

2016 ISSUE PAPERS

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO



AFGE 2016 Issue Papers
Table of Contents

Federal Pay – General Schedule.....	1
Federal Pay – Blue Collar	14
Federal Retirement.....	18
Federal Employees’ Health Benefits Program.....	21
Sourcing: Complying with the Law.....	29
Official Time for Federal Employee Union Representatives.....	40
Elimination of Federal Employees’ Right to Payroll Deduction of Union Dues.....	44
Department of Defense.....	46
1. Don’t Gut the Civil Service—New Beginnings Must Trump Force of the Future.....	49
2. No More Arbitrary Cuts.....	56
3. Retain the Prohibitions on Use of Flawed OMB Circular A-76 Privatization Process.....	60
4. Scrap the Cap.....	63
5. Ensure DoD Complies with Privatization Safeguards.....	66
6. Civilian-to-Military Conversions Must be Cost-Efficient.....	68
7. Identify and Control Service Contract Costs.....	72
8. Use Insourcing to Save Taxpayer Dollars and Improve Performance Warfighters.....	76
9. Save the Commissary Benefit for America’s Warfighters.....	79
10. Preserve DFAS to Keep Financial Management Costs Down.....	82
11. Carefully Consider the Consequences Before Undertaking New Rounds of BRAC.....	84
12. Preserve and Protect DoD’s Industrial Facilities.....	88
13. Cuts to Federal Employees’ Per Diem Allowance for Long-Term Official Travel.....	93

Department of Veterans' Affairs.....	95
Bureau of Prisons.....	102
Transportation Security Administration.....	119
Voter and Civil Rights.....	127
Paid Parental Leave.....	130
Equality	133
Federal Workers' Due Process Rights.....	134
Equal Employment Opportunity Commission.....	139
One America, Many Voices Act.....	151
AFGE District 14.....	153

Federal Pay – General Schedule

Introduction

General Schedule (GS) pay is governed by the Federal Pay Comparability Act (FEPCA) which provides for annual salary adjustments tied to market rates in the private sector and state and local government. Congress and the President almost always alter the adjustments provided for under the law. GS pay levels are also affected by many administrative decisions involving the boundaries that define local pay areas and how market comparability is calculated. During the three-year pay freeze, the administration refused to implement any of the changes recommended by the two statutorily-mandated advisory committees on federal pay, arguing that since some might result in higher pay for some employees, implementation would violate the “spirit” if not the “letter” of the laws imposing the freeze. This administrative “freeze” was only lifted this year, as 13 new pay localities were established and current localities were expanded to reflect changes in commuting patterns revealed in the most recent decennial census.

Federal wages and salaries continue to lag those in the private sector and state and local government. Although federal pay adjustments are, by law, supposed to reflect changes in the cost of labor rather than the cost of living, it is important to note how much the purchasing power of federal pay has declined as federal employees have become an all-purpose ATM for budget austerity. Since 2010, the inflation-adjusted value of federal wages and salaries has fallen by 6.5 percent, leaving all federal employees with a lower standard of living than they had just five years ago.

Federal employees have been forced to give up \$182 billion in compensation since the start of the economic crisis, and that amount will continue to grow because the cuts were permanent even though the problems they were imposed to address were temporary. The Great Recession and the ensuing budget deficit were used to justify freezing and then barely adjusting federal pay for six years. However, the Federal Reserve has raised interest rates on the basis of the strength of the labor market, among other factors, and the deficit is at its lowest level since 2008. Despite this recent strengthening of the labor market and the decreasing federal deficit, Congress has not worked to restore federal employee pay.

The time has come to restore the purchasing power and market position of federal pay. As such, AFGE recommends a federal employee pay raise of 5.3 percent for FY 2017. This proposed increase is based on the Employment Cost Index-based (ECI) adjustments denied in 2013, 2014, 2015, and 2016. ECI measures changes in private sector wages and salaries. The difference between the combined federal pay adjustments over that four year period (3.3 percent) and the amount of ECI adjustments that should have occurred in that period (5.6 percent) is 2.3 percent.

And for 2017, FEPCA’s formula directs an ECI adjustment of 1.6% (2.1 percent ECI - 0.5 = 1.6). But making federal employees whole with regard to ECI adjustments isn’t the entire goal.

Federal pay is also supposed to provide pay adjustments on the basis of local labor market conditions. Therefore, AFGE proposes an additional 1.4 percent of payroll be added to the aggregate 2017 adjustment for the six years federal employees did not receive locality pay adjustments. In 2016, for the first time in six years, locality pay was unfrozen. The average locality increase for 2016, however, was just 0.3 percent. While this nominal adjustment was welcome, it did not allow much of a narrowing of the gaps between federal and non-federal pay that OPM, using Bureau of Labor Statistics data, measures on a city-by-city basis.

The position of the federal government as a competitive employer is increasingly weakened each year that federal employee pay is not raised to levels that are comparable to private sector pay. This growing gap between private and federal pay only exacerbates federal recruitment and retention challenges. Thus Congress and the administration must recognize the urgency of raising federal pay by 5.3% in 2017.

Pay Adjustments for General Schedule: The Market Comparability Standard

Under the Federal Employees Pay Comparability Act (FEPCA), federal employees who are paid under the General Schedule are supposed to receive salaries that are 95 percent of “market comparability.” This bipartisan law, enacted in 1990, established the principle that federal pay should be governed by the market, and set salaries at levels just five percent less than standards in the private sector and state and local government.

FEPCA requires that the government produce a measure of market comparability on a regional basis, and provide annual adjustments that simultaneously close any measured gaps and make certain that no existing gap becomes larger. This is to be accomplished by providing federal employees with annual pay adjustments that have two components: one nationwide adjustment, and one locality-based gap-closing adjustment. The nationwide adjustments are based on the Bureau of Labor Statistics (BLS) Employment Cost Index (ECI), a broad measure of changes in private sector wages and salaries from across all industries and regions (the FEPCA formula is ECI – 0.5 percent). The locality adjustments are based on measures of pay gaps using Bureau of Labor Statistics (BLS) data from surveys that compare, on a job-by-job basis, salaries in the federal government and those in the private sector and state and local government. But FEPCA has loopholes, allowing alternatives in times of “economic emergency” which, according to three successive administrations (1995-2016) is apparently a permanent condition in the United States.

The relevant nationwide measure for January 2017 is the 12-month period ending September 30, 2014, during which time the ECI rose by 2.1%. The law governing the General Schedule pay system calls for an annual across-the-board adjustment to base salaries equal to the ECI measure minus 0.5 percentage points. Thus, the January 2017 ECI adjustment should be 1.6%. This year (2016), the nationwide raise should have been 1.8% rather than 1%, and locality pay should have closed the gap to within 5% of market rates.

Locality adjustments are meant to close gaps between federal and non-federal pay on a regional basis. The Federal Salary Council, the advisory body established in law to make recommendations to the President's Pay Agent on locality pay, uses a weighted average of the locality pay gaps, based on a BLS model using data from both the National Compensation Survey (NCS) and the Occupational Employment Statistics (OES) to measure the average disparity between federal and non-federal salaries for the jobs federal employees perform. As of March 2015, the overall remaining pay gap was 34.92%, based on the BLS model.

Had the schedule for closing the pay gaps put forth in FEPCA been followed, comparability would have been realized more than a decade ago in 2002. But in each year since 1995, Congress and successive presidents have found reason to reduce or freeze the size of both the nationwide (ECI-based) and locality adjustments dictated by the law, variously citing economic emergency and deficit-cutting as rationales. The most recent data from BLS show the 2015 average remaining pay gap is 34.92%, compared to 35.18% for 2015 (the relevant year for the January 2016 adjustments). In spite of the repeated use of alternatives to the terms of FEPCA, there has been strong, consistent and broad bipartisan support for the goal of paying federal salaries that are comparable to those paid by private firms and state and local governments that employ people for the same kinds of jobs. AFGE will work to maintain support for the principle of pay comparability that uses job-by-job salary comparisons for all federal pay systems.

The Federal Salary Council's Recommendations

In addition to measuring regional pay gaps and calculating the annual nationwide (ECI-based) adjustments under FEPCA, the Federal Salary Council makes recommendations regarding data and changes to the boundaries of existing pay localities and the establishment of new localities. These changes reflect new data from the decennial census and focus on changes in commuting patterns and rates, the most important criteria in defining a local labor market. In each of the past four years, the Federal Salary Council has recommended some or all of the following:

- Drop from the criteria for establishment or maintenance of a GS locality any reference to the number of GS employees, since concentration of GS employment does not define a local labor market or indicate economic linkage among counties in a commuting area.
- Restore full funding for the BLS National Compensation Survey (NCS), particularly the wage survey portion that was specifically designed to match private sector and state and local government jobs to federal jobs.
- Use all commuting pattern data collected under the American Community Survey in determining areas for inclusion in locality pay areas.
- Use new criteria for evaluating counties adjacent to Core Based Statistical Areas (CBSAs) (7.5% employment interchange) and adjacent single counties (20%).

- Use micropolitan areas if they are part of any Combined Statistical Area, whether or not a Metropolitan Statistical Area was included, and recognize multi-county micropolitan areas for locality pay.

The President's Pay Agent has not implemented these recommendations. AFGE urges adoption of all of these Council recommendations, as they will improve the market sensitivity of the pay system, and align the boundaries of pay localities with contemporary commuting patterns. In addition, responding positively to the recommendations of the Federal Salary Council would demonstrate respect for the law governing federal pay, a law intended to de-politicize federal pay setting.

Past, Present, and Future: The Three-Year Freeze and Two Years of 1%, and 1.3% for 2016

How did a three-year freeze on the wages and salaries of federal employees – and threats of continued freezes or even outright pay reductions – become our nation's response to the collapse of the housing bubble, the financial crisis caused by this collapse, the bailout of large banks, insurance companies, and Wall Street firms? Politicians coalesced around the notion of budget austerity, the illogical and thoroughly discredited idea that reducing government spending in the face of recessions and inadequate private investment would prompt increases in private sector investment. The Budget Control Act of 2011 enshrined the principles of austerity into a ten-year law, and it has only worsened the living standards of 90% of the population and depressed economic growth. It is hoped that the false economies of austerity will be acknowledged, and a more productive set of macroeconomic policies will be embraced. Lowering federal employee living standards by freezing pay and shifting the costs of retirement onto federal workers needs to come to an end. Such policies do not improve the economy; they only impose harm on the civilian employees who serve our nation and make it more difficult for federal agencies to hire and retain the workforce necessary to carry out the mission of federal agencies and programs.

Nobel Laureate in Economics and Princeton University Professor Paul Krugman once referred to the freeze as "cynical deficit reduction theater" that was "a literally cheap trick that only sounds impressive." He also confirmed that "federal salaries are, on average, somewhat less than those of private sector workers with equivalent qualifications." But none of these facts seemed to matter to President Obama or the members of Congress who voted repeatedly for the freeze, two consecutive years of 1% adjustments and this year's 1.3%. They have been, to some degree, responding to a well-orchestrated campaign by certain media outlets and the Heritage Foundation, the Cato Institute, and Booz-Allen that use a combination of sophistry and outright lies to make a case that federal employees are overpaid relative to their private sector counterparts.

One way these anti-federal government and anti-federal employee groups seek to create an impression that federal salaries are too high is by highlighting the number of federal employees at the highest federal salary level, even though almost all of them are accomplished physicians and scientists working at the National Institutes of Health or the Food and Drug Administration.

A tiny few are the top lawyers and auditors at the Federal Deposit Insurance Corporation (which is not financed by taxpayers) and the Securities and Exchange Commission. Nevertheless, screaming headlines about federal “bureaucrats” raking in quarter-of-a-million dollar salaries have had an impact, helping to solidify the false belief that federal employee pay far surpasses the pay of ordinary taxpayers. In fact, about 600,000 federal employees earn less than \$50,000 per year, and approximately 900,000 federal employees make under \$60,000 per year, according to the most recent data from the Office of Personnel Management (OPM).

The Federal Salary Council (FSC), a statutory body responsible for examining objective data that compares what private sector and state and local government employers pay for the jobs federal employees perform to what the federal government pays, has found consistently that federal employees are underpaid. The Federal Prevailing Rate Advisory Committee (FPRAC), which performs a similar function for the blue collar FWS system, finds the same result. The amounts of underpayment vary by locality and other factors, but the advantage in all places goes to the private sector.

Distorting the Truth on Federal Pay

In the past several years, propagandists have published “studies” that twist the facts surrounding federal pay to pretend that federal employees are overcompensated. The propaganda compares gross averages in the private sector to average salaries of the current federal workforce, uses manufactured data on the dollar value of private sector fringe benefits and distorts data on the cost of federal benefits, and sensationalizes the fact that a growing number of federal salaries have exceeded \$100,000 per year. The Washington Post helped to promote the myth of overpayment by commissioning a poll that asked Americans whether they believed that federal employees were underpaid or overpaid, implicitly giving support to the notion that such issues are a matter of opinion rather than fact. The results of the poll reflected only how well the misinformation campaign had worked.

To bolster the false impression of federal employee overcompensation even more, the Heritage Foundation’s James Sherk published a deeply flawed econometric study (<http://www.heritage.org/research/reports/2010/07/comparing-pay-in-the-federal-government-and-the-private-sector>) with a headline-grabbing claim that the government “overtaxes all Americans” by providing federal employee pay and benefits “on the order of 30 percent to 40 percent above similarly skilled private sector workers.” Heritage claimed that federal salaries are “22 percent above private sector workers.” In an odd coincidence, Heritage’s numbers are the mirror opposite of the calculations performed by the economists and pay experts from the Bureau of Labor Statistics (BLS) and the Office of Personnel Management (OPM), whose data for the same year showed federal pay lagging behind the private sector by 22 percent.

