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National Secretary-Treasurer

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June 3, 2020

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

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

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

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

Dear Chairmen and Ranking Members:

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

1. **Preserve the continuation of existing collective bargaining and union representation for civilian employees.** On January 29, 2020, a Presidential memorandum, unsolicited by the Secretary of Defense, provided the Secretary of Defense broad authority to exclude Department of Defense (DoD) agencies and subdivisions from being covered under the Federal Service Labor-Management Relations Statute (FSLMRS), which outlines collective bargaining rights for federal employees. AFGE urges the inclusion of language in the FY 2021 NDAA that prohibits the use of **appropriated funds to exclude the Department, or any agency, activity, or subdivision of the Department, from coverage under the Federal Service Labor-Management Relations Statute (FSLMRS)**, which outlines collective bargaining rights for federal employees.
2. **Align the Federal Wage System Areas with the General Schedule Locality Pay Areas.** Hourly and salaried workers who work side-by-side in the same place for the same employer and who travel the same roads to get to and from work are treated as though they are in different locations. AFGE urges you to prohibit the Office of Personnel Management (OPM) from including more than one local wage area within a General Schedule pay locality and provide direction to align Federal Wage System areas with General Schedule locality pay areas.

3. **Expand federal employee paid leave benefits.** Provide twelve weeks of paid family leave to federal employees for qualified purposes. Lack of paid family leave forces families to make difficult decisions when coping with newly arrived children, medical emergencies, or separations due to military service. Studies show that providing this leave costs relatively little but results in increased employee morale and productivity, reducing employee turnover. Additionally, AFGE urges inclusion of a technical correction that would expand the paid parental leave benefit to federal employees who are currently ineligible because they are not Title 5 employees. Specifically, we urge inclusion of H.R. 5885, the “Federal Employee Parental Leave Technical Correction Act,” in the FY 2021 NDAA. This includes, Federal Aviation Administration employees; certain Department of Veterans Affairs (VA) employees; District of Columbia Courts and Public Defender Services employees; certain employees of the Executive Office of the President and White House Office; non-screener personnel at the Transportation Security Administration; and Article I judges, including bankruptcy and magistrate judges.
4. **Improve total force management by prohibiting (1) arbitrary reduction of the DOD civilian workforce; (2) inappropriate privatization or conversion to more costly labor sources (military and contract); and (3) arbitrary misuse of term or temporary hiring authorities for enduring missions by requiring consideration of workload, cost, readiness and other effectiveness measures.** The Department currently imposes arbitrary cuts on the civilian workforce, shifting work to more costly labor sources (contract or military). Most recently, Secretary of Defense Esper’s “Night Court” reviews cut more than \$5 billion from Defense Agencies based on “assumed” efficiencies, which will most likely result in degradation of capabilities when the efficiencies do not occur as planned. When there are imbalances in total force management, this creates a “hollow force” even with additional funds going to Defense because of an inefficient and ineffective mix between the military and the required civilian support structure. Additionally, the misuse of term or temporary hiring authorities for enduring missions results in employees working for many years without the benefits and protections afforded to the permanent workforce.
5. **Improve compliance with contract services planning, programming, and budgeting requirements and statutory limitations on outsourcing government jobs.** AFGE urges inclusion of language in the FY 2021 NDAA that would restrict the use of appropriated funds for services contracts that have not complied with the statutory requirements for comprehensive contractor inventories, improved compliance checklists to preclude unauthorized privatization (prohibiting work arounds to the public-private competition moratorium), and statutorily compliant budgets for contract services. Inclusion of such a provision would implement several GAO recommendations related to services contracts. Additionally, complementary to our affirmative proposals to improve compliance with existing anti-privatization laws, there are separate but inextricably related issues as described below:
 - a. Oppose proposals to discontinue the public-private competition moratorium, as the Department and OMB have not complied with the requirements in section 325

of the FY 2010 NDAA that would address longstanding DoD IG and GAO findings, and Congressional findings.

- b. Oppose legislative proposals that expressly make exceptions to public-private competition requirements or ignore those requirements, as recently occurred with the global household goods privatization statutorily authorized in last year's NDAA.
 - c. Oppose expansion of the use of public-private talent exchanges, as proposed last year by the section 809 Panel and this year by the National Security Commission on Artificial Intelligence, until the inequitable defects in existing authorities are repealed, as exemplified in problematic language in section 1599g of title 10 United States Code that:
 - i. Limits liability for contractor employees while detailed to the federal government from any liability under the Federal Tort Claims Act; Ethics in Government Act; and various anti-corruption provisions of title 18;
 - ii. Treats contractor employees while detailed to the federal government as if they were employees, to include authority provided to the Secretary of Defense to authorize them to perform "inherently governmental" functions; and
 - iii. Subjecting federal employees detailed to contractors to potential ethics reviews based on highly subjective and potentially overly broad limitations on disclosure of any allegedly "pre-decisional" planning, programming and budgeting information that the federal employee may arguably have been exposed to before the detail began.
6. **Support Department of Defense legislative proposals to correct the overly broad definition for commercial items.** The Department of Defense has proposed solutions to correct the imbalance created by recent overly broad extensions of so-called "commercial" treatment for acquisitions. The Department has stated that the "commercial item" definitions and treatment have generated excessive cost growth and readiness problems. The Department's legislative proposals would improve access to cost and price information and access to technical data needed for maintaining weapon systems at depots.
7. **Oppose Title 5 Related proposals from the National Security Commission on Artificial Intelligence and the Commission on Public Service.** AFGE urges you to oppose proposals that would weaken the diversity and quality of the competitive service through short-cuts in the hiring process that would limit consideration of veterans and internal candidates. These short cuts include proposals for expanding the use of direct hire or expanding the scope of the excepted service, such as the cyber excepted service. We also urge you to oppose the expansion of personnel demonstration pilots that have the purpose of re-introducing National Security Personnel System (NSPS) "performance-based compensation" schemes that were repealed, in part, because of their discriminatory application against women and minorities and "cafeteria plans" that would weaken participation in the Federal Employees Retirement System (FERS).

