AFGE 2014 Issue Papers
Agency Specific Issues

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Department of Veterans Affairs

Introduction

In 2014, AFGE and the National VA Council (AFGE) will work with lawmakers and veterans' groups to improve services provided by the Department of Veterans Affairs (VA) through adequate health care staffing, implement performance standards for disability claims processing that improve both accuracy and timeliness, and curb illegal and unjustified privatization of VA jobs and health care services. AFGE and the National VA Council will continue to fight against medical center shutdowns and cutbacks, unequal bargaining rights for VA health care professionals, unequal rights for veterans facing discrimination in the VA health care workforce, and other forces that deprive VA's dedicated workforce of a fair and safe work environment.

Equal Bargaining Rights For Title 38 Health Care Professionals

The Veterans Health Administration (VHA) employs health care personnel in over 40 direct patient care positions to deliver its medical services to veterans. Since 2003, VHA has unfairly singled out 8 of those 40 positions, using an unintended loophole in Title 38 law to deprive them of equal bargaining rights. VA's interpretation of 38 USC 7422 has dramatically impacted the morale and workplace rights of VA physicians, dentists, registered nurses (RN), physician assistants (PA), podiatrists, optometrists, chiropractors, and expanded duty dental auxiliaries. These clinicians have starkly different bargaining rights than clinicians working in the same positions at military and federal prison facilities, and their VHA colleagues who have full Title 5 bargaining rights.

Two important developments in 2010 confirm the importance of enacting reform of Title 38 bargaining rights law. First, the VA issued new agency policy on Title 38 bargaining rights, most significantly, a clarification that VA clinicians have the right to bargain over the VA's failure to follow its own regulations and policies. Second, VA initiated a bargaining rights pilot project pursuant to legislation merging a Navy facility with a VA facility in North Chicago; clinicians transferring from Navy Title 5 jobs to VA Title 38 jobs were given full Title 5 bargaining rights to clinicians on a pilot basis.

To date, none of the dire warnings about patient safety made by opponents of full bargaining rights have borne true. No patients in VA medical centers have been harmed. In fact, full bargaining rights at the new North Chicago joint facility have enabled management and labor to efficiently and amicably resolve a number of significant transition issues.

VA's prior interpretation of 38 USC 7422, pursuant to a 1999 labor-management agreement, vastly reduced the number of labor management disputes and fostered valuable collaboration on innovations in health care delivery. Sadly, the Bush Administration invalidated the agreement in 2003.

In 2014, AFGE and the National VA Council will seek support for S.1556, a bill introduced by Senator Brown (D-OH) to extend equal bargaining rights to these dedicated clinicians, and introduction of a House companion bill. The ability of this workforce to have an equal voice in the workplace should no longer depend on national politics or the whims of local human resources personnel. Veterans will be the greatest beneficiaries of this long overdue legislation that will hold the VA accountable for failure to follow its own rules and regulations.

Congressional Action Needed:

- Enact legislation to amend 38 USC §7422 to restore equal rights to bargain to "pure Title 38" health care professionals.
- Eliminate the backlog of dozens of undecided VA "7422" cases that await Secretary determinations. This backlog has deprived some VA clinicians of relief for their claims for more than three years. The VA has not responded to AFGE's multiple requests for an inventory of pending cases, in violation of AFGE's right to this information under the Federal Labor Relations Act (5 USC 7114).

VA Benefits Issues

The increase in press and Congressional inquiries has pushed the backlog of disability and pensions claims to the forefront of Veterans Benefits Administration (VBA) issues. AFGE's main legislative priority is to improve a broken work credit system for employees and unfair performance standards. Employees consistently do not receive adequate or any credit for many tasks they perform on a daily basis. VBA's performance standards for employees are based on arbitrary metrics that do not accurately measure an employee's ability to perform their job. AFGE continues to lobby Congress to mandate a scientifically valid time motion study of the tasks VBA employees complete on a regular basis in order to develop a fair work credit system.

Senate VA Committee Chairman Bernie Sanders (I-VT), introduced the Claims Processing Improvement Act of 2013, S. 928 to bring about long overdue improvements to the VBA work credit system. The bill has been included in the Committee's omnibus bill. AFGE expects the bill to pass through the Senate by unanimous consent and will continue to urge the House to introduce similar legislation.

AFGE must also educate Congress and work to implement changes for VBA's new claims processing system, the Veterans Benefits Management System (VBMS). VBMS is now implemented in every Regional Office nationwide, yet major problems continue on a daily basis. VBMS shuts down on nearly a weekly basis, sometimes for hours at a time. When VBMS shuts down, employees are still held to the same standard, even though they do not receive the same amount of credit for work that is not done electronically. AFGE urges Congress to provide additional oversight of VBMS, including forming a Committee to monitor its progress as well require VA to provide errors and issues related to VBMS in its Monday Morning Report. AFGE

also urges Congress to conduct a time-motion study to investigate how long each claim takes to complete in VBMS and what adjustments must be made when VBMS is inoperable.

Congressional Action Needed:

- Pass legislation requiring a scientifically valid time motion study of VBA's work credit system
- Provide oversight of VBMS and demand regular reporting about to Congress about daily issues with VBMS
- Pass legislation requiring standardized work credit remedies when VBMS is inoperable

VA Downgrades

In February 2013, the VA announced a plan to downgrade 14,000 VHA and VBA employees. Of these employees, 11,000 work as a GS-7 or below, and at least 8,000 are veterans. VA's plan is a follow up to the downgrades which began in 2008, where approximately 1,600 employees were downgraded. AFGE believes that the VA has not considered the impacts on patient care or the disability claims backlog which continues to grow. VA consistently blames OPM classification review decisions for the downgrades, but VA could prevent this independently by simply adding duties to position descriptions.

AFGE urges passage of legislation to impose a spending moratorium that would put a hold on all VA spending on downgrades until the full impact on patient care, the backlog, and veterans' employment can be determined. AFGE and the VA Council are also participating in a labor-management working group addressing the downgrades; we remain doubtful about the ability of this group to influence VA's internal decisions on downgrades.

Congressional Action Needed:

- Pass legislation issuing a moratorium on all spending of VA downgrades to allow for a comprehensive assessment of the full impact of downgrades on patient care, claims processing and the impact of veterans' current and future employment opportunities in the Department

Equal Protections for Veterans in the VA Health Care Jobs

AFGE and the National VA Council will seek support for H.R. 2785, introduced by Cong. Tim Walz (D-MN), a bill that provide equal rights to veterans hired by the Veterans Health Administration (VHA) under the Title 38 or Hybrid Title 38 personnel systems. Current law must be changed in order to overturn a 2003 Federal Circuit Court decision that held that these VHA employees are not covered by the Veterans Employment Opportunities Act (VEOA), and therefore lack the right to appeal to the Merit Systems Protection Board and Labor Department when their veterans' preference is violated.

The men and women who are healing veterans at VA medical centers, including the growing number of active duty personnel service in the medical corps who are transitioning to VHA jobs as physicians, RNs, PAs, among others, deserve the same employment rights as other veterans seeking or working in Title 5 positions at the VA or other agencies, including veterans performing the same jobs at military hospitals and other federal medical facilities. The need for this legislative fix has increased as VHA converts more Title 5 employees to the Hybrid Title 38 personnel system pursuant to the expanded authority provided to the VA Secretary by the Caregivers and Veterans Omnibus Health Services Act (Public Law 111-163) (Caregiver Act).

H.R. 2785 also extends preference rights to reservists. Related bill S.1320, introduced by Senator Joe Donnelly (D-IN), which also contains reservist provisions, should be amended to include provisions for the preference rights of VA Title 38 employees.

Congressional Action Needed:

- Cosponsor H.R. 2785 to extend coverage of the Veterans Employment Opportunities Act, including appeal rights, to VA employees hired under the Title 38 personnel system.
- Amend S.1320 to add protections for Title 38 employees.

Working Conditions in VA Medical Facilities: Short Staffing and Excessive Work Hours Hurt Patient Care and VA's Ability to Recruit and Retain Personnel

Staffing

VHA regularly implements new patient care initiatives without corresponding increases in staff or workspace. As a result, the goals of these important initiatives are frustrated, and already short staffed facilities are even less able to provide quality, timely care. Short staff has taken an especially heavy toll on the effectiveness of VHA's "PACT" initiative (Patient Aligned Care Teams). While this team approach has the potential to improve quality and access of veterans' care the services to be delivered through PACT are not being supported by sufficient staff or resources. Rather, PACT has placed significant new responsibilities on VA clinicians who are already carrying enormous patient caseloads.

Staff-patient ratios and other sound staffing policies are sorely lacking at VHA. VHA's own staffing policy, a new staffing methodology directive issued in 2011 does not provide fixed ratios. Our members report that this modest initiative to improve staffing has been undermined by lack of training, confusion, and an inadequate role for labor.

Excessive Work Hours

Congress has attempted to protect RNs at the VA from excessive mandatory overtime through limits on length of the work day and a clear definition of what constitutes an "emergency' that allows management to override those limits. Unfortunately, when managers mandate

overtime without adequate justification, RNs at the VA have little recourse because of their limited bargaining rights under 38 USC 7422.

VA physicians are subject to a harmful and outdated VA policy known as the "24/7" rule. The use and abuse of the 24/7 rule by VHA management to impose chronic, excessive work hours on VA physicians, especially those working in primary care and psychiatry, is reaching crisis proportions. Inadequate staffing plans and poor recruitment and retention policies should never be a justification for mandating excessive and unsafe work schedules for health care personnel.

As a result of their limited bargaining rights under 38 USC 7422, VA physicians have little recourse against regular demands from management to cover evening shifts, weekend inpatient rounds and on call duty.

A solid body of research in the medical community has established a link between exhausted personnel and patient safety. At the VA, it is common for inpatient physicians to be on duty for 24 hours without a sufficient period of rest before returning for the next tour of duty, in direct violation of VA's policy.

In addition, most VA physicians have panel sizes far exceeding the VA's own recommended limits on patient caseloads. Consequently, they must work several additional hours each evening at the end of a long work day to complete onerous administrative duties. (In addition to patient notes, clinicians have the VA faced an ever increasing number of computer alerts and other administrative duties.)

VA physicians are not covered by overtime pay laws, and can only be compensated for extended work hours through compensatory ("in lieu") time.), VA's leave policies and practices are equally unreasonable and counterproductive. For example, supervisors regularly deny physicians the compensatory time they have earned, in violation of VA policy.

These policies and practices are decimating the VA's ability to recruit and retain physicians. VA medical centers across the country are having difficulty attracting and retaining recently hired clinicians, and causing many with valuable experience to retire earlier.

Noncompliance with Pay Law and Policies for Physicians and Dentists

The pay system for VA physicians and dentists was revamped by P.L. 108-445. The three tier pay system that was created has not been subject to adequate oversight. Therefore, its effectiveness in strengthening the VA's ability to recruit and retain, and reduce reliance on costly, less specialized contract care, is unknown.

Our members who work as VA physicians and dentists report widespread concerns with the implementation of the 2004 pay law:

- The base pay grouping for psychiatrists has resulted in a low base pay that is impeding VA's ability to be a competitive employer in the face of intense demand for VA psychiatric care.
- The composition of and data analysis of the market pay panels frequently do not comply with statute of agency policy.
- Performance pay criteria in many practice areas are developed without any input from front line clinicians or their union representatives. Too often, they are improperly based on factors unrelated to individual achievement and are often issued in an untimely manner. Unfortunately, AFGE was excluded from a recent VA workgroup looking into performance pay.
- Managers often disregard the statutory amounts for performance pay, and instead, arbitrarily provide all clinicians with a small award regardless of individual performance.
- Older physicians with extensive experience express concern that new hires come into the VA with a higher level of compensation despite their limited experience.

Violence in the Workplace

Many medical facilities face severe short staffing of VA police especially in emergency rooms and outpatient clinics (a growing number of which are in very rural areas.). Short staffing of medical personnel in combination with inadequate security put both patients and personnel at risk of harm from acts of violence at the facility or in the community.

Congressional Action Needed:

- Staffing:
    - Cosponsor H.R. 1907, the Nurse Staffing Standards for Patient Safety and Quality Care Act to set fixed staffing ratios and ensure that VA nurses who report short staffing are protected from retaliation.
    - Monitor implementation of VHA's staffing methodology
    - Conduct oversight of the Primary Care and Specialty PACT Teams.
- Excessive Work Hours
    - Oversight of the VA's use of mandatory nurse overtime
    - Oversight of the VA's use of the 24/7 rule for physicians
    - Investigate other laws and policies limiting work hours for clinicians in other settings and professions
    - Oversight of patient panel sizes and administrative duties imposed on physicians and other VA independent providers
- Flawed pay policies
    - Conduct oversight of the effectiveness of the physician/dentist pay law, to determine how current VA practices regarding base pay, market pay and performance pay are impacting the VA's ability to recruit and retain these clinicians, and control costs of contract care.

    - Establish nationally uniform guidelines for performance pay criteria based on individual achievement, and developed with input from front-line clinicians and their labor representatives.
- Workplace violence
    - Oversight of the adequacy of VA police staffing levels and current VA policies to counter workplace violence.

VA Outsourcing Hurts Employment Opportunities for Tomorrow's Veterans: Time to Insource!

AFGE and its VA Council have secured a statutory ban against "direct conversions" by the VA that is modeled after that ban that AFGE won to curb direct conversions by other federal agencies. "Direct conversions" are management actions to contract work by federal employees without a formal cost comparison. AFGE has also secured a law that prohibits VA and other agencies from conducting a formal cost comparison process. Title 38 also prohibits VHA from using medical dollars to conduct cost comparisons.

Despite these statutory bans, the VA regularly enters into contracts for a wide range of services performed by its own employees, especially low wage jobs traditionally filled by service-connected disabled veterans, such as housekeeping, food service, building maintenance, patient transportation and cemetery caretaking. VA also engages in "back door" direct conversions through reassignments and downgrades (discussed previously) and refusing to fill vacancies created through retirements.

VA employees need the same protections against direct conversions that are in place for DoD employees. As discussed elsewhere, AFGE is working to strengthen OMB guidance that was issued in 2012 to warn VA and other agencies against direct conversions during sequestration.

AFGE and the National VA Council urge VA, consistent with longstanding law, to finally establish reliable and comprehensive inventories of all their current service contracts to determine which should be cancelled and which should be insourced, i.e. brought back in to the agency. Al moderately skilled VA jobs should be insourced and reserved for veterans, especially those recovering from a disability. Numerous VA functions should be insourced, because they are more appropriately performed by the agency rather than a for profit contractor, for example, "comp and pen" disability exams, medical, behavioral and pharmaceutical care related to service-connected conditions, cemetery caretaking and scanning of paper benefits claims files containing confidential information.

VHA relies excessively on contract care, instead of implementing personnel practices that would improve recruitment and retention of health care personnel. At both the national and local levels, VHA continues to abuse its statutory "sharing" authority to arrange for non-VA care, which is only supposed to be exercised in *limited* circumstances, i.e. when VA care is not geographically accessible or cannot provide care for a specialized medical need.

AFGE and the National VA Council have been especially concerned about recent VHA initiatives to expand the use of contract care on a national scale. The Project HERO pilot established in 2007 operated in four VISNs without adequate oversight of its impact on patient care and VA's in-house capacity. Similarly, very little is known about the Project Arch rural care pilot project. Most recently, the VA awarded a $9.4 billion, ten year contract to two corporate health providers to run the Patient-Centered Community Care (PC3) to conduct the traditional VA function of arranging and coordinating non-VA care. In all these instances, a glaring lack of transparency prevented stakeholders from assessing contractor claims of cost efficiency and increased patient access. AFGE has never been included in the stakeholder groups set up to support these initiatives.

Congressional Action Needed:

- Conduct comprehensive and ongoing oversight of PC3, through an advisory group that includes stakeholders.
- Require the VA to issue direct conversion guidance.
- Expedite the development of VA's insourcing plan.
- Require VA to produce an inventory of all current and planned direct conversions.

Veterans' Preference Overhaul: 21st Century Overhaul Needed

AFGE and the National VA Council will continue to work with veterans' groups this year on strengthening the complex set of rules governing veterans' preference in federal employment, through both legislation and agency action. As already noted, one of the most glaring gaps in veterans' preference rules is the lack of appeal rights for veterans applying for Title 38 VA health care jobs (either as first time VA employees or current VA employees seeking different health care positions within the VA system.).

In 2013, Congressman Tim Walz (D-MN) introduced H.R. 2785 to provide a much needed statutory fix, with bipartisan support. Both H.R. 2785, and related bill S. 1320, introduced by Senator Joe Donnelly (D-IN), extend preference rights to military reservists. We urge Senator Donnelly to add Title 38 preference language to S. 1320.

A statutory fix for veterans throughout the federal sector is also needed to extend preference rules to promotions and reassignments, a gap that especially impacts veterans in the Reserves and National Guard who take multiple leaves from their federal jobs. In addition, a change in Labor Department regulations is needed to update the list of jobs restricted to disabled veterans.

To ensure compliance with veterans' hiring requirements, OPM needs to collect more comprehensive data on agency efforts to recruit and retain veterans. Training of federal hiring officials who apply these rules and rate veterans' skills acquired through military service should also be improved.

Congressional Action Needed:

- Enact H.R. 2785 to extend coverage of the Veterans Employment Opportunities Act, including appeal rights, to all VA health care personnel hired under Title 38. Amend S. 1320 to add the same Title 38 provisions.
- Extend veterans' preference laws to reassignments and promotions.
- Update and expand the list of restricted positions for disabled veterans.
- Improve OPM data collection on agency veteran hiring and increase training for federal hiring officials.

Fair Treatment of Veterans Canteen Service Employees

The Veterans Canteen Service (VCS) is the sole provider of retail, food and vending operation at almost all VA medical facilities. VCS operates with non-appropriated funds. Its 3000 employees are "at will employees" because they are hired under a separate section of Title 38 that does not provide them with any appeal rights when management terminates their employment.

This lack of basic rights and permanent job insecurity has led to an environment of fear and abuse in many VCS workplaces. Employees facing discrimination, harassment and false allegations of misconduct will never have any real recourse as long as they remain at-will employees who can be summarily fired.

The canteen workforce is comprised of a disproportionate number of women and minorities who are often paid less than other VA employees performing the same duties, especially in food service.

Recent legal challenges have confirmed that a legislative fix is needed to change the law in order to provide basic rights to this vulnerable workforce.

Congressional Action Needed:

- Introduce legislation to amend Title 38 law in order to provide Veterans Canteen Service employees with the same right to appeal their terminations through the grievance process as other federal employees.

Funding Reform and Budget Transparency

The 2013 government shutdown provided clear evidence of the enormous benefits of enacting advance appropriations for the VA health care system in 2009. During the shutdown, veterans knew their health care was safe because funding was already in place for salaries and other operating expenses. In contrast, veterans faced great uncertainty about whether their pending benefit claims would be processed and whether ongoing benefits would be cut. Several VA benefits programs were impacted by furloughs of claims processors and the call center for

education benefits suspended operations. The shutdown also put at risk the VA's ability to carry out burials and maintain gravesites.

