The bill would have ended the diversion of the passenger security fee, raise the fee by two dollars and designate the funds collected for the frontlines to be used for staffing, checkpoint security technologies, airport law enforcement and explosive detection. Similar legislation ending the diversion of the passenger security fee has attracted bipartisan support in past congresses and should be reintroduced in the 119th Congress.

CONGRESS MUST REFORM THE SCREENING PARTNERSHIP PROGRAM

Following the terrible events of Sept. 11, 2001, the nation demanded that Congress improve the U.S. aviation security 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.

In 2018, AFGE prevented attempts to privatize screening under the SPP at Orlando International Airport and San Luis Munoz Marin (San Juan) Airport. In 2019, AFGE also fought efforts by the St. Louis Board of Aldermen to expand screening privatization under the FAA airport privatization program 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 Rep. Bennie Thompson (D-MS) during the 114th Congress. The Contract Screener Reform Act would apply transparency and accountability to the SPP. AFGE also calls on Congress to examine if the FAA's airport privatization program can open the door to private screening without consideration of national security risks.

Conclusion

The TSO workforce is essential for preventing future terrorist attacks 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 not only appropriate funds to continue the new pay scale; it must pass legislation to ensure the TSO workforce has the same civil service protections as other federal workers to recognize TSOs for the important service they provide in protecting the country.

EXPANSION OF THE LAW ENFORCEMENT OFFICER STATUTORY DEFINITION

Background

Congress should 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) but are currently excluded and receive inferior benefits. Under present law, the definition of a LEO does not include officers of the Federal Protective Service (FPS), and police officers from the Department of Defense (DOD), Veterans Affairs (VA) the U.S. Mint, and other agencies. Despite having duties similar or identical to other LEOs, these law enforcement professionals do not receive equal pay and benefits compared to their occupational counterparts in other agencies. Specifically, they have lower rates of pay, lower pensions, 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, or at any age with 25 years of LEO service. To be eligible for LEO retirement coverage, positions must meet both the statutory definition under 5 U.S.C. 8401 as well as LEO requirements under FERS.

Under 5 U.S.C. 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."

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:

- Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position.

- Occupy a substantial portion of the individual's working time over a typical work cycle; and 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. 8336(c), a federal LEO with a minimum of 20 years of service at age 50, or 25 years of service at any age is eligible to retire with an unreduced federal annuity. In contrast, federal employees who are not LEOs may begin to collect their annuities only after reaching age 60 with 20 years in federal service. Law enforcement retirement rules mandate LEOs contribute more of their salary toward retirement than federal employees who are not LEOs. As a result of this contribution, LEOs are eligible to continue participation in the Federal Employees Health Benefits Program (FEHBP) and the Federal Employees Group Life Insurance (FEGLI) immediately after they retire.

In contrast, employees without LEO status are not eligible for continued FEHBP or FEGLI coverage after early retirement unless the retirement was a result of a downsizing, Reduction in

Force (RIF), or offered in some other context under Voluntary Early Retirement Authority (VERA). Additionally, annuities for federal law enforcement officers and firefighters are calculated according to a substantially more generous contribution formula than 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) accounts 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 continues to 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

In the 119th Congress, AFGE will support the reintroduction of the bipartisan "Law Enforcement Officers Equity Act." In the 118th Congress, this bill was introduced by Representative Bill Pascrell, Jr. (D-NJ) (H.R. 1322) in the House and Senator Cory Booker (D-NJ) (S. 1658) in the Senate.

This bill would amend the definition of the term "law enforcement officer" to include federal employees whose duties include the investigation or apprehension of suspected or convicted individuals and who are authorized to carry a firearm.

The primary duties of these law enforcement professionals include the protection of federal buildings, federal employees, officials, and the American public; as well as duties and responsibilities that are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the U.S., or the protection of officials against threats to personal safety. These professionals are trained to use and carry authorized firearms, yet in too many cases they are only considered law enforcement officers when they are killed in the line of duty and their names are inscribed on the wall of the National Law Enforcement Officers Memorial.

FPS officers, and police officers from VA, DoD, and the U.S. Mint are honorable protectors of the public and they deserve recognition as law enforcement officers. The primary duties and responsibilities of these law enforcement professionals are not only rigorous but are also in direct

alignment with the statutory definition of a LEO. AFGE will continue to fight for this bill's re-introduction and passage in both chambers of Congress.

On May 16, 2024, Bryan Hunt, the President of AFGE Local, a 12-year veteran of the VA Police and 2012 VA Police Officer of the year, testified at a House Veterans Affairs Committee Subcommittee on Oversight and Investigations hearing titled "Ensuring VA's Security: How Can Congress Best Support VA's Law Enforcement?" Bryan made a strong case on the importance of passing the "Law Enforcement Officers Equity Act" which led several more members of Congress to co-sponsor the bill.

Congressional Action Needed

- AFGE strongly urges the 119th Congress to reintroduce the "Law Enforcement Officers Equity Act," to amend 5 U.S.C. Section 8401 to include FPS officers, and police officers from the VA, DoD, the U.S. Mint, and other agencies in the definition of a law enforcement officer.

SOCIAL SECURITY ADMINISTRATION

AFGE's Social Security General Committee represents the six AFGE councils at the Social Security Administration (SSA), including AFGE Council 224, AFGE Council (and Local) 1923, AFGE Council 109, AFGE Council 215, AFGE Council 220, and AFGE Council (and Local) 2809. The General Committee (GC) advocates for the large majority of bargaining unit employees who serve the American public through the Social Security system.

FULLY FUND SSA

The Social Security Administration (SSA) is critical for Americans to access benefits in times of need but has faced years of chronic underfunding which has left the agency at a crisis point. Service levels have deteriorated while more Americans have turned to SSA for assistance. The result has been an increase in wait times for calls, in-person office assistance and disability claim decisions.

SSA employee morale is ranked the lowest in government, the result of inadequate resources, unrealistic work demands, and poor working conditions. High attrition rates are hurting the agency's ability to serve the public as highly trained and experienced employees leave the agency for better pay, benefits, and working conditions offered elsewhere. Meanwhile, SSA's workload is set to increase as nearly twenty million Americans reach retirement age over the next decade.

AFGE has supported additional funding to be used towards staffing resources, the agency's Disability Determination Services, for IT modernization and towards increasing security in SSA field offices.

Because of the consistent failure to fund SSA through the regular appropriations process, AFGE also encourages Congress to recognize the self-funding nature of SSA with its dedicated FICA

revenue stream and take the appropriations process "off-budget" and not subject to spending caps, as is the case with other fee-based agencies.

Congressional Requests:

- Fund SSA at 1.2% of benefits paid in the FY 26 appropriations bill to ensure the agency can adequately serve the public.

- Recognize the self-funded nature of SSA and take the program "off-budget."

TELEWORK

The Social Security Administration faces a critical staffing crisis, having the lowest staffing level in over 50 years while struggling to retain trained and experienced workers. A hybrid telework agreement was reached with the agency and included as part of the Collective Bargaining agreement that is set to run to 2029. SSA has testified that this hybrid telework model significantly enhances cost efficiency while improving employee productivity, and this flexible work model has proven essential for recruiting and retaining talented staff in a competitive job market. Most importantly, telework has strengthened mission engagement and enabled more effective workload management across our operations. Performance data collected by SSA demonstrate that agency productivity increased 6.2% in 2024 under current hybrid arrangements.

Congressional Requests:

- To protect the Collective Bargaining agreement on telework for SSA employees.

Secure a Student Loan Repayment Program and Childcare Assistance

SSA is the only large federal agency to not offer a student loan repayment benefit. To be a competitive employer in recruitment and retention, AFGE encourages Congress to appropriate funds for a student loan repayment benefit as part of increased SSA funding. AFGE estimates that this proven recruitment and retention benefit would cost $8.5 million a year, a very small but worthwhile investment for an agency of this size and importance. SSA is also one of a few agencies that doesn't offer a child-care subsidy. For a modest cost, Congress can improve SSA's ability to serve the public by ensuring trained and experienced workers don't leave SSA for better benefits at other agencies.

Congressional Requests:

- Fund SSA to participate in OPM's student loan repayment program and child-care assistance program.

NEW AGENCY LEADERSHIP

In July 2023 President Biden announced former Maryland Governor Martin O'Malley as his nominee for Commissioner. Governor O'Malley pledged to work with the union to improve

working conditions at the agency and was confirmed by Congress on December 18, 2023. In the little under a year there before resigning at the end of November 2024, he helped transform the agency for the better, driving numerous improvements and increasingly employee morale.