Why do Heritage and OPM/BLS come up with opposite numbers? The simple answer is that the Heritage study has highly politicized assumptions, and is based on data that are entirely inappropriate for use in salary comparisons. The BLS and OPM results derive from objective

calculations and high quality data from the BLS's National Compensation Survey (NCS), a survey designed specifically for use by private and public employers to gauge salary rates and differences by occupation and location. Heritage used Current Population Survey (CPS) data from interviews with random individuals who were asked how much they made, how much their employer spent on their benefits, and what their occupation was. Another source of data used by purveyors of the myth of the overpaid federal employee is the Bureau of Economic Analysis (BEA), part of the Commerce Department. The BEA itself warns the public not to use its data for comparing federal and non-federal salaries, noting on its website that "federal compensation estimates include sizable payments for unfunded liabilities that distort comparisons with private-sector compensation. For 2006, for example, the value of these payments for unfunded liability were \$28.6 billion or 10.7 percent of total federal civilian compensation" (http://www.bea.gov/faq/index.cfm?faq_id=320&start=0&cat_id=0). The "unfunded liabilities" refer to liabilities of the now-closed Civil Service Retirement System (CSRS), not the current Federal Employees Retirement System (FERS). Further, both these data and Heritage's are "bounded" at the top and bottom and exclude private salaries lower than \$21,544 and higher than \$190,119. Thus, even though salary and bonuses for those working in Wall Street securities and financial industries routinely run into the millions, the BEA dataset artificially caps salaries at under \$200,000.

CBO Study of Federal vs. Private Sector Pay Compensation

The Congressional Budget Office published a report in 2012 with an extremely misleading title. "Comparing the Compensation of Federal and Private Sector Employees" does not tell us whether federal salaries are too high or too low. It answers the highly peculiar question: If the current federal workforce were replaced with a new one with the same demographic profile as the current one, and the new one were paid average private sector rates for this group's demographic profile, how much would it cost?

From this question came an answer that was a foregone conclusion. If taken one at a time and categorized by race, gender, education, and other "demographic traits," of course some of them will appear "overpaid" compared to private sector averages. Why? Because the private sector wage data show large variations by "demographic trait" and for the most part, federal pay systems avoid this kind of discrimination.

The CBO study used what's called a "human capital model;" basically a "capital asset pricing model" that applies the logic of finance to human beings. Wages, salaries, and benefits are the "price" and the worker is the "asset." The "asset" has attributes upon which the market places a value, either negative or positive. In such a model, being white, male, and/or highly educated are positive sources of value, while the absence of these attributes means a relatively lower value.

When CBO assessed the accuracy of the "capital asset pricing" of the conglomeration of human capital known as the federal workforce, it was clear that they would find the price too high.

This is because, on average, the private sector pays men more than women, whites more than blacks, old more than young, and higher rates in big cities than in rural areas. But the federal government does not reproduce all of these differentials, because in its pay systems, demographic traits are irrelevant. Federal pay is an attribute of the job, not of the demographic traits of the individual holding the job. As a result, men and women with the same federal job are paid roughly the same amount. The demographic traits that comprise a human capital model's independent variables are completely irrelevant to the salary and benefit package the federal government applies to any given federal job.

Had CBO used the proper method for making the comparison, the one used by the Federal Salary Council, its conclusions would have lined up with the Council's findings, that federal employees are underpaid whether they are top professionals like doctors or lawyers, technical experts like engineers and scientists, health care providers like VA nursing assistants and dieticians, or administrative workers who handle claims for Social Security or Veterans' benefits.

The Federal Salary Council is required by law to measure the gap between federal salaries and salaries in the private sector as well as state and local government, together referred to as the "non-federal sector." On average, the Council's method finds the nationwide gap between federal and non-federal pay remains about 35 percent in favor of the non-federal sector, but varies by locality. This is largely because the job comparison methodology used by the Council requires finding comparable positions before making pay comparisons, and many jobs found in the federal government are uniquely governmental. Useful pay comparability measures require data from job matches. The Federal Salary Council/BLS/OPM approach actually matches jobs and level of work.

The CBO study is flawed not only because it relies so heavily on "demographic traits", but also because it uses broad occupational categories and industrial categories as proxies for job matches. And that error compounds the noxious comparison by race, gender, and age. Indeed, the headlines describing the findings of the CBO study emphasized pay differences by education, and the most attention was given to the claim that the federal government allegedly overpays those whose highest level of education is a high school diploma. But consider some of the numerous federal jobs that have similar educational requirements, and are in similar broad industrial categories as those in the private sector, but which do not have nearly the same level of responsibility, or day-to-day duties or risks.

- A federal Correctional Officer might be compared with someone who works in the broadly defined, private sector "security services industry": But a "mall cop" does not perform the same function as an officer guarding convicted felons/dangerous inmates in our federal prisons. Same industry, same education, different job.
- A VA Nursing Assistant caring for a wounded warrior suffering a Traumatic Brain Injury might be compared with someone who works in a doctor's office, calling prescriptions into pharmacies. Same industry, same education, different job.

- An electrician working at an Army Depot who builds and repairs sophisticated electronic weaponry might be compared with an apprentice learning how to run wires at a construction site. Same industry, same education, different job.

CBO called its own benefits comparisons “uncertain.” That was an understatement, because not only are their data shaky, as they acknowledge, but their human capital methodology is spectacularly inappropriate for assessing health and retirement benefits. The federal government provides health insurance and retirement benefits to all its employees on the same terms – regardless of education, race, pay system, occupation, or tenure. And a huge part of the alleged benefits gap the CBO calculated derives from the employer cost for the defined benefit pension. As is well known, many of America’s largest and most profitable corporations (such as Wal-Mart) do not provide defined benefit pensions at all. It was inappropriate for CBO to include data from such corporations, as they are not the standard to which the government should be compared. If CBO had restricted its comparison to federal and private sector workers performing similar jobs (e.g. aerospace engineers at NASA compared to aerospace engineers at Boeing), they would have found no gap.

The CBO study on federal pay does a great disservice to those who seek objective analysis on questions related to federal pay and benefits. Except for a brief footnote buried in the middle of the report, the study neglected the work of the Federal Salary Council, which provides an accurate measure of difference between federal and non-federal pay using BLS data and adjusting for the specific characteristics of federal jobs, including the level of work required by the jobs federal employees actually perform. The demographic traits of the federal workforce are irrelevant to the adequacy of their pay, and irrelevant to any measure of pay comparability.

One Bright Spot for Federal Pay and a Threat to Extinguish It

In April 2014, the Office of Personnel Management (OPM) published a report entitled “Governmentwide Strategy on Advancing Pay Equality in the Federal Government.” It is the most informative, objective, and important examination of the federal pay system published by any entity in several years and deserves close attention, especially in light of the fanfare given over to the many extremely poorly-performed “studies” of federal pay from conservative think tanks. The OPM report was prepared in response to the President’s request for a gender pay-equity analysis of federal pay systems that paid close attention to the General Schedule’s classification system and its transparency. The President also asked for recommendations for administrative or legislative action that would promote “best practices” that were found to minimize inequities.

Although the report focused on just one outcome of the federal pay system – its success in advancing gender pay equity – the study provides important insight into the General Schedule system’s strengths as a whole. Any pay and job classification system must be judged on attributes such as internal and external equity, as well as transparency and effectiveness. External equity refers to whether a pay system meets market standards. We know that the General Schedule fails the external equity test, but not because of any kind of systemic flaw but

rather because successive Congress' and administrations have not funded it even before the pay freezes. We have the annual reports of the Federal Salary Council since 1995 to prove that.

But this OPM report on one aspect of internal equity, gender equity, is extremely telling. It compares data on federal employment over the past two decades and finds great progress on the part of women in ascending to higher-graded positions. But the most important finding was that there is no significant gender pay differences by grade level among GS workers. That is, at each pay grade, there was no real difference between the salaries paid to women and men doing the same jobs. This is a great virtue of the federal pay system.

The study showed that, depending on methodology used, from 76 to 93 percent of the observed pay gap between federally employed men and women is attributable to women being concentrated in lower-graded occupations. Indeed, the only real observed inequities arose where managerial discretion operates, such as in the awarding of quality step increases, promotions, and starting salaries. While women are more frequent recipients of promotions and quality step increases, managers have exercised discretion in providing higher starting salaries to men. But even starting salaries were mostly equivalent; it was in just four occupational categories that male starting salaries exceeded those provided to women by more than ten percent. Among members of the non-General Schedule Senior Executive Service, women's salaries were 99.2 percent of men's, a remarkable achievement.

These findings constitute a ringing endorsement of the current pay system, a system that assigns salaries to the position, not the individual. In the jargon of pay-setting, the General Schedule is oriented more toward a "rank-in-position" rather than a "rank-in-person." And that orientation is the secret to having a pay system that avoids discrimination.

The Threat to Revive the Discredited NSPS: Force of the Future

The federal government's disastrous experience with the National Security Personnel System (NSPS) in the Department of Defense during the George W. Bush administration is a cautionary tale on the dangers of abandoning an objective "rank-in-position" system like the General Schedule for federal agencies. From 2006 to 2009, 225,000 civilian workers in DoD were subject to a system that based salaries and annual salary adjustments on supervisors' assessments of employee performance. NSPS also granted managers tremendous "flexibility" on classification of jobs, hiring, assignments, promotion, tenure, and "performance management." The system's only additional funding relative to the General Schedule payroll base was for outside consultants who had a large role in designing, implementing, and training DoD managers in their new system.

It was not surprising that even in its brief three-year reign, NSPS damaged the federal government's excellent record of internal equity on race and gender. Data on salaries, performance ratings, and bonuses showed marked advantages to being white and male, and working in close geographic proximity to the Pentagon. Those in the Office of the Secretary of Defense, the Defense Finance and Accounting Service and Tricare were found to be higher

performers, on average, than civilian employees in the Departments of the Army, Navy or Air Force.

NSPS was a system conceived in a highly politicized context. The Department of Homeland Security (DHS) had been established two years earlier, in 2002, and its secretary was granted broad personnel authorities, construed by the agency to include the right to unilaterally abrogate provisions of collective bargaining agreements and replace them with agency directives. The rationale for DHS' grant of authority to create a new pay and personnel system was the war on terror and the administration's belief that union rights and national security were mutually exclusive. So in 2003, Defense Secretary Rumsfeld used the same rationale to seek personnel authorities similar to those granted to the Secretary of the Department of Homeland Security.

Now, the Defense Department is contemplating NSPS 2.0 under Force of the Future. Early drafts of the Force of the Future proposals for civilians included the notion of moving virtually all DoD civilians from Title 5 to Title 10. This was the original plan for NSPS. Title 10 governs the Department's uniformed personnel, but includes a few provisions for civilians in intelligence and Defense universities. A move from Title 5 to Title 10 would eliminate most civil service protections, give the hiring authority complete discretion to set and adjust pay. (Please see AFGE's Force of the Future Issue Paper for more details). AFGE strongly opposes any and all efforts to restore NSPS, whether under the guise of Force of the Future or by any other means. Its flaws were well-documented and there is certainty that a revival would reproduce all the discriminatory effects of its earlier incarnation.

The Department of Homeland Security's personnel system, named MaxHR, never really got off the ground, thanks to a lawsuit that successfully argued that its undermining of collective bargaining rights violated the law. But NSPS did move forward in part because its focus was not on eliminating the union per se, but rather on creating a pay system that allowed managers to reward themselves and their cronies, and punish others. NSPS could only have continued if Congress had been indifferent to its discriminatory outcomes. Fortunately, when faced with data that showed NSPS gave systemic advantages to white employees and other relatively powerful groups at the direct expense of other DoD civilians, and that the venerated Merit System Principles had been undermined, Congress voted to repeal the system in 2009.

But the architects of NSPS never give up on the dream of a subjective pay system for the federal government, one in which managers can decide each employee's salary and whether and by how much that salary will be adjusted each year. Prior to this year's Force of the Future, the contractor Booz Allen Hamilton (\$5.76 billion in revenue in 2013, 98 percent of which is from the federal government) endowed the publication of a report under the imprimatur of the Partnership for Public Service.

The report trod the well-worn path of those seeking lucrative contracts to revamp the federal personnel system. It employs many of the hackneyed tropes that have become all too familiar among the enemies of fair pay for federal employees: the General Schedule is "stuck in the

past,” “broken,” “rigid,” and “fragmented.” It conveniently neglects to acknowledge the fact that numerous flexibilities and modernizations have been enacted over the past few decades. In the 1990’s, the General Schedule went from having one nationwide annual cost-of-living adjustment to a city-by-city, labor market-by-labor market cost-of-labor salary adjustment system. Special rates were authorized as well. In the 2000’s, Congress passed legislation that introduced broad new hiring authorities, managerial flexibilities in salary-setting, and a program for substantial bonuses for recruitment, relocation, and retention. Congress enacted legislation to allow student-loan repayment, new personnel system demonstration projects, and phased retirement. The list of new flexibilities is long, and in many cases, these new authorities have improved the General Schedule. In any case, the list stands as a refutation of the myth that the General Schedule is a relic, untouched by modernity or that Congress has failed to address needed changes in the civil service system for decades on end.