The Funding First Act of 2013, H.R. 813/ S. 932, would bring funding stability to VBA, NCA and other VA activities outside of VHA. Veterans deserve timely and predictable funding of all VA services. Advance appropriations would also allow the Department to conduct more effective long term planning to better meet future demand for its services.

Congressional Action Needed:

- Enact the Funding First Act of 2013, H.R. 813/ S.932.
- Oversight and investigation of VA spending to hire additional managers at VA Central Office, VISNs and medical center, and the overall ratios of managers to personnel providing direct services to veterans.

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

Summary:

1. **EXTEND THE GOVERNMENT-WIDE AND DOD-SPECIFIC SUSPENSIONS AGAINST STARTING UP ANY NEW OMB CIRCULAR A-76 STUDIES:** Congress should extend the suspensions on the use of the OMB Circular A-76 privatization process in all agencies and in the Department of Defense (DoD) specifically until much-needed reforms have been implemented and functions performed by contractors are systematically targeted for insourcing, using reliable and comprehensive inventories of service contracts. The Office of Management and Budget (OMB), by its own admission, has made no reforms to an A-76 process it acknowledges to be flawed.

   DoD, like OMB, has urged Congress not to repeal the moratorium on the A-76 process. Pursuant to a bipartisan agreement in the FY10 National Defense Authorization Act (NDAA), the A-76 process cannot be used in DoD until the department finally finishes its inventory of service contracts. Certification of this much-delayed accomplishment is not expected in the short-term future. A 2013 scheme to repeal the DoD-specific A-76 suspension was defeated in the House 178-248. However, contractors and their Congressional cronies will no doubt be back again for more later this year.

2. **LIFT THE ARBITRARY CAP ON THE SIZE OF THE CIVILIAN WORKFORCE:** Consistent with the law, DoD should manage its civilian workforce by budgets and workloads. Instead, pursuant to the "Efficiency Initiative", DoD has capped the size of its civilian workforce at FY10 levels. No workload analysis preceded the implementation of these reductions. Since the work performed by these civilian employees in many cases still needs to be carried out, DoD instead uses service contractors because their use is not subject to the same constraints.

   The Congress had tried to offset the impact of the civilian personnel cap by imposing a comparable cap on service contract spending. However, the latter cap includes too many exceptions and, according to the Government Accountability Office (GAO), has not been enforced. Despite contractor opposition, AFGE was successful in extending the contractor cap through FY14. If there is a constraint on the size of the civilian workforce but no comparable constraint on service contractors, it is inevitable that managers will use service contractors instead of civilian personnel, regardless of cost or legality.

a. **ENFORCE PROHIBITIONS AGAINST DIRECT CONVERSIONS:** Consistent with the law, no work last performed by DoD civilian employees may be contracted out without ensuring conversions to contract would actually be in the best interests of taxpayers, excluding arguable exceptions for housing and utilities. Absent such formal determinations, any conversions are flatly illegal. To its credit, DoD has acknowledged that the risk of direct conversions increases significantly during downsizing and issued guidance to ensure compliance with the law. In fact, the Office of Personnel and Readiness has tried to be

helpful in enforcing that guidance. However, under pressure to get work performed but with fewer civilian employees as a result of the cap on the in-house workforce, some managers are illegally substituting contractor and military personnel for civilian personnel.

The cap on the civilian workforce has also encouraged the Department to use borrowed military manpower in lieu of the in-house workforce. The Army is looking to convert at least 5,500 positions to military in FY14. Gate guard positions at access control points are particularly vulnerable. AFGE understands that military performance of certain functions that might be more efficiently performed by civilians or even contractors is necessary for recruitment, retention, and career development purposes. However, AFGE opposes any conversions of functions from civilian to military that are not military essential and that are not done pursuant to cost determinations that military performance is less expensive than civilian performance.

b. **CAREFULLY CONSIDER THE CONSEQUENCES BEFORE UNDERTAKING NEW ROUNDS OF BRAC:** The Administration proposed significant force structure reductions as part of the FY14 DoD budget, including a corresponding reduction in the military's facilities infrastructure through use of the Base Realignment and Closure (BRAC) process. However, Congress refused to approve a domestic BRAC for DoD in the FY14 NDAA. While it is unknown at this time whether DoD will request a BRAC for FY15, Congress should not approve BRAC until at least two criteria have been met: DoD and Congress complete a comprehensive review and closure of overseas bases that are no longer necessary in a changing global environment; and Congress increases revenue and thus avoids the far larger defense spending cuts from sequestration, so that the full extent of the budget threat and corresponding military drawdowns are known.

   Moreover, any future BRAC should produce both short and long-term savings. Congress should avoid passing a BRAC resolution that repeats the mistakes of previous BRAC rounds where the calculated savings were scheduled to appear far into the future, while DoD spent enormous sums up front, increasing the national debt, disrupting the lives of our nation's hardworking civilians and military, and in some cases destroying the livelihood of communities in the name of savings that never truly materialize. The Pentagon must resist the temptation to pre-determine BRAC sites through selectively and arbitrarily reducing civilian personnel through reorganizations, Reductions in Force and budget starvation so that the military value of an installation is diminished in advance of a review by an impartial panel. Further with a future BRAC on the horizon, the retirement benefits of civilian personnel must be protected to prevent creation of a double hardship for those who may be forced to retire early due to unforeseen and unavoidable job losses caused by a BRAC action or budget generated downsizing.

5. **THROUGH INSOURCING, REQUIRE AGENCIES TO GIVE CIVILIAN EMPLOYEES OPPORTUNITIES TO PERFORM NEW AND OUTSOURCED WORK:** Consistent with the law, agencies should insource work that was contracted out without competition or is

being poorly performed. Significant savings have been generated from insourcing, according to DoD, particularly in the Army. An independent group has determined that contractors are generally twice as costly as federal employees. Even senior DoD officials acknowledge that contractors are significantly more expensive, particularly for the performance of long-term functions. Nevertheless, the arbitrary reductions imposed only on the civilian workforce, resulting in special approval processes that are as cumbersome as they are forbidding, have made it very difficult to insource. Contractors complained about DoD's costing methodology, but GAO determined that if anything it is biased against civilian employees.

6. **PRESERVE AND PROTECT DOD'S INDUSTRIAL FACILITIES:** Congress and the Administration must ensure preservation of our organic industrial base—our nation's government-owned and government-operated depots, arsenals and ammunition plants—as DoD shifts military strategy and embarks on a major drawdown of force structure. The Administration's stated commitment to preserving the defense industrial base must extend to the organic industrial base. It is vital that the House and Senate reaffirm Title 10 statutory provisions that assure the viability of an organic overhaul, maintenance and fabrication capability necessary to ensure military readiness. AFGE agrees with long-held public policy that it is essential to the national security of the United States that DoD maintain an organic capability within the department, including skilled personnel, technical competencies, equipment, and facilities, to perform depot-level maintenance and repair of military equipment, as well as production/fabrication of same at our arsenals and ammunition plants, in order to ensure that the Armed Forces of the United States are able to meet training, operational, mobilization, and emergency requirements without impediment. The organic capability to perform depot-level maintenance, repair and production/ fabrication of military equipment and ammunition must satisfy known and anticipated core maintenance and repair scenarios as well as retain key manufacture capabilities across the full range of peacetime and wartime scenarios.

   The statutes that require this core capability and others, such as designation of a 50% floor for depot maintenance work by civilian employees of DoD, and protection of the organic industrial manufacturing base through the Arsenal Act, have kept our nation secure and our core defense skills protected and should continue to be supported and strengthened.

   The return of depot maintenance law to long-standing statute reaffirmed the Congressional commitment to a strong organic capability and a balance between public and private sector depot maintenance. This held through the FY 14 National Defense Authorization Act (NDAA) enactment, as we successfully countered efforts to repeal 50/50 and language to establish a committee to review the entirety of depot law and make recommendations to change the law. These efforts remind us that these issues must be watched diligently to ensure that Congress continues to protect those provisions that designate the workload that must be performed by civilian government

employees and continues to protect readiness. As budgets decrease and the armed forces downsize and DoD enacts new acquisition policy, it will become particularly important not only to protect 50/50, but also to ensure that core workload is actually established in the organic depots in a timely manner. Review and engagement with the required core reports will be key to preserving the long-term viability of the organic depot systems.

As part of the FY14 Omnibus Appropriations Act, arsenals received a much needed boost of strong congressional support. The Appropriators included $150 million dollars in supplemental funds to ensure adequate funding for organic arsenals and the competiveness of rates. Additionally, the Army was instructed to provide workload to support efficient operations of the arsenals. In spite of this outstanding congressional action, this is an area that remains very vulnerable. Arsenals must work with the Congress to ensure that minimum capability to support the warfighter and preserve key capabilities are assigned to the facilities at efficient levels to maintain readiness.

1. EXTEND THE GOVERNMENT-WIDE SUSPENSION AGAINST STARTING UP ANY NEW OMB CIRCULAR A-76 STUDIES

Since FY09, the Financial Services Appropriations Bill has retained a provision that would prevent new A-76 reviews from being launched by any federal agency. A temporary suspension of new A-76 reviews was imposed specifically on DoD in the FY10 NDAA until the department finally complies with a longstanding requirement that it establish a contractor inventory and integrate the results into the budget process. OMB acknowledges that the process is flawed and in need of reform.

DoD, like OMB, has strongly opposed rogue House efforts to repeal the prohibition on the A-76 process:

> *"The Department of Defense does NOT support the amendment that would lift the current moratorium, under section 325 of the FY10 NDAA, on public-private competitions under OMB Circular A-76 within DoD. Sec 325 requires that the Secretary of Defense make certain certifications related to improvements in the inventory of contracts for services, the review process associated with that inventory, and the integration of that data into the Department's budget justification materials.*
>
> *"As delineated in our Nov 2011 plan to the Congress, the Department has made long-term commitments to be able to meet these certification requirements. Our priorities with regard to contracted services include continuous and measurable improvements to the inventory of contracts for services; a deliberate and comprehensive review process to ensure appropriate alignment of workload and prevent overreliance on contracted services; increased granularity in budget justification materials; and implementation of control mechanisms to preclude over execution of budget amounts. These have been highlighted by the Congress as critical to improve our resource stewardship. While we*

appreciate the value of the A-76 public-private competition process as a tool to help shape the Department's workforce, until we can fully understand the extent and scope of contracted services reliance as a component of the Total Force, further conversion of internally performed work to contract performance is not in the Department's best interests.

"The Department has made marked improvements in its Inventory of Contract of Services over the past year, and began comprehensive reviews of those inventories. However, there is still significant progress must be made prior to a certification from the Secretary of Defense. This includes additional steps to improve reporting of actual labor hours and associated costs as required by title 10, to fully understand our reliance on contracted services, and to better account for those contracted services in the Department's budget submission."

The A-76 process is fundamentally flawed for several reasons.

The OMB Circular A-76 process can't show savings: Even after years and years of costly and disruptive privatization studies across the federal government, GAO reported in 2008 that supporters of the OMB Circular A-76 could not demonstrate any savings:

"We have previously reported that other federal agencies—the Department of Defense (DoD) and the Department of Agriculture's (USDA) Forest Service, in particular—did not develop comprehensive estimates for the costs associated with competitive sourcing. This report identifies similar issues at the Department of Labor (DoL). Without a better system to assess performance and comprehensively track all the costs associated with competitive sourcing, DoL cannot reliably assess whether competitive sourcing truly provides the best deal for the taxpayer…"[1]

Use of the OMB Circular A-76 was prohibited because the process is severely flawed: According to GAO and the DoD Inspector General (IG), the A-76 privatization process

a. failed to keep track of costs and savings,

DoD IG: "DoD had not effectively implemented a system to track and assess the cost of the performance of functions under the competitive sourcing program…The overall costs and the estimated savings of the competitive sourcing program may be either overstated or understated. In addition, legislators and Government officials were not receiving reliable information to determine the costs and benefits of the competitive sourcing program and whether it is achieving the desired objectives and outcomes…"[2]

GAO: "[The Department of Labor's (DoL)] savings reports…exclude many of the costs associated with competitive sourcing and are unreliable…(O)ur analysis

shows that these costs can be substantial and that excluding them overstates savings achieved by competitive sourcing…DoL competition savings reports are unreliable and do not provide an accurate measure of competitive sourcing savings…Finally, the cost baseline used by DoL to estimate savings was inaccurate and misrepresented savings in some cases, such as when preexisting, budgeted personnel vacancies increased the savings attributed to completed competitions...[3]

b. resulted in the actual costs of conducting the privatization studies exceeding the guesstimated savings, and

GAO: "For fiscal years 2004 through 2006, we found that the Forest Service lacked sufficiently complete and reliable cost data to…accurately report competitive sourcing savings to Congress…(W)e found that the Forest Service did not consider certain substantial costs in its savings calculations, and thus Congress may not have an accurate measure of the savings produced by the Forest Service's competitive sourcing competitions…Some of the costs the Forest Service did not include in the calculations substantially reduce or even exceed the savings reported to Congress."[4]

c. included fundamental biases against the in-house workforce.

DoD IG: "…In this OMB Circular A-76 public/private competition—even though (DoD) fully complied with OMB and DoD guidance on the use of the overhead factor—the use of the 12 percent (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…In the competitive sourcing process, all significant in-house costs are researched, identified, and supported except for overhead. There is absolutely no data to support 12 percent as a realistic cost rate. As a result, multimillion-dollar decisions are based, in part, on a factor not supported by data…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…"[5]

Until the implementation of the reforms listed below, AFGE believes that the suspensions on new A-76 reviews should be continued:

a. The establishment of a reliable system to track costs and savings from the A-76 process that has been implemented, tested, and determined to be accurate and reliable, over the long-term as well as the short-term.

b. Consistent with the law, the establishment of contractor inventories so that agencies can track specific contracts as well as contracts generally.

c. Consistent with the law, the development and implementation of plans to actively insource new and outsourced work, particularly functions that are closely associated with inherently governmental functions, that were contracted out without competition, and are being poorly performed.

d. Consistent with the law, the enforcement of government-wide prohibitions against direct conversions.

e. The development and implementation of a formal internal reengineering process that could be used instead of the costly and controversial A-76 process.

f. Revision of the rules governing the A-76 process to make it more consistent with agencies' missions, more accountable to taxpayers, and more fair to federal employees.

1. Increase the minimum cost differential to finally take into account the often significant 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).[6]

2. Double the minimum cost differential for studies that last longer than 24 months—from the beginning of preliminary planning until the award decision.[7]

3. Eliminate the arbitrary 12% overhead charge on in-house bid.[8]

Fortunately, almost all efforts to repeal the suspensions against the OMB Circular A-76 privatization process ultimately failed. With respect to DoD specifically, FY12 NDAA conferees, on a bipartisan basis, decided that "the appropriate use of public-private competition is predicated on a sound planning process and the availability of accurate information, including the information that would be supplied by a compliant inventory."

An amendment offered on the floor by Representative Scott Rigell (R-VA) to the FY14 NDAA to repeal the requirement that DoD be able to certify completion of the service contract inventory and integration into the budget process was overwhelmingly defeated in strong, bipartisan fashion by a vote of 178-248.

2. END THE "EFFICIENCY INITIATIVE'S" ONE-SIDED AND ARBITRARY CONTRAINTS ON THE SIZE OF THE CIVILIAN WORKFORCE

With the actual implementation of the "Efficiency Initiative", DoD has reverted to its traditional approach of managing its overall workforce at the expense of the civilian workforce. The imposition of an arbitrary FY10 cap on the civilian workforce is contrary to the law and

completely inconsistent with the imperative to manage civilian employees by budgets and workloads.

If there is work to be done and money to pay for that work to be done, DoD managers should not be prevented from using civilian employees simply because they are civilian employees. Instead, performance decisions should be made on the basis of the usual criteria of law, policy, risk, and cost. DoD claims that exceptions are allowed to the cap, mitigating against its intrinsically arbitrary and illegal nature. However, the process by which exceptions are sought and reviewed is as cumbersome as it is forbidding.

As DoD officials have acknowledged, this cap is forcing managers to use contractors instead of civilians because spending on contractors is uncapped. Declared one Army official in Congressional testimony from March 2012: "Cost-effective workforce management decisions ought to be based on allowing for the hiring of civilians to perform missions, rather than contractors, if the civilians will be cheaper. The lifting of the civilian workforce cap would restore this flexibility..."

Although not directing DoD to lift its wasteful civilian personnel cap, Congress did acknowledge that it was unfair and unproductive to cap just one of the Department's three workforces. In the FY12 NDAA, Congress included a cap on service contracting costs, which removed the Department's incentive to substitute contractors for civilians, with this justification: "(We) conclude that an across-the-board freeze on DoD spending for contract services comparable to the freeze that the Secretary of Defense has imposed on the civilian workforce is warranted to ensure that the Department maintains an appropriate balance between its civilian and contractor workforces and achieves expected savings from planned reductions to both workforces".

In May 2012, the Pentagon announced that it was extending the cap on civilian personnel through FY18. Thanks to AFGE, the cap on service contract spending was extended through FY14. Representative Rob Andrews (D-NJ) successfully offered an amendment to extend the contractor cap, with the support of all Democrats and a significant number of Republicans at the House Armed Services Committee's FY14 mark up. Senator Ben Cardin (D-MD) successfully offered an amendment to extend the cap on the floor to the FY14 NDAA. Although the cap was extended for another year, GAO has raised troubling questions about DoD's compliance with the cap as well as unnecessary exclusions of certain service contract spending from the cap.

Ideally, the House and Senate Armed Services Committees will extend the cap on their own—rather than again leave it up to AFGE. Apparently, there are some Hill staff who think that the service contract spending cap is superfluous, given the cuts in service contract spending imposed by Section 955 of the FY13 NDAA—the so-called "McCain Cuts" which require DoD to reduce spending on civilian personnel and service contracts by the same percentage as DoD reduces spending on military personnel. However, those cuts need not be fully implemented until 2017, leaving DoD plenty of time between now and then to shift work from one workforce to another. Moreover, DoD has already begun implementing cuts in civilian personnel pursuant

to the "McCain Cuts". However, DoD has not even completed the required report to Congress on how it will impose the reductions in service contract spending imposed by "McCain Cuts".

Ultimately, if Congress wants sourcing decisions to be based on the merits, then either the cap on the size of the civilian workforce must be lifted or spending on service contracts must be subjected to the same constraint.

3. ENFORCE PROHIBITIONS AGAINST DIRECT CONVERSIONS

Despite the extensive use of the Office of Management and Budget (OMB) Circular A-76 privatization process (and the resulting proof of the superiority of in-house workforces—federal employees won 80% of the time during the Bush Administration, despite a process that independent observers insisted is biased against them)—work is still contracted out without any public-private competition, i.e., without any proof that giving work to contractors is better for taxpayers or better serves those Americans who depend on the federal government for important services.

The Congress, on a bipartisan basis, has, repeatedly, prohibited agencies from perpetrating "direct conversions"—the term used to describe instances in which agencies give work performed by federal employees to contractors without first conducting full cost comparisons. This prohibition has applied regardless of the number of positions involved. There are arguable but not definitively proven exceptions for work associated with utilities and housing, which can be privatized under their own statutes.

