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September 15, 2021

The Honorable Jim McGovern
Chairman
House Committee on Rules
H-312 The Capitol
Washington, D.C. 20515

The Honorable Tom Cole
Ranking Member
House Committee on Rules
H-312 The Capitol
Washington, D.C. 20515

Dear Chairman McGovern, Ranking Member Cole, and Members of the Committee:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE), which represents more than 700,000 federal and District of Columbia government employees in more than 70 federal agencies, I write to share our position on the following amendments to H.R. 4350, the “National Defense Authorization Act for Fiscal Year 2022” as you decide which amendments to make in order related to the hardworking federal employees who provide vital services to the American public.

Please make in order Amendment Numbers 29 and 30 proposed by **Representative Norton (D-D.C.)** to correct a longstanding drafting error and clarify that D.C. National Guard members who are federal civilian employees are entitled to leave without loss in pay or time from their civilian employment during their mobilization. AFGE supports these amendments, which would apply the change prospectively and retroactively, and would ensure that federal civilian employees who serve their country in the D.C. National Guard are treated the same as all other federal civilian employees who serve in the National Guard and are not unfairly penalized for their service.

Please make in order Amendment Number 66 proposed by **Representatives Kilmer (D-WA) and Wittman (R-VA)** that would provide for Fair Labor Standards Act protected overtime pay for Navy employees working on Naval vessels Outside the Continental United States (OCONUS).

Please make in order Amendment Numbers 83, 150, and 202 proposed by **Representative Newman (D-IL), Representatives Lynch (D-MA) and Green (R-TN), and Representative Meng (D-NY)** respectively that will either study the various toxins and chemicals veterans were exposed to during their service or make it easier for veterans to apply for and receive benefits for exposure during their service. By conceding that veterans were exposed to certain toxins, the VA can streamline the claims process and allow employees to process claims more accurately and efficiently. AFGE is proud to represent the employees who process these claims, many of whom are veterans themselves. AFGE urges the VA, after the enactment of each of these amendments, to consult with AFGE in a working group to make sure that employees receive adequate training on the new processes related to these claims and ensure that new trainings and procedures are followed universally at each Veterans Benefits Administration Regional Office.



Please do not make in order Amendment Number 53 proposed by **Representative Roy (R-TX)** that would prohibit funds from being used for inoculating members of the Armed Forces with the COVID-19 vaccine. This amendment would place the health and safety of DoD civilian employees and their families working with the military at risk by disrupting the vaccination of the military.

Please do not make in order Amendment 131 proposed by **Representatives Salazar (R-FL), Newman (D-IL), and Evans (D-PA)** to raise sole source contracting thresholds for certain small business concerns (8(a), HUBZone, service-disabled veteran-owned, and women-owned) from current levels to \$10,000,000 for manufacturing contracts and \$8,000,000 for other types. This amendment would also align sole-source thresholds in Title 38 (VA) with Title 15 (Small Business). The government already relies too much on sole source contracting which often results in excess prices and profits being provided to the detriment of the government as a smart buyer and taxpayer interests. Direct conversion of federal government employee jobs through sole source arrangements to special preference firms who were often sub-contractors of large companies with special connections was a common abuse that occurred prior to Congress enacting the government-wide moratorium on public-private competitions.

Please do not make in order Amendment Number 55 proposed by **Representative Roy (R-TX)** that would prohibit federal funds from being used for Diversity Officers or Senior Advisors for Diversity and Inclusion.

Please do not make in order Amendment Number 89 proposed by **Representative Speier (D-CA)** that would change the standard for “hostile environment” in title 10 so that the standard is not in keeping with the case law. The amendment would change the standard in a way that will at some point affect the DoD civilian workforce because military and civilian employees work side by side in the same organizational structure. The amendment strikes the words, "severity, repetitiveness, or pervasiveness" and establishes that a mere “perception” that something is “intimidating” or "offensive," is sufficient in creating a “hostile environment.” These are subjective concepts that significantly alter presumptions and burdens of proof to the detriment of obtaining reliable and fair outcomes based on longstanding norms of due process and fundamental fairness. We are concerned with second and third order effects and unintended consequences. A person can claim a “perception” from a “single incident.” Harassers themselves could use this subjective standard as a defense and such a subjective standard could be used to retaliate against whistleblowers for being “offensive” or “intimidating” when they report alleged wrongdoing.

Please do not make in order Amendment Number 116 proposed by **Representative Biggs (R-AZ)** that would arbitrarily reduce Defense Components by 0.5 percent on the basis of the financial audit and whether or not they obtain an unqualified audit opinion on their “financial statements,” excluding military and defense health appropriations.