Congress has been careful, however, not to go so far as to undermine the Merit System. Unlike a private firm, the federal government is spending the public’s money in ways that are meant to promote the public interest. NSPS was an object lesson in what happens when the Booz Allen Hamilton plan is implemented in a federal agency. Despite good intentions, the Merit System Principles are undermined, particularly the principles that promise “equal pay for work of substantially equal value,” and that “employees be protected against arbitrary action, personal favoritism, or coercion for partisan political purposes.” Veterans Preference in hiring, retention and promotions is also inevitably undermined. These are the lessons of NSPS.

To make its plan sound less “scary,” Booz Allen Hamilton assumes dramatic increases in funding for federal pay so that no one would be any worse off than they would be with the protections of the General Schedule. As naïve and unrealistic as this assumption is, it is also based on a profound misunderstanding of the Merit System Principles. It is not enough to ensure that no one would be worse off. It remains wrong to distribute the system’s hoped-for additional monies in a way that favors some demographic groups over others on the flimsy grounds of a manager’s subjective assessment of performance. In the public sector, there is too much risk of political favoritism, and too much risk that unconscious bias will result in greater rewards for those with good connections or the preferred gender or skin color. And the General Schedule’s pay and classification system, as the most recent OPM report amply demonstrates, bests the private sector and any other type of split, “rank-in-person” system on equity time and again.

AFGE does not suggest that either the Partnership or the architects of Force of the Future advocate discrimination in pay. They likely have good intentions. But we also know that the road to hell is paved with good intentions, and federal employees have no desire to revisit the hell of NSPS. To be clear: Force of the Future and/or the Booz Allen Hamilton blueprint are not just cut from the same cloth as NSPS, they are NSPS redux.

While NSPS and its would-be successors fail the internal equity test, there is no question that when it comes to external equity, Congress and the Clinton, Bush, and Obama administrations have all failed to perform their role. It is preposterous to blame the current system for failing to produce external equity. External equity is a funding issue, and the General Schedule cannot

fund itself. It relies on budget authority and appropriations. To pretend that Congress would magically provide billions more each year to fund a new civil service system identical to one it repealed in 2009 on the grounds that it was discriminatory is folly.

The cost of living has risen 8.3 percent from 2010 to the present. So even before the salary reductions for new employees of 2.3 percent and 3.6 percent, the purchasing power of federal salaries had declined by five percent. The degree to which they lag the market varies by city, but the nationwide average is 34.92 percent according to the most recent estimates from OPM, using data from BLS. And that number includes current locality payments which were frozen for five long years.

Inequality, the Decline of the American Middle Class, and Wages and Salaries of Federal Employees

The decline in living standards for America's middle class and the ongoing misery of the poor have been much in the news recently. Even as the rate of unemployment has dropped, wages continue to stagnate for many workers. On one side are those who deny the numbers, attribute changes in the distribution of income and wealth to changes in educational attainment or willingness to exert effort. On another side are those who recognize that the decline of unions, the rise of outsourcing and global free trade agreements, and the deregulation of the 1990's and other factors are better explanations. Median incomes for middle class American families, adjusted for inflation, are lower than they were in the 1970's and the very rich have benefited so disproportionately from economic growth over the decades that America is now more unequal than it was in the 1920's. Both middle incomes and the incomes of the poor are now higher in several European countries and Canada than they are in the U.S. After adjusting for inflation, median per capita income in the U.S. has not improved at all since 2000.

Federal employees are typical middle class Americans. They work hard and have historically received modest, but fair pay from their employer. It has been recognized that the nation benefited from having an apolitical civil service governed by the merit system principles. The pay and benefits that derived from those principles were supposed to be adequate to recruit and retain a high-quality workforce, capable of carrying out important public sector functions, from law enforcement to guaranteeing care for wounded warriors to protecting public health.

The government would not be a bottom-of-the-barrel employer, paying the lowest possible wages and forgoing health care and retirement benefits, like so many of today's most profitable corporations. Likewise, the government would not be a place where anybody went to get rich at taxpayer's expense (that role is assumed by government contractors like Booz Allen Hamilton). The government as an employer would be a model when it came to ideals of internal equity and non-discrimination, promoting both fairness and seeking employees devoted to the public interest. And on pay and benefits, it would aim at "comparability," defined in the pay law as no less than 95 percent of what private and state and local government pays on a locality basis.

While some brave politicians have held fast to these principles over the past several years when there has been immense political pressure to reduce government spending no matter what, many more have succumbed to the notion that America should reconcile itself to declining living standards for all but the very rich. As such, they supported the pay freeze the 1 percent adjustments, and the 1.3% adjustment for federal workers, the federal retirement benefit cuts, which have cut purchasing power of some federal paychecks by an additional 2.3 or 3.6 percent; and they have supported the Budget Control Act's discretionary spending caps, which have meant temporary layoffs and could mean permanent job loss for thousands.

We recognize the politics behind the pressure to constantly reduce federal spending. We understand the vast power of those who would protect the low tax rates of the wealthy at any cost. Regardless of one's position on austerity and sequestration, both Force of the Future's pay proposals and the Booz Allen Hamilton plan deserve strong opposition because they introduce subjectivity and politicization into federal pay, undermine veterans' preference and violate the merit system principles. These plans are also objectionable because they would reallocate salary dollars away from the lower grades toward the top, increasing inequality and decreasing opportunity for advancement. Even if the direct attacks on federal employees' pensions were to stop and funding for salaries were enhanced, it would be important to reject Force of the Future and the Booz Allen Hamilton approach, because they quite explicitly advocate greater inequality between the top and the bottom of the federal pay scale.

The elitism of Force of the Future and the Booz Allen Hamilton plan is striking. They ignore the federal government's hourly workforce altogether. Apparently blue collar workers are so bereft of the qualities DoD and the contractor want to reward in their pay schemes that they are not worth notice. The implied segmentation of the General Schedule or salaried workforce is also highly elitist. Employees in the lower grades, like hourly workers, are excluded entirely, again because, presumably, trying to measure their contribution to excellence would be a pointless exercise. But excluding the lowest paid federal workers is only one part of the inequality enhancement exercise that Force of the Future and Booz Allen Hamilton propose for DoD and the rest of government. Like their NSPS forbearer, the plans would divide the workforce by occupational category, reserving the highest raises for the highest earners. Those in the midlevel occupations would stagnate or decline, while their betters would be provided with both higher salary increases and a larger pool of funds from which to draw performance-based adjustments.

Force of the Future and its government-wide twin from Booz Allen Hamilton should also be opposed because they both would undo the tremendous achievement of the current system with respect to eliminating discrimination in pay. AFGE urges Congress to treat the findings of the OPM study on pay equity as important accomplishments worth protecting. We should be celebrating this success, not considering replacing the system that produced it. And that celebration must include full funding, so that federal employees can restore their status in the middle class.

The Federal Salary Council Approach

The Federal Salary Council uses BLS data gathered by trained data collectors who visit businesses and government agencies and record detailed information about the job duties assigned to workers at each salary level and at each location. The dataset used by Heritage asks individuals to identify their occupations by broad industrial categories; e.g., a lawyer would have an occupation called “legal services” as would many others with jobs in that industry. In contrast, the BLS data records, for example, a salary for a “senior attorney with at least ten years of experience in administrative law and litigation in the area of securities law.” The legal profession includes a broad range of salaries, with the majority of lawyers earning modest salaries for providing routine services such as title searches, real estate closings, preparation of simple wills, and representation in small claims court. While some attorneys employed by the government perform similarly routine functions, many more are responsible for complex litigation and regulatory oversight. The data in the National Compensation Survey capture these differences and apply them to the calculation of the gap between federal and private sector pay exactly according to their weight in the overall distribution of federal jobs.

Another difference that explains the opposite results of Heritage and the BLS and OPM is methodological. Heritage uses the “human capital” approach, comparing the pay of individuals on the basis of personal attributes such as age, industry, geographical location, gender, race, ethnicity, educational attainment, occupation and tenure. One appalling result of Heritage’s approach is the interpretation of the fact that the federal government is less likely to discriminate against women and minorities in terms of pay than the private sector: It is viewed as evidence that the government “overpays” relative to the private sector, rather than the other way around.

In contrast to Heritage, the BLS and OPM use a method that matches federal jobs with jobs in the private sector that are similar not only in terms of occupation but also that match levels of responsibility, and levels of expertise required. The personal attributes of the job holder are not included in the calculation, only job description, duties, and responsibilities. In this careful analysis, which focuses on the jobs of the actual federal workforce, the universal and consistent finding is that federal employees are underpaid relative to their counterparts in both the private sector and state and local government.

While the human capital approach is a valid way to reveal patterns of discrimination against individuals, it is not appropriate for pay-setting. Unfortunately, it has proved to be extremely valuable for scoring cheap political points, as the pay freeze and subsequent budget deals’ cuts to federal retirement attest.

Conclusion

AFGE strongly urges the Congress to approve a 5.3% federal pay increase for 2017. On paper, the General Schedule pay system is a model of market sensitivity and budget prudence that upholds the government’s merit system principles and guards against discrimination. It has

extensive flexibility that allows recognition for exceptional performance and special rates for jobs that are hard-to-fill. But what's on paper and what occurs in practice have become two very separate things. The three-year pay freeze followed by two years with meager one percent adjustments and this year's 1.3 percent make a mockery of market sensitivity. Budget prudence has become an all-purpose excuse for reducing the living standards of middle class federal workers. And there remains a steady drumbeat from those who would dismantle all but a small number of federal agencies and programs that federal pay should match that of the worst private employers, and that subjectivity should replace objectivity in structuring a new system.

The federal payroll played no role in the creation of the economic crisis that required massive government spending to resolve. Federal employees did not cause the housing bubble either to inflate or to burst. Federal employees did not engage in speculative investments in derivatives of mortgage securities. Federal employees did not mislead investors, did not outsource jobs to China or Mexico, and did not destroy the financial system. The three-year pay freeze, and subsequent 1%-1.3% adjustments, were nothing more than symptoms of the mania for austerity and a pointless effort at appeasement to those who oppose the missions of almost every executive branch agency and program. It is likely that some in Congress will vote to freeze federal pay again, and the response must be an emphatic rejection of their effort to drive down living standards for federal employees, now and in the future. Federal employees deserve 5.3% in 2017, they deserve deliverance from the role of pawns in the war against the middle class and the war against government.

Federal Pay – Blue Collar

Another Unfulfilled Promise of Market Comparability

The Federal Wage System (FWS), the federal government’s pay system for hourly workers in the skilled trades, is supposed to be a “prevailing rate” system that matches federal and private sector rates on a locality basis. For almost four decades, this system has been distorted by the application of a pay “ceiling” that prevents any annual adjustments from exceeding the average GS adjustment. In the past fifteen years, Congress matched the “ceiling” with a “floor” so that the government’s hourly and salaried workers receive the same annual locality and nationwide adjustments. They recognize that the hourly and salaried employees of the federal government work side-by-side for the same employer, commute together on the same roads, share health insurance, pension, and other non-pay compensation, and should be treated equally.

There remain substantial disparities between the General Schedule system for salaried workers and the FWS. Almost all of these disparities disadvantage blue collar workers. In particular, the blue collar system has only five steps for recognizing the added-value and skills that tenure and experience bring to the workplace, while the General Schedule has ten steps. In addition, the FWS uses outdated systems for gathering data to measure the gaps between federal and private sector wages. Finally, the FWS includes 131 local wage areas (plus 118 non-appropriated fund wage areas) with boundaries drawn to reflect blue collar employment in the federal government dating from as far back as 1965 and 1972, rather than the contemporary commuting data used by the GS locality system.

In October 2010, the Federal Prevailing Rate Advisory Committee (FPRAC) voted to end the practice of treating blue collar and white collar federal employees differently with regard to the drawing of local labor market boundaries. The effect of the FPRAC-supported regulation would be to limit each non-Rest of U.S. General Schedule (GS) locality to one Federal Wage System (FWS) local wage area. The new policy awaits approval by the administration. The administration has cited the pay freeze as an explanation for the long delay in approval of the regulation; the lifting of the freeze eliminated this justification, and we look forward to its publication.

Unifying FWS and GS Locality Boundaries Brings the FWS into the 21st Century

One important argument in favor of unifying FWS local wage areas and GS localities is that it modernizes the prevailing rate system’s recognition of what constitutes a local labor market. Chapter 53 of Title 5 directs OPM to maintain “a continuing program of maintenance and improvement designed to keep the prevailing rate system fully abreast of changing conditions, practices, and techniques both in and out of the Government of the United States.” When the prevailing rate system’s current local wage area boundary-drawing criteria were established more than 50 years ago, the white collar pay system did not yet vary salaries on the basis of local labor markets. The boundaries were drawn around federal facilities that employed large numbers of blue collar federal employees. Many of those federal blue collar jobs and facilities

no longer exist, but the separate facility-based wage areas do still exist. These old wage areas also reflect a time before the expansion of metropolitan areas and the establishment of new highways and public transit systems that allow commuting within large metropolitan areas.

The enactment of the Federal Employees Pay Comparability Act (FEPCA) in 1990 led to the establishment of modern criteria for defining the local labor markets, putting an emphasis on commuting data from the decennial census. These data are widely used by employers in both the public and private sectors to define local labor markets. In contrast, the FWS continues to draw boundaries on the basis of custom, tradition, and often out-of-date information on concentrations of blue collar workers in the private and federal sectors. It is time for FPRAC to recognize that the commuting patterns recognized by the GS system are the most relevant factors for local labor market definitions.