In December 2011, DoD issued guidance to its managers to guard against direct conversions. This guidance was not issued to protect federal employees, but because of concern "that the Department not become overly reliant on contracted services." As downsizing goes forward, DoD's guidance warns that "we must be particularly vigilant to prevent the inappropriate conversion of work to contract." (Although the GAO, in a highly controversial decision, invented an exception to the direct conversion prohibition for non-appropriated fund (NAF) employees, this exception is not recognized by DoD's guidance. In fact, the House Armed Services Committee directed the Department to clarify its guidance to ensure that it does apply to NAF employees—two years in a row.)

However, many managers don't know these prohibitions exist and those who do know believe that there are exceptions which in fact don't exist. In other instances, management knows but it doesn't care. It is imperative that AFGE, through its Locals, Caucuses, and Councils spread the news. For the first time in the history of the Republic, there is a statutory ban on direct conversions in DoD and the department has issued guidance to carry out that prohibition. In most instances, any time work last performed by civilian employees is given to a contractor without going through a formal cost comparison process it is a direct conversion.

Although not always successful, AFGE has fixed direct conversions through three options:

a. Administratively: working with the Department, particularly the Office of Personnel and Readiness, which is responsible in the Department for enforcing the direct conversion guidance;
b. Legislatively: working with lawmakers who represent the affected installations as well as those who serve on committees of jurisdiction over the Department; and
c. Judicially: filing bid protests with the GAO.

In January 2014, for example, as a result of pressure from AFGE, Congress, and the Office of Personnel and Readiness, the Navy acknowledged wrongfully contracting out work performed by civilian employees at Camp Lejeune Naval Hospital and committed to recreating the jobs that had been illegally privatized. However, even then, the hospital continued to directly convert other positions held by civilian employees to contractor performance, despite a commitment by the Navy to reform its sourcing practices.

In some instances, management may attempt to convert our work to performance by military personnel, a workforce sometimes referred to as "Borrowed Military Manpower". Usually, it makes no sense. After all, because of their justifiably superior compensation, military personnel cost more than civilian personnel—or even some contractors, for that matter. Moreover, readiness is diminished when military personnel are performing non-military functions, particularly when they are occupationally unrelated. Here is how the Department expresses its reservation about military conversions: "While there may be instances where military personnel can be used to appropriately satisfy a near-term demand, the Department must be vigilant in ensuring military personnel are not inappropriately utilized, particularly in a manner that may degrade readiness."

However, managers are increasingly turning to military personnel for the performance of functions traditionally performed by civilian employees and even contractors, largely because pay for military personnel is exempt from sequestration, the civilian workforce is laboring under an onerous cap, and the spending on service contracting is also frozen, however nominally.

Although the problem is worst in the Army and the Air Force, we are seeing our work being converted to military performance across the Department, eliminating the jobs of our members, denying our members promotional opportunities, and shrinking the size of our bargaining units.

When our work is wrongly converted to contractor performance, we can invoke the law. However, when our work is wrongly converted to military performance, we can only invoke DoD's own guidance, which is slack and loosely-written. The House Armed Services Committee has expressed concern to the Department about military conversions, in part because the impact on service contractors may be even more severe than it is on civilian employees. Eventually, legislation may be enacted to prevent our work from being wrongly converted to military performance, particularly if we can document when, where, and how these conversions are occurring across the Department.

DoD's *Guidance Related to the Utilization of Military Manpower to Perform Certain Functions* allows the use of military personnel in lieu of civilian employees for the performance of non-military essential functions if there is a genuine military need and the costs of military performance are taken into account. Most uses of military personnel should be temporary and limited in nature. Through FY14, the Army will operate under even more nebulous rules, per *Total Force Management and Budgetary Uncertainty*, which make it easier to substitute military personnel for civilians.

Nevertheless, we have caught managers abusing their authority under the guidance to convert our work to military performance, and, sometimes, managed to reverse these conversions. In fact, many if not most DoD officials don't even know that the Department has guidance that governs the use of military conversions.

It's up to us to educate our managers and our members in order to prevent management from perpetrating any more inappropriate military conversions and to reverse any inappropriate military conversions that have been perpetrated already.

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

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

The political environment is not favorable for government employees, particularly for those working in DoD facilities. While we do not know yet what DoD will propose in the FY 15 budget expected in the near future, for the past 2 budget cycles, DoD has requested BRAC authority and Congress has passed language forbidding DoD from planning for a future BRAC. However, DoD military and civilian leadership have estimated that the Department has between 20% to 25% excess capacity based on the status following BRAC 2005. Following the implementation of sequester and planning for serious downsizing of military personnel, senior military leadership calls for BRAC have escalated with each of the military service chiefs indicating their active support and stating the absolute necessity of a BRAC to manage the size and scope of the budget cuts facing DoD. The Strategic Review included BRAC as a centerpiece and the Quadrennial Defense Review (QDR) is expected to follow suit. Further, multiple think tanks across the ideological spectrum are calling for another BRAC round as part of their assessments of the actions necessary to downsize DoD in the current and future budget environment. With notable exceptions, such as House Armed Services Committee (HASC) Ranking Minority Member Adam Smith (D-WA), congressional reaction to the updated BRAC proposal has been almost universally negative. However, most offices and Members acknowledge that a BRAC is a matter of when and not if at this point.

While the authorizers have been unanimous in actively preventing or delaying a new BRAC round, appropriations action has not followed the same pattern. Notably, Congressman Wittman (R-VA) offered a similar amendment to the House version of the FY14 DoD Appropriations bill as passed the HASC as part of the FY14 NDAA (prohibiting even any planning for BRAC) and the amendment failed on the floor of the House by a voice vote. This vote took place after DoD had begun 6 days of unpaid furloughs and the impact of sequestration was becoming clearer to Members. This action could cause concern that a BRAC could be allowed sooner than previously thought.

Local communities are continuing to gear up to address the threat of a future BRAC and many have not reduced their effort because of the FY14 NDAA action to thwart DOD's BRAC proposal. Several communities have approached AFGE locals to coordinate and participate on community planning groups preparing to fight any proposed local closure. Activities include regular strategic planning meetings and Washington, DC lobbying trips. Some are beginning to engage on policy issues that could impact workload at various bases.

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

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

First, if you do not know your Member of Congress and your Senators in Washington, introduce yourselves and your military facility to him or her and the staff. If they are not naturally friendly towards unions, use your local elected officials to help you gain an entrance to their offices. Have your Member of Congress or Senators seek information on your projected workload, have them ask questions about the calculation of your rates if you handle industrial work; keep them involved with the military on behalf of your base. Encourage your elected officials to become involved with the Pentagon in support of your facility – this is especially important for those bases represented by Members who do not serve on one of the Defense Committees.

Get to know your local elected officials at the community, regional and state levels. Just as you will your Washington officials, make them aware of any potential threat to your facility as a result of a force structure change, reduction in personnel, weapons system cancellation or reduction, functional merger or other sentinel event. Have your local

officials pass resolutions of support for your military facilities and the civilian and military personnel who work on base and transmit these resolutions to Washington. These elected officials should participate in any community hosted meetings with senior DoD personnel.

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

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

Encourage positive media attention regarding your facility, the work completed by the civilian workforce and the value of the base to the community. Newspaper articles are often included in the daily summary distributed throughout the Pentagon so having your local paper write positive stories has a constructive purpose. Public interest pieces work almost as well as hard news stories to produce a good reputation. Television news stories are also important for capturing the attention of your local politicians and the members of your community in terms of building popular support.

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

c. Work with Management: First and foremost, military leadership tries to protect those bases that they view as good, solid bases with a content, reliable workforce

and look for ways to close those that they feel are problematic. A reputation for poor labor-management relations is one of the fastest ways to have your facility targeted for closure. Both management and labor must work together to overcome difficulties for the sake of the workforce and the community.

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

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

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

AFGE Locals can and must take positive action now to minimize the impact and size of BRAC actions by strategically addressing specific elements where senior DoD officials have the ability to make choices between facilities and/or programmatic decisions. The actions with the greatest probability of success in reducing the number of civilian personnel job losses at DoD are those that are taken in advance of any adverse decision. From a historical perspective, military facilities enjoying the greatest across-the-board unity between all elements of the community and political spectrum are the ones who have been the most likely to survive a BRAC threat. Political activism and early involvement by base employees have been critical elements of success. AFGE Locals can and should take steps now to reinforce their facilities and save jobs.

5. THROUGH INSOURCING, REQUIRE AGENCIES TO GIVE FEDERAL EMPLOYEES OPPORTUNITIES TO PERFORM NEW AND OUTSOURCED WORK

After sixteen years of indiscriminate privatization, DoD attempted to rebalance its workforce through targeted insourcing during parts of 2009 and 2010, both of functions which are

inappropriate for contractor performance and functions which can be performed more efficiently in-house. DoD reported that in FY10 insourcing generated significant savings, $900 million, and brought in-house work performed by thousands of contractors that was actually too important or sensitive to privatize. Ultimately, 17,000 civilian personnel were added to handle insourced work. Insourcing continued in FY11, although final data is, mysteriously, not yet available.

Insourcing is just common sense. Given the results of the 2011 study by the Project on Government Oversight (POGO), which compared the costs of federal employees and contractors, taxpayers may well wonder why any Pentagon official or lawmaker would want to shield from scrutiny the defense contractors who are responsible for so much documented waste, fraud, and abuse. According to POGO's study—*Bad Business: Billions of Taxpayer Dollars Wasted on Hiring Contractors*—"on average, contractors charge the government almost twice as much as the annual compensation of comparable federal employees. Of the 35 types of jobs that POGO looked at in its seminal report—the first report to compare contractor billing rates to the salaries and benefits of federal workers—it was cheaper to hire federal workers in all but just two cases."

However, it was not until Senator Claire McCaskill's (D-MO) March 29, 2012, Contracting Oversight Subcommittee hearing that it became clear just how successful insourcing had been. The Army, which had conducted the most robust insourcing effort, reported savings from between 16 and 30 percent. More significantly, "During the much smaller period from FY08 to 10 when the Department instituted an active insourcing program in conjunction with its service contract pre-award approval process and contractor inventory review process, contract service obligations not identified to Overseas Contingency Operations funding decreased from $51 billion in Fiscal Year 2008 to $36 billion in Fiscal Year 2010." The increase in civilian personnel costs from insourcing was slight in comparison with the steep reduction in service contract costs.

Contractors, insisting that the insourcing process was biased against them, turned to the Center for Strategic and International Studies (CSIS), which claimed that the DoD's costing methodology did not take into account a multitude of in-house costs. Congress later assigned the GAO to review DoD's costing methodology. After discussions with contractors, CSIS and AFGE, GAO issued its own assessment in 2013 of the costing methodology, "Human Capital: Opportunities Exist to Further Improve DoD's Methodology for Estimating the Costs of Its Workforces," which implicitly rejected the CSIS critique. If anything, GAO's recommendations indicated that the methodology is biased against civilian employees.

GAO reported that DoD Instruction 7041.04 "reflects improvements to DoD's methodology for estimating and comparing the full cost to the taxpayer of work performed by military and civilian personnel and contractor support."

GAO also had several recommendations for improving the methodology:

■ Improve accountability for in-house overhead. DoD's methodology accounts for the items that constitute in-house overhead costs, reports GAO, but does not attach costs to those items. When subject-matter experts can't assign costs to overhead items, the default position is to automatically impose a 12 percent overhead charge on the in-house workforce. The DoD inspector general determined in 2003 that this charge is arbitrary and unjustifiable, and that it was instrumental in a botched Office of Management and Budget Circular A-76 privatization process that wrongly contracted out the work of 600 Defense Finance and Accounting Services employees. DoD must revise the methodology so that only actual — not imaginary — overhead costs are imposed on in-house workforces.

■ Don't attribute excessive retirement costs to civilian personnel. As GAO politely put it, "our analysis found that the instruction also directs the inclusion of several cost elements that may not be appropriate to consider. These include payments for part of unfunded liabilities — any previously identified shortfalls in federal retirement assets."

■ Use more accurate data in determining the cost of contractors. Fortunately, as GAO points out, this problem will be rectified when the Defense Department completes its long-delayed inventory of contract services. AFGE is proud to be the biggest booster of the inventory, and we look forward to it finally being completed.

DoD's brief but successful insourcing effort was severely compromised with the imposition of an onerous cap on the size of the civilian workforce, beginning in August 2010, which makes it extremely difficult to bring work back in-house no matter how much money can be saved or even if the work is inherently governmental. Deliberately misconstruing remarks by former Secretary Robert Gates—who had earlier made his own view about the high costs of service contractors very clear when he told *The Washington Post* that civilian personnel are 25% cheaper—contractors and their ever-obliging cheerleaders in what passes for the trade press declared insourcing a failure.

A GAO report from February 2013, which put his remark in the proper context, showed that Gates was actually complaining about contracting out, not contracting in: "In August 2010, the Secretary of Defense stated that he was not satisfied with the department's progress in reducing over-reliance on contractors. Representatives of OUSD (P&R) and the Office of the Under Secretary of Defense (Comptroller) told us that although DoD avoided $900 million in costs for contracted support services in fiscal year 2010 due to the budget decision to reduce funds associated with in-sourcing, total spending across all categories of service contracts increased in fiscal year 2010 by about $4.1 billion." In other words, the significant savings from DoD's modest insourcing effort could not offset the Department's ever-increasing reliance on service contractors.

As the Department patiently explained to GAO: "Insourcing has been, and continues to be, a very effective tool for the Department to rebalance the workforce, realign inherently governmental and other critical work to government performance (from contract support), and in many instances to generate resource efficiencies."

Unfortunately, the Department reverted in FY11 to its historical pattern during budgetary retrenchments of managing the civilian workforce by arbitrary constraints—ruthlessly cutting the in-house staff back down to FY10 levels, which, in a cruel irony, effectively punishes components which successfully insourced—while imposing no comparable constraints on service contract spending. Additional insourcing became extremely difficult—not because savings cannot be generated, not because funding is unavailable, but because an arbitrary limitation has been imposed on the number of civilian workers the Department can employ through FY18. In the Army for example, any additional insourcing requires the Secretary's personal approval. No special permission is required in order to add new contracts or expand on existing contracts. The cap on the Army's civilian workforce is so onerous that GAO reported this year that the service is often unable to insource inherently governmental functions. Even when taking on new work, the Army must eliminate funding for comparable numbers of positions elsewhere. Obviously, there are no comparable requirements to cut a dollar in service contracting for every new dollar the Army spends on service contracting.

Even while making insourcing needlessly difficult, senior Defense Department officials continue to acknowledge that civilian employees are significantly cheaper than contractors. Comptroller Robert Hale told a Senate subcommittee in June 2013 that contractors are two to three times more expensive than civilians, particularly for long-term functions. In a September 2013 House hearing, the Army chief of staff echoed Hale's remark. Congress' reenactment in the FY14 NDAA of a provision—because the Pentagon ignored it the first time around—that would require the Department to issue regulations that would make it easier to use civilians instead of contractors for long-term functions is an opportunity to restart the insourcing program.

A House floor amendment to the FY13 NDAA that would have, effectively, killed DoD's insourcing effort failed, in large part because of the Pentagon's strong opposition. There were no serious anti-insourcing amendments in 2013.

6. PRESERVE AND PROTECT DOD'S INDUSTRIAL FACILITIES

Congress and the Administration must preserve our organic industrial base—our nation's government-owned and government-operated depots, arsenals and ammunition plants—as DoD shifts military strategy and embarks on a major drawdown of force structure. The Administration's stated commitment to preserve the defense industrial base must extend to the organic industrial base. It is vital that the House and Senate reaffirm Title 10 statutory provisions that assure the viability of an organic logistics, maintenance, overhaul, and fabrication capability necessary to ensure military readiness.

AFGE agrees with long-held public policy that it is essential to the national security of the United States that DoD maintain an organic capability within the department, including skilled personnel, technical competencies, equipment, and facilities, to perform depot-level maintenance and repair of military equipment, as well as production/fabrication of same at our

arsenals and ammunition plants, in order to ensure that the Armed Forces of the United States are able to meet training, operational, mobilization, and emergency requirements without impediment.

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

The statutes that require this core capability and others, such as designation of a 50% floor for depot maintenance work by civilian employees of DoD, and protection of the organic industrial manufacturing base through the Arsenal Act, have kept our nation secure and our core defense skills protected and should continue to be supported and strengthened.

Changes in the FY13 NDAA re-established long-held depot statutes defining depot maintenance and core. This ensured that key logistics capabilities continued to be considered core and that the definition of depot maintenance was not limited arbitrarily to reduce the scope of work that should be included in the 50/50 calculations. Most importantly, the language eliminated the ability to waive the requirement to establish core in organic depots. Additionally, Congress continued to require DoD to submit annual reports identifying core requirements and plans for funding and allocating workload to meet core requirements.

Taken together, these measures should secure workload and government jobs at DoD industrial facilities. While the legislative provisions were not perfect, they certainly paved the way for greater accountability at DoD and provided Congress with key monitoring tools to appropriately protect civilian government jobs and our national defense posture. The reporting provisions provided a great point for AFGE to begin working in advance to save defense jobs around the nation.

And in FY14, we were successful in thwarting efforts to water down or repeal 50/50 requirements and stop a proposal to require a new commission to review all depot statutes and make recommendations to change depot law. These actions were designed to weaken the organic depot industrial base in favor of the private sector and we were fortunate that they were not enacted.

And yet, even with the FY13 provisions in place and the rejection of private sector initiated amendments in FY14, sequester-related actions led to illegal transfer of core work from depots to the private sector in violation of multiple laws. Further, key department officials have indicated that some of the military services may have trouble meeting 50/50 requirements as older weapons systems and aircraft are eliminated from the inventory or downsized drastically, proving that depots are impacted by budgets and acquisition policy in addition to depot-specific provisions.

For FY14 Congress designated $150 million in additional funding for arsenals to strengthen the manufacturing arm of our organic industrial base. In FY 15, Congress should enact a statutory core requirement for DoD to workload arsenals and ammunition plants rather than allowing these vital institutions to wither from lack of workload that should be available on a first right of refusal basis.

In FY15 Congress should clarify the requirement to establish core in depots within 4 years without waiver.

Further, AFGE continues to oppose establishment of an outside commission or panel of private industry analysts to review Chapter 146 of Title 10 for a major overhaul because of the inherent lack of impartiality to be found on such a panel.

AFGE also opposes DOD and the military services using sequestration, reduced budget levels, and the mandatory civilian personnel cuts as an excuse to breach the 50/50 depot maintenance law.

AFGE continues to oppose the utilization of civilian furloughs as a strategy to manage budget shortfalls, particularly in the area of working capital fund employees, who are not funded through direct appropriations, and urges the Department of Defense to abide by Congressional Report language accompanying the FY14 Omnibus Appropriations Act.

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

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

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

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

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

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[1] Government Accountability Office, Department of Labor: Better Cost Assessments and Departmentwide Performance Tracking Are Needed to Manage Competitive Sourcing Program (GAO-09-14).

[2] Department of Defense Inspector General, DoD Reporting System for the Competitive Sourcing Program (D-2006-028).

[3] Government Accountability Office, Department of Labor: Better Cost Assessments and Departmentwide Performance Tracking Are Needed to Manage Competitive Sourcing Program (GAO-09-14).

[4] Government Accountability Office, Forest Service: Better Planning, Guidance, and Data are Needed to Improve Management (GAO-08-195).