President-elect Trump has nominated Frank Bisignano, a former the CEO of a payment and financial technology company, the Fiserv Corporation. He previously served in executive positions at JP Morgan Chase and Citigroup, earning tens of millions of dollars in annual compensation. The nominee has no government experience and his views on Social Security are largely unknown. While it will be difficult to stop his nomination and we will likely have to work with him once confirmed, AFGE will continue to track his nomination and work with our partners to shape the messaging around his nomination and ultimately his performance as Social Security Commissioner.

DEPARTMENT OF VETERANS' AFFAIRS

Introduction

Effective workforce policies are critical for the Department of Veterans Affairs to deliver the exemplary health care and other services that veterans have earned through their sacrifice and service. Chronic short staffing, hostile management practices that ignore collective bargaining rights, and unsafe working conditions are further eroding this essential safety net for veterans – a net that is already severely strained by the pandemic and the relentless greed of privatizers.

In 2025, AFGE and its National VA Council (NVAC) will work to ensure that the VA fully uses all available tools to recruit and retain a strong workforce. We will continue to fight for the full restoration of employees' rights to due process, improve employee benefits, collective bargaining, and official time and fight to prevent erosion of civil service and due process protections. We will take an unwavering stand against privatization, whether it occurs through the MISSION Act's contract care policies, the proposed closures of VA facilities or suspension of services, new legislation, or VA policies that promote outsourcing over hiring. AFGE will also seek comprehensive Congressional oversight of VA spending and operations in the Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), Board of Veterans Appeals (BVA), National Cemetery Administration (NCA), and other VA components.

ENSURING A SAFE HEALTHCARE WORKPLACE

Background

The VA employs thousands of healthcare workers who have daily contact with veterans and their families and risk exposure to infectious diseases. It is essential that VA engage in mitigation of the spread of these diseases for the protection of personnel and the veterans they serve.

AFGE is monitoring the current bird flu outbreak for any potential impact on VA workers. CDC believes there is minimal risk to the public of bird flu transmission because it doesn't spread through person-to-person infections. We will advocate for safeguards for VA employees in the event the outbreak worsens.

While COVID-19's emergency phase has ended, it continues to pose a long-term health and safety risk for VA healthcare employees. COVID-19 and other workplace safety risks need to be handled through sound management practices and meaningful, ongoing labor-management cooperation. Unfortunately, at most VA medical facilities, the workplace practices of the first Trump administration that eliminated joint labor-management planning and problem solving continue. Instead of working with their labor partners to address the pandemic hazards, and the staffing shortages that management created and that worsened during the pandemic, management puts employees and patients at greater risk by refusing to recognize collective bargaining rights to address safety issues, overtime mandates and reassignments.

A permanent OSHA COVID-19 standard is essential to protect VA healthcare personnel and other federal employees from the ongoing risks presented by COVID-19. The OSHA Health Care Emergency Temporary Standard (ETS) issued in January 2021 pursuant to Executive Order 13999 provided clear requirements to be met by employers to ensure a safe VA health care workplace, including mandates for personal protective equipment (PPE), physical barriers, more extensive cleaning procedures in high-risk areas, ventilation and screening of individuals entering facilities. It also provided paid leave to employees quarantining due to infection or exposure and required the VA and other employers to develop a workplace plan with involvement from employees and their representatives. Employees could file OSHA complaints when the standard was violated. The temporary standard has since expired without being replaced by a permanent standard. AFGE had urged OSHA to reinstate the temporary standard pending the development of a permanent standard. After expiration of the ETS, management at numerous VA facilities reverted to pre-pandemic practices that left employees without protections that were still greatly needed as COVID-19 persisted.

On July 2, OSHA released a proposed Heat Standard, Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings. Public hearings on it are scheduled for June. The rule would apply to VA employees who are working outdoors, for example, groundskeeping or cemetery workers, and those working in hot indoor areas like warehouses. AFGE will urge the Trump administration to finalize and implement the standard.

Congressional and Administrative Requests

- Strengthen and expand on the permanent standard, including requiring employers to provide medical leave for workers who become sick or must quarantine after an exposure.

- OSHA sent the finalized permanent COVID-19 standard to the Office of Management and Budget for regulatory review in December 2022. AFGE urges prompt issuance of a permanent standard as the nation faces the long-term threat from COVID.

VA’S STAFFING AND HUMAN RESOURCES CRISES ARE FURTHER FUELING PRIVATIZATION

Background

VHA has always had to compete with other healthcare employers for physicians, nurses, psychologists and others working in clinical shortage occupations. While VHA cannot be a pay leader, it has always competed by serving a unique patient population and offering good working conditions and a labor-management partnership. In March 2023, the Veterans Healthcare Policy Institute and AFGE's National VA Council released results of a survey of AFGE VA employees about the impact of human resources (HR) modernization and staffing shortages.

Findings included:

- 96% of Veterans Health Administration respondents said their facility needs more frontline clinical staff.
- 75% said their facility needs more administrative staff.
- 77% said that there are vacant positions for which no recruitment is taking place.
- 77% reported that their VHA facilities have closed beds, units, and/or programs due to staffing and budget shortfalls.
- 55% said they have less time to deliver direct patient care and support services than they did four years ago.
- Half of respondents said that the VHA's centralized HR activities under the new Human Resources Modernization Project has worsened delays in hiring and is contributing to the hemorrhaging of staff. Over 90% said candidates lost interest due to HR delays.

While VA reports that it is making gains in hiring, there is a disconnect between its rosy reports and what AFGE members experience on the ground. Reports of hiring freezes and pauses attributed to budget shortfalls across VISNS are increasingly common. (VHA is currently experiencing an estimated $6.6 billion shortfall, a key priority for the legislative team to address in 2025.) And the data that VA uses to populate its staffing data required under section 505 of the Mission Act is by VA's own admission not yet accurate. AFGE members report differences between the number of vacancies they see on paper organizational charts and the numbers that are generated by HR Smart, VA's electronic human resources record system.

According to VA's June 2023 Section 505 annual report:

VA is not at the point yet where the vacancies recorded in HR Smart are indicative of true current and budgeted positions, but rather best estimates based on available data and systems. VA actively monitors the workforce to evaluate and take action to minimize the impact of staffing gaps on capacity to care for Veterans.

The VA's misguided HR practices that began in the first Trump administration continue to present severe obstacles to hiring staff throughout the department. Routine personnel actions such as job postings, hiring, credentialling, promotions and pay adjustments that used to be

handled in person at the facility level have been replaced by "HR Smart" and other computerized, centralized systems at the VHA VISN level and the VBA regional level.

Our local leaders and members have lost virtually all involvement in the hiring process where they could once advocate for more staff and assist management in identifying hiring needs.

Compensation remains a key reason that VA has trouble recruiting and retaining staff. The VA has different pay systems for physicians and nurses. The current pay system for physicians, dentists, podiatrists and optometrists is composed of market pay, performance pay, and longevity pay. When the VA rolled out the three-tiered system pay system, it was intended to make pay more competitive with local markets and to incentivize individual professional performance, while also rewarding retention and experience. However, since this pay system was enacted nearly two decades ago, there have been widespread management inconsistencies with processes for setting market pay and performance pay.

In 2023, S. 10, the VA Clinician Appreciation, Recruitment, Education, Expansion, and Retention Support (CAREERS) Act was introduced, which would have ended the three-tiered payment system for physicians and replaced it with a system based mainly on market pay. While AFGE supports making physician pay more competitive with other payers, we oppose efforts to transition physician pay to market pay before VA fixes overall problems setting market pay. For example, some similarly situated clinicians at facilities in similar markets receive radically different market pay. We frequently hear reports of long-serving, experienced, highly credentialed clinicians sometimes receiving lower market pay than new employees in the same facility. The CAREERS Act was one of a variety of bills considered as part of an omnibus veterans' package, the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act (Public Law No: 118-210), which President Biden signed into law on January 2. Most of S. 10 did not advance in the omnibus veterans' package. However, section 142 of the Elizabeth Dole Act requires an annual report to the Committees on Veterans' Affairs of the Senate and the House of Representatives that includes a list of each facility and specialty that conducted an evaluation of pay during the period covered by the report, a list of occupations for which pay was evaluated and date it was completed, whether a market pay adjustment was made following the evaluation per each occupation and specialty evaluated and whether employees and labor parties were notified of an evaluation. This reporting was included at AFGE's request, and the legislative team will monitor these reports and advocate for improvements to clinician pay systems.