Congress Just Re-affirmed its Support for Treating FWS and GS Equally for Purposes of Annual Pay Adjustments

In December 2015, Congress voted to provide the same pay adjustment for FWS employees as the President provided GS employees with his Executive Order. Prior to the freeze, the Congress had voted for more than a decade to treat the federal government's blue and white collar employees the same with regard to annual locality pay adjustments. Recognizing that all FWS employees within a given GS locality deserve to be treated as if they worked in the same local labor market, the Congress has directed federal agencies to provide the same annual percentage pay adjustment to all blue collar workers within a given GS locality. Congress has recognized that this is an important element of the internal equity that it wants federal pay systems to maintain. Indeed, almost all federal agencies with non-GS pay systems that grant locality differentials have voluntarily adopted the GS locality boundary definitions for non-GS employees, including the Transportation Security Administration's PASS system, the repealed National Security Personnel System (NSPS), and numerous others.

Maintaining Different Local Labor Market Boundaries for Blue and White Collar Workers is Inequitable

Treating blue collar workers as if they are in one local labor market for purposes of annual pay adjustments and as if they are in a different local labor market for purposes of setting underlying base pay is inconsistent and inequitable. It violates basic standards of fairness. The policy makes an invidious distinction among federal employees in pay-setting. Blue collar workers are treated differently from white collar workers for reasons entirely unrelated to the work that they do. It is not and should not be acceptable to treat workers of different races or genders or ages who work in the same location as if they were in different local labor markets; likewise, it should not be acceptable for any employer, and especially not the federal government, to make this distinction on the basis of hourly vs. salaried work.

Disparate Treatment Creates Internal Conflict at the Workplace

Continuation of the current practice of treating different federal employees in the same federal workplace as if they work in different localities creates massive inequities and disunity. For example, the Tobyhanna Army Depot is located in the New York City GS locality, but the Scranton FWS locality. The resulting pay inequities are extremely troubling and indefensible. At Tobyhanna, WG-11 Electronics Mechanics and Production Machinery Mechanics are responsible for highly complex electronics weapons manufacture, repair, modification, configuration, installation, and testing. They are responsible for equipment and machinery that is worth hundreds of millions of dollars and directly affects the progress of war and the well-being of warfighters. The skilled tradesmen and women who perform these jobs work directly with GS personnel, side-by-side, day after day. The WG-11 annual pay ranges from \$46,488 to \$54,246. In the same building at the same time, GS-9 Process Improvements Specialists earn between \$55,327 and \$71,920 and GS-7 Secretaries earn between \$45,232 and \$58,802 with a career ladder that makes them eligible for GS-8 salaries of between \$50,092 and \$65,116. No one is questioning the appropriateness of the Federal Salary Council's designation of Tobyhanna within the New York City commuting area; it is a well-established observable fact, as described by census data. What is questioned is pretending that the blue collar workers at Tobyhanna work in a different location than the white collar workers there.

Unifying FWS and GS Locality Boundaries is Not New, Just Overdue

In 2008, the Federal Prevailing Rate Advisory Committee (FPRAC) undertook a comprehensive examination of the criteria for defining FWS wage areas. At that time, numerous updates were adopted, including the requirement that wage area boundaries would not split Metropolitan Statistical Areas (MSAs) as defined by the Office of Management and Budget (OMB). The unification of MSAs was justified on the basis of a recognition that the FWS wage areas reflected outdated notions about how far workers in the skilled trades would commute to jobs. Census data that are used to define MSAs proved that commuting patterns in large metropolitan areas that include urban cores, suburbs, and "exurbs," are similar for workers in all occupations. The next step was to unify the FWS and GS locality boundaries, since the latter are determined by a combination of MSA definitions, commuting patterns, and concentrations of federal employment. This element of the modernization of FWS boundary criteria remains to be addressed. AFGC urges passage of legislation to require this unification of local pay area boundaries.

Conclusion

There is no rationale for maintaining different local pay area boundaries for the federal government's salaried and hourly workforces. No private employer follows such a practice. It is a relic of the past, of a time that preceded the existence of large suburban and ex-urban housing and commuting patterns affecting not only those in the skilled trades, but workers in professional and administrative jobs as well. The census data demonstrate clearly that workers in all kinds of occupations, blue and white collar, travel the same highways, ride the same

trains, and work in the same buildings. Some are paid by the hour, some are paid an annual salary. It is indefensible for the federal government to continue to classify them as though they live, travel, and work in different locations when they live, travel, and work in the exact same place. Congress already recognizes the importance of equity in pay adjustments between the hourly and salaried federal workforces. It is time to recognize equity in local pay area definitions as well.

Federal Retirement

Federal Employees Have Made Substantial Sacrifices Since 2011

Since 2011, federal workers have contributed more than \$159 billion towards deficit reduction, including an unprecedented three-year pay freeze, a 2.3% increase in pension contributions by employees hired in 2013, and a 3.6% increase in pension contributions by employees hired after 2013. This figure of \$159 billion does not include the hardship that resulted from delayed paychecks, threats to credit ratings, and general disruption to the lives of federal employees and their families caused by the 16-day government shutdown in 2013.

<i>3-year pay freeze (2011, 2012, 2013)</i>	<i>\$98 billion</i>
<i>2012 UI extension which increased retirement contributions for 2013 hires to 3.1%</i>	<i>\$15 billion</i>
<i>2013 lost salaries of 750,000 employees furloughed because of sequestration</i>	<i>\$1 billion</i>
<i>2013 Murray-Ryan increased retirement contributions for post-2013 hires to 4.4%</i>	<i>\$6 billion</i>
<i>2014 pay raise of only 1%; lower than baseline of 1.8%</i>	<i>\$18 billion</i>
<i>2015 pay raise of only 1%; lower than baseline of 1.9%</i>	<i>\$21 billion</i>
<i>2016 pay raise of only 1.3%; lower than baseline of 1.8%</i>	<i>\$23 billion</i>
<i>Total</i>	<i>\$182 billion</i>

Federal employees hired after 2013 already pay 4.4% of their salaries toward their defined benefit pension and 6.2% to Social Security which will make it all but impossible for them to fund their Thrift Savings Plan (401(k) equivalent) accounts. The result will be a serious shortfall in their retirement income security, and a substantial lowering of their standard of living.

AFGE rejects the notion that there should be a trade-off between funding the agency programs to which federal employees have devoted their lives, and their own livelihoods. None of this would be occurring were it not for the perverted logic of austerity politics. The Budget Control Act was a grave mistake, and the spending cuts it imposes year after year have been ruinous for our economy and for the government services on which all Americans depend. Spending cuts hurt the poor and the vulnerable, and they also hurt military readiness, medical research,

enforcement of clean air and water rules, access to housing and education, transportation systems and infrastructure, and homeland security.

Background

In 2013, federal retirement was attacked on several fronts. The House Budget Resolution for FY 2014, authored by then House Budget Committee Chairman Paul Ryan (R-WI), proposed draconian cuts to federal employee pensions, by requiring current employees to increase their contributions to retirement by 5.5% of salary. Federal Employees Retirement System (FERS) employees would have gone from paying 0.8% of salary to their pension to 6.3% of salary to their pensions. Civil Service Retirement System (CSRS) employees would have gone from paying 7% of their salary to 12.5% to their pension. The Ryan pension cuts were estimated to save \$132 billion over ten years. These cuts “score” (in budget parlance) as tax increases. By contrast, the Senate version of the FY 2014 Budget Resolution, authored by Senate Budget Committee Chairman Patty Murray (D-WA), made no recommendation to cut federal employees pay or benefits and criticized the House Budget Resolution’s proposals in these areas.

At the end of 2013, Chairman Ryan and Chairman Murray negotiated over a budget that would repeal sequestration for two years in order to restore most agencies’ funding levels above sequestration levels. Their primary differences were on which offsets should be used to pay for the two year repeal of sequestration. Eventually, they agreed that one offset would be a \$6 billion hit to federal employee retirement, which was achieved by increasing pension contributions for employees hired after 2013 to 4.4%.

President Obama’s FY 2015 request did not recommend increased federal employee retirement contributions. While the Senate did not take up a budget resolution, the House 2015 Budget Resolution again proposed increasing federal employee retirement contributions by 5.5%. At the end of October 2015, the House and Senate passed a budget deal to lift sequestration for two years. This was a critical victory for federal employees, since it did not require any offsets from federal employee pay or benefits.

It is important to view all proposals to cut federal retirement in the proper context. The federal retirement systems play no role whatsoever in the creation of the deficit, and reducing benefits to federal workers has made no positive effect on the budget or the economy. These proposals have no justification other than to scapegoat federal employees and retirees for an economic crisis they had no part in creating. No other group of middle-class Americans has contributed to deficit reduction the way federal employees have, and it is time to find other ways to reduce the deficit than continually taking from working and middle-class workers who have dedicated their lives to federal service. AFGE will continue to oppose any additional efforts to undermine the statutory retirement promises on which federal employees rely.

Conclusion

AFGE strongly supports legislation introduced by Representative Donna Edwards (D-MD), H.R. 785, the Federal Employee Pension Fairness Act of 2015 which would repeal the draconian increase in employee contributions to retirement for those hired after 2012. AFGE will be working to get a Senate companion bill introduced. AFGE will continue to vigorously oppose any retirement cuts for employees hired before 2013.

Federal Employees' Health Benefits Program

The Federal Employees Health Benefits Program (FEHBP), which covers more than eight million federal employees, retirees, and their dependents, is the nation's largest employer-sponsored health insurance program. FEHBP was affected by the Patient Protection and Affordable Care Act, otherwise known as Obamacare. FEHBP is also a target of those who would force federal employees to forfeit their earned benefits to finance deficit reduction. The President's failed 2011 deficit commission, led by Morgan Stanley Director Erskine Bowles and former Republican Senator Alan Simpson recommended dismantling FEHBP and turning it into a voucher program. The attacks on FEHBP are likely to continue in Congress this year and may be intensified by the newly-elected Speaker of the House, Paul Ryan (R-WI) who has been a long-time proponent of voucherizing federal health insurance. AFGE strongly opposes dismantling either FEHBP or Medicare by replacing the current premium-sharing financing formula with vouchers.

Coverage of Applied Behavioral Therapy for Autism in FEHBP

After years of pressure from AFGE and organizations representing the families of those with autism spectrum disorders, OPM finally agreed in 2013 to allow FEHBP plans to cover the most widely used and most effective treatment for autism, Applied Behavior Analysis (ABA). Forty-three states plus the District of Columbia require health insurance plans operating to cover autism treatments and interventions. Since 2015, OPM has provided an exception to cost neutrality if ABA was included as a new service. This effort has increased coverage somewhat, but coverage still remains far from universal.

FEHBP only permits and does not require its plans to cover treatments such as ABA. In 2014 and 2015, only 19% of participating plans offered ABA. In 21 states and Puerto Rico, coverage was offered in some regions. The 2016 landscape is slightly better but still far from complete. ABA coverage is available in part or all of 27 states. While this is an improvement, coverage remains spotty around the country. Major metropolitan areas such as Boston, Charlotte and Nashville lack coverage and there is still no coverage for federal employees who work in Washington, DC or Maryland.

The most disturbing trend that continues in 2016 is that none of the 15 nationwide health plans covers ABA. This includes the two largest FEHBP plans, Blue Cross/Blue Shield Standard Option or Basic Option. These nationwide plans cover over 60% of all FEHBP participants, leaving a majority of participants without this important coverage. Thus, if OPM is at all serious about providing coverage for the most effective and widely used intervention for autism, it must require plans to cover ABA. AFGE will continue to press OPM to require this coverage in every FEHBP plan.

Obamacare and FEHBP

Neither the enactment of the Affordable Care Act in 2010, nor the inception of the individual mandate has solved all of our nation's problems associated with health care cost and insurance

coverage, as millions of Americans remain uninsured or underinsured, and we still spend almost twice as much per capita as other advanced industrialized countries with nationalized health care. This is true despite the fact that almost half of all American health care spending is funded by the U.S. government through Medicare and Medicaid which are not drivers of cost. The country's problems with prices and coverage derive from the other "half" of health care spending, the portion controlled by private insurers and pharmaceutical companies and where policies and rates are set by the private sector rather than government regulation.

The phase-in of benefits from Obamacare began in 2011 with extension of coverage to dependents up to age 26, no copayments for preventive care, and smoking cessation benefits, again without charging any copayments. Several other provisions of Obamacare affect federal employees and retirees who participate in FEHBP. Three will have a direct cost impact. The most promising is the rule on medical loss ratio limitations. Insurers have to spend at least 80 percent of premiums on medical care or functions that improve the quality of care. For those covered by large group policies, insurers must spend an even higher amount -- 85 percent. Insurers who fail to meet this standard must provide policyholders with a rebate instead of pocketing the extra premiums as profit.

Those covered by Medicare and an FEHBP plan pay nothing for one annual well-patient visit to a doctor, and can request a personalized illness prevention plan at no cost. Medicare beneficiaries are also able to get immunizations and screenings for cancer and diabetes without any copayments. Those who participate in Medicare Part D are eligible for a 50 percent discount on brand-name drugs and a seven percent discount on generic drugs if the plan has a coverage gap (also known as a "donut hole"). These discounts will increase each year until the donut hole is completely eliminated by 2020.