[5] Department of Defense Inspector General, Public/Private Competition for the Defense Finance and Accounting Service Military Retired and Annuitant Pay Functions (D-2003-056).

[6] It is accepted in the A-76 circular that it makes little sense to shift work back and forth without at least a guesstimate that savings will be more than negligible. "The conversion differential precludes conversions based on marginal estimated savings…" Unfortunately, the conversion differential--the lesser of 10% of agency labor costs or $10 M, which is added to the non-incumbent provider—captures only "non-quantifiable costs related to a conversion, such as disruption and decreased productivity". See OMB Circular A-76, Attachment B.

[7] The biggest selling point for the revised A-76 circular was that standard privatization studies were supposed to last no longer than a year. Of course, OMB insists that a standard competition has not started until it has been formally announced, even though preliminary planning, the work conducted on an A-76 study before formal announcement, can last several years. Even excluding preliminary planning A-76 studies now routinely take longer 12 months. In fact, OMB reports that the average A-76 study takes 13.6 months to complete. COMPETITIVE SOURCING: Report on Competitive Sourcing Results Fiscal Year 2007, May 2008, p. 9. Worse, the length is gradually increasing over time. In other words, the more the A-76 process is being used, the longer it is taking. The A-76 circular is based on standard competitions lasting no longer than a year except in unusual circumstances. Clearly, the conversion differential should be increased to take into account the growing length of A-76 studies.

[8] All in-house bids are slapped with an overhead charge, which works out to 12% of personnel costs. This significant impediment to in-house bids should be eliminated. As the Department of Defense Inspector General reported about the now infamous A-76 privatization review at the Defense Finance and Accounting Service, "We do not agree that the standard factor for overhead costs is a fair estimate for calculating overhead. We believe that DoD must develop a supportable rate or alternative methodologies that permit activities to compute reasonable overhead cost estimates." "Public-Private Competition for the Defense Finance and Accounting Service Military Retired and Annuitant Pay Functions", Report D-2003-056 (March 2003). Neither reform has been undertaken. Consequently, most if not all in-house bids are unfairly biased against federal employees.

Transportation Security Administration and Transportation Security Officers (TSOs)

> ***"It always seems impossible until it's done."***
> **Nelson Mandela**

Over 40,000 Transportation Security Officers (TSOs) screen passengers and baggage at our nation's airports, mass transit, and large public gatherings such as Presidential inaugurations and the Super Bowl. In 2013, TSOs experienced shared challenges with the federal workforce and unique challenges resulting from the irrational management rights clause included in the Aviation Transportation Security Act (ATSA) and exploited by the Transportation Security Administration (TSA) management. This mere statutory footnote has been interpreted by courts and administrative bodies as giving the TSA Administrator the authority to pick and choose whether, and how, Title 5 federal worker rights and protections apply to TSOs. The ATSA footnote has no relationship to defending America against those seeking to do us harm. As implemented by TSA, the denial of Title 5 rights and protections to TSOs, and continued attempts to frustrate TSO union rights, only serve to make TSA operate dysfunctionally. It is for that reason that no other federal agency – including intelligence agencies – has adopted the restrictive regime of TSA management. AFGE will continue the fight for rights and respect for TSOs and the important work that they do. Our goal is not impossible. We will achieve it.

Union Progress

The first full year of implementation of the collective bargaining agreement ratified by TSOs demonstrated the tangible benefits of solidarity and exclusive representation. Three-fourths of the TSO workforce received a bonus and pay raise under the new pay system. Congressional lobbying resulted in a new law requiring TSA to maintain responsibility for monitoring lanes and saved at least 1,400 TSO jobs. AFGE fought to save the jobs of Behavior Detection Officers when the Screening of Passengers by Observation Techniques Program was threatened. Transfers, shift, and leave bid policies at TSA began to mirror established policies at other federal agencies. AFGE is an integral part of a team working in partnership with TSA to improve airport safety and protect TSOs on the job. AFGE has beat the odds to improve the worklife of TSOs and we will aggressively continue the fight in the upcoming year.

Title 5 Rights

AFGE's victory in negotiating a historic first contract with TSA under the 2011 Administrative Directive granting *limited* collective bargaining, representation and appeal rights to TSOs nonetheless retained an unsustainable, separate and unequal personnel system for 41,000 federal employees. Despite the 2011 Directive, TSOs are limited in areas subject to collective bargaining, access to the Merit Systems Protection Board (MSPB) to appeal adverse actions,

application of long-accepted worker protection laws such as the Family and Medical Leave Act, the Fair Labor Standards Act, and Office of Personnel Management (OPM) pay and leave guidelines. Application of Title 5 rights and protections to workers has done nothing to preclude the ability of other agencies at DHS to carry out their important duties of protecting the U.S. public, and those agencies are not subject to the consistently low scores TSOs give TSA on employee morale and worker satisfaction surveys. There is no correlation between the mistreatment of the majority of the TSA workforce and good governance. If there was some advantage to denying workplace rights and protections to workers, TSA employees who are not TSOs would not enjoy the rights denied to the TSO workforce.

TSA has created a system for resolving employee disputes that is almost entirely left to the agency's sole discretion. The National Resolution Center (an internal TSA management-created entity that exists in no other agency) determines which matters are grievable and attempts to restrict what matters can be brought before a neutral third party for review. Currently TSOs lack the meaningful ability to appeal adverse personnel decisions to the MSPB, a right Congress granted to almost every other federal employee. TSA has attempted to limit this fundamental right of due process by requiring the MSPB to submit its decisions to TSA Administrator John Pistole for his concurrence. As a result, MSPB, an independent agency, has rightly refused to hear cases that can be overturned by the head of the agency. The MSPB had the integrity to reject TSA's end-run around the agency's authority and autonomy. AFGE will work for legislation that repeals the ATSA footnote setting TSOs apart from other workers at TSA and demands that TSA's tenure as an outlier federal agency come to an end. TSA must follow the same laws, regulations, and guidance regarding its workforce as other agencies in DHS. Absent such action by Congress, AFGE calls upon President Obama to use his executive authority to apply Title 5 rights and protections to TSOs.

TSA Denies a Fundamental Civil Right to TSOs

TSA continues to violate the letter and spirit of the Rehabilitation Act and the Americans with Disabilities Act. TSA's website specifically states that TSA employees or applicants "may raise" disability or the other prohibited forms of discrimination in the Equal Employment Opportunity (EEO) complaint process. The TSA website fails to mention that the agency will remove itself from enforcement of EEO rights, especially if the agency is likely to be held liable for discriminatory acts. TSA routinely refuses to provide reasonable accommodations for TSOs with disabilities. TSOs who are capable of continued employment are often placed on leave and subsequently terminated for inability to perform their duties or inability to work a regular schedule. The Equal Employment Opportunity Commission (EEOC) has found the TSA's actions to violate the Rehabilitation Act and the Americans with Disabilities Act. The EEOC has found TSA's use of a document entitled *Medical and Psychological Guidelines for Transportation Security Screeners* (*Guidelines*) to determine whether a TSO can perform what the agency states are the "statutory requirements" for a screener to be in violation of the law. The mere diagnosis of a condition such as an arrhythmia or diabetes and the use of Family and Medical Leave Act provisions apparently trigger evaluation under the *Guidelines,* not whether there is any evidence that the condition prevents a TSO from performing their duties. TSA continues to

disqualify TSOs from their jobs based on the *Guidelines* and also refuses to provide a current copy of the document to AFGE despite numerous requests. No other federal agency applies this criteria to its workforce. These are hardly the actions of an agency dedicated to a fair workplace where employees are treated equally.

TSA has consistently demonstrated its willingness to exempt itself from laws and regulations providing protection and rights to federal workers because of the ATSA footnote. AFGE calls on President Obama through Executive Order and Congress through legislation to make clear their intent that TSOs are protected by Title 5 worker protections, all civil rights laws and the guidelines and regulations of OPM.

TOPS: THE PAY-FOR-PERFORMANCE SYSTEM THAT DOESN'T PAY OR PERFORM

During negotiations with TSA management and the union's ten year campaign to represent TSOs, AFGE repeatedly informed management representatives that development of the details of the new Transportation Officer Performance System (TOPS) would require extensive discussion and collaboration between management and the union. Despite agreements for discussion and collaboration, TSA management prematurely released details of the TOPS program without any input from AFGE. The refusal to consult AFGE is more than a broken promise; it is evidence of the lack of good faith on the part of TSA. The reasonable request of TSOs is that they are adequately compensated by a pay-for-performance system that will provide a fair chance that TSOs will actually be paid for the work they perform. TOPS does not deliver on this expectation.

Although three in four TSOs received a bonus and raise in the first TOPS payout, AFGE wonders if those results would have been greater with a more realistic and fair system. AFGE filed a grievance over TSA's unilateral implementation of the TOPS program and failure to engage in collaborative discussions with the union. The TOPS standards are not specific, measurable, achievable, realistic, and time-bound. TSOs were evaluated on duties they not only do not perform, but also duties that are specific to different positions in a higher payband. As a consequence, these officers could not possibly meet the standards TSA created for TOPS. An officer can still be negatively impacted by one instance of failure to meet a standard during an entire year of work. TSOs were evaluated by managers who were improperly trained and failed to apply the standards correctly. Managers incorrectly told TSOs dissatisfied with their evaluations there would be no payout in 2013. As a result some TSOs who believed they were evaluated unfairly failed to grieve their evaluations in a timely manner because of management misrepresentations. On the surface, a majority of TSOs did receive a bonus and a raise under TOPS, but a deeper assessment of TOPS strongly indicates an illogical and unfair system that robbed many TSOs of the rating and pay they should have received.

AFGE will pursue the grievance of TOPS to arbitration and represent TSOs who have grieved their final ratings. These adversarial actions could have been avoided if TSA respected the collective bargaining agreement and consulted AFGE during the formulation of the system. TOPS does not address the inadequate pay that has dogged the agency since its inception. At a

January 2014 hearing before the House Oversight and Government Reform Committee, TSA Assistant Administrator for Security Operations Kelly Hoggan acknowledged that being a TSO is not an easy job and that "TSOs are some of the lowest paid employees in the government." AFGE calls on TSA to do more than pay lip service to the unconscionably low wages of TSOs. Instead, the agency should work with AFGE to increase TSO pay and institute a fair evaluation system.

Attempts to Privatize the Screening Function by Some in Congress

Following the tragic events of 9/11, Congress and the public demanded that jobs of screening passengers and baggage be performed by federal employees. A group of lawmakers successfully exempted the screening function at a few airports from being federalized and the Screening Partnership Program (SPP) was born as a pilot and experimental program. But some lawmakers and their business allies did not stop their opposition to federalization. They have been expanding the program from the original five airports to 16. The program was a consolation prize to private contractors after their past appalling performance in aviation screening led to the federalization of those jobs in the first place.

TSA Administrator John Pistole suspended the SPP in January 2011 after concluding that private screeners were more expensive and did not provide equivalent security when compared to federalized TSOs. Representing the financial interests of security contractors such as Covenant and Trinity instead of the security interests of the flying public, former House Transportation Committee Chairman John Mica (R-FL) insisted on holding up the important Federal Aviation Administration Modernization Act until his provisions making privatization easier were included. In addition to limiting the TSA Administrator's authority to disapprove SPP applications, the provisions even allowed foreign companies to apply to perform screening at U.S. airports.

However, what Representative Mica and security contractors failed to account for was the dedication of TSOs to retain their jobs as employees of TSA working as part of the federal team to protect the flying public. On January 8, 2013, the Sacramento County Council reversed its decision to apply for private screeners under the SPP program. Members of the Sacramento County Council responded to facts provided by a recent Government Accountability Office report that concluded TSA has insufficient evidence to support that private screeners are more effective or cheaper than federal TSOs, and expressed concerns that TSOs might lose their jobs if a private contractor was in charge at the airport. Members of AFGE Local 556 at Orlando International Airport (MCO) have worked very hard to prevent Representative Mica from taking their jobs and handing them to private screeners. Despite TSOs at the airport ranking 7th in the nation in confiscated firearms in 2013 (83% of which were loaded) and receiving high satisfaction ratings from 93% of 1100 passengers surveyed in a 2010-2011 Valencia College poll, Representative Mica has advocated that screening at the airport be disrupted and handed over to a for-profit private screening company. AFGE stands with the TSOs at MCO and will continue to provide local officials with the facts about SPP to prevent expansion of this program. As in other personnel matters, TSA should follow the same laws and regulations that

apply to other federal agencies. AFGE will work with members of Congress to introduce legislation that will apply the same contracting out rules to TSA and the SPP as followed by the rest of the federal government.

AFGE strongly supports H.R. 1455, the Contract Screener Reform and Accountability Act introduced by TSO and worker rights advocate Representative Bennie Thompson (D-MS), ranking member of the House Homeland Security Committee. H.R. 1455 is a common sense bill that finally applies transparency and accountability to private screening companies seeking a fast buck off aviation security. The bill prohibits subsidiaries of foreign-owned corporations from obtaining SPP contracts; requires that security breaches at airports with private screening services be reported; requires training for the proper handling of sensitive security information at SPP airports; mandates covert testing of contract screeners and imposes penalties for cheating; and enhances customer service at SPP airports. These are the basic minimum standards of operation and accountability that private screening contracts should meet. AFGE strongly supports the Contract Screener Reform and Accountability Act and will work for introduction of companion legislation in the Senate.

TSO RESPECT, VIOLENCE PREVENTION, AND HEALTH AND SAFETY ISSUES

Disrespect Inevitably Leads to Violence

Tragically on November 1, 2013, an active shooter at Los Angeles International Airport (LAX) murdered TSO Gerardo Hernandez, the first TSO to die in the line of duty. Two other TSOs were injured in the same attack. The potential for checkpoint carnage aimed at the TSOs on duty that day was immeasurable. The shooter was indicted on federal charges including murder of a federal employee, but he was not charged with violation of 49 U.S.C. §46502, which establishes assault with a dangerous weapon on security workers at an airport as punishable with a sentence of up to life imprisonment. This omission was yet another indication of a failure to appreciate the skill, commitment to duty, and courage of our nation's 41,000 TSOs.

Despite being the frontline workforce that has prevented acts of aviation terrorism on flights originating from U.S. airports since its creation, TSOs have been singled out as targets of disdain by a few members of Congress who would deny them badges, uniforms and even the title of officer. Perhaps encouraged by this blatant disrespect, a small but active group of passengers often blows the slightest irregularity out of proportion, which in turn is repeated by the media. TSOs are not the authors of the rules they enforce, but face discipline, up to termination, if they do not enforce those rules. TSOs working at airport checkpoints report being pushed, hit, and spit upon, and routinely have items yanked from them by passengers with such force that the officers lose their balance. A first step toward preventing acts of aggression against TSOs is to encourage the public to treat them with respect. Every member of the flying public should know that it is absolutely unacceptable, not to mention a violation of federal law, to assault a TSO.

TSA must also take steps to better protect the TSO workforce. Although TSOs are required to report checkpoint assaults to management, it is not clear what occurs from that point. There are reports that managers have refused to detain passengers who have assaulted TSOs, and at times TSOs who were the victims of assaults are blamed for the incident. TSOs are unarmed, do not have apprehension authority or even the authority to call airport local police if there is an assault. As was sadly learned as a result of the LAX shooting, delays in summoning and the response time of airport local police may result in loss of life and injury. AFGE strongly supports the creation of an armed federal law enforcement TSO position to guard the checkpoint and our nation's airports.

Why Won't TSA Agree that TSOs Should Wear Dosimeters?

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

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

Representation Rights

TSA managers continue to pursue avenues to thwart the right of union members to effective representation on the job. Despite the Pistole Determination's provisions that union representatives are entitled to "reasonable amounts of official time", TSA management consistently limits or denies official time requests in violation of the Determination, the collective bargaining agreement, and TSA policy directives. Managers substitute their judgment for the amount of official time necessary to represent employees in a manner that always reduces the representation an employee may receive. AFGE demands that TSA stop interfering with the fundamental right of union representation and stop displacing the judgment of worker representatives with their own narrow and incorrect "understanding."

Conclusion

AFGE and its TSA members continue progress towards fundamental workplace rights wrongfully denied the workforce. In 2014 AFGE expects to make even greater strides to ensuring those fundamental workplace rights apply to TSOs as a matter of law and policy. AFGE will continue to take the case for TSO rights to both President Obama and Congress during 2014.

Federal Prisons

Summary

Over the past several years at Los Angeles International Airport (LAX), the Federal Bureau of Prisons (BOP) correctional institutions have become increasingly dangerous places to work. The savage murders of Correctional Officer Jose Rivera at U.S. Penitentiary (USP) Atwater (CA), Correctional Officer Eric Williams at USP Canaan (PA), and Lieutenant Osvaldo Albarati at Metropolitan Detention Center (MDC) Guaynabo (PR), as well as the hundreds of vicious, albeit less-than-lethal, inmate-on-staff assaults that have occurred at many BOP institutions illustrate that painful reality.

AFGE strongly urges the Obama Administration and the 113th Congress to:

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

2. Address a major cause for the explosive growth in the BOP prison inmate population by supporting federal legislation to reduce lengthy sentences for those convicted of non-violent drug offenses.

3. Support allowing BOP correctional officers who work in highly dangerous areas of BOP prisons to routinely carry pepper spray in case situations arise where they must defend themselves if physically attacked by dangerously violent inmates.

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

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

6. Prevent BOP from meeting additional bed space needs by incarcerating prison inmates in private prisons.

7. Oppose any effort to statutorily redefine the term “law enforcement officer” for pay and retirement purposes to exclude BOP prison staff.

8. Exempt federal law enforcement officers, including BOP correctional officers and staff, who separate from federal government service after age 50 from the present law’s 10% additional tax penalty for early withdrawals from the Thrift Savings Plan (the third component of the Federal Employees Retirement System or FERS).

Discussion

1. Increase federal funding of BOP to remedy the serious correctional officer understaffing and prison inmate overcrowding problems that are plaguing BOP prisons. Over 216,000 prison inmates are confined in BOP correctional institutions today, up from 25,000 in 1980, 58,000 in 1990, and 145,000 in 2000. About 81% - or 173,964 – of the inmate population is confined in BOP-operated prisons while 19% - or 42,109 – is managed in private prisons and residential reentry centers. By the end of FY 2014, it is expected there will be over 224,000 inmates incarcerated in BOP institutions nationwide.

This explosion in the federal prison inmate population is the direct result of Congress approving stricter anti-drug enforcement laws involving mandatory minimum sentences in the 1980s, as documented in the *History of Mandatory Minimums*, a study produced by the Families Against Mandatory Minimums Foundation (FAMM).

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

The number of federal correctional officers who work in BOP-operated prisons, however, is failing to keep pace with this tremendous growth in the prison inmate population. The BOP system is staffed at an 89% level, as contrasted with the 95% staffing percentage levels in the mid-1990s. This 89% staffing level is *below* the 90% staffing level that BOP believes to be the minimum staffing level for maintaining the safety and security of BOP prisons. In addition, the current BOP inmate-to-staff ratio is 4.82 inmates to 1 staff member, as contrasted with the 1997 inmate-to-staff ratio of 3.7 to 1.