Short-sighted strategies to recruit new employees at the expense of existing employees only exacerbate problems with retention, as new doctors increasingly see VA as a good place to train but not to stay. We hope the information from these reports will help VA develop policies that will attract physicians over the continuum of a career and across the spectrum of specialties and pay levels; otherwise fixes to one set of problems will only create new ones.

VA is also mandated to perform third-party RN locality pay surveys, which are triggered by factors such as turnover rates, resignations due to dissatisfaction with pay, or other criteria set by the facility director. But VA's lack of transparency about the underlying information needed to

calculate turnover and vacancy rates makes it hard to determine whether the agency is compliant with its legal obligations under Title 38.

Widespread human resource errors create further barriers to retention and recruitment and tarnish VA's reputation as a good faith employer. Prospective employees accept VA job offers based on salaries, duties and schedules outlined in tentative offer letters. When they report to the job, they are informed by HR or their manager that their salary, job description or schedule differs from the offer made by VA. These individuals may have given notice at a previous job, declined a competing offer, or relocated based on these erroneous offers. To make matters worse, VA employees may receive debt letters to recoup money they were erroneously paid due to HR coding mistakes. New employees already on the job have been hit with debt letters when HR discovers that they were paid more than they should have due to a coding or job offer mistake by HR. The employees are informed that not only will they receive a wage or salary reduction, but that the payroll department will claw back the money already paid to them. VA lacks a formalized, mentoring and teaching curriculum for VHA, specifically developed for the necessary HR coding requirements within HR Smart that matches VHA complex policy and personnel system to assure mastery. Most troubling, if a miscoding error by an HR official occurs that results in employee debt, the agency seemingly has no systematic after-action plans for correction, so these errors don't happen again. Historically, VA has sought to remedy issues like this by asking to streamline HR processes by moving more employees to Title 38. But that is not the answer. Rather, VA must develop a stringent complete curriculum related to those HR errors that resulted in employee debt to prevent those actions from occurring again.

Limitations on employees gaining redress for HR errors under 38 U.S.C. §7422 prevent employees from using grievance procedures from a collective bargaining agreement "for any matter or question concerning or arising out of the establishment, determination, or adjustment of employee compensation." The bar on grieving compensation means that employees cannot grieve paycheck errors even if it is clear that VA is at fault. Further, VA uses an overly broad interpretation of §7422 to improperly deny union access to information about whether market pay surveys are done at all, citing the inability to grieve compensation under §7422 as a complete bar to obtaining information about locality pay surveys mandated separately under 38 U.S.C. §7451.

Congressional and Administrative Requests

- VHA must provide HR officials with proper training to code VHA personnel records and create mandated after-action plans when they inadvertently create employee debt.

- VHA should make third-party locality pay surveys accessible to help more front-line RNs and PAs secure needed pay adjustments.

- Union representatives should receive the same training on the locality pay survey process that managers receive.

- Congress should enact the "VA Continuing Professional Education (CPE) Modernization Act," (H.R. 543 in the 118th Congress) which would increase the eligibility for VA

clinicians to receive CPE, increase the reimbursement amount, and adjust the amount for inflation.

- Congress should undo or at least make fixes that mitigate the rupture of relationships between human resources and local facilities that have undermined effective hiring.

- VA should improve the accuracy of vacancy, turnover, and recruitment data.

- Congress should amend 38 U.S.C. §7422 to allow for full collective bargaining rights for title 38 employees including the ability to grieve violations of VA pay policies. In the meantime, it should pass the "VA Correct Compensation Act" (H.R. 6538 in the 118th Congress), which would allow employees to grieve common paycheck errors (See discussion below).

STOPPING ATTEMPTS TO REVIVE THE AIR COMMISSION

The VA MISSION Act of 2018 established a nine-member Asset and Infrastructure Review (AIR) Commission to make recommendations regarding "closure, modernization and realignment" of VHA facilities. AFGE took a cautious approach at first to the Commission, hoping that the process might result in more attention to the VA significant need for infrastructure investment and modernization. However, in March 2022, the VA announced its recommendations to the AIR Commission, calling for a vast privatization of VA services through the closure or downsizing of nearly 60 VA medical centers, around a third of the total across the country. The VA's plan called for transferring these functions to new, mostly smaller facilities that had yet to be funded or built, or to the private sector, with almost no analysis of the quality, cost, or availability of those private services. The VA used outdated, pre-pandemic analyses to support its recommendations, an approach that was lambasted by its own OIG, the Government Accountability Office, and a panel of private experts the VA convened through MITRE Corporation. Despite the obvious frailty of the VA's process, the MISSION Act established a fast-track process for approving the recommendations, with little opportunity for Congress or other stakeholders to exert any influence.

AFGE successfully mobilized across the country in opposition to the AIR Commission. Congress approved the 2023 omnibus spending bill, which defunded the AIR Commission and imposed new restrictions on the VA ability to close or downsize rural healthcare facilities.

Nonetheless, the significant threat of privatization under a second Trump administration persists. A separate section of the MISSION Act, unaffected by Congress's recent actions, directs the department to conduct strategic infrastructure reviews every four years. In the late summer of 2022, following the collapse of the AIR process, several VISN's contacted AFGE locals with plans to continue pursuing the hospital closures recommended to the defunct AIR Commission, with no apparent attempt to update the discredited market assessments behind those recommendations.

Congressional Requests:

- Oversee the VA's implementation of the strategic reviews under Section 106 of the MISSION Act to ensure that the VA uses accurate, up-to-date information about the utilization of facilities, their benefits to veterans, and their future infrastructure needs, and that the VA works in partnership with its workforce throughout the process.

- Ensure that language from the 2023 omnibus appropriation bill that restricts VA's authority to close rural healthcare facilities without a thorough analysis of the impact on veterans' access to care is implemented and remains law.
- Oversee instances of back-door closure of facilities that had been slated for closure under AIR.

Private Care Access Standards

The VA MISSION Act (Public Law No. 115-182) required the Department to implement access standards to determine when veterans should be referred outside the VA health care system for care in the private sector through the Veterans Community Care Program (VCCP). These standards consider how long veterans wait to access VA in-house care and how long it takes for the veteran to drive to the closest VA medical facility to determine if the veteran should be referred to a VCCP provider. If a veteran must wait more than 20 days for VA or drive more than 30 minutes for VA in-house primary care or wait 28 days or drive 60 minutes for VA in-house specialty care, then he or she can choose to go outside the VA to a VCCP provider instead.

The access standards have been flawed from the outset and AFGE has continued to urge the VA Secretary to make several significant changes to ensure that veterans receive the most appropriate and highest quality care in a timely manner. In addition, changes are urgently needed to rein in the unprecedented number of costly VCCP referrals that are threatening the VA's long-term capacity to carry out *all* its missions, including its core mission of providing comprehensive, integrated, specialized care to veterans, as well as medical training, medical research and emergency preparedness that yield tremendous benefits to all health care consumers.

First, the current double standard must be eliminated; a revised access standard must be applied equally to the VA and VCCP providers. Currently, the access standards do not consider the wait times and driving times that veterans will face to access care outside the VA. This double standard has resulted in many veterans waiting longer and driving further for non-VA care than they would have if they continued receiving VA in-house care.

In addition, the drive-time component of the access standard creates a one-size-fits-all standard that doesn't consider regional differences in population density, provider capacity, traffic, or geographic barriers. VA should implement standards that are achievable across the country and apply them equally to VCCP providers so that private care supplements rather than supplants the VA. Multiple studies have shown VA's own care to be of higher quality with better health outcomes, and less costly than private sector care.

The access standards also apply a double standard to care provided by telehealth including mental health care. The VA has long been recognized as a leading telehealth model by

other health care systems. Yet, the access standards do not count VA in-house telehealth services in determining if the VA has met the standard. As a result, veterans who would have not had any wait for VA-provided telehealth care are sent to VCCP providers who treat them through telehealth programs of unknown quality and at greater cost to taxpayers.

In 2024, VA told AFGE that it was writing a rule that would allow VA telehealth to count toward satisfying the wait and drive-time access standards, but it never released this rule. VA should release the rule allowing VA telehealth to satisfy the access standards. Lawmakers should also consider the burdens that the VCCP program is placing on VA's own staff, who are already struggling to take care of patients under chronic short staffing conditions. Additional VA staff have not been provided in any systematic way or in adequate numbers to assist with the large number of VCCP consults that VA medical personnel must now issue and manage as patients and their medical records move in and out of this chaotic contract care arrangement.