In 2014, the income-based government subsidies for individuals to purchase health insurance from state-run "exchanges" became available. Unfortunately, tens of thousands of federal employees who should qualify for these subsidies, because their incomes are so low, will not be eligible because they have access to FEHBP plans, which are partially paid for by their employer. Obamacare's subsidies are calculated partially to limit the share of family income paid out in premiums, and partially on the basis of family size, but FEHBP's employer contributions do not vary by family size or income level. Thus, federal employees who cannot afford FEHBP premiums will not be able to obtain subsidies to purchase insurance on the exchanges.

FEHBP already had some of the consumer protections that the Affordable Care Act extended to everyone in 2014. First among these are rules to prevent insurance companies from discriminating against those with a pre-existing or existing health problem. Second, insurance companies are now prohibited from placing lifetime limits on the amount they will pay for benefits for a patient (the law raises the limit and eventually eliminates it). Restrictions on insurance companies' ability to cancel coverage when an enrollee falls ill also came into effect in 2014.

The most serious concern AFGE has had regarding Obamacare and the one that is likely to be very damaging to federal employees is the excise tax known as the “Cadillac Tax” on high cost health plans that was set to go into effect in 2018. Implementation has been delayed until 2020 as a result of the Omnibus Appropriations bill passed in late 2015. This excise tax will make FEHBP far less affordable for many federal employees and retirees than it already is.

Most disturbing is the fact that it will fall on many FEHBP plans whose high costs are not at all a reflection of a rich benefit package. In fact, the highest cost plans in FEHBP are not those with the most comprehensive benefits. The highest cost plans are those that exploit FEHBP’s structural weaknesses by encouraging those with the highest health risks to congregate, and thus their costs reflect the risk group rather than the actuarial value of the benefits offered. Additionally, many FEHBP plans become “high cost” because of their political power and the Office of Personnel Management’s long history of exempting them from cost accounting standards, as well as OPM’s practice of acceding to demands for large annual premium increases.

FEHBP contracts are fixed price re-determinable type contracts with retrospective price redetermination. This means that even as the insurance companies receive only a fixed amount per contract year per “covered life”, they are allowed to track their costs internally until the end of the year. The following year, they can claim these costs and recoup any amount they say exceeded their projections from the previous year. They are guaranteed a minimum, fixed profit each year regardless of their performance or the amount of claims they pay. The cost “estimates” on which they base their premium demands are a combination of what they report as the prior year experience plus projections for the coming year plus their minimum guaranteed profit. Clearly, there is no ability for federal employees to alter the “high cost” of these plans. It is in the FEHBP’s insurance companies’ interests to keep costs and profits high, and benefits low. And to subject the result of this inefficient system to a “Cadillac Tax” when its high costs have nothing to do with benefits just adds insult to injury.

As of December 2015, the implementation of the “Cadillac tax” has been delayed an additional two years until 2020. AFGE had been working to delay the implementation of the tax and managed to do so through bipartisan support in the Omnibus Appropriations bill. AFGE continues to support the repeal of the tax. One reason for our opposition is that the excise tax is a heavily regressive tax on federal workers, especially those whose incomes are too high to be eligible for the exchange subsidies but are too low to afford employee premiums in excess of \$3,000 per year. While the 40 percent tax is levied on the insurance company and is paid on incremental costs over \$10,200 for individuals and \$27,500 for families, there are already FEHBP HMOs whose rates already meet the 2018 and ultimately the 2020 thresholds.

With the delay enacted, AFGE remains concerned about how the cost thresholds will be calculated since they continue to be based on the initial costs (listed above) adjusted for inflation. In addition to the delay in implementation, the excise tax will now be tax deductible, which is a new policy that will benefit employers. Finally, the initial costs were calculated and benchmarked based on the Blue Cross/Blue Shield benefit option under FEHBP. The 2016

Omnibus Appropriations bill requires a study to determine whether that benchmark is appropriate for age and gender adjustment and will make recommendations about alternative benchmarks. The delay in implementation is a positive step, but the excise tax will remain a problem and AFGE will continue to work for its repeal.

The Administration's Proposed Changes to FEHBP

Discounts for Wellness

The first proposal is to provide “discounts for wellness.” This Orwellian label barely masks its true purpose -- to impose surcharges on those deemed “unwell.” The unwell have relatively higher health insurance claims than those identified as “well.” Would OPM also propose lower salaries for those deemed “unwell”? Would OPM propose to charge those in “wellness programs” more for their retirement benefits on the belief that those with good health are likely to live longer, and therefore cost the retirement system more? This proposal is nothing more than a pay cut imposed on the basis of health status.

The latest medical research strongly suggests that weight is as much a function of genetics as is height, and obesity will be one of the primary disqualifiers for the wellness discount. Illness is a misfortune, not a moral defect. Genetic traits do not respond to financial incentives. According to the latest data from the Centers for Disease Control, obesity rates vary tremendously by race and ethnicity, with 58.5% of non-Hispanic black women and 41.4% of Hispanic women classified as obese, while just 32.2% of non-Hispanic white women were labeled as such. The legal definition of discrimination involves disparate treatment on the basis of immutable characteristics, and one protected class has to do with physical disability. There are numerous conditions that are physical disabilities that might make a federal employee ineligible for the “wellness discounts” related to obesity, rendering the initiative discriminatory. We understand that this form of discrimination is legal under ERISA and other laws, but it remains offensive to our sense of fairness. As such, AFGE opposes the premium differentials tied to “wellness” initiative.

As an alternative, we propose requiring all FEHBP plans to cover up to \$750 per year for gym memberships, fitness classes, or fitness devices. This would provide a positive incentive to pursue fitness, and it is a practice that is far superior to penalizing those with obesity or other conditions that render them ineligible for preferred rates. This is the practice that AFGE uses for its employee health insurance program. For many of AFGE’s employees, this subsidy has been instrumental in the decision to pursue fitness classes that would otherwise have been unaffordable.

Regional PPOs

The next idea from OPM for FEHBP is one its proponents call “expansion of FEHBP plan types.” In practice, this means allowing regional Preferred Provider Organizations (PPOs) to compete against the national PPOs such as Blue Cross/Blue Shield (BCBS) standard and basic options.

The “Blues” are FEHBP’s most popular plans, and currently cover more than 60 percent of enrollees. Like other proposals that claim to lower costs by increasing competition, this one will deliver much less than promised by OPM. First, OPM has a miserable track record when it comes to “arms-length” negotiations with health insurance carriers. Indeed, the carriers are regularly referred to as OPM’s “partners” while we, the enrollees on whom OPM wants to shift more and more costs, are kept at a distance. OPM never seems to understand that as a purchaser, they have a different set of interests from the carriers and it is not their role to follow and accommodate and approve any and all demands by the carriers. Thus their assurance that they would pursue a “negotiations” strategy “not only advantageous to the FEHBP Program but to carriers as well” does not bode well for enrollees, and neither does the \$600 million they think they will save from this initiative. Health care costs (prices and utilization) are not going down. When OPM claims FEHBP savings of \$600 million here and \$6 billion there, it can only mean that enrollees are paying the difference.

Like all of OPM’s proposals, this one would have both winners and losers. Who wins and who loses is important to know in advance; the \$600 million savings implies more losers than winners or that the amount of savings for the winners exceeds the losses of the losers. In short, what will be the impact on FEHBP enrollees? How many will migrate out of other plans into these regional PPOs? How many will shift out of other plans that are affected by the migration to regional PPOs? What will be the impact on premiums and benefits? OPM has not answered any of these questions.

OPM suggests that BCBS plans have too much market power, and that a dose of competition from regional PPOs will lower costs for both. But we know from experience that is not how things go in FEHBP. What will likely happen is that BCBS will end its national plan and the various state BCBS organizations will compete against the regional PPOs, depriving federal employees of the most popular national plan. More risk segmentation will plague FEHBP. There may be less competition, not more, as a result of this change.

If there is one thing FEHBP carriers oppose more than anything, it is the reform long championed by AFGE: one standard benefits package that would require plans to compete on the basis of cost and quality, rather than compete by segmenting the market. Without the national BCBS plans, the regional plans will construct dissimilar benefits packages designed to cherry pick, and the ensuing increase in risk segmentation will worsen FEHBP’s existing flaws. AFGE will continue to fight against the creation of regional PPOs.

Direct Contracting with one Pharmacy Benefit Manager

Another OPM initiative, put forth under the heading of “increasing contracting discretion” would involve carving out prescription drug benefits and allowing OPM to negotiate directly with one Pharmacy Benefit Manager (PBM). The logic behind this is identical to AFGE’s arguments in favor of reducing the number of carriers in order to consolidate buying power and encourage the kind of competition that drives down costs, rather than that which merely segments the market and shifts costs. AFGE would be supportive of this proposal if OPM had

not let slip that it contemplated this in the context of full “voucherization” of FEHBP, as recommended by Messrs. Simpson and Bowles, but not endorsed by the commission they led. The notion that the carve out would mean a voucher to purchase prescription drugs, and would, eventually, be part of a fully-voucherized cafeteria-type structure for all of FEHBP makes AFGE extremely wary of OPM’s initiative.

In addition, since it seeks to save \$1.8 billion over ten years, it is not clear whether OPM’s strategy would lead to the adoption of a formulary (i.e. a list of covered drugs) that would leave out a particular drug or brand of drug that a patient needs. It is also far from clear that OPM would be successful in choosing a PBM that would provide the best prices. There is an almost inevitable trade-off between the restrictiveness of the formulary and the overall cost of the prescription drug benefit. Further, plans such as Blue Cross/Blue Shield may have more buying power than OPM, as they cover more than eight million when their non-federal customers are counted. It remains for OPM to demonstrate how it intends to lower its costs without a cost-shifting voucher or problematic restrictions on the formulary.

Alternatively, AFGE strongly supports H.R. 2175, introduced in the 114th Congress by Representative Stephen Lynch (D-MA), the FEHBP Prescription Drug Oversight and Cost Savings Act. The bill is meant to lower FEHBP’s prescription drug costs by putting restrictions on the activities of PBMs, the entities that negotiate with drug manufacturers and supply prescription drug benefits to health insurance plans of all types. The legislation prohibited PBMs from switching a person’s prescription without prior approval from the prescribing doctor (currently PBMs do so if switching to a different drug is more profitable for them). It also required a PBM to return to insurance plans almost all rebates and incentive payments they receive from manufacturers, and creates disclosure requirements for information about such rebates and incentive payments.

Same-sex Spousal Benefits

With the Supreme Court decision of *US v. Windsor* that struck down a portion of the *Defense of Marriage Act* (DOMA) in 2013, same-sex spouses are eligible for benefits just like opposite-sex spouses. In addition, the children of same-sex spouses are also eligible for coverage. This policy change from recognizing domestic *partners* to recognizing same-sex *spouses* also changes the tax penalty for coverage since the Supreme Court ruled that same and opposite-sex marriages must be treated the same under the law; however, domestic partners are no longer a recognized relationship for federal benefits. While the changes are positive for same-sex marriages, AFGE continues to support the full coverage for domestic partners of both same- and opposite-sex couples and their children under FEHBP.

The 2011 Deficit Commission’s Proposal to Dismantle FEHBP Remains a Threat in 2016

The recommendations of the co-chairs of the President’s National Commission on Fiscal Responsibility called for “transforming the Federal Employees Health Benefits Program (FEHBP) into a defined contribution premium support plan that offers federal employees a fixed subsidy

that grows by no more than GDP plus 1 percent each year.” Essentially, this creates a voucher program for federal employee health coverage. Although the commission failed to achieve the supermajority vote necessary to send its recommendations to Congress for fast track consideration, the recommendations remain alive in current attempts to reduce the deficit on the backs of federal employees. The 2015 election of Paul Ryan (R-WI) to the office of Speaker of the House, makes this threat even more real as Ryan has been a vocal advocate for voucherizing Medicare and other federal health benefits.

The voucher plan would change FEHBP by having the government provide a fixed amount of cash each year that employees could use to buy insurance on their own, instead of paying a percentage of average premiums charged by the insurance companies, as is currently the case. Under the existing statutory system, if premiums go up by 10 percent, the government’s contribution goes up by around 10 percent. The FEHBP financing formula requires the government to pay 72 percent of the weighted average premium, but no more than 75 percent of any given plan’s premium. Under the Commission proposal, the government’s “defined contribution” or voucher would go up by an amount totally unrelated to the rise in premiums. For example, between 2012 and 2016, FEHBP premiums went up by an average of 4.1 percent (6.4% for 2016). The government’s contribution largely kept pace with the employee contribution, although for 2016, the government contribution will be 1.4 percentage points lower than the contribution from employees. If the voucher proposal would have been in effect, the government’s “contribution” or voucher would have gone up by GDP + 1%. During periods of slow growth, the voucher program would not cover premiums; for example, GDP in 2015 was estimated to have grown by 2%. Adding an additional percentage point to that, the voucher would have risen by 3%, not enough to cover the 4.1% average rise in premiums over the last 5 years.

Last year, then House Budget Committee Chairman Paul Ryan (R-WI) and the House Republicans voted not to wait for the FEHBP pilot, and to voucherize Medicare immediately. In 2015, House Republicans, led by Ryan pushed a budget plan to turn Medicare into a voucher program. With Speaker Ryan now setting the agenda for the House of Representatives and having a track record of voucherization votes, the threat that FEHBP will follow suit is more real. Of course, the voucher plan only holds down costs for the government by shifting the financial burden to federal workers or the elderly.