At the same time, prison inmate overcrowding is an increasing problem at BOP institutions despite the activation of new prisons over the past few years. The BOP prison system today is overcrowded by about 37%, up from 31.7% as of January 1, 2000. Inmate overcrowding is of special concern at higher security institutions—with 54% overcrowding at high security prisons and 44% at medium security institutions. By the end of FY 2014, it is estimated the BOP system will be overcrowded by 40%.

These serious correctional officer understaffing and prison inmate overcrowding problems are resulting in significant increases in prison inmate assaults against correctional officers and staff. Illustrations of this painful reality include: (1) the savage murder of Correctional Officer Jose Rivera on June 20, 2008, by two prison inmates at the United States Penitentiary in Atwater, CA; (2) the lethal stabbing of Correctional Officer Eric Williams on February 25, 2013 by an inmate at the United States Penitentiary in Canaan, PA and (3) the murder of Lieutenant Osvaldo Albarati on February 26, 2013 while driving home from the Metropolitan Detention Center in Guaynabo, Puerto Rico.

Indeed, BOP has performed a rigorous analysis of the effects of prison inmate overcrowding and correctional worker understaffing on inmate-on-worker rates of violence - and found that increases in both the inmate-to-worker ratio and the rate of overcrowding at an institution are directly related to increases in the rate of serious inmate assaults on correctional workers. An increase of one in a BOP prison's inmate-to-worker ratio increases the prison's annual serious assault rate by about 4.5 per 5,000 inmates.

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

Therefore, AFGE strongly urges the Obama Administration and the 113th Congress to:

- Increase federal funding of the BOP Salaries and Expenses account so BOP can hire additional correctional staff to return to the 95% staffing percentage levels of the mid-1990s.
- Increase federal funding of the BOP Buildings and Facilities account so BOP can build new correctional institutions and renovate existing ones to reduce inmate overcrowding to at least the 31.7% level of the late-1990s.

2. Address a major cause for the explosive growth in the BOP prison inmate population by supporting federal legislation to reduce lengthy sentences for those convicted of non-violent drug offenses.

The statistics above demonstrate the need to move away from the "tough on crime" laws of the 1980s and focus more on "smart on crime" policies. That is why AFGE is supporting the *Smarter*

Sentencing Act of 2013 (S. 1410 and its companion H.R.3382), a bill that takes an incremental approach to modernizing non-violent drug policy. This legislation would:

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

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

  S. 1410 would broaden the "safety valve's" eligibility criteria. The bill provides that a federal judge can impose a sentence for certain non-violent drug offenses below existing mandatory minimum sentences if he or she finds the "criminal history category for the defendant is not higher than category II." Category II includes 2 or 3 criminal history points.

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

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

  S. 1410 provides that a federal judge who imposed a drug offense sentence under the pre-Fair Sentencing Act of 2010 regime, may – on a motion of the sentenced inmate or the BOP Director – impose a reduced sentence as if the 2010 federal law was in effect at the time the inmate committed the drug offense.

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

  The Controlled Substances Act and the Controlled Substances Export and Import Act provide that non-violent drug offenders shall be sentenced to a term of imprisonment of not less than the *minimum* mandatory minimum sentence (or "floor") and not more than the *maximum* mandatory minimum sentence (or "ceiling"). For example, a person who knowingly distributes 500 grams of powder cocaine "shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years."

  S. 1410 reduces the *minimum* mandatory minimum sentences (or "floors") for non-violent drug offenses, allowing a federal judge more discretion than he or she has now

to decide the appropriate sentence in individual cases. The bill does not lower the *maximum* mandatory minimum sentences (or "ceilings"). In the above example, a person who knowingly distributes 500 grams of powder cocaine shall be sentenced to a term of imprisonment which may not be less than 2 years – lowered from 5 years – and not more than 40 years.

3. Support allowing BOP correctional officers who work in highly dangerous areas of BOP prisons to routinely carry pepper spray in case situations arise where they must defend themselves if physically attacked by dangerously violent inmates.

For several years, AFGE has been urging BOP to institute a new pepper spray policy that would allow federal correctional officers who work in highly dangerous areas of BOP prisons to routinely carry oleoresin capsicum spray – commonly known as pepper spray – in case situations arise where they must defend themselves if physically attacked by dangerously violent inmates.

That is why we were pleased when BOP announced In June 2012 that the agency had decided to conduct a one-year pilot program at seven U.S. penitentiaries to determine if allowing correctional officers to routinely carry pepper spray while on duty would improve the safety of correctional workers, prison inmates, and others. The seven penitentiaries are: USP Coleman I (FL), USP Coleman II (FL), USP Florence (CO), USP Lee County (VA), USP Lewisburg (PA), USP Pollock (LA), and USP Atwater (CA).

On February 28, 2013—three days after the savage murder of Correctional Officer Eric Williams by a prison inmate at USP Canaan (PA)—BOP announced that as part of a Partnership Council Initiative with the AFGE Council of Prison Locals, the agency was expanding this pilot to include all high security institutions. The implementation of this expanded pilot occurred in two phases. Phase one included USP Allenwood (PA), USP Big Sandy (KY), USP Canaan (PA), Administrative Maximum U.S. Penitentiary (ADX) Florence (CO), USP Hazelton (WV), and USP McCreary (KY), and phase two included USP Beaumont (TX), USP Terre Haute (IN), USP Tucson (AZ), and USP Victorville (CA).

BOP is currently expanding the pepper spray pilot program to include all administrative facilities. Administrative facilities are institutions with special missions, such as the detention of pretrial offenders; the treatment of inmates with serious or chronic medical problems; or the containment of extremely dangerous, violent, or escape-prone inmates. They are mostly located in metropolitan areas and are capable of holding inmates in all security categories.

AFGE is now working to expand the pepper spray pilot project to include correctional officers who work in highly dangerous areas *in all BOP prisons* – allowing them to routinely carry pepper spray in case situations arise where they must protect themselves if physically attacked by violent prison inmates.

We applaud BOP for conducting the one-year pilot program on pepper spray. But we remained puzzled as to why BOP has been so reluctant over the years to institute a new pepper spray policy. A new pepper spray policy is vitally necessary because BOP prisons are significantly more violent than a few years ago because of serious correctional officer understaffing and prison inmate overcrowding – and because correctional officers are being forced to control more aggressively dangerous offenders, including more gang-affiliated inmates.

Under current BOP policy, federal correctional officers are not allowed to routinely carry pepper spray in BOP prisons. Instead, prison wardens (or designated officials) must authorize pepper spray utilization before correctional officers can use it to quell an emergency situation. Pepper spray is stored in specific locations throughout the prisons, such as in secure control rooms, watchtowers in the prisons' yards, or in the prisons' armories outside the secure perimeter.

The problem, however, is that in situations where aggressively dangerous inmates, who often have home-made lethal weapons, are physically attacking correctional officers, there is little or no time for the warden to authorize the use of pepper spray and get it to the endangered officers so they can protect themselves. The correctional officers are left to defend themselves with the two things they are authorized to carry: keys and a walkie-talkie radio.

BOP management has relied on four arguments to disallow correctional officers from routinely carrying pepper spray while on duty – arguments with which the AFGE strongly disagree:

(1) Cultural argument: BOP officials have argued that correctional officers should not carry pepper spray or other equipment because BOP believes in the importance of officers communicating with inmates to ensure officer safety. BOP believes that carrying pepper spray would impede officers' communication with inmates—and increase the level of prison violence—because (a) the officers would be more likely to use the pepper spray to prevent an inmate from engaging in dangerous misconduct than talk with the inmate, or (b) the inmate would perceive correctional officers carrying pepper spray as more threatening and therefore would be less willing to engage in communication with officers.

AFGE, however, believes this "officer-inmate communication" policy totally ignores the current reality at BOP institutions. The level of violence inside BOP institutions is already increasing – and not because correctional officers are not attempting to communicate with prison inmates. The violence level is increasing because of the serious correctional officer understaffing and prison inmate overcrowding problems – and because correctional officers are being asked to control offenders who are deliberately non-communicative, more aggressively violent, and often gang-affiliated.

In addition, AFGE believes this "officer-inmate communication" policy ignores the information in a BOP Executive Staff Paper, dated March 7, 2003. According to that paper, the Colorado, Illinois, and Texas State Departments of Corrections—three of the many states that allow their prison staff to routinely carry pepper spray—reported to BOP in 2003 that the ability of their

staff to immediately use pepper spray decreased the need for physical restraint techniques, enhanced inmate compliance to staff warnings and commands, and resulted in an overall and significant reduction in injuries to both staff and inmates.

(2) "Used against officer" argument: BOP has argued that correctional officers should not routinely carry pepper spray because it could be taken from the officer by an inmate and then used against him or her by that inmate.
AFGE believes this "used against officer" argument ignores one of the reasons why the BOP Executive Staff Paper (March 7, 2003) recommended providing correctional officers with pepper spray rather than expandable batons. One of the advantages of pepper spray use that was detailed in that paper was: "If an inmate gains control of the [pepper spray] and uses it on staff, there is no permanent harm to the staff member." By contrast, "if an inmate gains control of the expandable baton and uses it on staff, there could be serious permanent physical harm to the staff member."

(3) Regulatory argument: BOP has argued that *28 CFR 552.25 - Use of chemical agents or non-lethal weapons* is the reason why the agency cannot allow correctional officers to carry pepper spray. Here is that CFR section:

TITLE 28--JUDICIAL ADMINISTRATION

CHAPTER V--BUREAU OF PRISONS, DEPARTMENT OF JUSTICE

PART 552_CUSTODY--Table of Contents

Subpart C_Use of Force and Application of Restraints on Inmates

Sec. 552.25 Use of chemical agents or non-lethal weapons.

The Warden may authorize the ***use*** of chemical agents or non-lethal weapons only when the situation is such that the inmate:
(a) Is armed and/or barricaded; or
(b) Cannot be approached without danger to self or others; and
(c) It is determined that a delay in bringing the situation under control would constitute a serious hazard to the inmate or others, or would result in a major disturbance or serious property damage.
[54 FR 21394, May 17, 1989. Redesignated and amended at 59 FR 30469, 30470, June 13, 1994] ***[Emphasis added]***

AFGE contends that 28 CFR 552.25 does not support the BOP position regarding correctional officers carrying pepper spray. The important key is the word "use" in the first sentence. 28 CFR 552.25 restricts the active "use" of pepper spray—that is, the "putting into action" of pepper spray—to situations where an inmate is armed and/or barricaded or cannot be approached without danger to the correctional officer, and when a delay in restoring order

would result in a major disturbance or serious property damage. In other words, this regulation's intent is to prevent correctional officers from actively spraying an inmate with pepper spray in less-than-dangerous situations—that is, in situations where the inmate is not armed or can be approached without any danger to the correctional officer, and when a delay in restoring order would not result in a major disturbance or serious property damage.

However, 28 CFR 552.25 says absolutely nothing about the passive carrying of pepper spray. Thus, contrary to BOP's position, this section does not preclude BOP from authorizing correctional officers to routinely carry pepper spray. And it certainly does not preclude BOP from authorizing a correctional officer to routinely carry pepper spray in highly dangerous prison areas—just in case the correctional officer must actively "use" pepper spray in situations where an armed inmate is physically attacking the correctional officer, and when a delay in restoring order would result in a major disturbance or serious property damage.

(4) Cost argument: BOP has argued that the agency cannot afford the cost of supplying pepper spray to its correctional officers because the Congress has failed for years to provide BOP with sufficient funding. As a result, BOP is experiencing serious correctional worker understaffing, prison inmate overcrowding, and a significant increase in inmate-on-worker assaults.

AFGE is totally cognizant of the BOP's funding problems, and has been actively lobbying the Congress to substantially increase funding for BOP. However, we think the argument that BOP cannot afford the cost of supplying pepper spray to its correctional officers is a bit overdone.

Frankly, pepper spray costs seem to be relatively minimal. A brief perusal of the Internet reveals that a two ounce pepper spray device costs from $12.95 to $17.95, and a four ounce pepper spray device costs from $15.95 to $20.95. Thus, the cost of providing pepper spray to each and every one of its approximately 16,000 correctional officers would be in the range of only $207,200 to $335,200. In addition, the total number of pepper spray devices that must be purchased—and the attendant costs—would be greatly reduced by the number of such devices already stored today in BOP prisons' armories.

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

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

The FPI prison inmate work program is an important management tool that federal correctional officers and staff use to deal with the huge increase in the BOP prison inmate population. It helps keep about 13,500 prison inmates productively occupied in labor-intensive activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides strong incentives to encourage good inmate behavior, as those who want to work in

FPI factories must maintain a record of good behavior and must have completed high school or be making steady progress toward a General Education Degree (GED).

In addition, the FPI prison inmate work program is an important rehabilitation tool that provides federal inmates an opportunity to develop job skills and values that will allow them to reenter—and remain in—our communities as productive, law-abiding citizens. The Post-Release Employment Project (PREP), a multi-year study of the FPI prison inmate work program carried out and reported upon in 1996 by William Saylor and Gerald Gaes, found that the FPI prison inmate work program had a strongly positive effect on post-release employment and recidivism. Specifically, the study results demonstrated that:

- In the short run (i.e., one year after release from a BOP institution), federal prison inmates who had participated in the FPI work program (and related vocational training programs) were: (1) 35% less likely to recidivate than those who had not participated, and (2) 14% more likely to be employed than those who had not participated.

- In the long run (i.e., up to 12 years after release from a BOP institution), federal prison inmates who participated in the FPI work program were 24% less likely to recidivate than those who had not participated in the FPI work program. (*PREP: Training Inmates Through Industrial Work Participation, and Vocational and Apprenticeship Instruction,* by William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 24, 1996.)

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

- Significant decline in FPI sales revenues: While FPI in FY 2009 had sales revenues of $889,355,000 in FY 2009, it only had revenues of $745,423,000 in FY 2011—a decline of $143,932,000 or 16% over three years.

- Significant closing and downsizing of FPI factories: On July 15, 2009, FPI closed factory operations at 14 BOP prisons and downsized operations at four other BOP prisons. The next year on July 13, 2010, FPI closed 12 more factories and downsized three. And on September 7, 2011, FPI announced that it would close and downsize 12 additional factories at 10 different BOP prisons. According to then-FPI Chief Operating Office Paul Laird, these closings and downsizings were cost control actions taken to bring production capacity and expenses in line with FPI's level of business.

- Significant decline in the number of prison inmates employed by FPI: While the FPI program employed 18,972 inmates in FY 2009, it employed only 14,200 at the end of FY 2011 and 13,466 in April 2012.

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

The FPI Board of Directors in 2003 administratively ended the application of mandatory source authority for those FPI-made products where FPI had a share of the Federal market that was greater than 20%. But Section 827 took a much more stringent approach, ending the application of the mandatory source authority with regard to DoD purchases of FPI-made products where FPI's share of the DoD market for those products was greater than 5%. Initial analyses of the effect of this reduction of the "significant market share" from 20% to 5% projected a loss of up to $241 million in FPI sales revenues and 6,500 FPI prison inmate jobs.

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

AFGE also was pleased that Section 221 authorized FPI to carry out pilot "off-shore repatriation" projects to produce items not currently produced in the United States. It is believed that FPI, if allowed to enter into partnerships with private businesses, could bring lost production back into the United States while providing BOP prison inmates with opportunities to learn skills that will be marketable after their release.

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

The FY 2014 Omnibus Appropriations Act (H.R. 3547), which contains the FY 2014 Commerce-Justice-Science (CJS) Appropriations bill, includes a general provision—Section 211—to prohibit the use of FY 2014 funding for a public-private competition under OMB Circular A-76 for work performed by federal employees of the BOP and FPI. Here is the exact language:

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

AFGE strongly urges the Obama administration and the 113th Congress to include the Section 211 language in the FY 2015 CJS Appropriations bill because:

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

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

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

In recent years, the federal government and some state and local governments have experimented with prison privatization as a way to solve the overcrowding of our nation's prisons—a crisis precipitated by increased incarceration rates and politicians' reluctance to provide more prison funding. But results of these experiments have demonstrated little evidence that prison privatization is a cost-effective or high-quality alternative to government-run prisons.

<u>Private Prisons Are Not More Cost Effective</u>

Proponents of prison privatization claim that private contractors can operate prisons less expensively than federal and state correctional agencies. Promises of 20 percent

savings are commonly offered. However, existing research fails to make a conclusive case that private prisons are substantially more cost effective than public prisons.

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

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

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

Private Prisons Do Not Provide Higher Quality, Safer Services

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

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

Numerous newspaper accounts have documented alleged abuses, escapes and riots at prisons run by the Correctional Corporation of America (CCA), the nation's largest private prison company. In the last several years, a significant number of public safety lapses involving CCA

have been reported by the media. The record of Wackenhut Corporation (now The Geo Group), the nation's second largest private prison company, is no better, with numerous lapses reported since 1999.

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

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

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

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

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

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

In conclusion, AFGE strongly urges the Obama administration and the 113th Congress to prohibit BOP from meeting additional bed space needs by incarcerating federal prison inmates in private

prisons. Prison privatization is not the panacea that its proponents would have us believe. Private prisons are not more cost effective than public prisons, nor do they provide higher quality, safer correctional services. Finally, without comparable data, BOP is not able to evaluate or justify whether confining inmates in private facilities is more cost-effective than building new BOP facilities.

7. Oppose any effort to statutorily redefine the term "law enforcement officer" for pay and retirement purposes to exclude federal prison staff.

Under current law, the definition of "law enforcement officer" for pay and retirement purposes includes federal prison support staff, in addition to those individuals who fill federal correctional officer positions. However, in October 2005, the Republican staff of the House and Senate federal workforce subcommittees released a 25-page "Concept Paper for a Federal Law Enforcement Personnel System" that proposed to redefine "law enforcement officer" for pay and retirement purposes to exclude federal prison support staff.

AFGE strongly urges the Obama administration and the 113th Congress to oppose any legislative effort to institute such a redefinition. The reason federal prison support staff receive law enforcement officer pay and retirement benefits is because their jobs include performing law enforcement security functions in federal prisons. These men and women, on a daily basis, help supervise and control prison inmates at all security levels inside the walls and fences of federal prisons. They are called upon, on a daily basis, to provide searches of inmates, to search housing areas of federal prisons for contraband, and to escort inmates to local hospitals or other outside facilities.

In addition, federal prison support staff—like federal correctional officers—are required to successfully undergo training to perform these law enforcement security operations in federal prisons. These men and women are required to go to law enforcement training in Glynco, GA, and are required to pass firearms training every year.

Why do the jobs of federal prison support staff include performing law enforcement security operations at federal prisons? Unlike state or county correctional facilities, federal prisons do not have sufficiently large numbers of correctional officers to deal with security-related issues. Because of this shortage of correctional officers, the federal BOP must train and use prison support staff to help maintain safety and security at federal prisons.

8. Exempt federal law enforcement officers, including BOP correctional officers and staff, who separate from government service after age 50 from the present law's 10% additional tax for early distributions from the Thrift Savings Plan (the third component of the Federal Employees Retirement System or FERS).

Under present law, a federal employee who receives a distribution from a qualified retirement plan such as the Thrift Savings Plan (TSP) prior to age 59½ is subject to a 10% early withdrawal tax on that distribution, unless an exception to the tax applies. Among other exceptions, the

early withdrawal tax does not apply to TSP distributions made to a federal employee who separates from government service after age 55.