Congressional Requests:

- Oppose legislation that would codify current VCCP access standards.
- End the current double standard and apply the same wait times and driving times to both in-house care and VCCP care.
- Urge the VA Secretary to revise the current access standards to increase the drive time limit and count VA in-house telehealth when determining whether the VA has met the standards.
- Ensure that access standards are sufficiently nuanced to account for different types of care, geography and population density.
- Ensure that each facility receives additional staff at appropriate levels to ensure that veterans' needs for in-house care are not compromised by workloads associated with VCCP referrals.

Preserving VA's Authority to Authorize Referral to Private Care

In 2023 a variety of bills that would have precluded or restricted VA's ability to authorize community care were considered as part of the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act. AFGE and ally organizations were successful in defeating all but one provision in the legislation, section 101 of this provision would make final decisions between a veteran and a doctor that a referral to the community final without the ability of the VA to review the decision. This provision directly weakens VA's ability to coordinate care when there is clinical evidence that a veteran is better served by a direct care provider. Furthermore, no healthcare network can afford to cover any services outside its network that its members desire while simultaneously meeting obligations to directly provide services on-demand for all its members. All viable healthcare networks need to be able to reasonably regulate outside referrals to effectively coordinate care, avoid unnecessary or ineffective

treatments, and manage costs. While AFGE was unable to remove this provision, we were able to limit it. Because of our advocacy, the provision sunsets after two years.

The House also considered several bills in 2024 that will likely return for consideration in the 119th Congress that would also undermine the VA's ability to authorize and coordinate private care:

H.R. 3176, Veterans Health Care Freedom Act

This bill would establish a three-year pilot allowing veterans to choose to see either a private, for-profit "Community Care" provider or a VA provider without regard to drive time or wait time access standards. The pilot program would become permanent after four years. This proposal would inevitably lead to service closures and create more limited options for veterans who wish to have their care at the VA. AFGE opposes this effort to transform VA from an integrated delivery system to a mere payer of care. VA's value resides in its evidenced-based, holistic, veteran-centered care model, which would be increasingly put at risk by this proposal.

H.R. 5287, Veterans Access to Direct Primary Care Act

The bill would establish Health Savings Accounts (HSAs) funded by the VA that veterans could use for private healthcare. Veterans electing these HSAs would be completely barred from accessing VA healthcare services. This bill would undermine VA's role coordinating care for veterans and would siphon resources from the VA. For these reasons, AFGE opposes H.R. 5287.

The Complete the Mission Act (No bill number)

Sec. 103. Consideration under Veterans Community Care Program of veteran preference for care and need for caregiver or attendant. This section modifies 38 USC 1703(d)(2) to make veteran preference to go to a private provider a criterion for what constitutes best medical interest.

AFGE opposes broad bans on VA authority to review community care referrals. A physician is often unwilling to challenge a veteran who may want to go out of network, even when it is not in the patient's best medical interest. This provision directly weakens VA's ability to coordinate care. Further, no healthcare network can afford to cover any services outside its network that its members desire while simultaneously meeting obligations to directly provide services on-demand for all its members. All viable healthcare networks need to be able to reasonably limit outside referrals to effectively coordinate care, avoid unnecessary or ineffective treatments, and manage costs.

Sec. 203**.** This section creates a three-year pilot program in at least five locations where veterans could access outpatient mental health and substance use services. AFGE opposes this provision as it would circumvent VA's ability to coordinate care and is unsustainable for the VA in the long term.

Congressional and Administrative Requests:

- Oppose efforts to allow veterans to self-refer for private care services.
- Oppose efforts to prohibit the VA from overriding inappropriate decisions to refer to private care.
- Require the VA to be more transparent about the costs of private care.
- Require private providers to meet the same quality and training requirements as VA providers.
- Oppose efforts to remove or restrict VA authority to coordinate care.

FIGHTING THE VA ACCOUNTABILITY ACT

Background

On June 23, 2017, the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (the Accountability Act) was signed into law (P.L 115-182). This law, pitched as a remedy to hold bad managers accountable and give employees the chance to report wrongdoing, has failed to achieve its goal. Instead, the VA wielded its powers under the Accountability Act to fire employees, many of whom were veterans themselves and dutifully served their fellow veterans at the VA, for relatively minor infractions that did not merit termination, resulting in thousands of employees either being terminated or preemptively resigning from the VA since the law's enactment.

Critical Problems with the Law

While several provisions of the statute have worked against VA employees and in turn interfered with their ability to best serve veterans, there are two critical provisions of the law that are the most glaring and used by the VA to unnecessarily discipline and terminate employees. These two provisions are the change in the standard of evidence used to sustain discipline that is appealed to a neutral, third party and the elimination of the ability of the Merit Systems Protection Board (MSPB) and arbitrators to mitigate (or lessen) a punishment.

Standard of Evidence

Prior to the enactment of the Accountability Act, the VA's burden of proof at both internal proceedings and at the appellate level was that the employee's misconduct met the "preponderance of evidence" standard, meaning that the majority, or at least 50 percent of the evidence is on the VA's side. When the Accountability Act was enacted, the law implemented a "substantial evidence" standard, meaning "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (Richardson v. Perales, 402 U.S. 389 (1971).) The "substantial evidence" standard is a considerably lower bar to meet than the "preponderance of evidence" standard and can allow a case where the balance of evidence is on the employee's side to still result in termination. Court cases were filed challenging the use of this standard, with

the decision in Rodriguez v. Dept. of Veterans Affairs, 8 F.4th 1290 (Fed. Cir. 2021), resulting in the court striking down the VA's use of this standard at the internal discipline stage, as the law as drafted only allowed for the lower standard to be used on the appellate level. Although the current VA administration has ceased trying to use the legally infirm Section 714 authority, including the "substantial evidence" standard, the provision remains on the books and could be used to harm VA employees in the future.

Ability to Mitigate

Prior to the passage of the Accountability Act, the MSPB had the power to mitigate a sentence when an employee is disciplined for misconduct, allowing the MSPB to agree with the VA's determination that the employee had committed misconduct under the preponderance of the evidence standard, but that the discipline chosen by the VA was too severe given the nature of the infraction. The Accountability Act removed the MSPB's and arbitrators' ability to mitigate in these misconduct cases, making the MSPB either accept the totality of the VA's determination, or rule that it was too severe, and allow the employee to receive no punishment. This paradigm led the VA to charge more aggressively and punitively than when the MSPB had the ability to mitigate, knowing that the MSPB is more likely to uphold a harsher sentence than overturn a punishment entirely. This has been a severe detriment to employees and unnecessarily resulted in an uptick in terminations. However, in the case *Connor v. Dept. of Veterans Affairs*, 8 F.4th 1319 (Fed. Cir. 2021), this practice was found to be a violation of precedent, concluding that the VA had to continue to use the "Douglas Factors" when determining the appropriateness of a punishment.

Renewed Push for Accountability Legislation

As a result of the rulings in *Ariel Rodriguez v. Department of Veterans Affairs*; *Stephen Connor v. Department of Veterans Affairs*; *Richardson v. Department of Veterans Affairs*, and several other opinions, legal rulings and determinations, the VA announced on March 5, 2023, that the VA will prospectively "cease using the provisions of 38 U.S.C. § 714 to propose new adverse actions against employees of the Department of Veterans Affairs (VA), effective April 3, 2023."

In response to the VA's decision to suspend the use of the Accountability Act towards bargaining unit employees, Republicans on the House and Senate Veterans' Affairs Committee held hearings and introduced the Affairs Accountability Act of 2023." This bill, had it been enacted, would have effectively reversed the court decisions that weakened the original 2017 Accountability Act, and have gone further than the original law in making it easier to fire employees. Specifically, the bill would allow for the abrogation of collective bargaining agreements, reinforced the use of the "Substantial Evidence Standard," restated the prohibition on the Merit Systems Protection Board to mitigate penalties, limited the use of the "Douglas Factors," and allowed the bill to apply retroactively to the time when the original 2017 Accountability Act was enacted.