Conclusion

During the past 5 years, including the three year pay freeze, federal pay rose by just 3.3% (0% for 2011-2013, 1% for 2014 and 15 and 1.3% for 2016). But in that same 5 years, federal employees’ premiums are over 20% higher in dollar terms in 2016 than they were in 2012. The cost to employees of participating in FEHBP continues to rise by more than either the general rate of inflation or the rate of growth of their ability to pay (i.e. COLA growth for retirees or pay adjustment rates). For 2016, federal employees will pay 6.4% more for their healthcare premiums – double the increase from 2015 – and employees will only realize a 1.3% rise in their wages and salaries. In addition, while the average employee percentage share of the premiums

will increase 7.4% in 2016, the average increase in the government share of the premiums will be only 6.0%. This indicates a continuation of cost shifting from the employer to employees. Federal employees are paying 23% more of the 2016 increase and paid 13% more of the 2015 increase. The most popular plan (Blue Cross/Blue Shield Standard Option) will cost an additional \$24.93 per pay period for a family plan in 2016 bringing the total annual employee cost to \$6100. This plan will now cost about seven percent of the average government employee's annual salary *before* annual co-payments and deductibles.

While the consumer protections included in Obamacare have allowed all Americans to enjoy some of the positive elements of the FEHBP, federal employees' main benefit has been the extension of coverage to dependents up to age 26. AFGE supports efforts to lower FEHBP's prescription drug prices, but will closely monitor any impact on the formulary. We oppose differentials in FEHBP premiums based on health status, and will oppose regional PPOs until more information on the impact on enrollees is provided. AFGE continues to support full equality in the provision of health insurance for all families, including those that are comprised of domestic partnerships. Finally, AFGE is pleased that the health care "Cadillac Tax" implementation has been postponed to 2020 and will continue to oppose this tax, because it would punish enrollees for the failure of OPM to negotiate premiums that are a fair reflection of the benefits contained in FEHBP's plans.

Sourcing: Complying with the Law

Summary:

- 1. EXTEND THE GOVERNMENT-WIDE SUSPENSION AGAINST STARTING UP ANY NEW OMB CIRCULAR A-76 STUDIES:** Roll over the suspension on the use of the OMB Circular A-76 privatization process until much-needed reforms have been implemented and functions performed by contractors are finally targeted for insourcing. 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. Schemes to repeal the A-76 suspensions were unsuccessful in previous years, but contractors will no doubt be back again this year.
- 2. ENFORCE PROHIBITIONS AGAINST DIRECT CONVERSIONS:** Consistent with the law, no work last performed by federal employees should be contracted out without first conducting a full and fair public-private competition. The Department of Defense (DoD), the largest department in the federal government, acknowledging that the risk of direct conversions increases significantly during downsizing, issued guidance to promote compliance with the law. OMB has issued guidance for the non-DoD agencies, but that guidance is not reaching the folks who matter the most—i.e., front-line managers and the acquisition workforce. OMB committed to AFGE that it would issue additional guidance, and now it needs to follow up. OMB is in the process of issuing detailed and complicated guidance to protect contractor employees from legal violations perpetrated by their employers—when will OMB issue the additional necessary guidance to protect federal employees from agencies’ illegal privatization schemes?
- 3. THROUGH INSOURCING, REQUIRE AGENCIES TO GIVE FEDERAL EMPLOYEES OPPORTUNITIES TO PERFORM NEW AND OUTSOURCED WORK:** Consistent with the law, agencies should insource functions that were contracted out without competition or are being poorly performed. Significant savings are possible from insourcing. An independent group determined that contractors are generally twice as costly as federal employees. DoD has claimed significant savings through insourcing. However, that effort was shut down when DoD imposed a cap on the size of its civilian workforce, but not its contractor workforce. And OMB is late, almost seven years late, in issuing guidance that would allow agencies to regularly and systematically insource functions for cost reasons. OMB committed to AFGE that it would finally issue this guidance, and now it needs to follow up.
- 4. COMPILE SERVICE CONTRACT INVENTORIES:** Consistent with the law, agencies should compile inventories of their service contracts so that we know, among other things, how much contractors cost, how many employees are performing each contract, and how well they are performing. It is imperative that agencies are able to identify and control contractor costs to the same extent that they can already identify and control federal employee costs if downsizing is not to disproportionately impact the less costly civil service. After overcoming OMB opposition, DoD has made progress, but is still years

away from integrating its contractor inventory into its budget process. However, GAO reports that non-DoD agencies are far behind, principally because OMB allows agencies not to collect from contractors important cost information required by law.

5. **LIFT CAPS ON AGENCIES' IN-HOUSE WORKFORCES WHICH FORCE WASTEFUL PRIVATIZATION:** There is no question that work performed by federal employees is being contracted out in defiance of the law because of personnel ceilings. And there is no question that personnel ceilings are being used to deny federal employees opportunities to perform new work and outsourced work. AFGE appreciates that OMB committed in 2014 to issue government-wide guidance to address these very serious concerns.

Details:

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

The prohibition first included in the FY09 Financial Services Appropriations Bill that would prevent new A-76 reviews from being launched by any federal agency remains in effect—and, for several very sound reasons, according to the Government Accountability Office (GAO) and the DoD Inspector General (IG).

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..."

The OMB Circular A-76 process is also severely flawed: According to GAO and the DoD 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...”

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...”

- 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.”

- 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...”

Until the implementation of the reforms listed below, AFGE strongly believes that this temporary suspension 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, or 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.

i. 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). 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."

ii. Double the minimum cost differential for studies that last longer than 24 months—from the beginning of preliminary planning until the award decision. The biggest selling point for the revised 2003 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. 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.

iii. Eliminate the arbitrary 12% overhead charge on in-house bids. 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 DoD IG 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.” Neither reform has been undertaken. Consequently, most if not all in-house bids are unfairly biased against federal employees.

BOTTOM LINE: *Office of Management and Budget (OMB) officials acknowledge that the A-76 process is flawed and that the moratorium on its use should not be repealed. In January 2014, the federal government’s previous top procurement official told The Washington Post that he “agrees with the congressional moratorium on a contracting-out process known as A-76, because he says it uses flawed methodology.” Even DoD, the agency most supportive of the A-76 process historically, also opposes efforts to repeal prohibitions against its use.*

The existing suspensions on the use of the OMB Circular A-76 privatization process should remain in place until the circular has been fixed; federal employees are managed by budgets and workloads, instead of arbitrary constraints; direct conversions have actually been stopped; reliable systems for tracking and controlling service contractor costs have been implemented, including completion of contractor inventories; and insourcing can occur as easily as outsourcing always has been.

2. ENFORCE PROHIBITIONS AGAINST DIRECT CONVERSIONS

Despite the extensive use of the 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), much 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.

In December 2011, DoD, the largest department in the federal government, 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.” The DoD

guidance protects bargaining unit work from illegal privatization because it covers positions, not jobs. Therefore, according to DoD, positions need not be occupied and current federal employees need not be adversely affected in order for management to defy the prohibition.

OMB has issued acceptable guidance: “Pursuant to 41 U.S.C. 1710 and 10 U.S.C. 2461, agencies are precluded from converting, in whole or in part, functions performed by federal employees to contract performance absent a public-private competition (a practice known as “direct conversion”). The conversion of work from in-house to private sector performance may only occur through public-private competition. Appropriations acts since 2009, however, have prohibited agencies from using funds to “begin or announce a study or public-private competition regarding the conversion to contractor performance of any function performed by Federal employees pursuant to Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy. The President’s Budget has proposed continuing this moratorium...”

Unfortunately, it is hidden in the middle of a 700 page document entitled Circular A-11: Preparation, Submission, and Implementation of the Budget, which is read by a tiny handful of budget officials, but not by the acquisition workforce and not by the front-line managers.

In past AFGE meetings with OMB over the last six years, various hurdles were established—including waiting for DoD to issue its own guidance and requiring proof that direct conversions are actually occurring—all which have been surmounted. AFGE is pleased that OMB has committed to issuing additional guidance.

During the Bush Administration, OMB imposed arbitrary numerical privatization quotas on agencies (e.g., agencies were required to review for privatization by the end of the fiscal year 5% of full-time equivalent employees who were classified as “commercial”) and reduced funding for agencies that failed to achieve satisfactory progress. In enforcing this agenda, OMB identified for agencies particular positions for privatization and judged how agencies carried out particular privatization studies. AFGE members are very familiar with the extent to which OMB has historically involved itself in specific agency outsourcing efforts. There is no reason OMB can’t use its influence to promote compliance with the law against direct conversions.

Among the contingencies that need to be addressed in that guidance—or myths to be “busted”—are:

“No harm, no foul” myth: we can wait until federal employees retire or are reassigned and then contract out their work—without having to follow the law.

“Focus on core” myth: we want federal employees to focus on their core responsibilities and then contract out everything else—without having to follow the law.

“More of the same is somehow new” myth: when an agency gets more of the same work or wants to do differently work already designated for performance by federal employees, we can call that work new—so we don’t have to follow the law.

BOTTOM LINE: *OMB spares no expense to educate the federal workforce in ways that benefit contractors, e.g., the acquisition process. However, it has expended the bare minimum when it comes to protecting taxpayers from illegal privatization. Either OMB should issue guidance to enforce statutory prohibitions against direct conversions to a broader audience, or it should be required to do so by the Congress. Direct conversions are not just illegal, they undermine the interests of taxpayers and all Americans who depend on agencies for reliable and efficient service. And the danger of direct conversions increases dramatically during downsizing, particularly when cuts in funding or workforce are imposed arbitrarily. DoD has already issued such guidance, and the Army has followed up with a comprehensive checklist, which has been endorsed by the Congress—both of which should be adapted by OMB for the non-DoD agencies.*

The Administration has styled itself as the champion of federal contractor workers through the issuance of the fair pay and safe workplaces executive order. However, while the Administration is striving to protect contractor workers from scofflaw employers, laws which forbid the arbitrary privatization of work designated for performance by its own reliable and experienced workforce are laxly enforced. That the Administration is more inclined to police contractors than its own agencies raises a host of serious questions.

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

All agencies are now required to develop insourcing policies for new work and outsourced work, in particular outsourced work that is inherently governmental and wrongly contracted out, work contracted out without competition and presumably more expensive than it should be, and work contracted out that is poorly performed. Nevertheless, insourcing, particularly in non-DoD agencies, is proceeding slowly. In fact, OMB has failed to issue guidance that would allow agencies to use insourcing to save money for the taxpayers by bringing in-house functions solely for cost reasons.

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 the Obama Administration would want to shield from scrutiny the army of 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 new 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 2 cases.”

We know that insourcing works—albeit for the brief time it was faithfully undertaken by DoD. According to GAO, DoD officials reported that the Department saved \$900 million through insourcing in fiscal year 2010. 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.”*

It was not until Senator Claire McCaskill’s (D-MO) March 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 in DoD, reported savings from between 16 and 30 percent. More significantly, *“During the much smaller period from Fiscal Year 2008 to 2010 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.

However, insourcing has been essentially shut down by DoD because of the imposition of a cap which prevents the civilian workforce from being larger than it was in 2010. Now, insourcing can only occur if proposals are signed off on by senior officials after going through a daunting and cumbersome approval process. DoD imposed no comparable size constraint on the contractor workforce and required no additional authorization before entering into new contracts or expending on existing contracts.

Little insourcing for cost reasons is occurring in non-DoD agencies. OMB committed to AFGE and Senator McCaskill that it would issue guidance to promote cost-based insourcing by mid-2012. Given that OMB has said that this guidance is merely the first installment, and more likely to be thoughts and ruminations, rather than a full-blown costing methodology, there is no reason why it should not be issued sooner rather than later. The administrative and statutory frameworks governing the outsourcing process took years to be developed. Not every contingency nor every challenge associated with insourcing can be anticipated. Let OMB establish broad guidelines for cost-based insourcing, so that agencies can begin to systematically look for possibilities to insource, as the authors of the law intended, and then improve upon and expand upon that initial guidance as agencies gain valuable experience.

From AFGE’s discussions with agencies, it is clear that managers are waiting for OMB’s endorsement before they insource. Although agencies understand that the savings from insourcing are significant, so are the controversies from taking on contractors. It’s been almost seven years since the insourcing law for agencies other than DoD was enacted. Surely, that’s a long enough interval before the issuance of an initial guidance. Moreover, OMB should make it clear that this guidance explicitly allows agencies to take on additional staff to perform insourced work and that contractors not be rewarded in any cost comparison process for

providing health care and retirement benefits less generous than that of the federal government.

The insourcing law for non-DoD agencies was enacted in an FY09 funding measure; Jeff Liebman, a former senior OMB official, told AFGE in 2009 that costing guidance would be issued; in early 2012, Jeff Zients, another former senior OMB official, told Congress and AFGE that the guidance would be issued soon; and during his tenure, former Office of Federal Procurement Policy Administrator Joe Jordan told AFGE more than once that issuance of the guidance was imminent.

In the meantime, DoD, the agency which does the most service contracting and the most complicated service contracting, has issued detailed costing guidance which has withstood the scrutiny of GAO and a few skeptical lawmakers. DoD stands by its guidance and claims that insourcing has resulted in significant savings. To the extent that guidance is flawed, those problems come disproportionately at the expense of civilian employees, according to GAO. Nevertheless, AFGE supports the guidance because it is better than nothing; and the guidance can be improved if it is actually used. OMB should not reinvent the wheel—instead, OMB should take DoD’s guidance and adapt it for use by non-DoD agencies. OMB should not let private interests that might lose from insourcing obstruct the public interest in giving agencies opportunities to consider cost-efficient in-house alternatives for the provision of services currently outsourced.

