

STATEMENT FOR THE RECORD

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
PROVIDED TO THE
SENATE COMMITTEE ON VETERANS' AFFAIRS
CONCERNING
PENDING HEALTH CARE AND BENEFITS LEGISLATION
SEPTEMBER 16, 2015**

Chairman Isakson, Ranking Member Blumenthal, Members of the Committee, thank you for the opportunity to present the views of the American Federation of Government Employees, AFL-CIO and its National Veterans Affairs Council (AFGE) regarding pending legislation. AFGE represents over 670,000 federal employees, including more than 220,000 employees of the Department of Veterans Affairs. AFGE's representation of non-management, front line employees working in virtually every non-management position in the Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), and National Cemetery Administration (NCA) allows us to share a unique perspective with the Committee. AFGE also greatly appreciates the efforts by members of this Committee to solicit the views of our AFGE local officials and the employees they represent in settings where they feel free to share their concerns and recommendations without reprisal.

S. 1856

AFGE strongly supports S. 1856 and applauds Ranking Member Blumenthal for his leadership in introducing meaningful and comprehensive accountability legislation. S. 1856 would provide highly effective tools for increasing VA accountability while preserving essential protections against retaliation and prohibited personnel practices. Accountability will only be achieved when managers utilize the tools provided to them to properly manage their workforces. S. 1856 enhances VA management training and evaluation to ensure that managers make full use of the accountability tools available to them through current law and this important legislation.

S. 1856 will achieve the accountability improvements that S. 1082 can only promise. In fact, whereas S. 1856 increases protections for whistleblowers and other vocal employees, and takes a multi-prong approach to reducing mismanagement, S. 1082 decreases protections for these employees and does not create any new tools for addressing mismanagement.

Section 2: Current law requires managers to provide the following due process protections before a termination or other adverse action becomes final:

- 30 days advance written notice;
- 7 days to respond and present evidence;
- Right to secure representation;
- Right to examples of performance problems; and
- Written decision with specific reasons.

Current law provides for an exception to the 30 day notice provision when the supervisor has reasonable cause to believe that an employee committed a crime which could lead to imprisonment (5 USC 7513). Supervisors may also suspend an employee without pay if the agency considers it necessary in the interest of national security (5 USC 7532). In addition, supervisors may also reassign the employee or place the employee on paid, nonduty status if his or her continued presence in the workplace during the notice period “may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests” (5 CFR 752.404).

Section 2 of S. 1856 provides supervisors with an additional flexibility: the immediate suspension without pay of an employee who presents a clear and direct threat to public health or safety rights. Notice and other due process rights apply after suspension and before removal. The employee also retains full MSPB appeal rights. The employee is entitled to back pay for the post-suspension period if the Secretary determines that the termination is not justified.

Section 3: As noted earlier, accountability can only be achieved if managers use the tools they are given in current law and new legislation to properly manage the workforce. The requirement in

Section 3 of the bill for annual performance plans for VA political appointees addresses this problem through the following critical performance measures:

- Hiring, selection and retaining well-qualified employees;
- Engaging and motivating employees;
- Training and developing employees for leadership roles;
- Holding every manager accountable for employee performance problems.

Section 4: This section also ensures that managers will fulfill their workforce-related responsibilities by requiring that each manager provide feedback to probationary employees and assess whether the employee is suitable for permanent status, especially in light of findings in the August 2015 MSPB report, *Adverse Actions: The Rules and The Reality*, that supervisors are reluctant to terminate poor performers in both management and non-management positions during probationary periods.

Section 5: Similar to the evaluation requirements for political appointees in Section 3, this section increases accountability by requiring that all managers be evaluated for addressing poor performance and misconduct, and their abilities to improve employee engagement.

Section 6: This section addresses growing evidence that VA managers have not been receiving sufficient training on workforce management. It enhances accountability by mandating manager training in key workforce management areas: whistleblower rights, employee motivation and managing poorly performing employees.

Section 7: This section provides the VA with a valuable new workforce retention tool: the ability to promote high achieving employees to technical expert positions when that is more suitable or desirable than a management track position.

Section 8: AFGE has seen a number of whistleblowers, especially those in licensed medical and behavioral health professions suffer great harm to their careers as a result of retaliatory negative

performance evaluations. Current law does not provide clear Office of Special Counsel jurisdiction over Title 38 employees filing such complaints. Section 8 of the bill closes this major gap in the law.

Sections 9 and 10: These comprehensive “revolving door” provisions that safeguard against conflicts of interests between acquisition personnel and other personnel involved in sourcing decisions, and contractors doing business with the VA. Contracts based on self-interest rather than need or merit have been a longstanding problem in VHA, VBA and NCA, at both the local and national level.

Section 11: This section halts the abuses of extended paid administrative leave that have wasted taxpayer dollars and prevented VA employees from being put back to work to serve veterans. This section also mandates the collection of data on the use of administrative leave that is sorely needed to separate rhetoric from actual practice. Excessive use of administrative leave has been another symptom of VA management’s reluctance and inability to use current law and policy to manage the workforce properly.

Sections 12 and 13: AFGE also supports new reporting requirements for the Office of the Medical Inspector and an assessment of the impact of new SES personnel rules, in light of reports of high vacancy rights.

S. 1451

As the exclusive representative of VA employees processing survivor benefits, AFGE supports S. 1451. AFGE greatly appreciates Senator Hirono’s efforts to bring additional attention to survivor benefits and the Senator’s efforts to streamline this process.

Based on feedback from our membership, AFGE shares the concerns addressed in S. 1451 with the current backlog for processing survivor benefits. AFGE believes that “non-rating” claims are not provided with adequate attention from the Veterans Benefits Administration (VBA). As of August 2015, the non-rating total workload was just shy of 415,000 claims with over 265,000 claims pending for 125 days. AFGE members are proud of their success with VBA in reducing the disability claims backlog, now below 100,000. However, AFGE believes VBA has not adequately prioritized the non-rating claims, worsening the backlog. AFGE believes the inadequate attention on non-rating claims also created problems elsewhere, such as the current backlog of dependency claims. Unfortunately, VBA has once again turned to the quick fix of contracting out even though contractor work on the dependency claims has wasted taxpayer dollars that would be better spent hiring additional claims processors. Contracting out also increases inaccuracies that increase the workload for VBA employees. Therefore, AFGE urges Congress and VBA to place additional attention on the non-rating backlog, including survivor benefits, by increasing in-house capacity as opposed to relying on contractors.

Thank you for the opportunity to testify on these important legislative issues.