AFGE led a coalition of other unions that represent VA employees in opposition to the bill, including the American Federation of State, County, and Municipal Employees (AFSCME), American Federation of Teachers (AFT), International Brotherhood of Teamsters (IBT), International Association of Firefighters (IAFF), Laborers' International Union of North America (LIUNA), National Association of Government Employees, SEIU (NAGE), National Federation of Federal Employees (NFFE), National Nurses United (NNU), and Service Employees International Union (SEIU). AFGE also worked closely with the Fraternal Order of Police (FOP) as they specifically opposed the proposed abrogation of collective bargaining agreements. Separately, AFGE advocated for certain amendments to the bill to highlight its many problems. Because of this advocacy, AFGE was successful in holding all Democratic members of the House VA Committee in opposition to the bill. This organized opposition prevented Republican from bringing the bill up for vote in the last Congress. Additionally, the Senate companion bill never was never considered for a vote in the 118th Congress.

On January 16, 2025, Congressional Republicans reintroduced H.R. 472/S. 124 the "Restore VA Accountability Act," for the 119th Congress, and AFGE will continue to coordinate with allies to again defeat this legislation.

The "Protecting VA Employees Act"

On August 24, 2023, Rep. Brian Fitzpatrick (R-PA) and Rep. Chris Deluzio (D-PA) re-introduced, the "Protecting VA Employees Act" for the 118th Congress. This bill would have made two critical changes to the Accountability Act statute. First, it would have restored the "preponderance of the evidence" standard for internal VA discipline, making the VA prove with at least 50 percent of the evidence that an employee committed the misconduct he or she was being accused of. This would have helped eliminate overzealous punishment and prevented disciplining employees who have likely not committed misconduct. Second, the bill would have restored the ability of the MSPB to mitigate a punishment imposed by the VA. Restoring this power to the MSPB and arbitrators would have prevented the VA from charging either unnecessary or extra punishment, with the knowledge that unfair punishments will be overturned, and would result in unnecessary, costly, and time-consuming appeals. AFGE is working to have the "Protecting VA Employees Act" reintroduced early in the 119th Congress.

Furthermore, AFGE supported portions of Senator Tester's bill, the "Leadership, Engagement, Accountability, and Development (LEAD) Act of 2023." This bi-partisan bill would have created opportunities for the Senate Committee on Veterans' Affairs to pursue oversight of the VA on how it manages and disciplines its employees. AFGE supported Section 101 of the bill which would have improved training on how to process adverse actions against employees at VA. The reasoning for this section being that if managers are appropriately trained on how to correctly implement discipline at the VA, including on how to correctly address issues related to due process, civil service protections, and collective bargaining agreements, the VA will make fewer mistakes in future, and lessen the number of appeals and ensuing litigation. This thoughtful approach would better serve the VA, employees, and the veterans they serve. This bill was never considered by the Senate Veterans Affairs Committee for a vote, and it is uncertain if senators will re-introduce the legislation in the 119th Congress.

Congressional Requests:

- Oppose the "Restore Department of Veterans Affairs Accountability Act" (H.R. 472/ S. 124 in the 118th Congress) when it is considered during the 119th Congress.

- Co-Sponsor the "Protecting VA Employees Act" when it is re-introduced during the 119th Congress and ensure that disciplinary proceedings against VA employees are handled in a similar manner to other federal workers, with adequate due process protections.

IMPROVING RIGHTS AND BENEFITS FOR VA WORKERS

Title 38 Collective Bargaining Rights

VA Employees appointed under 38 U.S.C. 7401(1), (exclusive to "physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries") are subject to different collective bargaining laws than other VA employees. Specifically, this group is subject to the Title 38 collective bargaining rights law, 38 U.S.C. 7422 ("7422"). This law, enacted in 1991, excludes "compensation," "professional conduct or competence" or "peer review" from the scope of collective bargaining and grievance procedures for covered VA employees. For over 30 years, the VA has interpreted and applied this section in an arbitrary and expansive manner. As a result, the employees covered by 7422 have not been able to bargain or grieve over a wide range of routine workplace issues that are subject to bargaining by other VA employees and health care professionals at other agencies, including the Defense Department. All too often, the VA weaponizes its use of its 7422 power to nullify valid and binding arbitration decisions or other administrative judicial decisions, and to challenge contractually bargained provisions that have survived Agency Head Review. These 7422 determinations are often unreasonably late and follow extensive litigation before arbitrators, administrative agencies, and federal courts. Finally, the 7422 determinations unreasonably expand the scope of statutory exclusions well into peripheral matters. In both 2003 and 2017, the White House voided a commonsense VA policy based off of a Memorandum of Understanding (MOU) that had expanded Title 38 collective bargaining rights and improved labor management relations. The Biden Administration did not negotiate a new MOU or institute a new policy.

The "VA Employee Fairness Act"

In the 117th Congress H.R. 1948 and S. 771, the "VA Employee Fairness Act," was re-introduced respectively by Rep. Mark Takano (D-Calif.) and Sen. Sherrod Brown (D-Ohio) to eliminate the three exceptions in current law that VA has applied to deny every labor request to grieve, arbitrate or negotiate over workplace matters, including schedules, fixing incorrect paychecks, overtime pay, professional education and many other matters. At the end of 2022, H.R. 1948 had 218 co-sponsors, including two Republicans, more than the bill had ever received in any prior Congress. On December 15, 2022, the bill passed the House of Representatives by a vote of 219-201, including four Republican votes in support.

Additionally, the White House issued a Statement of Administration Policy in favor of the bill, which stated "[t]he Administration supports House passage of H.R. 1948, the VA Employee Fairness Act of 2022, to expand collective bargaining opportunities for covered Federal employees." The statement went further by explaining that "[t]he Biden-Harris Administration supports worker organizing and empowerment as critical tools to grow the middle class and build an inclusive economy. The Federal government, consistent with its obligations to serve the public, can be a model employer in this regard." In the Senate, S. 771 had 11 cosponsors at the end of the 117th Congress but did not receive a vote.

In the 118th Congress, the "VA Employee Fairness Act" was reintroduced in both the House and Senate as H.R. 9855 and S. 4046 respectively. The House version gathered 136 co-sponsors, and the Senate gathered 19 co-sponsors. Neither bill received a vote.

The "VA Correct Compensation Act"

In the 2022 congressional debate over the "VA Employee Fairness Act" it became clear that there was strong disagreement over changes to certain parts of 7422. However, the debate also demonstrated that there was bi-partisan agreement on reform for part of the statute, including compensation as it relates to paycheck accuracy.

After extensive collaboration with Democrats and Republicans on the House Veterans Affairs Committee, on November 30, 2023, Ranking Member Mark Takano (D-CA) and Chairman Mike Bost (R-IL) together introduced H.R. 6538, the "VA Correct Compensation Act of 2023" (VACCA). This bi-partisan bill would have defined what compensation is under 7422 and specifically stated that compensation "does not include a grievance challenging whether an employee described in section 7421(b) of this title has received the correct compensation as required by law, rule, regulation, or binding agreement." This bi-partisan and commonsense bill would have directly addressed one of the most common problems for Title 38 employees and helped the VA with recruitment and retention.

AFGE worked with a coalition of partners to build support for VACCA. Over several months, VACCA received 40 co-sponsors, balanced between 22 Democrats and 18 Republicans. This included every Democrat on the House Veterans Affairs Committee, as well as several committee Republicans, which totaled a majority of committee members.

On March 21, 2024, Joycelyn Westbrooks, the Secretary-Treasurer for AFGE Local 1633 testified at an Oversight and Investigations Subcommittee hearing on "Pending Legislation." In her testimony and answering of questions, Joy gave a compelling narrative on the need for the passage of VACCA and answered questions from committee members admirably. In large part because of Joy's testimony, in the following weeks, the House Veterans Affairs Committee proceeded to advance H.R. 6538 out of both the subcommittee and full committee by voice vote. Unfortunately, VACCA did not receive a vote on the House floor.

AFGE expects Ranking Member Takano and Chairman Bost to reintroduce VACCA early in the 119th Congress, and AFGE is actively looking to find sponsors in the Senate.

Congressional Requests:

- Gather original co-sponsors for the "VA Employee Fairness Act."

- Co-sponsor and pass the "VA Correct Compensation Act" upon its re-introduction.

- Reform and strengthen pay-setting processes for VA physicians, dentists and podiatrists including restoration of an independent, transparent market pay panel, and a fair process for setting performance pay criteria and determining performance pay awards.