BOTTOM LINE: *Insourcing saves money and ensures public control over important and sensitive functions. That is no longer subject to dispute. DoD needs to re-start its insourcing program. It makes no sense for DoD to limit the size of the civilian workforce if that means paying contractors more to perform functions that civilians could perform more efficiently. OMB needs to finally start cost-based insourcing in the non-DoD agencies by issuing guidance. In an austere budget environment, no agency can afford to leave billions of dollars in the pockets of contractors that, thanks to insourcing, might be better directed towards urgent programs or deficit reduction.*

4. COMPILE CONTRACTOR INVENTORIES

Because the federal government’s service contract workforce is more expensive than its civil service workforce, any effort to achieve savings in how agencies provide services necessarily requires subjecting service contractors to severe scrutiny. In order to allow for such scrutiny, a law was enacted in 2009 that required non-DoD agencies to develop inventories of service contracts, which copied a 2007 law that required DoD to establish an inventory of service contracts.

Senate Armed Services Committee Chairman Carl Levin (D-MI) was the first to identify compliance with the inventory requirement and integration into the budget process as necessary if downsizing is to be done intelligently: *“In the past, we’ve found that proposed cuts to contract services are nearly impossible to enforce because expenditures for service*

contracting are invisible in the department's budget.” As House Armed Services Committee Chairman Buck McKeon (R-CA) and Ranking Member Adam Smith (D-WA) noted, sagely, “A credible inventory that is fully integrated into the budget submission is necessary to identify and control contract costs, particularly in this time of fiscal constraints.”

After years and years of delays caused by contractors and their cronies in the executive branch, DoD is moving forward with its inventory. Throughout most of 2012, OMB blocked progress by insisting that the inventory imposed onerous paperwork burdens on DoD's service contractors. Thanks to Congressional pressure and DoD's determination, the Department finally prevailed, issuing guidance in November that emphatically required contractors to routinely provide information needed to complete the inventory for their contracts.

In DoD, the “manpower” experts have an investment in the completion of the inventory because they are responsible for developing and coordinating policy for the Department's entire workforce of military, civilian, and contractor personnel. In the non-DoD agencies, there is no influential constituency pressuring from within to complete the inventories, even though it is understood that they would more than pay for themselves by identifying excessively costly contracts.

During downsizing, it is especially important that all agencies be able to identify and control their service contract costs. Failure to do so will incentivize agencies to impose disproportionate cuts on in-house workforces, particularly during downsizing, because their costs can actually be identified and controlled.

Nevertheless, non-DoD agencies regard the contractor inventories as box-checking exercises, rather than tools that can help them to budget and manage more efficiently. Most agencies rarely review contracts aggressively to identify those that cost too much or include illegal or inappropriate functions. OMB has allowed agencies to submit non-standardized information and not required them to collect vital cost data from contractors.

BOTTOM LINE: *Congress should continue to pressure DoD to finish its inventory of service contracts and then integrate it into the budget process so that service contracting costs can be identified and controlled as easily as civilian personnel costs already are. Congress should require that OMB ensure that agencies collect all required information from contractors and use their inventories in order to reduce the costs of service contracting so that in-house workforces aren't forced to make disproportionate sacrifices during downsizing.*

5. LIFT CAPS ON AGENCIES' IN-HOUSE WORKFORCES WHICH FORCE WASTEFUL PRIVATIZATION

There is no question that work performed by federal employees is being contracted out in defiance of the law because of personnel ceilings. And there is no question that personnel ceilings are being used to deny federal employees opportunities to perform new work and

outsourced work. AFGE appreciates that OMB committed in 2014 to issue government-wide guidance to address these very serious concerns.

Contracting out functions performed by federal employees in order to comply with a personnel ceiling is contrary to law; and at a time when OMB is calling on agencies to economize it makes no sense for agencies to insist that they can spend money on contractors, but not federal employees, to perform particular functions.

In seeking reform, OMB is obviously not trying to arbitrarily increase the size of the federal workforce. Rather, AFGE simply asks that federal agencies govern by budgets and workloads— if they have functions to be performed and funding to pay for performance of those functions, then agencies should be able to use federal employees or contractors, depending on the law, policy, cost, and risk. It makes no sense for agencies to insist that they cannot use federal employees for the performance of functions precisely because they are federal employees, regardless of the law or cost and policy considerations.

AFGE accepts OMB’s assurances that it does not establish personnel ceilings for agencies. Nevertheless, agencies perceive that OMB is imposing such constraints, although in many instances agencies are probably blaming OMB for their own misconduct. OMB’s guidance can therefore disabuse agencies of their misperceptions about OMB and also direct agencies not to establish their own personnel ceilings, unless specifically required by law.

Among the myths that can be “busted” in OMB’s guidance are these:

Agencies can spend money on contractors to perform functions, but not federal employees, because of freezes or caps on in-house workforces, or because of the Anti-Deficiency Act.

Agencies can’t use federal employees for the performance of new work, let alone in-source work, because of constraints on the number of federal employees on the payroll, even if the functions in question should be performed in-house for cost or performance reasons.

For truly temporary functions, agencies can only use contractors, never temporary or term federal employees.

Money is not fungible—funding for service contracts cannot instead be used to pay for performance by federal employees.

BOTTOM LINE: *OMB should follow up on its commitment to issue guidance to ensure agencies discontinue the imposition of caps and freezes on the size of their civil service workforces. If work needs to be done and there is funding available, all agencies should be able to use in-house staff as well as contractors in order to perform that work. If OMB fails to fulfill its commitment, then it should be directed to do so by Congress.*

Official Time for Federal Employee Union Representatives

Introduction

As part of a systemic attack on working and middle class Americans, some Members of Congress have advocated cutting the salaries and benefits of federal employees. Federal workers are the individuals who keep the government functioning through times of political crisis or deadlock. They are the people who get the Social Security checks out on time, ensure a safe food supply, go after those who pollute our water and air, and care for our wounded veterans, but they and other federal employees have been unfairly painted as the cause of our country's economic troubles.

Standing in the way of those who would drastically cut back on the pay, health insurance and retirement benefits of these federal employees are the democratically-elected unions that represent these patriotic public servants. Those who would dismantle vital government programs know that they must silence federal workers' voices in order to achieve their goals. It is not fiscal conservatism that motivates this attempt to prevent effective union representation by attacking the use of official time by employees. Use of reasonable amounts of official time has been supported by government officials of both political parties for some 50 years.

Current Legislative Situation

In March 2015, Representative Jody Hice (R-GA) introduced H.R. 1658, the "Federal Employee Accountability Act of 2015," which would eliminate the use of official time within federal agencies. On April 29, 2015, Representative Hice offered an amendment to the Military Construction-Veterans Affairs Appropriations bill to eliminate official time for all Department of Veterans Affairs (VA) employee union representatives. The House of Representatives soundly rejected the amendment on April 30th, by a vote of 190-232, with all Democrats and 49 Republicans voting against the elimination of official time within VA.

Policy Background

By law, federal employee unions are required to provide representation for all employees in units that have elected union representation, even for those who choose not to pay dues. Federal employee unions are also forbidden from collecting any fair-share payments or fees from non-members for the services which the union must provide.

In exchange for the legal obligation to provide the same services to those who pay as well as those who choose not to pay, the Civil Service Reform Act of 1978 allowed federal employee unions to bargain with agencies over official time. Under this law, federal employees who volunteer as union representatives are permitted to use official time to engage in negotiations and perform representational activities while on duty status.

Legally permitted representational activities are limited to:

- Creating fair promotion procedures that require that selections be based on merit, so as to allow employees to advance their careers
- Establishing flexible work hours that enhance agencies' service to the public while allowing employees to properly care for their families
- Setting procedures that protect employees from on-the-job hazards, such as those arising from working with dangerous chemicals and munitions
- Enforcing protections from unlawful discrimination in employment
- Developing systems to allow workers to perform their duties from alternative sites, thus increasing the effectiveness and efficiency of government, and relieving traffic congestion in metropolitan areas
- Participating in improvement of work processes
- Providing workers with a voice in determining their working conditions

The law provides that the amount of time that may be used be limited to that which the labor organization and the agency agree is reasonable, necessary, and in the public interest. As pointed out in a Congressional Research Service report, "(a)ny activities performed by an employee relating to the internal business of the labor organization must be performed while in a non-duty status."

Activities which may not be conducted on official time include:

- solicitation of membership
- internal union meetings
- elections of officers
- any partisan political activities

To ensure its continued reasonable and judicious use, all federal agencies track basic information on official time, and submit it annually to the Office of Personnel Management (OPM), which then compiles a government-wide report on the amount of official time used by agencies. In September 2014, OPM reported that the number of official time hours used per bargaining unit employee decreased from 2.82 hours in FY 2011 to 2.81 hours in FY 2012, and that official time costs represented one tenth of one percent of the total of federal employees' salaries and benefits for FY 2012.

Official Time Makes the Government More Efficient and More Effective

Through official time, union representatives are able to work together with federal managers to use their time, talent, and resources to make our government even better. Gains in quality, productivity, and efficiency--year after year, in department after department -- simply would not have been possible without the reasonable and sound use of official time.

Private industry has known for years that a healthy and effective relationship between labor and management improves customer service and is often the key to survival in a competitive

market. The same is true in the federal government. No effort to improve governmental performance--whether it's called reinvention, restructuring, or reorganizing--will thrive in the long haul if labor and management maintain an adversarial relationship or lack a means of communication. In an era of tight budgets, it is essential for management and labor to develop a stable and productive working relationship.

Union representatives and managers have used official time to transform the labor-management relationship from an adversarial stand-off into a robust alliance. If workers and managers are really communicating, workplace problems that would otherwise escalate into costly litigation can be dealt with promptly and more informally.

Official time under labor-management partnerships or forums is used to bring closure to workplace disputes between the agency and an employee or group of employees. Those disputes would otherwise be funneled to more expensive, more formal procedures – the agency's own administrative grievance procedures, EEOC complaints, appeals to the Merit Systems Protection Board, and federal court litigation. Thus, although registered as a cost, official time is ultimately a cost-savings mechanism in many instances.

Healthier Labor-Management Relations in the Federal Government Also Produce Cost Savings in Reduced Administrative Expenses

Union representatives use official time for joint labor-management activities that address operational mission-enabling issues in the agencies. Official time allows activities such as designing and delivering joint training of employees on work-related subjects; and introduction of new programs and work methods that are initiated by the agency or by the union. As examples, such changes may be technical training of health care providers in the Department of Veterans Affairs; or, introduction of data-driven food inspection in the Food Safety and Inspection Service.

Union officials use official time for routine and unusual problem-solving of emergent and chronic workplace issues. For example, union representatives use official time when they participate in agency health and safety programs operated under the Occupational Safety and Health Administration (OSHA). Such programs emphasize the importance of effective safety and health management systems in the prevention and control of workplace injuries and illnesses.

Official time is also used by union representatives participating in programs such as LEAN Six Sigma, labor-management collaborative efforts which focus on improving quality of products as well as procedural efficiencies. Recently, union representatives have participated on official time by working with the Department of Defense to complete a department-wide performance management and recognition system and accelerate and improve hiring practices within the department.

Conclusion

Official time under the Federal Service Labor-Management Relations Statute is a longstanding, necessary tool that gives agencies and their employees the means to expeditiously and effectively utilize employee input to address mission-related challenges of the agency, as well as to bring closure to conflicts that arise in all workplaces. It has enjoyed bipartisan support for decades. Overseen by the agencies on a day-to-day basis and by OPM in an aggregated way, official time is used as provided by law, and only for the purposes specified in statute.

AFGE strongly opposes any legislative effort to erode or eliminate the ability of elected union representatives to use official time to represent both dues and non-dues paying federal employees.

Elimination of Federal Employees' Right to Payroll Deduction of Union Dues

Background

Anti-union legislators have increased efforts at the local, state, and federal levels to ban employees from choosing to have their union dues deducted from their paychecks. It is both the right and choice of federal employees, who have chosen to join the union, to have their dues deducted through the automatic payroll system. The deduction of union dues is no different from the current list of automatic payroll deductions available to federal employees that range from health insurance premiums to contributions to charitable organizations.

Federal agencies throughout the country operate under an open shop collective bargaining arrangement, established first by Executive Order under President Kennedy in 1962, reaffirmed by Executive Order under President Nixon in 1969, and finally established by statute, the 1978 Civil Service Reform Act. Under the law, if a labor union is elected by the non-supervisory employees of a federal agency, then the union is legally obligated to represent *all* the employees in that bargaining unit, whether they join the union or not. *The employees in that bargaining unit are under no obligation whatsoever to join the union*, nor are they under any obligation to pay for representation or pay any other fee to the union. When federal employees choose to join the union, they sign a form called an "1187" which establishes their union membership and sets up the payroll deduction. When federal employees choose to pay union dues, they utilize a process that was established by the agencies for purposes other than just collecting union dues.

Recent Legislative Efforts

During the 113th Congress, legislation was introduced to amend current law by making it illegal for federal agencies to allow federal employees who are union members to pay their dues through automatic payroll deduction. The legislation was introduced by Representative Mark Meadows (R-NC) (H.R. 4792) and Senator Tim Scott (R-SC) (S. 2436). In 2013, Senator Scott also offered a Senate floor amendment to eliminate payroll deduction of union dues. This amendment was soundly rejected, 43 to 56.

