



Eric Bunn Sr.
National Secretary-Treasurer

Dr. Everett B. Kelley
National President

Jeremy A. Lannan
NVP for Women & Fair Practices

August 13, 2020

Honorable Adam Smith
Chairman
House Armed Services Committee
2120 Rayburn House Office Building
Washington, D.C. 20515

Honorable Jim Inhofe
Chairman
Senate Armed Services Committee
228 Russell Senate Office Building
Washington, D.C. 20510

Honorable Mac Thornberry
Ranking Member
House Armed Services Committee
2126 Rayburn House Office Building
Washington, D.C. 20515

Honorable Jack Reed
Ranking Member
Senate Armed Services Committee
228 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairmen and Ranking Members:

On behalf of the American Federation of Government Employees, AFL-CIO, (AFGE) which represents more than 700,000 federal employees who serve the American people in 70 different agencies, including approximately 300,000 in the Department of Defense (DoD), we appreciate your support of a strong national defense and your recognition of the importance of a professional, apolitical civil service supporting our uniformed warfighters. As you work to finalize the “William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year 2021,” we write to urge your support on the following issues:

Please include in the FY 2021 NDAA Section 1102 of the House passed bill, “Limitation on authority to exclude employees from chapter 71 of Title 5,” to preserve the continuation of collective bargaining and union representation for civilian employees. On January 29, 2020, a Presidential memorandum, unsolicited by the Secretary of Defense, provided the Secretary of Defense broad authority to exclude DoD agencies and subdivisions from being covered under the Federal Service Labor-Management Relations Statute (FSLMRS), which outlines collective bargaining rights for federal employees. AFGE urges the inclusion of House-passed language in the FY 2021 NDAA that prohibits the use of **appropriated funds to exclude the Department, or any agency, activity, or subdivision of the Department, from coverage under the Federal Service Labor-Management Relations Statute (FSLMRS).**

Please include in the FY 2021 NDAA Section 1106 of the House passed bill, “Limiting the number of local wage areas defined within a pay locality.” AFGE strongly supports aligning the Federal Wage System Areas with the General Schedule Locality Pay Areas as a matter of equity and fundamental fairness. The General Schedule (GS) locality boundaries are drawn, *inter alia*, according to commuting rates within and among the counties surrounding metropolitan cores, which is the proper way to define local labor markets. However, the Federal Wage System (FWS) wage area boundaries were drawn mostly in the 1950s, reflecting the location of large military installations that employed most federal hourly workers at that time. Today, some GS localities include several FWS wage areas. Thus, two sets of hourly workers within a GS locality will get different wages while all the GS workers within the locality will get the same rates. The hourly workers are considered to be in a different local labor market than salaried workers despite the fact that they work side-by-side in the same place for the same employer and travel the same roads to get to and from work. The Congressional Budget Office on July 8, 2020



estimated that the House version of the NDAA, Section 1106, would have “an insignificant effect on net direct spending and revenues.” AFGE strongly urges inclusion of Section 1106 as drafted in the House NDAA to ensure fair pay to federal workers who are paid hourly.

Please include in the FY 2021 NDAA Section 1101 of the House passed bill, “Paid parental leave technical corrections” to expand federal employee paid leave benefits. AFGE urges inclusion of this technical correction that would expand the paid parental leave benefit to federal employees who are currently ineligible because they are not Title 5 employees. This includes Federal Aviation Administration employees; certain Department of Veterans Affairs (VA) employees; District of Columbia Courts and Public Defender Services employees; certain employees of the Executive Office of the President and White House Office; non-screener personnel at the Transportation Security Administration; and Article I judges, including bankruptcy and magistrate judges. Lack of paid parental leave forces families to make difficult decisions when caring for newly arrived children. Studies show that providing this leave costs relatively little, but results in increased employee morale and productivity, reducing employee turnover. The Congressional Budget Office on July 8, 2020 estimated that the House version of the NDAA would have “an insignificant effect on net direct spending and revenues.”

Please include in the FY 2021 NDAA Section 911 of the House passed bill, “Limitation on reduction of civilian workforce,” and Section 806, “Defense reform.” Both of these provisions reinforce and clarify existing Title 10 provisions that require managing the Total Force of military, federal government employee and contractor workforces based on the capabilities they provide to the National Defense Strategy, taking into account risk and cost. Under these provisions, the DoD federal government employee workforce is to be managed based on workload and available funds, commonly referred to as “manage to budget,” which is the common parlance for not arbitrarily constraining the DoD civilian workforce to personnel caps, whether articulated as an end strength, full time equivalent, or any kind of constraint on the number of positions. Budgetary shell games of “deferring requirements” and “assuming risk” mischaracterized as “savings” are prohibited as are arbitrary reductions of the civilian workforce that ignore workload, readiness, lethality, military force structure, stress on the force, operational effectiveness and fully burdened costs.

Unfortunately, the Department continues to manage its workforce capabilities in uncoordinated “silos,” using the federal government employee civilian workforce as the primary offset or billpayer when developing its program and budget, in its various Defense Wide Reviews, bottom up reviews, and biennial Program Objective Memorandum process. Both the House and Senate bills found it necessary to restore these arbitrary cuts to various Defense Agencies in the acquisition workforce where the workload has been increasing. These practices result in regular findings by the Government Accountability Office (GAO) that the Department under-executes its civilian employee budget projections, the very opposite of “managing to budget,” often shifting these funds originally budgeted for the civilian workforce to lower priority contractors as the DoD Inspector General recently found occurred in the case of the Army two years ago.