- Conduct oversight into the workload and work hours of VA providers (physicians, nurse practitioners, dentists, physician assistants, therapists) and the leave policies affecting them.

- Enact legislation to ensure that VA physicians and dentists on alternative work schedules are covered by fair leave accrual policies that recognize all their hours of work.

Increasing Continuing Professional Education Benefits for VA Clinicians

Many VA clinicians are required to have a professional license as a condition of employment within the VHA. In order to maintain these licenses, many of these employees are required to complete what is known as "Continuing Professional Education" (CPE), depending on their profession and the state in which they are licensed. In the private sector, many employers reimburse employees for the costs associated with CPE to maintain their licenses. However, opportunities in the VA are significantly more limited.

In 1991, Congress enacted a law that allowed "Board Certified Physicians" and "Board Certified Dentists" to be reimbursed up to $1,000 annually for CPE. This law has not been updated in over 30 years and is extremely limited. The current statute also ignores a large swath of practicing physicians and dentists who work at the VA but are not "Board Certified" and ignores the entirety of other professions that have CPE requirements. Additionally, $1,000 a year in CPE may have been adequate 30 years ago, but costs for CPE have only gone up, and the VA has failed to keep pace with escalating costs and inflation. Beyond this narrow and small benefit, Medical Center Directors have the authority on an ad hoc basis to reimburse their clinicians for CPE costs, but this practice is haphazard and not evenly distributed within a medical center, and even less so at the VISN or national level.

To address this issue, in the 118th Congress, Congresswoman Julia Brownley (D-CA), Ranking Member of the House Veterans' Affairs Committee Subcommittee on Health re-introduced H.R. 543, an amended version of the original the "VA CPE Modernization Act." If enacted this bill would have significantly expanded the CPE benefit throughout the VA. Specifically, the bill would have reimbursed certain clinicians up to $2,000 annually. The bill also creates a mechanism that gives the Secretary discretion to increase the amounts for clinicians based on inflation.

AFGE is working to have both the "CPE Modernization Act" reintroduced in the House in the 119th Congress and have it introduced as standalone legislation in the senate.

Congressional Requests:

- Gather original sco-sponsors for the "VA CPE Modernization Act."

- Enact legislation to expand eligibility and amounts for Continuing Professional Education Reimbursement for the Title 38 and Hybrid Title 38 Workforce.

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 front-line VA workers. AFGE agrees with the Inspector General's (IG) position 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.* (VA OIG 17-05248-241).

Because of the level of difficulty in processing MST claims, AFGE was and remains supportive of the VBA's changes that now send MST claims to a specialized team of claims processors, though problems remain. At a recent House Veterans Affairs Committee Subcommittee on Disability Assistance and Memorial Affairs hearing entitled "Supporting Survivors: Assessing VA's Military Sexual Trauma Programs" AFGE submitted a Statement for the Record that highlighted the need for claims processors who develop and rate MST claims to get additional credit considering the complexity and time intensiveness of these claims. AFGE also urges that claims processors assigned to MST cases also receive other types of cases in their workload to avoid compassion fatigue.

Based on these changes with MST claims, AFGE is calling on VBA to send other former "Special Operations" cases including Traumatic Brain Injury, catastrophic injury, and "Blue Water Navy" claims to specialized Claims Processors, with a corresponding increase in performance credits for more difficult work. Additionally, AFGE urges VBA to 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).

Furthermore, On June 6, 2023, House Veterans Affairs Committee Joint Disability Assistance and Memorial Affairs and Technology Modernization Subcommittee hearing titled "From Months to Hours: The Future of VA Benefits Claim Processing." David Bump, a National Representative for the NVAC, and Second Vice President for VBA for AFGE Local 2157, in Portland, Oregon testified on AFGE's behalf. During the hearing, Dave submitted written and oral testimony and answered questions on a number of issues facing frontline VBA employees, highlighting problems with the NWQ and providing suggestions on how to improve it to enable employees to better serve veterans. AFGE hopes this testimony leads to legislation to reform the NWQ to better enable VBA employees to serve veterans.

On June 26, 2024, James Swartz, President of AFGE Local 2823 at the Cleveland, Ohio VBA Regional Office testified at a hearing title "Examining Shortcomings with VA's National Work Queue Veterans Benefits Claims Management System." Jim highlighted the history of the NWQ, ways the VBA incorrectly uses the technology to the detriment of AFGE members and veterans, and proposed changes that VBA could make to fix these issues. There was a strong bi-partisan reception to his testimony, and Jim put the VBA Office of Field Operations, which has jurisdiction over the NWQ, under a microscope. Further oversight on this issue is expected.

Congressional Requests:

- Conduct 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.

- Lobby for vigorous oversight and possible legislation to implement the recommendations made by the reports that study if VBA claims processors are getting fair credit for the work they perform.

Information Technology and Training

Information Technology and Training issues continue to plague VBA, negatively affecting VA's mission of serving veterans and AFGE members striving to fulfill that mission every day. For years, the committee has examined how technology issues are delaying both disability and pension claims. AFGE is working with the committee to show how these delays negatively affect the ability of AFGE members to do their jobs. AFGE members face unfair negative performance appraisals and potential disciplinary action due to delays and malfunctions caused by IT problems beyond their control, adding to the problems created by the VA Accountability Act and ever-changing performance standards.

To address and highlight this issue, AFGE secured in H.R. 2617, the Consolidated Appropriations Act, 2023 an oversight report that requires VBA to "to complete an assessment of the Veterans Benefits Management System and develop a plan to modernize the system as appropriate." AFGE will continue to use this report to lobby Congress to ensure the needs and

success of VBA employees are considered when updating IT systems. Furthermore, in a larger debate of IT systems in the 117th Congress, the House and Senate Veterans' Affairs Committees considered several ways to partially or fully automate certain claims within VBA. The full automation of certain claims would be a gross disservice to veterans who require experienced and trained claims processors to ensure that claims are processed correctly and fairly and have personnel able to hand any unique intricacies a claim may present that are beyond the capabilities of artificial intelligence.

As part of this debate, AFGE has successfully argued that technology should supplement and not supplant the VBA workforce, and successfully obtained an amendment to-then Ranking Member Bost's bill, H.R. 7152, "Department of Veterans Affairs Principles of Benefits Automation Act," to state "[a]utomation of claims processing should not eliminate or reduce the Veterans Benefits Administration workforce." Furthermore, through AFGE's lobbying efforts, we have framed the debate within Congress to use new technology to better assist claims processors to handle increased demand to process claims and allow personnel to focus on the problems that cannot be handled by machines, instead of using technology as an excuse to shrink the VBA workforce while failing the needs of veterans.

On June 6, 2023, House Veterans Affairs Committee Joint Disability Assistance and Memorial Affairs and Technology Modernization Subcommittee held a hearing titled "From Months to Hours: The Future of VA Benefits Claim Processing." David Bump, a National Representative for the NVAC, and Second Vice President for VBA for AFGE Local 2157, in Portland, Oregon testified on AFGE's behalf. During the hearing, Dave submitted written and oral testimony and answered questions on a number of issues facing frontline VBA employees, highlighting problems with VBA IT. Specifically, the testimony highlighted problems with not just the NWQ (see above), but also the Veterans Benefits Management System (VBMS), and the reliability, basic functionality, and interoperability, of different VBA systems. Dave's testimony and answers to the committee members' questions have helped shape the committee's focus and evaluation of VBA IT as it relates to frontline employees.

In relation to training, on July 23, 2024, Linda Parker-Cooks, President of AFGE Local 138 testified at a Disability Assistance and Memorial Affairs subcommittee hearing titled "Is the Veterans Benefits Administration Properly Processing and Deciding Veterans Claims?" In her written and oral testimony, Linda gave a detailed accounting of the shortfalls of VBA's training programs, and offered concrete suggestions on what VBA could do to improve in this area. At the end of her oral statement, Chairman Luttrell (R-TX) asked the VBA representative "why aren't you doing what she's telling you to do?" This was another great example of AFGE members highlighting the challenges facing frontline employees, and demonstrated the congress is watching the issue closely.

Congressional Requests:

- Conduct oversight on the impact of IT shortcomings on both the performance ratings of VBA employees and the number of employees removed or disciplined under the VA Accountability Act.

- Encourage the VA to provide adequate training time for employees on new IT systems and ensure VA employees are not penalized for IT problems beyond their control.

- Maintain continued oversight over the use of automation in claims processing.