Present law also provides that BOP correctional officers and staff, as well as other federal law enforcement officers, who complete 20 years of service in a "hazardous duty" law enforcement position are eligible to retire at age 50. This provision is intended to help the federal government recruit and retain a young, physically strong work force to work in BOP correctional institutions.

As a result, BOP correctional officers and staff who retire at 50 years of age/20 years of service cannot—under present law—withdraw their TSP funds without incurring the 10% early withdrawal tax penalty. These retirees must wait until age 55 to withdraw their TSP monies if they want to avoid incurring this penalty.

This is grossly unfair to the BOP correctional officers and staff who keep the most dangerous felons behind bars, as well as to the other federal law enforcement officers who patrol our nation's borders and secure our federal buildings' safety.

Until a few years ago, police and firefighters who worked for State and local governments experienced a similar problem. Those who retired after age 50 but before age 55 were unable to withdraw money from their defined benefit plans without incurring the 10% additional tax penalty. However, section 828 of the Pension Protection Act of 2006 (P.L. 109-280) resolved the problem for these State and local public safety employees. This section amended section 72(t) of the Internal Revenue Code of 1986 (which exempts certain individuals from the 10% early withdrawal penalty) by adding the following new paragraph:

> "(10) Distributions to qualified public safety employees in governmental plans.
>
> (A) In general. - In the case of a distribution to a qualified public safety employee from a governmental plan (within the meaning of section 414 (d)) which is a defined benefit plan, paragraph (2)(A)(v) shall be applied by substituting "age 50" for "age 55".
>
> (B) Qualified public safety employee. - For purposes of this paragraph, the term "qualified public safety employee" means any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision."

AFGE strongly urges the Obama administration and the 113th Congress to support legislation that would modify the section 72(t)(10) language to benefit those federal law enforcement officers, including federal correctional officers and staff, who want to retire at age 50 and withdraw their TSP monies without incurring the 10% additional tax penalty. This legislation would:

- Strike the language “which is a defined benefit plan” from subparagraph (A). Thus, federal law enforcement officers who participate in a defined contribution plan like the TSP would also be granted relief from the 10% early withdrawal penalty.
- Amend subparagraph (B) to include *federal* law enforcement officers. Subparagraph (B) as now written only applies to state and local police, firefighters, and EMS personnel.
- Amend subparagraph (B) to include *correctional officers and staff* who work at BOP prison facilities. Subparagraph (B) as now written only applies to police, firefighters and EMS personnel.

National Council of SSA Field Operations Locals

The FY 2014 Omnibus Appropriations bill provided the Social Security Administration (SSA) with:

> *$11.7 billion to administer SSA activities, which is a $265 million increase above the fiscal year 2013 enacted level. This level is sufficient to allow the SSA to continue prompt processing of Social Security checks and claims, and will help ensure that all eligible recipients get their benefits on time and in the proper amount. Within the total, the bill devotes $1.2 billion to program integrity activities to ensure that disability and other benefits are properly paid.*

The FY 2014 funding for SSA is $651 million over FY 2013 enacted, based on the following assumptions/calculations:

Topline FY 2014 funding number for SSA is $11.697 billion including Program Integrity (PI) funding and user fees. SSA was operating under a topline funding number of $11.046 billion in FY 2013 after a sequestration cut of $386 million.

The documents also indicate SSA is to spend $1.197 billion on Program Integrity activities.

Overall, these numbers are a step in the right direction. The possibility of a $651 million increase over the FY 2013 enacted levels should ease some of the staffing and other concerns of the Union.

Sections from the Joint Explanatory Statement related to Social Security Statements, Field Office Closings, and Social Security Number Printouts and Benefit Verification Letters are included below:

Social Security Statements*. - The Commissioner is directed to develop a plan to significantly increase the number of individuals receiving Social Security Statements annually, either electronically or by mail. This should include a significant restoration of the mailing of* 2 *statements to ensure that individuals are informed of their contributions and benefits under Social Security programs and have an opportunity to review their earnings records and correct any errors in a timely manner. The Commissioner or her designee is directed to brief the House and Senate Appropriations Committees within 60 days of enactment of this act on this plan, including the intended plan for mailing statements in fiscal year 2014.*

Field Office Closings. *- Concerns remain that in recent years SSA has lacked comprehensive, transparent policies regarding field office closings, including data on specific populations impacted by office closures and plans to mitigate the effects of closures. The Commissioner is directed to submit a report to the House and Senate Appropriations Committees within 90 days*

of enactment of this act on its policies and procedures for closing and consolidating field offices, including any policies and procedures related to assessing the community impacts of closing or consolidating offices, and the metrics used to calculate short- and long-term cost savings. In addition, the Commissioner is directed to provide a readily available public notice of proposed field office closures to ensure that impacted communities are aware of proposed changes and allow an opportunity for public input on the proposed changes and possible mitigation to ensure continued access to SSA services.

Social Security Number (SSN) Printouts and Benefit Verification Letters. *- The Commissioner is directed to continue to make SSN Printouts available at field offices through at least July 31, 2014 and Benefit Verification Letters available at field offices through at least September 30, 2014. The SSA should continue to encourage third parties that currently require these documents to use alternative means and existing online tools to verity the same information provided in these documents. However, concerns remain that third parties will not significantly change their behavior in a short period of time and instead individuals who are expected to provide these documents, for a variety of purposes, will be adversely impacted. The Commissioner or her designee is directed to brief the House and Senate Appropriations Committees within 30 days of enactment of this act on planned initiatives to decrease the reliance on field offices providing these documents, including a detailed explanation of what assurances will be provided that individuals will not be adversely impacted. Further, the Commissioner shall notify the House and Senate Committees on Appropriations no later than two weeks prior to any announcement of significant changes to current policies regarding the availability of these documents at field offices.*

Message to AFGE Members:

If you are concerned about the future of the Social Security program, you need to take a close look at the financial crisis facing the Social Security Administration. Field offices are being closed, critical services are being eliminated, and thousands of jobs have been lost. Please urge your lawmakers to provide the funding necessary to allow SSA to do its job.

National Guard/Reserve Technicians

The Issue: Authorizing Veteran Status for National Guard and Reserve Members Entitled to Reserve Retirement Pay

Immediate Action Required: Contact your senators and representatives and ask them to pass S. 944

The Veterans Health and Benefits Improvement Act of 2013, or S. 944, sponsored by Sen. Bernie Sanders, I-Vt., and co-sponsored by Sen. Richard Burr, R-N.C., contains language honoring career service in the National Guard and Reserve.

Section 807 of S. 944 would honor as veterans "any person who is entitled under chapter 1223 of title 10, United States Code, to retired pay for nonregular service or, but for age, would be entitled under such chapter to retired pay for nonregular service."

This cost-neutral provision would not bestow any benefits other than the honor of claiming veteran status for nearly 300,000 who honorably served and sacrificed as career reserve-component members.

Currently, the Veterans Code, Title 38, excludes from the definition of veteran career reserve-component members who have not served on Title 10 active duty for other than training purposes. Drill training, annual training, active duty for training and Title 32 duty are not qualifying service for veteran status.

The bill awaits a floor vote in the Senate before moving to the House. The active support of your senators and representatives for S. 944 will make a difference

The Issue: Ensure that the A-10 stays in the Air Force and Air National Guard combat fleets until sufficient quantities of the F-35 are available to replace it.

Immediate Action Required: Ask your senators to support Floor Amendment 2063 to the National Defense Authorization Act to prevent the premature retirement of the A-10.

The Air Force recommends in its fiscal 2015 Program Objective Memorandum to divest A-10s in the active component and Reserves in fiscal 2015 and in the Air National Guard in fiscal 2018. The service plans to replace it in the combat fleet with the F-35, which Gen. Mark A. Welsh III, the Air Force chief of staff, admits will not be fully operational until 2021.

Sen. Kelly Ayotte, R-N.H., and Sen. Roy Blunt, R-Mo., have introduced an amendment to the Senate National Defense Authorization Act that would prevent retirement of the A-10 until the F-35 is operational and fielded in sufficient quantity to replace the retired A-10s.

Gen. Ray Odierno, the Army chief of staff, has testified before Congress that the A-10 is the "best close air support platform" today in the military.

Removing the A-10 from the combat fleet three years before the F-35 is available would leave an untenable gap in close air support capabilities, putting ground troops at risk.

The Issue: A Window of Opportunity to Roll Back Sequestration

Immediate Action Required: Tell your representative and senators, along with members of the bipartisan Congressional Budget Committee, to amend the 2011 Budget Control Act to allow greater flexibility in determining future defense funding, which would allow the National Guard to remain operational, ready and strong.

The Congressional Committee on the Budget, which is composed of 29 members of the House and Senate, is to reach a compromise on the future of government spending by Dec. 13. Issues include taxes, entitlement and defense spending. Groups on various sides are working to influence these House and Senate budget conferees. Lawmakers say if an agreement can be reached, it most likely would be a one- or two-year government-funding deal that includes sequester relief.

If Congress cannot come together to find a solution to the budgetary constraints of the 2011 Budget Control Act, the National Guard will see critical funding arbitrarily cut across the board in order to adhere to law. Such cuts will put the National Guard's core mission at risk, erode readiness and adversely impact national security and domestic response.

The next few weeks present a window of opportunity to identify a reasonable solution to move appropriations forward and the views of the members of the National Guard are vital to the deliberations.

Tell your elected lawmakers and other members of the Congressional Budget Committee to amend the Budget Control Act to allow defense spending to remain at levels that will provide sufficient defense against current and future threats to our national security. Educating the committee about the vital role of a strong operational National Guard right now is imperative. The nation must retain the all-time high levels of Guard readiness and preserve the training and equipment investments made over the last 11 years.

Anything less could return the National Guard to days not so long ago when combat units sometimes had to scrounge steel from landfills to armor their vehicles in Iraq.

The Issue: Reducing the Retirement Age for the National Guard

Immediate Action Required: Contact your Representatives and urge them to support H.R. 2907, which would credit retroactively to September 11, 2001 qualifying active duty service to reduce the age for National Guard retirees to collect retirement pay.

The Fiscal Year 2008 National Defense Authorization Act reduced the archaic 60 year eligibility age for retired members of the Ready Reserve to collect retirement pay three months for each aggregate of 90 days per fiscal year of active duty performed in Title 10 status in support of a contingency operation or in Title 32 status in responding to a national emergency.

Unfortunately, these historic provisions applied only to service after January 28, 2008, the date of enactment of the Fiscal Year 2008 NDAA.

Since September 11, 2001, members of the Reserve Component have served as an operational force alongside their active counterparts in Iraq, Afghanistan and other dangerous locations around the globe.

The National Guardsmen and Reservist Parity for Patriots Act, H.R. 2907, introduced by Representative Joe Wilson (R-S.C.), would allow qualifying National Guard retirees to draw retirement pay three months earlier for each aggregate of 90 days per fiscal year of deployed service performed after September 11, 2001 in support of a contingency operation or national emergency, thereby correcting the arbitrary eligibility requirement.

Since active duty service of the Reserve Components in wartime and national emergencies after January 28, 2008 is now recognized in reducing the age to collect military retirement pay, it is only fair and deserving to credit retroactively all otherwise qualifying service performed after September 11, 2001.

Our members who so bravely risked their lives in service to our country have earned this.

Unfortunately, legislation has stalled because the Congressional Budget Office (CBO) has scored its cost at $2.6 billion over ten years. Because reserve retirement pay is classified as mandatory spending, it is subject to "Pay-Go" rules, which require that new spending be offset by a reduction in another program to ensure it is deficit-neutral or be justified as an emergency spending measure.

The Issue: Hiring preference points for members of the reserve components for competitive federal civil service employment

Immediate Action Required: Ask your senators and representative to support the Military Reserve Jobs Acts, H.R. 2785 and S. 1320

Urge your senators and representative to support the Military Reserve Jobs Acts, H.R 2785 and S. 1320, introduced by Rep. Tim Walz, D-Minn., and Sen. Joe Donnelly, D-Ind., that would provide hiring preference points to members of the reserve components who seek employment in the federal civil service.

Service in the reserve components does not entitle a member to veteran's benefits when applying for a job with the federal government.

Although the Uniform Services Employment and Reemployment Rights Act prohibits hiring discrimination against members of the reserve components for their ongoing military service, it does take place. And such acts are often impossible to prove as employers can assert numerous reasons for denying employment to a Guard or Reserve member.

When an employer has a choice of hiring a veteran no longer serving in uniform or an applicant still serving in the Guard or Reserve, the employer may choose to hire the nonserving veteran to remove the risk of losing that employee to a deployment.

The law currently provides preference points for competitive federal civil service positions to veterans, spouses of unemployable disabled veterans, unmarried widows or widowers of veterans, and the mothers of deceased or disabled veterans. However, the law denies preference points to our National Guard members who serve faithfully in homeland defense and disaster relief missions, but lack the Title 10 service to call themselves veterans.

H.R. 2785 and S. 1320 would correct this inequity by providing five preference points to gray-area retirees; four to serving reserve-component members who have completed 10 years of service; and three to trained members of the reserve component who have completed six years of obligated service.

Members of the Guard and Reserve should not face discrimination in the hiring process, particularly from federal government employers.

Issues & Advocacy

Issue: Enhance Domestic Operations

The National Guard's ability to provide critical response to Americans at a moment’s notice relies on planning and dedicated funding.

Issue Overview

Every day, the National Guard responds to requests from civilian authorities during emergencies within our country. Saving lives and protecting property is a duty the Guard provides faithfully and without question. Whether responding within their state or across state borders, the Guard does what it takes to help civilians during a time of crisis. What's At Stake? Located in over 3,000 communities, the National Guard is immediately available as the most experienced of military first responders. In times of natural disasters, wildfires or special events like the Presidential Inauguration, the National Guard composes 96 percent of all military support to civilian authorities. With thousands of Guard readiness centers and wings spread all over the United States, the National Guard stands ready to provide critical response to Americans at a moment’s notice.

Issue: Increase the National Guard

Our nation can reduce defense spending and maintain the necessary force structure and experience to meet future challenges by growing the National Guard as a percentage of the Total Force.

Issue Overview

Today's National Guard is a modern, accessible military force that trains and performs to the same standards as their Active Duty counterparts at a fraction of the cost. In this cost-conscious budgetary environment, the answer to an affordable defense force lies not in cutting the reserve, but in a return to a well trained and equipped, community-based force.

What's At Stake?

Major persistent conflicts over the last two decades have required near-continuous use of both Active and Reserve Component forces in order to meet security needs. During these sustained engagements, the National Guard has evolved from a strategic reserve to a battle-proven, operationally proficient force. However, as overseas contingency operations draw down, the United States must rebalance its national security needs in ways that are more cost-effective without compromising capabilities.

Issue: Expand Cyber Security Operations

The National Guard is perfectly suited to expand our nation's cyber security capabilities by leveraging the unique information technology talents within its ranks.

Issue Overview

Cyber security is an increasingly important mission area, impacting both public and private sectors. With modern society's increased reliance on computer technology, we are left exceptionally vulnerable to cyber espionage, intellectual property theft, advanced persistent threats and exploitation of vulnerabilities in our critical infrastructure. As citizen-soldiers, the National Guard can easily be utilized in the cyber domain with its unique access to a wealth of information technology talents within its ranks, including Guardsmen working as network defenders at top information technology, banking, medical and defense companies.

What's At Stake?

The evolving and persistent cyber-based threats to our nation complicate our national security, commerce, intellectual property and Americans as individuals. Over the past six years, the U.S. Computer Emerging Readiness Team details that the number of reported cyber incidents by federal agencies increased 728 percent. However, there is no overarching national cyber security strategy that synthesizes or comprehensively describes the current strategy on cyber

security. The cyber domain requires teamwork and partnerships across the public and private sectors. The National Guard is an important asset available to the Department of Defense, Department of Homeland Security and local communities, straddling the intergovernmental divide while also acting as a critical link between all parties.

Recommendation

AFGE urges the Congress to authorize and appropriate:

- Fully Integrated Suite of AFSOC Support Equipment and Software
- $630,000 (3840 Appropriations)
- $2.58 million (3080 Appropriations)

Background

The Air National Guard Distributed Common Ground System (DCGS), as a part of the Air Force DCGS, lacks the system capability to efficiently provide Processing, Exploitation, and Dissemination (PED) support to current and future Combatant Commander (COCOM)-tasked Full Motion Video (FMV) missions. The current system configuration is neither robust nor reliable enough to support COCOM requirements.

To support today's fast-paced tactical missions and avoid the software limitations inherent in the current architecture, ANG DCGS analysts are growing increasingly reliant on workarounds and supplemental systems. Use of multiple systems has led to task saturation, making it difficult to meet the stringent timelines implemented by COCOMs. Current architecture requires the use of five separate systems to accomplish current COCOM mission taskings. Moving from five systems to a single standardized hardware and software solution immediately reduces exploitation timelines by an average of 50% and will result in less reliance on workarounds, thus enhancing overall analytical support.

In addition, the AF DCGS enterprise has migrated to United States Special Operations Command (USSOCOM) standards as the baseline for mission execution. As such, it is paramount to implement a solution which provides the same functionality and support employed by Air Force Special Operations Command (AFSOC). This capability would reduce complexity and interface seamlessly with existing AN/GSQ-272 SENTINEL weapons system architecture, which will enhance support to both Conventional and Special Forces ground commanders. Production timelines significantly decrease while providing proven data archival, exploitation, sort, and retrieval capabilities. Additionally, integration into COCOM and AF voice/data networks is essential to providing threat warning while maintaining situational awareness for DCGS analysts. The solution exists and includes the required exploitation capabilities for current and future mission requirements.

ANG DCGS units will be unable to properly and effectively PED USSOCOM Tier 1 and Tier 2 missions. Failure of these missions could jeopardize the safety of U.S. Forces.

Units Impacted

- 102 IW Otis ANGB, MA
- 123 IS Little Rock AFB, AR
- 181 IW Terre Haute IAP, IN
- 117 IS Birmingham IAP, AL
- 152 IS Reno-Tahoe IAP, NV
- 184 IW McConnell AFB, KS

Recommendation

AFGE urges Congress to authorize and appropriate:

- $9 million for MQ-1 and MQ-9 Ground-Based Sense and Avoid (3600 Appropriation)

Background

The MQ-1/9's current configuration and equipment, along with international and Federal aviation safety requirements, limit their ability to operate in international and domestic airspace outside of Military Restricted Areas.

MQ-1/9 flight operations require specific, International Civil Aviation Organization (ICAO), Federal Aviation Administration (FAA), or foreign authority approval which restricts the aircraft to insufficient airspace, and specific or limited routing and/or altitudes. Such restrictions prevent optimal aircrew training and degrade operational flexibility during Federal and State missions. Before the ICAO and FAA will approve unrestricted flight operations for unmanned aircraft, there is a requirement to achieve an "Equivalent Level of Safety," analogous to manned aircraft (pilot on board). Federal Aviation Regulation (FAR) 91.113 requires all pilots to "see-and-avoid" other aircraft. The FAA will authorize an equivalent "sense-and-avoid" solution once one is developed and certified.