Please do not make in order Amendment Number 800 proposed by **Representative Lee (D-CA)** that similarly would arbitrarily reduce Defense organizations by one percent on the basis of the financial audit and whether or not they obtain an unqualified audit opinion. The audits

solely relate to the development of a balance sheet of assets and liabilities for a sovereign entity funded with Congressional appropriations on an annual cash basis rather than on an accrual basis. There is no bona fide private market for most of the services and assets being assigned a “value” on a consolidated balance sheet for governmental sovereign entities, making the entire enterprise lacking in economic substance. The Department could still receive an unqualified audit opinion and be wasting billions of dollars or have mission failures. The amendment would hollow out the readiness of the Department resulting in misusing military to replace functions performed by civilians arbitrarily cut because the amendment’s proponents’ interpretation of the significance of the financial audits.

Please do not make in order Amendment Number 142 proposed by **Representative Rosendale (R-MT)** that would prohibit the Department of Defense from entering a contract with any company that mandates its employees received COVID-19 vaccines. This amendment would endanger federal employees working in the same workspaces with unvaccinated contract employees.

Please make in order Amendment Number 147 proposed by **Representative Lynch (D-MA)** that would prohibit the consolidation or closure of U.S. Coast Guard Scituate pending additional public meetings in affected surrounding communities and certification that a consolidation or closure proposal will not decrease response times or public safety.

Please do not make in order Amendment Number 295 proposed by **Representative Panetta (D-CA)** that purports to establish a pilot program for a Civilian Cyber Reserve that already duplicates another redundant “pilot” program along similar lines proposed for the Department of Homeland Security. It is misleading to call a program a “pilot” program when there is more than one pilot in the federal government. More fundamentally, this pilot program would weaken President Biden’s announced agenda to revitalize the Civil Service and strengthen the Office of Personnel Management. The Military Reserve Component already has mobilization authorities and well defined ways for addressing emergencies that require not just temporary but typically prolonged mobilizations that take a reservist away from their primary employer. The Military Reserve program, when evaluated from a fully burdened cost perspective, is most efficient and effective when there is a longer mobilization. Without turning this into a redundant species of the already existing military reserve program, this proposal will likely provide limited practical benefits to the government with just a series of temporary deployments. These would be highly disruptive to the permanent workforce which will be disrupted when they have to effectively train temporary civilian reservists on what the problem is, while the reservist waltzes in and out of the agency while the permanent staff are stuck with dealing with the longer-term problem. A major motive inducing a profit-based company to agree to losing an employee for something like this is to keep these projects temporary and to get some inside information from the government to enhance competitive advantage. This amendment needs, at a bare minimum, public disclosure -- using the Office of Government Ethics (OGE) form 278 to at least have a mechanism for reporting potential financial conflicts. Additionally, we oppose circumventing and weakening the merit principles of the competitive service through converting non-competitive appointments to competitive appointments. This proposal severely undermines competitive hiring and the underpinnings of an apolitical civil service and civilian control of the military by weakening the Office of Personnel Management (OPM). President Biden has stated

in a policy memo that he wants to revitalize the national security workforce and we have told that interagency working group that a major impediment to doing so is the weakening of civilian control at DoD by weakening the Office of Personnel Management. This will harm recruitment and retention through normal competitive processes of persons with cyber skills into the federal government and demoralize that workforce. This is not solving a problem that is not already better addressed through existing military reserve mobilization authorities which if they need to be adjusted at least have an established history of what works and does not work.

Please do not make in order Amendment Number 665 proposed by **Representative Gonzales (R-TX)** that would establish the National Digital Reserve Corps, a program within GSA that would allow private sector employees to work for the federal government for 30 days per calendar year to take on short term digital, cybersecurity, and AI projects. Reservists would report to GSA, who would then detail them to executive agencies as needed. The same defects discussed in amendment number 295 above equally apply to this amendment, creating still another redundant program.

Please do not make in order Amendment Number 347 proposed by **Representative Turner (R-OH)** that directs the Department of Defense to establish and maintain on a public web site all commercial product and commercial service determinations made by the Department. Establishing this public web site may sound innocent enough to those unfamiliar with the TransDigm scandal uncovered by the Department of Defense Inspector General. In that scandal, the Department's lack of access to certified cost and pricing data in a sole source acquisition of spare parts characterized as "commercial" resulted in excess profits ranging from 17 to 4,451 percent for 46 spare parts. Recent so-called acquisition "reforms" have rigged the process by forcing the mischaracterization of component parts of weapon systems as "commercial" so that private sector defense contractors can exploit the lack of real competition through sole source arrangements where the government is forced to fly blind because of legal restrictions imposed on its ability to obtain certified cost and pricing data in these faux "commercial" arrangements. A single foreign military sale can mandate the mischaracterization of the component parts of a weapon system as "commercial" under these rigged rules. Establishing this public data base is nothing less than an organized industry attempt to establish a framework to place continued Congressional and public pressure on the Defense Contract Management Agency (DCMA), particularly when DCMA makes a determination that the component part to a weapon system is not a "commercial item." Any member of Congress interested in avoiding waste to the taxpayer and profiteering by defense contractors should not support this amendment.