Performance Standards

Performance standards exist to measure employee performance against a specific set of written criteria, so that managers and employees have a consistent understanding of what is expected on the job. These standards should be fair and attainable for all employees while retaining the flexibility to adjust for changing circumstances in an employee's workload. While this should be the case, VBA management has over the years altered or mishandled performance standards in ways that negatively impact employees and veterans. Some of examples include:

- VBA has instituted counterproductive restrictions on excluded time. Excluded time is the time removed from an employee's production quota to account for situations that would make it more difficult to reach production goals. The most basic example of excluded time would be if an employee is expected to process 50 transactions a week (10 per day), and they are on work travel for a day, the employee would be granted excluded time for the travel day, which in turn would reduce the employee's quota for that week to 40 transactions. However, problems occur when VBA refuses to grant or reduces the excluded time granted time for training claims processors in new procedures and technology. This sets up employees to fail and hurts veterans by sacrificing quality for quantity.

- VBA has created standards that do not fairly award claims processors credit for work completed. One critical example is that Rating Veteran Service Representatives (RVSRs) who defer a case for further review (because it is not ready to rate) do not receive full production credit for that work. For many VBA employees, production credit is not allocated fairly based on the complexity and specialization of a claim or the amount of work involved. Employees should not be penalized for being assigned work that requires more information or analysis. Some of the VBA's performance measures have created a system that serves neither the worker nor the veteran.

- In the name of efficiency, VBA has reduced the amount of time that Legal Administrative Specialists, who assist veterans with questions about their claims, can speak to a veteran on the phone and still meet the criteria for an "outstanding" or "satisfactory" rating on a call. This system makes no allowance for calls with veterans who have highly complex questions or are disabled and need additional assistance to communicate. VA should not set standards that reward rushing veterans.

To address and highlight this issue, AFGE secured in H.R. 2617, the Consolidated Appropriations Act, 2023 an oversight report that requires a VA study on the National Work Queue to "address specifically (1) how it plans to restore procedures to provide specialized assistance to and coordination with veterans' accredited representatives; and (2) how it plans to evaluate VA employees fairly for their own work product." AFGE has also continued

to highlight the need to improve performance standards to the House and Senate Veterans Affairs Committee with congressional testimony and statements for the record, including testifying before the DAMA subcommittee on behalf of claims processors three times in the 118th Congress. This included when on June 6, 2023, David Bump, Second Vice President for VBA for AFGE Local 2157 and a NVAC National Representative, testified at a House Veterans Affairs Committee Joint Disability Assistance and Memorial Affairs and Technology Modernization Subcommittee hearing titled "From Months to Hours: The Future of VA Benefits Claims Processing." On June 26, 2024, James Swartz, the President of AFGE Local 2823 testified at a House Veterans Affairs Committee Subcommittee on Disability Assistance and Memorial Affairs hearing titled "Examining Shortcomings with VA's National Work Queue Veterans Benefits Claims Management System." Lastly, on July 23, 2024, Linda Parker-Cooks, President of AFGE Local 138 testified at a House Veterans Affairs Committee Subcommittee on Disability Assistance and Memorial Affairs hearing titled "Is the Veterans Benefits Administration Properly Processing and Deciding Veterans Claims?"

AFGE legislative staff will continue to lobby Congress to have the VA implement changes that will assist the VBA workforce.

Congressional Requests:

- Increase oversight on the status of VBA performance standards and if they are fair to employees and are serving veterans' best interests.

Compensation and Pension Exams

Disability exams are required for many veterans applying to receive VA benefits related to their military service, and Compensation and Pension (C&P) exams are the most common type of exam. The VA started to contract out these examinations in the late 1990's and has been increasing the number of contracted exams ever since. Currently, approximately 90 percent of all VA disability exams are contracted out by VBA instead of being processed by VA's own clinicians. AFGE is proud to represent clinicians who perform C&P exams for VA, as well as VA clinicians who perform similar Integrated Disability Examination System (IDES) exams for service members prior to their separation from service.

AFGE has long argued that VA clinicians are far better prepared and more likely to diagnose veterans correctly compared to private contractors without expertise in the unique and complex problems that veterans present. This is particularly true of medical issues that are more common or exclusive to the veteran community, including military sexual trauma, traumatic brain injury, and toxic exposure. To underscore this point, AFGE has submitted several statements to the House and Senate Committees on Veterans' Affairs as they considered issues related to disability exams.

On July 27, 2023, AFGE submitted a statement for the record for a House Veterans Affairs Committee Subcommittee on Disability Assistance and Memorial Affairs Subcommittee hearing titled, "VA Disability Exams: Are Veterans Receiving Quality Services?" In the statement, AFGE highlighted the benefits of the VA performing disability exams and the benefits the VA and veterans would receive from this change. On September 18, 2024, AFGE submitted another

statement for the record for a House Veterans Affairs Committee Subcommittee on Disability Assistance and Memorial Affairs Subcommittee hearing titled, "Examining VA's Challenges with Ensuring Quality Contracted Disability Compensation Examinations." In the statement, AFGE pointed out the problems with contract exams and who VA and veterans would be better served by bringing disability exams back into the VA.

As a result of advocacy on this issue, AFGE endorsed S. 2718, the "Medical Disability Exams Improvement Act" introduced by Senate Veterans Affairs Committee Chairman Jon Tester (D-MT) and Senator Thom Tillis (R-NC). If enacted, part of this bill would have changed the funding mechanism for disability exams, by moving the funding for VHA examiners from a discretionary VHA account to the same mandatory VBA account that funds contract exams. By keeping these exams in one account, it would have incentivized the VA to hire more internal VHA examiners and rely less on expensive and inferior contract exams. AFGE will lobby to ensure that the relevant components of this legislation are reintroduced in the 119th Congress.

AFGE will continue to lobby on this issue, demand strong oversight, and fight for the VA to bring C&P exams, particularly specialty exams, back within the VA.

Congressional Requests:

- Fight for continued oversight on the status of contract C&P exams including a comparison between the quality, timeliness, and cost of internal VHA and outsourced exams.

- Conduct oversight to make sure limitations on contract exams are being enforced.

BOARD OF VETERANS' APPEALS

On November 29, 2023, the House VA Subcommittee on Disability Assistance and Memorial Affairs held a hearing titled "Examining the VA Appeals Process: Ensuring High-Quality Decision-Making for Veterans' Claims on Appeal." This wide-ranging hearing examined a number of issues facing the Board of Veterans' Appeals, and what changes should be made to improve the Board. During the hearing, AFGE Local 17 President Douglas Massey testified on AFGE's behalf, raising the issues below and highlighting the need to improve conditions for frontline Board Attorneys and listen to their concerns. This testimony has become critical to Congress's oversight of the Board and will continue to reverberate into the future.

Workload and Performance

The workload and performance metrics for attorneys in the Board of Veterans Appeals are a major factor harming the Board's recruitment and retention efforts. Several factors contribute to this problem, including:

Workload: The Board has made significant changes over the past several years regarding the number of cases and issues a Board attorney must complete annually. Prior to the implementation of the Appeals Modernization Act (AMA), Board attorneys were expected to complete 125 cases a year, a pace that averaged 2.4 cases per week. Each case, regardless of the

number of issues decided, carried the same weight towards an attorney's production quota. In FY 2018, the Board increased its production standards from 125 to 169 cases per annum, (or 3.25 cases per week), a 35% increase in production requirements which was overwhelming for Board attorneys. In FY 2019, the Board created an alternative measure of production for Board attorneys which evaluated the total number of issues decided by an attorney, regardless of the number of cases completed, setting that number at 510 issues decided. AFGE supports the creation of this alternative metric as it better accounts for the work required to complete each case. However, we caution that measuring the number of issues can also be manipulated to create unfair metrics. Unfortunately, this manipulation appeared in FY 2020, the first year the AMA was fully implemented, because while the case quota remained at 169, the issue quota was raised to 566. Finally in FY 2021, the quota was changed to a more manageable but still difficult 156 cases or 491 issues. This remains the quota in 2025.

Judicial Sign Off: A Board attorney may only receive credit for a case once a judge signs off on the work. While this requirement may appear reasonable, delays caused by overburdened judges can cause attorneys to miss their quotas through no fault of their own. When attorneys are adjudged to be performing poorly based on such missed quotas, it violates Article 27, Section 8, Subsection E of AFGE's collective bargaining agreement with the VA, which states "When evaluating performance, the Department shall not hold employees accountable for factors which affect performance that are beyond the control of the employee." The VA should adhere to the terms of the collective bargaining agreement.