An MQ-1/9 operating with a Ground-Based Sense and Avoid (GBSAA) system meets the intent of collision avoidance contained in the ICAO Rules of the Air and FAA Federal Aviation Regulations (FAR). GBSAA systems incorporating active radar sensors, such as the Lightweight Surveillance and Target Acquisition Radar (LSTAR) high precision ground radar are Commercial Off-the-Shelf (COTS), low-cost solutions that provide the National Guard with a unique, scalable, and transportable system – critical for the State Title 32 Defense Support to Civil Authorities (DSCA) mission. Air National Guard (ANG) MQ-1/9 operations centers configured with a GBSAA system will improve and expedite the assimilation of the MQ-1/9 into operations in both international and domestic airspace.

If not funded, ANG MQ-1/MQ-9 units will continue to lack the ability to "Sense and Avoid," and continue to require specific airspace approval prior to conducting operations in International and Federal Airspace. Training throughput at the 174 ATW will increase significantly by enabling

aircraft to launch and recover out of Syracuse IAP vice Fort Drum; Defense Support to Civil Authorities (DSCA) response will be virtually non-existent for Remotely Piloted Aircraft (RPA) until a GBSAA system is available.

Units Impacted

- 118 AW Nashville IAP, TN
- 163 RW March ARB, CA
- 147 RW Ellington IAP, TX
- 119 WG Hector IAP, ND
- 174 ATW Syracuse IAP, NY
- 111 FW Willow Grove, PA
- 214 RS Davis-Monthan AFB, AZ
- 188 FW Ft Smith RAP, AR
- 132 FW Des Moines IAP, IA
- 217 AOG Battle Creek IAP, MI
- 107 AW Niagara Falls, NY

Recommendation

AFGE urges Congress to authorize and appropriate:

- $4.0M for Squadron Operations Center (SOC) Baseline (3010 Appropriations)

Background

The Remotely Piloted Aircraft Squadron Operations Center (RSOC) is the critical interface between the Ground Control Station (GCS) controlling the aircraft and the network architecture necessary to command and control the aircraft via Remote-Split Operations (a.k.a. “reachback operations”).

One main purpose of the RSOC is to fuse data and information for aircrew reference and disseminate resultant intelligence to various user agencies and authorities. All information, to include video feed, intelligence analysis and necessary networking must flow through the RSOC, where it is assimilated analyzed, and fused with other critical data prior to reaching the intended user. The infrastructure provided by the RSOC hosts up to five GCSs, consisting of operations and intelligence supervision, intelligence analysts, weather personnel, and other critical personnel, systems and subsystems. Currently, the Air Force and Air Combat Command have not programmed for adequate procurement funding to ensure that ANG RSOCs meet newly formed baseline requirements. Currently, ANG MQ-1 and MQ-9 units have an RSOC with similar, but individualized configurations. The ANG must modernize each RSOC to Air Force baseline standards to fully support the mission.

MQ-1/MQ-9 units will be unable to upgrade existing RSOCs to meet the baseline requirement, resulting in potential loss of combat capability and logistical/contracting support. New ANG MQ-1/MQ-9 units will not have adequate resourcing to purchase and install an RSOC necessary to meet initial and final operations capability requirements.

Units Impacted

- 119 WG Fargo, ND
- 163 RW March ARB, CA
- 178 FW Springfield, OH
- 147 RW Ellington Field, TX
- 174 FW Syracuse, NY 214
- 107 AW Niagara Falls, NY
- 111 FW Willow Grove, PA
- 132 FW Des Moines IAP, IA
- 217 AOG Battle Creek IAP, MI
- 188 FW Ft Smith RAP, AR
- 214 RS Davis-Montham AFB, AZ

Equal Employment Opportunity Commission

Fiftieth Anniversary of Civil Rights Act Finds EEOC Running on Empty after Sequester Cuts, Furloughs, Shutdown, Record Low Staffing

Summary

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

Fifty years after Title VII's passage, EEOC is hobbled by budget cuts, the government shutdown, and a chokehold on hiring. In FY13 sequestration slashed EEOC's budget from $370M to $344M. The agency absorbed the cut by furloughing the entire workforce for five days. A campaign spearheaded by AFGE Council 216 stopped a planned second phase of furloughs.

Sequestration has meant no relief to a three year hiring freeze, which has left EEOC with a record low 2,147 employees nationwide. This is down from 2,505 in FY11. EEOC cannot enforce laws without frontline staff on the job.

A lack of adequate staffing, exacerbated by losing a month to the shutdown and furloughs, has taken its toll on EEOC's ability to carry out its civil rights mission. In FY14, EEOC resolved 14,000 fewer cases than just the year before. The EEOC's backlog that had been modestly tamped down for the last two years is again on the rise with a year-end total of 70,781 cases.

The public must wait almost nine months for EEOC to process a case. Just to have a call answered by the in-house call center takes close to an hour. These extended delays represent lost opportunities for Americans who want to work. Cutting EEOC is counter intuitive when job creation remains the nation's priority, because the agency's mission is all about jobs.

AFGE Council 216 will lobby for Congress to end sequestration type cuts. For FY15, AFGE Council 216 will urge Congress to fund EEOC at $373M, i.e., the administration's request for FY14. AFGE Council 216 will continue to battle against any more furloughs. AFGE Council 216 will also press EEOC to implement real efficiencies e.g., the Union's dedicated intake plan, reducing supervisor to employee ratio to 1:10, cutting management travel, and eliminating contracts for work that can be performed in-house.

Discussion

1. Sequestration and the Shutdown Have Already Harmed Enforcement of Laws Barring Workplace Discrimination

- *AFGE Council 216 will lobby Congress to end across the board cuts that cause particular harm to EEOC, because the small civil rights agency suffered an imbalance of low staffing to high workload even before sequestration.*

Title VII's historic passage fifty years ago created EEOC, which is now the chief agency responsible for enforcing numerous laws preventing employment discrimination. Discrimination, such as harassment, failure to accommodate a disability, or retaliation, prevents private and Federal sector employees from working or initially getting a job.

Since its inception, EEOC has always been small and underfunded, but the situation worsened in FY13. Sequestration slashed EEOC's FY13 budget from $370M to $344M. To absorb this drastic cut, EEOC furloughed all of its employees five days. AFGE Council 216 maintains that EEOC could have better managed the sequester cut, e.g., cutting contracts, management travel, etc. To that end, AFGE Council 216 spearheaded a successful campaign to put an end to a plan to furlough staff an additional three days.

Nevertheless, the fact remains that not only were EEOC's workers harmed by the furloughs, but American workers suffered from the loss of assistance during those furlough days. The EEOC reported "a significant decrease in resolutions." Specifically, EEOC resolved 14,000 fewer cases in FY13 than in FY12. EEOC's Performance and Accountability report explained the drop was "likely due to the decline in staffing and resources the agency faced in FY2013, including the impact from furloughs."

On the heels of FY13 furloughs came the sixteen day government shutdown. According to the Office of Management and Budget, the EEOC lost 23,000 worker days to the shutdown. During that time, EEOC received nearly 3,150 charges of employment discrimination that it was unable to investigate, creating a backlog that will take about one month to work through. Now EEOC is left to play catch up for the lost time, with fewer staff on board.

2. Backfilling Frontline Staffing Must be the Priority, as Record Low Staffing and High Workload Have Had Disastrous Public Impact

- *AFGE Council 216 will lobby Congress to fund EEOC at $373M to allow backfills*

Fifty years ago, Martin Luther King, Jr. and others marched and fought for the passage of Title VII, intending it to be more than just a law on the books. There must be EEOC frontline staff to enforce Title VII and the other laws that prevent employment discrimination. EEOC must be swift and effective in order to deter discrimination. Unfortunately, thus far in FY14, EEOC is suffering under a third year of consecutive cuts that are harming the ability to carry out its critical civil rights mission.

EEOC experienced an unprecedented cut in FY12, reducing the agency's budget from $367M to $360M. Then in FY13, the sequester slashed EEOC's budget from a base funding level of $370M

to an actual budget of $344M. For the first quarter of FY14, EEOC has continued to operate at last fiscal year's painful sequester level.

The timing of these cuts has unfortunately coincided with five years of historically high discrimination charge filings. According to EEOC's FY13 Performance and Accountability Report, FY13's 93,727 charges was one of the top five years of receipts. The three most recent fiscal years broke agency records with charge filings of close to 100,000. Backlogs from these years are left for the current dwindling staff to try to resolve.

The worst impact of the three consecutive years of budget cuts has been the steady loss of frontline employees in virtually every EEOC field office at a time when workload is up. A hiring freeze first implemented in FY11, has caused EEOC's workforce to plummet. Since it first began reporting staffing levels in 1980, the civil rights agency has never had fewer staff to process the work. EEOC ended FY13 with only 2,147 employees nationwide down 14% from 2,505 just two years earlier in FY11. Typically, EEOC sees a wave of about 85 separations in January. Therefore, AFGE Council 216 estimates that FY14 overall staffing may be as low as 2,062.

Specifically, EEOC's frontline staff is the single most critical resource utilized to enforce civil rights laws that protect workers. EEOC's Office of Inspector General (OIG) cites as a "major challenge" that the "investigative staff, the primary staff responsible for handling private sector charges of discrimination, decreased from 726 to 656, a decline of (9.6%)." This is even lower than the 664 anticipated by EEOC's FY14 budget justification. In comparison, EEOC had a high of 917 investigators in FY00. EEOC is down to this skeleton crew of investigators at a time when the agency continues to increase the number of labor intensive systemic charges and other priority issues it investigates.

EEOC's OIG recognizes that, "[i]t is axiomatic that any substantial and sustainable effort to significantly reduce the charge inventory requires adequate numbers of staff (investigators in particular)." Likewise, EEOC credited modest hiring in FY10 as the basis of modest reductions in the backlog in FY11 and FY12. However, as of FY13, the agency confirmed the backlog is again on the rise. At the end of FY13, the EEOC private sector backlog stood at an unacceptable 70,781 cases. Sharp increases in the backlog are expected as frontline staffing diminishes. Average case processing delays of 9 months are also likely to worsen.

Other frontline activities have been impacted by the relentless attrition. EEOC's in-house call center has shrunk from 65 intake information representatives (IIR) to the current 28. Due to the IIR shortage, phones are not answered promptly and the public either waits almost an hour to speak to a live person for help or hangs up.

EEOC also fell further behind on its obligation to respond to Freedom of Information Act requests (FOIA). EEOC receives over 18,000 FOIA requests annually. According to the FY13 Chief FOIA office report, "[t]he lack of reduction in the request backlog was caused both by the increased number of requests, and by the inability to backfill vacant FOIA positions."

EEOC's FY14 budget requested funding "to hire 110 front-line FTE primarily investigators, mediators, office automation assistants (OAA), attorneys, and support staff to reduce agency private sector charge inventory." This would have resulted in only about 2 employees backfilled per office. However, given the sequester cuts in place through the first quarter and the continuing hiring freeze, these backfills have not occurred.

The last time EEOC's staffing level was close to the current record low was in FY08, when a previous devastating hiring freeze (FY01-08) resulted in the loss of almost 30% of its workforce. Most of the losses then, like now, were to front-line staff. The backlog exploded from 29,041 charges in FY02 to 81,081 in FY08.

Finally, in 2008, EEOC's ability to serve the public was in such abysmal shape that President Bush requested an increase for EEOC's FY09 budget to allow the agency to replenish frontline staff. Congress approved that budget request. EEOC's ability to finally backfill some frontline staff positions in FY09 correlated with lower case loads and a leveling of the backlog. Unfortunately, history and FY13 year end results demonstrate that the EEOC back slide has begun. The FY14 Omnibus funding level of $364M would allow the EEOC to correct its course, if EEOC prioritizes the backfilling of frontline staff after implementing the 1% salary increase and paying outstanding overtime claims, discussed below.

The result of these frontline staffing losses across the agency is that the public is not being served.

3. EEOC Must Avoid or Reduce Staff Furloughs, like the 5 days of Furloughs in FY13, by Implementing Real Efficiencies and Eliminating Unnecessary Contracts and Management Travel

- *AFGE Council 216 will lobby Congress to make EEOC implement efficiencies to prioritize frontline staff and eliminate unnecessary contracts and travel.*

EEOC's response to sequestration in FY13 was to pass the cuts along to frontline staff in the form of five days of furloughs. While EEOC threatened three more days of phase two furloughs, AFGE Council 216 prevented this harmful plan by waging a public awareness campaign and enlisting Congress to urge EEOC to find less damaging ways to manage. For FY14 and FY15, EEOC must make up for lost working days in 2013 and avoid more furloughs by saving money on unnecessary expenses and working smarter.

A. **EEOC Should Eliminate Expendable Contracts and Unnecessary Management Travel**

The EEOC should eliminate contracts it simply cannot afford and reign in contracts that can be performed in-house.

- EEOC habitually pays contractors to evaluate its work practices. The reviews can and should be performed by the Office of Inspector General (OIG). Instead, the OIG farms out these projects.

    - EEOC's OIG contracted a "Review of Evaluations," dated April 9, 2013. The review contains generalized recommendations, such as "EEOC should further standardize intake procedures across field offices." EEOC could have implemented AFGE Council 216's cost effective dedicated intake unit which takes tangible action to standardize intake. Instead it wasted money on this airy review, which was dismissed by the agency's Office of Research, Information and Planning: "[T]he report is not really research per se but a review of relevant literature that is generally used to develop research and generally not used to make recommendations."

    - According to the FY14 Budget Justification: "In the area of performance management, EEOC has engaged an independent contractor to provide expert guidance and assistance to the agency in developing an improved performance management program. The long-term goal is to create a performance culture that helps EEOC become a high performing agency. The near-term goals of identifying competencies, measuring degrees of proficiencies, and closing competency gaps that are considered significant components of the program are more than half way completed." It begs the question that EEOC cannot even identify its own competencies for longstanding positions.

    - In the past year, EEOC also contracted two other evaluations: "Evaluation of EEOC's Performance Measures, The Urban Institute, March 2013" and "Collecting Compensation Data from Employers; Panel on Measuring and Collecting Pay Information from U.S. Employers by Gender, Race, and National Origin, National Research Council of the National Academies, August 2012." The latter appears to duplicate the type of data the Department of Labor collects.

    - Previously, EEOC contracted a 2010 Evaluation of Priority Charge Handling Procedures. The bottom-line of the report, which surely cost six figures, was that different EEOC offices apply the procedures inconsistently. This determination could have been deduced very easily by any in-house team.

    - EEOC currently is contracting a study with Administrative Conference of the United States (ACUS), reviewing the organizational placement of its federal sector hearings judges. A report is due out later this year.

Again, the OIG could have conducted this evaluation without spending funds for a contract.

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

- EEOC pays contract OIT staff and labor economists to perform functions that can be performed in-house.

- EEOC regularly rents hotel space to conduct "TAPS" and "EXCEL" training conferences. Instead, EEOC should use its own offices' conference space. This might mean holding smaller trainings or conferences, but offering them more often. The additional dates would benefit the public by offering more choices to fit more schedules.

- EEOC pays for managers to travel to meetings and for office visits. This type of travel, which even occurred during the period EEOC employees were required to take furlough days, wastes money, given that EEOC has equipped offices with video teleconference (VTC) capabilities, new television monitors, and updated IT capabilities.

- Other examples persist of wasteful travel spending on trainings and meetings that could have been conducted in person. A diversity council training flew in 16 employees at a cost of $12,000 from around the country, during the period employees were required to take furloughs. Also, during furloughs, an HR official was flown around the country for audits that could have taken place by VTC and given that personnel files are now electronic. A recent event brought a cadre of managers to a field office to conduct a discussion on legal and enforcement interaction, when VTC could have been used.

- In FY13, EEOC advertised on www.fbo.gov for a tracking service for legislation affecting EEOC to be used by its Office of Communications and Legislative Affairs (OCLA). The in-house OCLA staff could locate this information for free on Thomas.gov.

B. EEOC Should Increase Efficiencies, Including: the National Intake Plan, Reducing Supervisor to Employee Ratio, and Expanding Telework to Decrease Rental Costs.

EEOC's planned efficiencies, as set out in its Performance and Accountability Report, are all smoke and mirrors. The EEOC's plans involve online pre-charge filing, an online appointment system, and on-line tracking of charge status. While technology and transparency are good, these efficiencies do not help get the work done. Rather, they create a bigger pile-up of work for fewer EEOC employees to do, and provide the public a means to track the bottleneck. Instead EEOC should focus on pushing resources to frontline staff, who directly serve the public.

- **Transition to the National Intake Plan Cannot Wait**

AFGE Council 216's Full Service Intake Plan addresses the efficient use of resources and the backlog, both of which benefit the public. AFGE Council 216 first submitted the plan four years ago. Congress recognizes the need for EEOC to implement efficiencies. Nevertheless, EEOC refuses to consider the plan and did not even mention it in the agency's recent Strategic Plan. It is now even more imperative to transition to AFGE Council 216's National Intake Plan to fix the in-house call center and improve intake. In 2006 EEOC was forced to shut down its failed contract call center, but stubbornly tried to replicate it in-house. The in-house version was based on 64 Information Intake Representatives. But for the FY14 budget request, EEOC reported it was down to 49 IIRs, who had handled 20,000 monthly calls, down from 25,000 in FY12. Since the FY14 budget was penned, only 28 IIRs remain. The IIRs left report that callers are angry and frustrated after waiting an average of 45 minutes. The call center model was never effective or efficient and at this staffing level also is unsustainable.

Moreover, the Strategic Plan emphasizes consistent implementation of the customer service goals and priority charge handling process [PCHP]. The National Intake Plan would achieve this desired consistency. AFGE Council 216's Intake Plan also better utilizes resources by relieving Investigative staff of intake responsibilities, to focus on processing cases already in the system and reducing EEOC's unacceptable 70,781 case backlog.

Initially, the plan could be piloted to create efficiencies without expense by training and integrating in-house call center staff into dedicated intake units that both answer phones and draft charges where appropriate. These pilots should occur in the offices which have IIRS. Moving forward, EEOC should focus any ability to backfill on staffing the dedicated intake plan, rather than throwing good money after bad by sticking with the failed contract call center model.

- **EEOC Must Prioritize Frontline Staffing Vacancies**

As the EEOC struggles to catch up from consecutive annual budget cuts and lost work days in 2013, it is critical that EEOC implement real efficiencies that push resources to frontline staff, who serve the public. First, any hiring should be used to backfill frontline vacancies, rather than hiring or re-employing annuitants in more costly management positions. EEOC should not deplete front line staff using promotions to supervisory and managerial vacancies, because these vacancies are not backfilled. A better plan to retain talent and frontline capacity would be to fill more GS-13 Systemic Investigator positions, in light of EEOC's renewed emphasis on systemic cases.

Second, a budget neutral way for EEOC to increase frontline staff is to reduce supervisor to employee ratios. The EEOC is notoriously top heavy, a point stressed by Republican leadership who pushed for a field restructuring plan, which promised to improve the staffing ratio to one supervisor for ten employees. Although EEOC implemented a controversial restructuring on January 1, 2006 without required approval from its Senate Appropriations Committee, to date,

it has failed to improve the staffing ratio of frontline employees. EEOC should identify management redundancies and redeploy supervisors to the frontline.