Please make in order Amendment Number 361 proposed by **Representative Gottheimer (D-NJ)** requiring the Under Secretary of Defense for Personnel and Readiness to prepare an annual report to Congress containing an analysis of the nationwide cost of living for members of the Department of Defense.

Please make in order Amendment Number 363 proposed by **Representative Brown (D-MD)** that adds installation support services to intergovernmental service agreements in order to protect individuals with disabilities.

Please make in order Amendment Number 367 proposed by **Representative Williams (D-GA)** that reestablishes the National Equal Pay Enforcement Task Force, a federal interagency task force focused on improving compliance, public education, and enforcement of equal pay laws.

Please make in order Amendment Number 562 proposed by **Representative Neguse (D-CO)** that provides relief to caps on civilian personnel that can serve in the Office of the Secretary of Defense, Defense Agencies or Field Activities, and in the headquarters of military departments in positions responsible for addressing energy security and assurance, PFAS contamination, and vulnerabilities due to environmental risks. The personnel caps remaining in sections 143, 194, 7014, 8014, and 9014 of title 10 on the number of civilian employees and military personnel assigned to these organizations distorts the true costs of the command and control activities required in the Department's management headquarters and encourages shifting inherently governmental and closely associated with inherently governmental functions to less transparent contractors not subject to these personnel caps and often programmed and budgeted for outside of headquarters program elements. This amendment is a step in the right direction but does not go far enough by eliminating the adverse effects of these personnel caps already recognized in Chairman's mark readiness subcommittee report language on personnel shortfalls in the Under Secretary of Defense for Policy and recent Government Accountability office findings that the Under Secretary of Defense for Intelligence and Security is currently only 22 percent civilian employees and 51 percent contractors with 27 percent temporary military detailees because of added missions without providing relief from these arbitrary caps going back to 1986. The HASC Chairman's mark has already recognized the problems posed by arbitrary personnel caps throughout the rest of DoD outside of these organizations and should completely remove all these caps in the headquarters and instead manage these headquarters accounts based on costs and workload. However, to do this, the GAO should be called in to re-baseline the true cost of headquarters by accounting for all the work being done by contractors in headquarters paid with non-headquarters program elements. As long as these personnel caps exist in headquarters elements, the culture of managing with caps may persist even when statutorily prohibited in the rest of the Department. The practice results in massive civilian under-execution levels and is a major contributor to problems in hiring and inadequate human capital planning.

Please make in order Amendment Number 582 proposed by **Representative Neguse** that establishes a housing stipend for federal wildland firefighters, many of whom are veterans, hired at a location more than 50 miles from their primary residence with the allowance being determined by the Secretaries of the Interior and Agriculture and be based on the cost of living in the area of deployment.

Please make in order Amendment Number 584 proposed by **Representative Schneider (D-IL)** that includes parental bereavement as eligible paid leave for federal employees.

Please make in order Amendment Number 633 proposed by **Representative Phillips (D-MN)** that would require all ethics opinions provided under Sec. 847 of the FY2008 NDAA be provided to the Standards of Conduct Office at the Department of Defense and made publicly

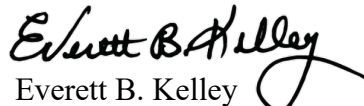
available. Requires the Secretary of Defense also make publicly available and accessible via Internet the contents of any information system or database used to store such guidance.

Please do not make in order Amendment Number 702 proposed by **Representative Buck (R-CO)** that strikes Subtitle H of Title V on diversity and inclusion.

Please do not make in order Amendments Number 145 proposed by **Representative Cloud (R-TX)**; **167, 170, 171, 176, 315, 317** proposed by **Representative Boebert (R-CO)**; **Amendments Number 1, 2, 3, 4, 5, 6** proposed by **Representative Gohmert (R-TX)**. **Amendment 158 and 434** by **Representative Rosendale (R-MT)**, and **Amendment 796** by **Representative Bishop (R-NC)**. These amendments would not support the functions of the Department of Defense and further do not support the employees nor the mission of the agency.

We urge you to consider AFGE's position on the above amendments to the H.R. 4350, the "National Defense Authorization Act for Fiscal Year 2022" as you decide which amendments to make in order. For questions or more information please contact John Anderson at john.anderson@afge.org or 703-943-9438.

Sincerely,


Everett B. Kelley
National President