Contractors are largely insulated from meaningful scrutiny of their requirements because the so-called Service Requirements Review Boards (SRRBs) do their reviews outside the Department’s programmatic and Defense Wide Reviews that are used to generate the Department’s budget requests. Similarly, the effect of arbitrarily cutting the civilian workforce on the military is likewise seldom scrutinized. The Department stopped accounting for borrowed military manpower in its readiness reporting in the mid-2000s timeframe, notwithstanding the fact that the Defense Science Board had originally recommended readiness reporting in the 1990s and had documented borrowed military manpower as a leading indicator of a “hollow force.” When the military takes on functions more appropriate for DoD civilian performance, this reduces the amount of military available for deployment for operational missions and

takes them away from being trained for these missions, harming the readiness and lethality of the Department's capabilities.

Please include in the FY 2021 NDAA Sections 1121 through 1128 of the House passed bill. In numerous press accounts and hearings, disclosures of retaliation by supervisors and managers for the formal and informal filing of equal employment opportunity (EEO) complaints undermine the current process and violate the rights of workers. Sections 1121 through 1128 will begin to correct the institutional biases in the current EEO process, where EEO violations go unaddressed and non-disclosure provisions in settlement agreements are used to cover up systemic abuses. Most notably, these provisions prohibit the supervision of the EEO process by agency lawyers, a crucial reform that addresses the conflicts of interest and structural barriers to fair EEO processes across the federal government inherent in such arrangements.

Please include in the FY 2021 NDAA Subtitle E of Title XVII, Section 1808, "COVID-19 Emergency Medical Supplies Enhancement," of the House passed bill. This provision establishes needed clarification on inter-agency responsibilities that include DoD (and the DLA within DoD), Health and Human Services, Homeland Security, the Food and Drug Administration, the Federal Emergency Management Agency, and the Department of Veterans Affairs, in the implementation of the Defense Production Act and Public Health Service Act responsibilities. This provision establishes a framework of meaningful consultation with unions and other stakeholders in the identification of diagnostic testing, personal protective equipment and other medical supplies and ventilators needed by each state. This provision also establishes oversight mechanisms for improved transparency, reporting, and audit over the use of DPA authorities to prioritize, distribute and control the pricing of scarce medical supplies and equipment needed to combat COVID-19 based on the greatest need.

Please include in the FY 2021 NDAA Section 1111 of the House passed bill that includes pandemics as an exigency of public business for purposes of carrying over of annual leave. Many federal employees will be unable to take the annual leave they earned during the course of the Coronavirus Pandemic and will lose this leave in the absence of the recognition that the Coronavirus Pandemic is an "exigency of public business."

Please include in the FY 2021 NDAA Sections 714, 715, 716 and 722 of the House passed bill extending the Defense Health reorganization until 2025, extending the bar on reduction or realignment of military medical structure, requiring TRICARE quality standards be reported to Congress; and the development of a Departmental medical COVID-19 strategy. The military departments are realigning military nurses into deployable jobs, but the Army and Navy are not backfilling these positions, thereby forcing civilian nurses to float from one ward to another after only an eight-hour orientation. This is outside of their position descriptions and scope of practice, and dangerous to patient safety. While the prior NDAA temporarily placed a hold on the Defense Health Agency reorganization, HASC Military Personnel Subcommittee hearings last December documented how this reorganization had already generated coverage gaps for military beneficiaries being shifted to TRICARE networks that lacked the capacity to provide timely and quality care in over-saturated private markets. Most significantly, these coverage gaps have been exacerbated by the Coronavirus Pandemic, placing everyone at risk. AFGE urges inclusion of these sections from the House bill to establish needed protections to ensure patient safety and quality of care, as well as prevent downsizing of military medical treatment facilities.

Please include in the FY 2021 NDAA Section 633 of the House passed bill, "Updated business case analysis on consolidation of Defense Resale System." The Government Accountability Office (GAO) recently found that the Defense Resale Task Force overestimated savings and underestimated the costs of its recommendations to merge Commissaries with Exchanges, and that DoD did not fully disclose to

Congress the concerns of the Military Department stakeholders regarding the merger. DoD requires statutory authorization from Congress to proceed with the merger. AFGE urges inclusion of Section 633 in the final FY 2021 NDAA prohibiting the merger of Commissaries and Exchanges given the adverse GAO findings, and clarifying the need for express Congressional authorization (See GAO-20-418, “DoD and Congress Need More Reliable Information on Expected Savings and Costs of Consolidating the Defense Resale Organization” (Apr. 30, 2020)).

Please include in the FY 2021 NDAA Section 2702 of the Senate passed bill, “Prohibition on conducting additional BRAC.” A Base Realignment and Closure (BRAC) would be completely disruptive to the Department’s missions and harm readiness and negatively affect communities across the country. The Department is currently buying back its readiness after suffering the adverse consequences of budgetary uncertainty and reductions and a BRAC would have substantial investment costs. The GAO has repeatedly documented that savings often are over-stated. AFGE strongly urges the inclusion of Section 2702 of the Senate passed bill in the final FY 2021 NDAA.

Please OPPOSE inclusion of Section 820C of House passed bill in the FY 2021 NDAA. This section further expands the scope of the definition of commercial items in a way that will ultimately impede governmental access to cost and pricing data and intellectual property needed for Depot maintenance and repair, leading to more scandals like the TransDigm scandal where the DoD IG found excess profits and price gouging for spare parts for weapon systems deemed to be “commercial items.” Section 820C is an invitation to further fraud, waste, and abuse by defense contractors.

For additional information or questions, please contact John Anderson, telework number (703) 943-9438, john.anderson@afge.org.

Sincerely,



Alethea Predeoux
Director, Legislative Department

Cc: HASC Conferees
SASC Conferees