Training: BVA has provided inadequate training for Board Attorneys, including only two hours of mandatory training required by the PACT Act. In response to a plethora of complaints and inaction by management, Local 17 initiated a union led program aimed at providing tools, support, and efficiency strategies to ensure the success of decision-writing attorneys. While upper management has taken notice of this successful initiative, there has been no effort to institute an analogous program on their part. Unfortunately, and predictably, the impacts of minimal training include decreased quality of decisions. Insufficiently trained attorneys are more likely to require additional time to research and understand the new law, leading to delays in claims processing and a backlog of cases. This inefficiency further delays veterans' access to benefits. Faced with the challenge of applying complex legal changes with minimal training, attorneys may experience moral and professional dilemmas, contributing to low morale, burnout, and high attrition at the Board. It is imperative that the Board revises its training protocols either on its own or through a statutory mandate, ensuring that our attorneys are not only well-versed in the intricacies of new legislation but are also fully prepared to uphold the rights and entitlements of our veteran population.

Congressional Requests:

- Increase oversight on the current status of Board attorney performance standards and assess if they are best serving veterans.
- Increase funding for the Board to hire more attorneys.
- Encourage the VA to eliminate the judicial sign off requirement for Board attorneys' performance measures.

- Require the Board to improve training for attorneys.

Recruitment and Retention

The Board of Veterans' Appeals is a place where attorneys should have a path to work for their entire careers. To accomplish this goal, the Board needs to re-establish a standard career ladder for GS-14 Board Attorney positions which had until recently existed for new hires. Eliminating this level of growth and compensation for attorneys is a direct way of dissuading qualified applicants from joining the Board of Veterans Appeals or choosing to stay long term. The VA should reverse this shortsighted policy and attract the best candidates to the Board's ranks.

To accomplish this, in the 118th Congress AFGE worked with Congressman Morgan McGarvey (D-KY) and Gus Bilirakis (R-FL) to introduce H.R. 9046, the "Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act." This bi-partisan bill would authorize the creation of a journeyman non-supervisory GS-15 Board Attorney position. Currently, Board attorney grades range from GS-11 to GS-14. Of the approximately 871 attorneys currently at the Board, 439 attorneys are at the GS-14 level. While not all attorneys would qualify or choose to advance to a GS-15 position, creating the possibility for 100 to 200 GS-15 attorneys would help with long-term recruitment and retention. It is also important to note that there are non-supervisory journeyman GS-15 attorneys within the VA Office of General Counsel, thus setting a precedent. As Board attorneys are in the Excepted Service, it is within the Secretary's discretion to create and fill these new positions. AFGE has encouraged the Secretary to create this advancement opportunity and has asked Congress to voice its support for this change or pass legislation establishing its creation. On July 10, 2024, Nick Keogh the 2nd Vice President of AFGE Local 17 and a NVAC National Representative testified at a House Veterans Affairs Committee Subcommittee on Disability Assistance and Memorial Affairs hearing on "Pending Legislation" in support of this bill. In the 119th Congress, AFGE expects Rep. McGarvey, now the Ranking Member of the Disability Assistance and Memorial Affairs Subcommittee that has jurisdiction over the "Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act," to reintroduce re-introduce the legislation.

The Board has also over the past several years hired Veteran Law Judges ("Board Members") who have little to no experience in veterans law. In the past, Board Members were required to have seven years' experience in veterans law but now are chosen for "leadership skills." This is a disservice to veterans who now have claims before judges who are learning on the job, and whose inexperience is causing delays that veterans cannot afford. A request for information from the Board confirmed that the least productive Board Member who was appointed from within the Board was more efficient at moving cases than the most productive Board Members chosen from outside the board. This inefficiency, specifically new Board Members being slow in signing off on decisions, has negative impacts on the performance metrics for Board attorneys, and is another driver for Board attorneys' fleeing. Additionally, by eliminating the experience requirement for Board Members and not promoting knowledgeable Board attorneys to these positions, the Board is eliminating a natural path for promotion and harming recruitment and retention. AFGE urges the Congress to amend Title 38 to require that Board Members have substantial experience in veterans law.

Congressional Requests:

- Gather original co-sponsors and pass the "Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act."

- Introduce legislation to amend 38 U.S.C. § 7101A to require that Board Members have substantial experience in veterans law.

VOTER RIGHTS, CIVIL RIGHTS, AND JUDICIAL NOMINATIONS

Background

AFGE is a full and active partner in the traditional alliance between the civil rights and workers' rights movement. AFGE created the Fair Practices Department in 1968 to fight racial injustice in federal employment and expanded it in 1974 to become the Women's and Fair Practices Department protecting the federal workforce. AFGE leaders marched in Selma in 2015 and 2019 with many others to honor the sacrifice of those who fought for the Voting Rights Act of 1965 and to ensure those rights will not be denied or diluted by state legislatures or federal judges.

AFGE has recognized disparities in the criminal justice system and has worked with advocates on sentencing reforms. AFGE fights for equal pay between men and women and against the use of discriminatory pay-for-performance schemes. AFGE fights for the federal government to become THE model employer, and for the rights and dignity of all federal workers regardless of race, sex, religion, orientation or gender identification, national origin, age, or disability status.

Legislative and Judicial Attacks on the Right to Vote

The preclearance section of the Voting Rights Act blocked discriminatory voting changes before implementation. Fifty-three percent of the states covered by the preclearance requirements due to past discrimination passed or implemented voting restrictions that disenfranchised tens of thousands of voters. Immediately following the Supreme Court's decision in *Shelby County v. Holder*, striking the preclearance provision of the Voting Rights Act, states previously subject to preclearance (Texas, Alabama, and North Carolina) implemented restrictive voter 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 two to three 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.

Freedom to Vote Act and the John Lewis Voting Rights Advancement Act

AFGE supports the reintroduction of the "Freedom to Vote Act" in the 119th Congress. In the 118th Congress, S. 2344 was introduced by Sen. Amy Klobuchar (D-MN). This bill would expand voting rights protections. Specifically, the bill expands voter registration and voting access. It limits removing voters from voter rolls and establishes Election Day as a federal holiday.

AFGE supports the reintroduction of the "John R. Lewis Voting Rights Advancement Act." In the 118th Congress, H.R. 14 was introduced by Representative Terri Sewell (D-AL). This bill would restore the Voting Rights Act of 1965 by outlining a process to determine which states and localities with a recent history of voting rights violations must pre-clear election changes with the Department of Justice. AFGE urges Congress to reintroduce the "John R. Lewis Voting Rights Advancement Act" and the "Freedom to Vote Act" to promote voter access across the country.

Election Day a Federal Holiday

AFGE supports reintroduction of the "Election Day Act" a bill to establish Election Day a federal holiday, helping people gain access to the polls. This bill would establish the Tuesday after the first Monday in November in the same manner as any legal public holiday for purposes of Federal employment and create "Democracy Day" a federal holiday to boost voter turnout on Election Day. The bill has been reintroduced in the 119th Congress as H.R. 154 by Representative Brian Fitzpatrick (R-PA) and Representative Debbie Dingell (D-MI).

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 to get 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.

Equal Pay

AFGE supports the reintroduction of the "Paycheck Fairness Act." In the 118th Congress, H.R. 17 / S. 728 was introduced by Representative Rosa DeLauro (D-CT) and Senator Patty Murray (D-WA). The bill closes loopholes that hinder the Equal Pay Act's effectiveness, prohibits employer retaliation against employees who share salary information among colleagues, and ensures that women who prove their case in court receive awards of both back pay and punitive damages. A 2018 study by the American Association of University Women found that fulltime working women on average earn 80% 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 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 2023 Census Bureau Poverty and Income Report, the Official Poverty Rate for those with disabilities was 20.3%, more than double the national average. Also in 2023, the unemployment rate for persons with disabilities was 7.2%, again more than double the national poverty rate. Only about a third 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 continues to work with Senator Tammy Duckworth (D-IL) and Representative Dingell to urge OPM to share data about the rates of persons with targeted disabilities who have been removed before or at the end of their probationary period. If problems are documented, AFGE will call upon Congress to strengthen protections for disabled federal workers.

AFGE urges Congress to:

- Reintroduce and pass legislation to protect the voting rights of each American, including a law establishing the day of federal elections as a federal holiday.

- Conduct oversight about possible discrimination against federal workers with a targeted disability.