



CONGRESSIONAL TESTIMONY

STATEMENT BY

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BEFORE

**HOUSE COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEE ON OVERSIGHT AND MANAGEMENT EFFICIENCY**

ON

**“EMPLOYEE MISCONDUCT: HOW CAN FEMA IMPROVE THE INTEGRITY OF ITS
WORKFORCE”**

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Mr. Chairman, Ranking Member Correa, and members of the Subcommittee: My name is Jacqueline Simon and I am the Policy Director of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the almost 700,000 federal and District of Columbia employees AFGE is proud to represent, I thank you for the opportunity to testify today on the Government Accountability Office (GAO) report which is at the center of this hearing.

GAO's report takes pains to explain the numerous, distinct types of employment tenure that exist among the workforce at the Federal Emergency Management Agency (FEMA). Most title 5 employees constitute the permanent and temporary workforce and are usually hired only after a rigorous and competitive merit-based examination process (one that includes application of veterans preference). FEMA employees who are covered by Title 5 are afforded full civil service protections and where the workers have voted to form a union, are covered by a collective bargaining agreement as well. Stafford Act employees, on the other hand, are hired for temporary or term appointments. They do not undergo rigorous vetting through competitive examination, are employed "at will," and may be terminated at any time for any reason or no reason and have no rights of appeal, and no due process protections. FEMA also employs Surge Capacity Force volunteers who are otherwise employed by the Department of Homeland Security; they are deployed in the case of catastrophic disaster. Thus far, the only time this volunteer force has been used was during the response to Hurricane Sandy in 2012. Finally, there is the FEMA Corps national service program, whose members are fewer than 500 and are part of the AmeriCorps program.

These distinctions matter. Under Title 5, employees are subject to well-defined disciplinary procedures, penalties, and have the right to appeal adverse actions either through grievance and arbitration procedures in their collective bargaining agreements (where applicable) or through access to the Merit Systems Protection Board (MSPB). FEMA Corps members have a disciplinary process that is determined by the AmeriCorps program. Surge Capacity Force volunteers have no documented misconduct policies and are presumed to be referred back to their "home component" for action.

Stafford Act employees – Reservists and CORE employees – make up a second-class workforce at FEMA. They are described by GAO as having poorly defined or non-existent disciplinary processes and no rights of appeal for adverse actions. It is the lack of policy or procedures to address misconduct and appeal rights for this segment of FEMA's workforce that makes up the heart of this report.

Let's start with the numbers. The average annual number of employee misconduct complaints for 2016 amounted to less than two percent of the all employees. Not to belittle any instance of alleged misconduct, but two percent hardly constitutes an epidemic of bad behavior within the agency. Next, of the complaints filed within a three-year period (January 2014 to December 2016), the agency's actions were decisive: 65% of the accused were terminated, 21% received reprimands, and 12% received suspensions of less than two weeks' duration. This appears to me to be a system at work. Allegations were investigated and the agency responded.

The result of the GAO's efforts to research and report on the policies in place to handle allegations of misconduct among FEMA workers is the realization that no consistent process exists at all for anyone other than Title 5 employees. And there is a need for better record keeping.

The report recommends instituting clearly documented policies and procedures to address misconduct among Surge Capacity Force volunteers and Reservists. This is certainly not controversial.

If there is a problem with investigating misconduct at FEMA, AFGE believes that the reason is the overabundance of "at will" employees. These workers have not been hired competitively. Their backgrounds, skills and qualifications have not been rigorously tested. And it seems as though they receive neither adequate training nor adequate supervision. Most important from the standpoint of the concerns about integrity addressed in the GAO report, because they lack the protection of a union contract and the right to appeal adverse actions such suspensions and terminations, their "whistleblower" protections are entirely pro forma and thus ineffective.

Corruption is an ever-present danger when the government is providing assistance after a disaster. There are cash transfers, direct provision of goods and services, and procurement decisions that are all occasions for those who either don't have clear policy and supervision, or are vulnerable to pressure from corrupt supervisors or managers to engage in misappropriation. FEMA is the last agency that should be staffed by an at-will workforce with no collective bargaining rights and no avenue of appeal for adverse actions by managers. There should be no surprise that there are allegations of impropriety among a workforce that is so much at the mercy of managers.

If this subcommittee is truly interested in providing the public with well-trained, qualified, and accountable emergency workers, then the current practice of hiring Reservists and

CORE employees “at will” should end. Rather the entire emergency workforce at FEMA should be hired under Title 5 authorities. This will ensure they are properly vetted, trained, and disciplined, and protect the public from potential financial or political corruption.

This concludes my statement. I will be happy to answer any questions that you may have.