8. **Oppose the Merger of Commissaries and Exchanges.** The GAO recently found that the Defense Resale Task Force overestimated savings and underestimated the costs of its recommendations to merge Commissaries with Exchanges, and that DoD did not fully disclose to Congress the concerns of the Military Department stakeholders regarding the merger. DoD requires statutory authorization from Congress to proceed with the merger. AFGE urges inclusion of language in the FY 2021 NDAA prohibiting the merger of Commissaries and Exchanges given the adverse GAO findings. (See GAO-20-418, “DoD and Congress Need More Reliable Information on Expected Savings and Costs of Consolidating the Defense Resale Organization” (Apr. 30, 2020).)
9. **Clarify the importance of retention of an experienced workforce and military service during Reductions in Force.** AFGE urges the inclusion of language in the FY 2021 NDAA to amend the order of retention for Reductions in Force (RIF) to emphasize seniority and veterans preference consistent with current section 3502 of Title 5. Such a provision would repeal recent language that gave subjective performance evaluations primacy over seniority and veterans preference in DoD RIF procedures. The use of “forced distributions” or bell curve performance evaluations in lieu of rating employees based on their actual accomplishments relative to assigned sets of duties is subjective and easily manipulated by management, demoralizing the workforce and affecting recruitment and retention of skilled employees.
10. **Include H.R. 2581 and S. 1357, “Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act of 2019” in the FY 2021 NDAA that would establish minimum direct care registered nurse staffing requirements based on the number of patients served by a hospital to ensure quality of care and ensure patient safety.** The Military Departments are realigning military nurses into deployable jobs, but the Army and Navy are not backfilling these positions, thereby forcing civilian nurses to float from one ward to another after only an eight-hour orientation. This is outside of their position descriptions and scope of practice, and dangerous to patient safety. While the prior NDAA temporarily placed a hold on the Defense Health Agency reorganization, HASC Military Personnel Subcommittee Hearings last December documented how this reorganization had already generated coverage gaps for military beneficiaries being shifted to Tricare networks that lacked the capacity to provide timely and quality care in over-saturated private markets. Most significantly, these coverage gaps have been exacerbated by the COVID-19 pandemic placing everyone at risk. AFGE urges inclusion of H.R. 2581 and S. 1357 in the FY 2021 NDAA to establish needed protections to ensure patient safety and quality of care, as well as prevent downsizing of military medical treatment facilities.
11. **Include language to address COVID-19 Issues related to Medical Supply Chain, Personal Protective Equipment (PPE), Uniform Testing, Telework, and the pandemic's Impact on Morale, Welfare and Recreation (MWR) Programs in the FY 2021 NDAA.** While most of the Congressional response to the COVID-19 has been in

separate legislation¹ the NDAA may be a parallel venue for addressing longer term solutions to medical production supply chain logistical problems to the degree they are not ultimately enacted into law in the Senate. In particular, both the HEROES Act from the House, and S. 3627, the “Medical Supply Transparency and Delivery Act,” have comprehensive strategies for ensuring sufficient supplies of personal protective equipment (PPE). The Department of Defense has unique capabilities and logistical skill sets that should be leveraged more on an inter-agency basis across the government in coordination with the Federal Emergency Management Agency. Additionally, the impact of COVID-19 on defense resale programs, both those using appropriated and non-appropriated funds, as well as effects on MWR programs previously funded by exchange profits are areas ripe for Armed Services Committee oversight. Accordingly, AFGE urges you to include provisions in the FY 2021 NDAA that establishes a framework for oversight, reporting and audits related to the implementation of uniform testing, allocation of PPE and availability of telework arrangements within DoD.

- 12. Allow for presumption of worksite illness for federal firefighters with cancer and heart disease.** AFGE urges inclusion of H.R. 1174, the “Federal Firefighters Fairness Act” which creates an automatic presumption of workplace illness if federal firefighters become disabled by serious illnesses, such as heart disease, lung disease, certain cancers, and other infectious diseases. Such a provision would ensure that federal firefighters receive the needed care and benefits in a timely manner.

Thank you for your consideration. For additional information or questions, please contact John Anderson at (703) 943-9438 or by email at john.anderson@afge.org.

Sincerely,



Alethea Predeoux
Director, Legislative Department

¹The Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (March 6, 2020); the Families First Coronavirus Response Act (March 18, 2020); the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (March 27, 2020); and the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act) (passed in the House in May 14, 2020); S. 3627, the Medical Supply Transparency and Delivery Act introduced by Senators Baldwin, Murphy and Schumer.