Third, EEOC should belatedly heed the Administration's call for efficiency and cost savings by using expanded telework to reduce rental costs. Instead, EEOC continues leasing the same or even greater space, not accounting for the reduction of needed space if employees voluntarily teleworked most days. EEOC's new CBA allows for an added day of telework. However, many employees decline to telework, because of unfounded managerial impediments.

Fourth, EEOC should limit turnover by taking actions and using flexibilities to improve employee morale. EEOC's already low scores in the 2013 Federal Employee Viewpoint and Best Places to Work surveys, slid downward in virtually every category. As implementation of a new CBA begins, EEOC should embrace the new maxi-flex pilot and promote the use of an added telework day. EEOC also must pay its debt to employees for willfully violating overtime laws since 2006, per the current claims process stemming from a Federal arbitrator's March 23, 2009 ruling.

Only by focusing its limited resources on the frontline, including appropriate support staff, will EEOC at least prevent the 70,781 charge backlog from growing larger and the 9 month processing time from getting even longer.

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

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

AFGE Council 216 will continue to object to and scrutinize any proposed case management system to ensure that judicial independence is retained, that discovery and hearings for Federal employees remain an essential part of the process and that the plan creates efficiencies which allow judges to continue to issue quality decisions. EEOC's final Strategic Plan calls for "[r]igorous implementation of a new case management system for federal sector hearings and appeals that will enable the agency to bring consistency and greater efficiencies to the processing of federal sector complaints." EEOC formed a workgroup in that created a draft case management system and in FY14 began pilots in at least three offices. While EEOC hopes to triage all federal sector inventory by FY16, categorizing cases without staff or other efficiencies simply leaves a pool of cases yet to be decided.

The draft case management system threatens judicial independence to the detriment of Federal employees, who may lose their rights to discovery or a hearing, in favor of numbers. Managers seeking to improve closure rates should not be allowed to categorize cases after a cursory review. This scheme results in summary judgment dismissals of complainants' requests for a hearing prior to allowing the parties an opportunity for adequate discovery. AJ's must retain independence and control over hearings and discovery. Moreover, EEOC should not

attempt to adapt the Priority Charge Handling Procedures utilized in the private sector to the Federal sector, which differs because it is adjudicatory.

It is critical that the AJ is involved throughout, including the initial conference where the AJ can tailor discovery. AFGE Council 216 will demand that the EEOC release the draft case management system for stakeholder comments, hold a public hearing prior to finalizing the system, and submit the final version to Congressional oversight.

AFGE Council 216 also will continue to address the loss of EEOC Administrative Judges (AJs), who leave to become Administrative Law Judges. AFGE Council 216 will support changes that can be accomplished under the regulations and statutes. AFGE Council 216 will continue to urge the Chair to ensure EEOC AJs are competitive with other agencies by addressing classification and regulatory issues that deny these employees the judicial independence and subpoena authority necessary to adjudicate and provide appropriate relief for federal sector claimants.

The EEOC admits in its Strategic Plan that: "As in the private sector, budgetary constraints have led to fewer available Administrative Judges and Office of Federal Operations Appellate Attorneys at a time when requests for hearings and appeals are increasing." Yet, EEOC makes no mention of hiring additional AJs or support staff for them in its FY14 budget submission. AFGE Council 216 will maintain pressure to backfill AJ positions and provide AJs appropriate support.

AFGE Council 216 will vigilantly monitor EEOC's implementation of its revised regulation that allows Federal agency complaint processing pilots. While the EEOC adopted AFGE Council's 216's recommendation that Federal employees must voluntarily opt-in, these pilots still must provide for complete, timely, and impartial investigations.

5. EEOC's New Strategic Plan Raises Concerns

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

EEOC's Strategic Plan, approved on December 18, 2012, leaves much open to further development and implementation. The most important element, which remains to be finalized, is a measuring stick for the agency's success. Until now, the EEOC has focused on touting its annual closures. In fact, EEOC's FY13 Performance and Accountability Report continues to focus on closures, while conceding that due to lack of resources 14,000 fewer cases were resolved. However, closure rates, whether or up or down, do not necessarily represent justice served. AFGE Council 216 welcomes the acknowledgment in the Strategic Plan that, "One of the EEOC's greatest challenges has been to create a system that rewards effective investigations and conciliations and does not incentivize the closure of charges simply to achieve closures." Instead, the Strategic Plan seeks to develop "Quality Control Plans" for the private and public sectors. AFGE Council 216 will fight to ensure that the quality control plan's emerging focus on charge processing time is not used to create a backdoor quota system.

EEOC's complex work of enforcing discrimination does not lend itself to a widget scorecard. EEOC's drive for numbers has never served either its employees or the public well.

The Strategic Plan continues EEOC's renewed emphasis on systemic cases. AFGE Council 216 will urge that both individuals as well as large groups of affected employees deserve protection from discrimination.

The Union's Accomplishments

In 2013, AFGE Council 216 aggressively raised awareness with Congress, the civil rights community and the press about sequestration cuts and furloughs at EEOC that harmed service to the public. As a result of AFGE Council 216's efforts this year:

1. Due to the successful campaign spearheaded by AFGE Council 216, EEOC did not implement a second phase of furloughs, slated for three days, on top of the five furlough days employees were forced to take in FY13's third quarter. AFGE Council 216 also negotiated an MOU that maximized employee flexibility in scheduling the required five days of phase I furloughs.

2. AFGE Council 216 played a major role in organizing to end the harmful sixteen day government shutdown. AFGE Council 216 leadership and members coordinated and attended rallies across the country, were featured in national and local media outlets, and published letters to the editor.

3. In a tough budget year, the administration actually requested a modest FY14 budget increase for EEOC. The requested $373M would have restored the $7M FY12 budget cut and included a small inflationary increase. Senate appropriators adopted the President's Request.

4. The continuing resolution that funded the government for the remainder of FY13, increased EEOC's base funding level from $360M to $370M. However, sequestration slashed EEOC's FY13 budget to $344M. For FY14, the omnibus funding level of $364M comes close to restoring EEOC's funding to FY10/11 level for the remainder of the fiscal year.

5. AFGE Council 216 provided written and oral testimony at the House CJS Subcommittee open witness hearing.

6. Senate appropriators for FY13 encouraged EEOC to hire investigators, attorneys, and other frontline staff needed to meet its obligations.

7. Both House and Senate Appropriators included report language requiring EEOC to prioritize the backlog.

8. AFGE 216 Council has continued to represent affected employees and retirees in the ongoing overtime case claims process, occurring pursuant to a March 23, 2009 Federal

arbitrator's ruling that EEOC had a committed a nationwide practice of willfully violating overtime laws. EEOC may owe its employees over $10M in unpaid overtime and liquidated damages.

9. AFGE Council 216's bargaining unit ratified a new CBA, negotiated by the Council. The CBA includes a maxi-flex pilot, expands telework days, and requires space for nursing mothers to pump milk, and added discrimination protection for genetics and gender identity.

10. AFGE Council 216 successfully lobbied so that EEOC's Final Rule revising its FOIA regulations did not include a new "simple track" processing period of 10 day, which would have been below the statutory deadline of 20 days. The Union successfully argued that too many requests would place an undue burden on diminished FOIA staff, result in more missed deadlines, and disappoint the public.

11. AFGE Council 216 has kept up the pressure on EEOC's administration to act on the Union's National Intake Plan.

12. Activity on AFGE Council 216's public and members-only Facebook pages has seen steady growth, especially during the government shutdown.

AFGE Activists should urge their lawmakers:

- To request FY15 funding for EEOC in the amount of $373M, i.e., the administration's request for FY 14.
- To avoid further sequestration cuts, which would exacerbate EEOC's already diminished ability to enforce workplace discrimination laws.
- To make EEOC avoid or reduce furloughing frontline staff by eliminating unnecessary contracts and implementing efficiencies.
- To direct EEOC to focus available hiring, up to the staff ceiling, on frontline staff to help workers, whose cases are trapped in EEOC's backlog and are waiting almost 9 months to receive help.
- To require EEOC to quickly implement Council 216's Cost-Efficient Intake Plan to provide timely and substantive assistance to the public.
- To make EEOC finally compensate its employees for willful overtime law violations, per the current claims process following a federal arbitrator's final decision dated March 23, 2009.
- To direct EEOC to keep its broken promise to increase efficiencies and flatten the agency by improving the staffing ratio to 1 supervisor to 10 employees. This will provide cost neutral front-line staff.
- To demand that EEOC comply with applicable agency, regulatory, and Congressional oversight requirements before implementing a draft case management system that could threaten a Federal employee's right to discovery and a hearing or limit Judicial independence.

- To demand that EEOC provide a plan, supported by Federal constituency groups to ensure judicial independence and subpoena authority in the federal hearings process.
- To fight to ensure that the quality control component of EEOC's Strategic Plan is implemented to best serve the public.
- To stop one-size-fits-all cuts to the Federal budget that are harming service to public, e.g., workers and employers EEOC serves. The focus should be on job creation - not attacking Federal employees.

Protecting Department of Energy's National Energy Technology Laboratory from Privatization and Consolidation

Summary

AFGE strongly opposes draft language (the so-called "EINSTEIN Act") under consideration by the House Science, Space and Technology Committee's Subcommittee on Energy that calls for a study that would encourage the privatization of the Department of Energy's (DoE) National Energy Technology Laboratory (NETL). AFGE also strongly opposes language in the recently passed FY14 Omnibus Appropriations Act that could lead to privatization or consolidation of NETL.

AFGE urges the Congress to abandon the pro-privatization effort that would be advanced by the draft "EINSTEIN Act". AFGE also asks that the Omnibus 2014 language be modified to exempt NETL from privatization and consolidation efforts. Finally, AFGE also asks that any Congressional efforts to change NETL's status be considered by two other committees of authorization—Energy and Commerce in the House and Energy and Natural Resources in the Senate.

Background

AFGE is proud to represent over 600 federal employees at NETL's three primary sites of Morgantown, West Virginia (Local 1995); Pittsburgh, Pennsylvania (Local 1916); and Albany, Oregon (Local 1104). NETL is the premier national laboratory for fossil energy and the only DoE laboratory that is Government-Owned and Government-Operated (GO-GO). NETL's work is critical to our nation as we strive to solve the energy and environmental issues related to the recovery and use of fossil fuels, and NETL's GO-GO status allows for truly unbiased and independent assessment, direction and performance in the development of advanced technologies.

The draft legislation being considered by the House Energy Subcommittee is clearly biased. Specifically, Section 111 of the EINSTEIN Act targets NETL:

> *Sec. 111. National Energy Technology Laboratory.*
>
> *Section 111 directs the National Academy of Public Administration to conduct a study assessing the management and operations of the National Energy Technology Laboratory. The assessment shall evaluate the current status of laboratory management; assess the cost-benefit associated with operating the laboratory as a government-owned, government-operated model compared to a government-owned, contractor-operated model; and* ***identify challenges of transitioning the laboratory to a government-owned, contractor-operated model.*** *(Emphasis added.)*

How can the dedicated NETL civil service workforce expect the study to be impartial given the subtle Congressional encouragement to the National Academy of Public Administration to endorse switching NETL to a Government-Owned and Contractor-Operated (GO-CO) facility? Why not study how to transition from a contractor-operated model to a government-operated model?

The Omnibus 2014 Act is also extremely troubling as it contains language establishing a Commission of Study that then reports to the Appropriations Committees, rather than the committees of authorization, in terms arguably favoring privatization and consolidation:

> *The Commission shall also determine whether there are opportunities to more effectively and efficiently use the capabilities of the national laboratories, including consolidation and realignment, reducing overhead costs, reevaluating governance models using industrial and academic bench marks for comparison, and assessing the impact of DoE's oversight and management approach. In its evaluation, the Commission should also consider the cost and effectiveness of using other research, development, and technology centers and universities as an alternative to meeting DoE's energy and national security goals.*

No doubt the authors of these draft and enacted provisions have sold them as merely efficiency and improvement studies. However, it is clear from past experience that anti-government legislators and business interests would, regardless of the merits, love to privatize NETL and eliminate good federal jobs. AFGE strongly opposes these efforts, as privatization and consolidation do not create real savings, and instead they merely disrupt critical services.

NETL is at the forefront of research and development to recover and utilize fossil fuels along with renewable energy sources in an environmentally responsible fashion—targeting not only power generation, but optimal energy use for material generation. Among NETL's unique range of specialties are:

- Development of energy-efficient and cost-effective strategies to manage and utilize CO2 emissions from fossil fuel energy production;

- Expertise in science and engineering of technologies used for environmentally responsible production and utilization of carbon-based fuels for both chemical and energy production, including strategies for mitigating net carbon emissions;

- In-depth knowledge of the chemistry and physics of solid, liquid, and gaseous carbon-fuel sources and their efficient transformations to fuels, chemicals, and energy; and

- Expertise in computational science encompassing molecular, device, and plant-scale models and integration of models at multiple scales for fossil energy applications in the present and future power-grid.

These capabilities address such national energy challenges as carbon capture, utilization, and storage; advanced coal processing; enhanced natural gas exploration and production and application; next-generation emissions controls; production of materials for extreme environments; advanced, clean, high-efficiency gasification and combustion-based energy conversion systems; advanced grid-scale power production and use interactions.

As a federally staffed laboratory, NETL's workforce consists of government employees who serve first in the national interest, with no competing or conflicting private sector biases. In addition to over 600 experienced federal employees, the laboratory also employs a number of contractor employees in supporting roles. Because it is an unbiased institution without profit motives, NETL works collaboratively with the energy industries, environmentalists, and several of the nation's finest universities. Since NETL is not viewed as a competitor by the private sector, energy-related businesses are willing to work with the laboratory by sharing information and partnering in solving critical energy challenges.

For example, NETL conducts comparative analyses or testing of technologies (e.g., horizontal drilling and hydraulic fracturing, fuel cell operation, carbon capture methods, sequestration monitoring, or high-pressure combustion). NETL also installs and tests prototypes to validate performance estimates, including the Solid State Energy Conversion Alliance's extreme environment hydrogen separation membranes. Intramural capabilities can also be used to provide data to validate external technology results such as carbon sequestration field testing, during which NETL scientists take carbon dioxide leak measurements from the field and leak estimates using mathematical models.

NETL leverages its research with expertise across and outside DoE. These efforts can be organized rapidly and can bring together the best expertise that America has to offer. For example, a recent workshop between Fossil Energy (FE) and Basic Energy Sciences (BES) highlighted the opportunity to link research programs in carbon capture. In this collaborative effort, NETL researchers are bridging the gap between BES' fundamental and FE's applied programs. This collaboration will provide direct input to FE's plans to accelerate development of new carbon capture concepts.

As a GO-GO, NETL provides immediate response to major energy-related events. NETL's federal staff of world-renowned experts in fossil energy technology and science serves as an emergency response team for the federal government on major energy-related events. For example, NETL's researchers and scientists recently received the Secretary of Energy's Achievement Award for their work on the Deepwater Horizon oil spill in the Gulf of Mexico. NETL's federal staff worked tirelessly to lead a team to estimate the rate of oil flowing into the Gulf and develop options for capping the well. Three of the NETL federal staff members involved in this effort received awards for Exemplary Service to the Nation from the U.S. Geological Survey. NETL could respond quickly because of its significant in-house federal workforce and unique expertise.

The bottom line is that no other DoE National Laboratory has the experience and capabilities in fossil energy research and development that NETL possesses.

However, NETL also excels in getting technology to the marketplace. Because of the unique, unbiased perspective inherent in a GO-GO entity, NETL has been extremely successful in developing and transferring important technologies to industry—consistently earning prestigious research and development 100 Awards. NETL, despite its modest size, has received 41 such awards since 2000. NETL has also won 22 Federal Laboratory Consortium (FLC) awards for Excellence in Technology Transfer since 2007. Demonstrating the emphasis that NETL places on the movement of technology to industry, NETL has since 2000 entered into over 300 technology transfer agreements with the private sector.

DoE is already one of the most heavily privatized departments, with recent staffing numbers showing fewer than 15,000 federal employees compared to well over 100,000 contractor employees. Although GO-GO's are the exception rather than the rule in DoE, there are highly-regarded GO-GO laboratories throughout the rest of the federal government, from the National Institutes of Health to the Center for Disease Control to the Food and Drug Administration to the Department of Defense. There is absolutely nothing intrinsically superior in a GO-CO arrangement.

Clearly, proponents of converting NETL into a GO-CO can't argue that the laboratory is failing to fulfill its mission. The legislative provisions in question are terrible solutions for problems that do not exist. Indeed, the scheme to promote NETL's privatization should be put into a broader political context. As every federal employee knows, too many in Congress scapegoat federal employees and insist on exalting the private sector at the expense of the federal sector. They vote to freeze federal employee pay, cut our benefits, arbitrarily slash our workforce, privatize our work, and prevent union representatives from doing their jobs. And that's what these pieces of legislation are: more attacks on gifted and dedicated federal employees, this time an attempt to privatize and eliminate good, unionized, federal sector jobs at NETL.

CONCLUSION

AFGE urges lawmakers to oppose any efforts to consolidate, privatize or eliminate NETL. Congress should reject the “EINSTEIN Act’s” privatization study. Language should be added to the 2014 Omnibus’ commission study to exempt NETL from privatization and consolidation efforts. No further action affecting NETL should be taken by the Congress that is not also considered by two of NETL’s other authorizing committees—the Senate Energy and Natural Resources Committee and the House Energy and Commerce Committee.

Office of Personnel Management

Retirement Backlog Issues

Introduction

The Retirement Services Division has been faced with a backlog of retirement cases since 2008, needing to be processed. Although efforts have been made in hiring re-employed annuitants and new employees in 2011 and 2012, along with employees working overtime, OPM has been able to meet the monthly goals set by Congress. As a result of the Congressional Mandates that have been placed on OPM to deal with the processing of these backlog cases, we still have reduced only a small percentage. The biggest battle we face is receiving fully developed retirement cases from all agencies. Currently, eighty percent of retirement cases received are underdeveloped which causes a problem in the final adjudication of a full monthly annuity payment.

Agencies have been sending more incomplete annuity cases (i.e. missing five years of proof of health benefits, missing continuation of life insurance forms, and verification of military deposit, military retired pay, missing service paycards (2806's/3100's), court ordered divorce decree and/or quality domestic relations order. When these documents are not provided in the case file, it causes downtime for adjudicating a final full monthly annuity payment. OPM employees are being blamed for not processing cases timely when in reality the retiree's agency should be held responsible for not providing the required case documents.

If OPM is already dealing with interpersonal changes and agencies are being forced to make cuts and reductions, this will have a great impact with more people retiring. It means more agencies will be sending more retirement claims to OPM and we do not have the appropriate staff and/or knowledge to handle such a surge. There must be some type of accountability or oversight authority given to ensure that all agencies are providing OPM with fully developed cases to adjudicate in a timely manner.

Recommendations

Congressional oversight should be provided in making agencies accountable for providing the necessary documents that are required when submitting a retirement case.

Congressional authority should be provided to OPM to charge fees to agencies for services rendered by OPM employees when the retiree’s agency is negligent in providing all documents needed to process a retirement case.

Appropriation funding is needed to allow OPM to hire more employees and to rehire retired employees to assist with processing the surge of retirement cases that will come in during 2013 and 2014.