Opposition to payroll deduction of union dues is rooted in the false premise that there is a cost savings if the collection of union dues is eliminated. Since payroll deductions are no longer done by hand, but electronically, there is no actual financial cost to the government to deduct union dues. The federal government currently provides payroll deductions for the following:

- Combined Federal Campaign
- Federal, state, and local taxes
- Federal Retirement System annuity funding
- Thrift Savings Plan (TSP) contributions and TSP loan repayments
- Federal Employees Health Benefits (FEHBP) premiums

- Supplemental private dental, vision, and long-term care insurance (these are not financed at all by the government, just facilitated through payroll deductions for premiums)
- Court-ordered wage garnishment for alimony and child support
- Flexible spending accounts for payment of health costs not covered by insurance

If it is wrong to provide employees with electronic payroll deductions for dues, then it is just as wrong to provide the service for these other worthy goals.

Conclusion

Any legislative attempt to eliminate payroll deduction of union dues is a blatant political attack on federal employees' wages, benefits, collective bargaining rights, and jobs. They are designed to silence the collective voice of federal employees who carry out the work of federal agencies and programs on behalf of the American people. AFGGE strongly opposes any efforts in the House or Senate to eliminate the ability of federal employees to choose to have their union dues deducted from their paychecks.

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

AFGE is proud to represent 270,000 civilian employees in the Department of Defense (DoD), whose experience and dedication ensures reliable and cost-efficient support of our nation's warfighters—from maintaining weapons to overseeing contractors to guarding installations. According to the Pentagon, of the Department's three workforces—military, civilian, and contractor—the civilian workforce costs the least and is the most cost-efficient, but it is being cut the most. AFGE is honored to represent civilian employees on a wide range of issues, both on Capitol Hill and within the Department.

1. DON'T GUT THE CIVIL SERVICE: NEW BEGINNINGS MUST TRUMP FORCE OF THE FUTURE

After repealing the discredited National Security Personnel System (NSPS), the Congress directed the Pentagon to work with AFGE to develop a collaborative labor-management relationship known as New Beginnings, which would standardize personnel practices and teach managers how to use the ample existing authorities to reward high performers and punish poor performers. Just as New Beginnings was about to be implemented, the Pentagon, working with consultants who had designed the late and unlamented NSPS, developed Force of the Future (FotF). This initiative includes good and bad proposals, but is fundamentally inconsistent with much of New Beginnings.

2. NO MORE ARBITRARY CUTS: REDUCTIONS IN DOD CIVILIANS SHOULD BE BASED ON CUTS IN WORKLOAD AND BUDGET

That the civilian workforce has been cut the most does not stop some lawmakers from proposing to impose additional arbitrary reductions. DoD should manage its civilian workforce by workloads and budgets—if there is work to be done and money to pay for that work to be done, then managers should be free to use civilians, consistent with law, cost, policy, and risk-mitigation. Arbitrary cuts in civilians don't save money because work shifts to more expensive contractors and military personnel.

3. RETAIN THE PROHIBITIONS ON USE OF FLAWED OMB CIRCULAR A-76 PRIVATIZATION PROCESS

The Office of Management and Budget (OMB) Circular A-76 privatization process was outlawed because of documented problems identified by the Government Accountability Office (GAO) and the DoD Inspector General (IG). DoD is specifically barred from using A-76 until it has finally completed an inventory of service contracts. The A-76 process has not been fixed, as OMB and DoD both acknowledge, which is why they oppose repealing the prohibitions on its use.

4. SCRAP THE CAP: FREE THE CIVILIAN WORKFORCE FROM ARBITRARY CONSTRAINTS ON ITS SIZE

Through at least 2019, the size of the civilian workforce is capped at its 2010 level, which prevents managers from assigning work on the basis of law, cost, policy, and risk-mitigation.

Work which could be performed more efficiently by civilian employees is sometimes transferred to contractors or military personnel, both of which DoD acknowledges cost more. Scrapping the cap doesn't increase costs, but it does allow managers to use the least costly workforce. Reductions in DoD spending should come from the legislative and executive branches deciding which functions DoD should no longer perform—and then dismissing the relevant workforce, whether it be military, civilian, or contractor.

5. ENSURE DOD COMPLIES WITH PRIVATIZATION SAFEGUARDS

Thanks to longstanding, bipartisan safeguards, DoD is required to at least guesstimate that conversion to contractor performance would result in marginal savings before privatizing work performed by civilian employees. Nevertheless, either out of ignorance or defiance, our work continues to be illegally privatized without regard to the impact on taxpayers. DoD has promulgated guidance but doesn't enforce it effectively. DoD should expand on that guidance and enforce it through a requirement that acquisition personnel review a checklist of relevant sourcing and workforce management laws prior to outsourcing our work.

6. CIVILIAN-TO-MILITARY CONVERSIONS MUST BE COST-EFFICIENT

The cap on the size of the civilian workforce is so onerous that DoD is using military personnel to perform functions long carried out by civilians, even though the Pentagon acknowledges that we are significantly cheaper. DoD must be required to establish an occupational link between incoming military personnel and the civilian positions that they will take over in order to promote readiness and ensure that any conversions are cost-efficient. At a time when force structure is being dramatically reduced and defense dollars are precious, replacing civilian personnel with military personnel must only be done if it makes fiscal sense.

7. IDENTIFY AND CONTROL SERVICE CONTRACT COSTS

Service contract costs exceed the costs of civilian personnel and military personnel combined. Despite the more than \$200 billion billed annually to taxpayers by service contractors, DoD has little visibility into and control over their costs because it has failed to comply with a longstanding requirement to compile an inventory of service contracts and then integrate the results into the budget process. According to GAO, DoD could control service contract costs if it finally finished the inventory and complied with a statutory cap on service contract spending. However, DoD is defying senior level commitments and several laws by suspending work on the inventory and considering junking a proven methodology for data collection. And the Department's compliance with the cap is spotty.

8. USE INSOURCING TO SAVE TAXPAYER DOLLARS AND IMPROVE PERFORMANCE FOR WARFIGHTERS

DoD is required to give "special consideration" to using civilian employees to perform privatized functions if the work costs too much, is poorly-performed, or is too important or sensitive to have ever been outsourced, using a methodology approved by GAO, although no insourcing is actually required. Despite the Pentagon's acknowledgement that contractors are significantly more expensive, the Department essentially no longer insources because of its cap on the size of the civilian workforce, which makes it difficult to add new staff no matter how much money

might be saved. According to DoD, insourcing efforts from FY10 and FY11 resulted in significant savings.

9. SAVE THE COMMISSARY BENEFIT FOR AMERICA'S WARFIGHTERS

The Defense Commissary Agency (DeCA) enjoys broad support—from the private-sector vendors which supply the commissaries to the military families who can balance their budgets because of less expensive DeCA products to the hard-working and dedicated civilian workforce represented by AFGE that makes the agency an integral part of the compensation package for our warfighters and their families—and it must be saved from the Pentagon's false economies.

10. PRESERVE DFAS TO KEEP FINANCIAL MANAGEMENT COSTS DOWN

The Defense Finance and Accounting Service (DFAS) was created to reduce DoD overhead costs by consolidating financial management functions in one agency, and its workforce is represented by AFGE at several installations across the nation. The Army is determined to bust up DFAS by creating its own financial management capability, using more expensive military personnel. Congress has slowed down the Army's efforts with report and review requirements, but more forceful action is required.

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

BRAC is not the answer to the military's budget dilemma; causes real harm to civilians, military and communities; and has a history of mixed results in terms of reducing infrastructure and costs, especially based on the results of the most recent BRAC. Congress should avoid passing a BRAC resolution that repeats past mistakes when 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 selective and arbitrary reductions of 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, 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.

12. 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 protect and enforce Title 10 statutory provisions that assure the viability of an organic logistics and fabrication capability necessary to ensure military readiness—that the Armed Forces of the

United States are able to meet training, operational, mobilization and emergency requirements without impediment.

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 they should continue to be supported and strengthened. Review and engagement with the required core and 50/50 reports will be key to preserving the long-term viability of the organic depot systems. 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. Lawmakers must be vigilant as DoD and the Armed Services Committees pursue Acquisition Reform to maintain government control of organic depot maintenance, key pathways for bringing new systems into the depots and efficient utilization of organic industrial facilities.

13. CUTS TO FEDERAL EMPLOYEES' PER DIEM ALLOWANCE FOR LONG-TERM OFFICIAL TRAVEL

In November 2014, DoD implemented changes to the Joint Travel Regulations (JTR) that reduces the per diem allowance for federal employees who travel for long periods of time. AFGE represents thousands of DoD civilian employees that provide essential mission support on long-term Temporary Duty (TDY) assignments. This change is negatively affecting federal employees and as a result of these changes, DoD employees must now identify reduced rate lodging and live off a per diem allowance for meals and incidental expenses that is well below nationally established per diem rates while traveling for work extended periods of time. AFGE strongly opposes reducing the per diem rates of DoD employees who are required to travel for more than 30 days. Federal employees have had to sacrifice and work through years of pay freezes, furloughs, and reductions in pay to reduce the federal deficit. Further cost savings should not be at the expense of federal employees who are required to regularly travel for long periods of time.

DON'T GUT THE CIVIL SERVICE: NEW BEGINNINGS MUST TRUMP FORCE OF THE FUTURE

When Congress repealed authority for the National Security Personnel System (NSPS) in 2009 as part of the 2010 National Defense Authorization Act (NDAA), it instructed the Defense Department to work with its unionized employees to devise a new performance appraisal system and an improved appointment process to support the Department's mission.

NSPS was a comprehensive system that changed pay and classification, performance management, and labor relations. The discriminatory outcomes of NSPS (lower pay and smaller pay adjustments for women, racial minorities, and those stationed outside the Pentagon) led Congress to repeal the authority for NSPS. In the wake of NSPS's demise, Congress responded to DoD's insistence that it needed more tools to incentivize high performance by its employees and more flexibility in hiring. Lawmakers wanted the Department to be a high-performing

organization able to recruit and retain the personnel necessary to carry out its mission. But recognizing that disdain for employee input was one of the fatal errors in the creation of NSPS, Congress required that subsequent efforts to change personnel practices be developed collaboratively with unions representing DoD's civilian workforce.

DoD's "New Beginnings": A Successful Post-NSPS Collaboration

In September 2010, DoD and its unions began working together on the mandate to create a new performance management system that eventually became known as "New Beginnings." True to the Congressional mandate, New Beginnings has represented a genuine collaboration between labor and management.

Three design teams were created that included labor and management representatives from the various components. The three teams were: Performance Management, Hiring Flexibilities and Civilian Workforce Incentive Fund. Each team conducted extensive research, analysis and consultation with subject matter experts to arrive at a series of recommendations. In the end, the design teams produced 99 recommendations that addressed the three content areas. These recommendations were presented to DoD in November 2011.

In 2012 the Department announced that it would move forward with 87 of the recommendations from the design team. The New Beginnings system has been the most ambitious labor-management collaboration on personnel issues among government agencies. New Beginnings does three things: First, it establishes a new unified personnel management system which standardizes performance management evaluation across DoD and requires documented regulated communication between supervisors and employees regarding performance. Supervisors and managers are to receive adequate training to assess performance and assure that employees are receiving constant and constructive feedback.

Second, it streamlines the hiring process by adding automation to the process and creating training and other resources to assist hiring managers and employees. Finally, New Beginnings promotes high performance by use of an array of financial incentives to reward highly performing employees, as well as the use of other, non-financial incentives to improve performance. All of these tools are designed to recognize and reward high individual performers and to improve overall agency performance. Together the three elements of New Beginnings aim to improve hiring, retain good employees and build opportunities for employee development in DoD with the overarching goals of creating a high-performing, mission-centered structure.

New Beginnings' performance management system will roll out in phases beginning in April 2016. By April 2018, all civilian employees in the Department will be under the New Beginnings system. AFGE is hopeful that the New Beginnings program will allow for a cultural change in the workplace that will enhance employee engagement and increase productivity.

Throwing a Wrench in New Beginnings: Force of the Future

In August 2015, just eight months before the scheduled implementation of New Beginnings, the Department's Office of Personnel and Readiness (P&R) put forward a set of proposed changes to law and policy regarding both civilian and military personnel in the Department under the name "Force of the Future" (FotF). FotF proposes 18 initiatives that would affect the civilian workforce. Several of the proposals curtailed employee rights and due process, so they have been the focus of AFGE's concerns and opposition. What follows pertains solely to those aspects of FotF proposals that would affect civilian personnel.

The first iteration of FotF revealed that DOD had learned absolutely nothing from the NSPS debacle. DoD established a secret team to design an entirely new personnel system for DoD. By approaching the work in this way, the FotF process ignored New Beginnings' emphasis on collaboration. On the contrary, from the high-handed manner of its release to the secretive nature of its preparation, no union or employee representative had been consulted, interviewed, or included in FotF's development. Of greater concern was that the Force of the Future documents liberally quoted from the now-repealed NSPS legal authority from the very first page.

The initial FotF package would have moved most or all civilian personnel from title 5 coverage to title 10 coverage, which traditionally has only military personnel, not civilian employees. DoD civilian personnel, like almost all of their counterparts at non-DoD agencies, have had most aspects of their employment governed by title 5, as well as implementing regulations issued by OPM, and other title 5 agencies (e.g., Office of Special Counsel, Merit Systems Protections Board). Removing the DoD workforce from title 5 would change the civilian workforce's access to many basic civil service protections regarding hiring, pay, due process and collective bargaining. Moving employees from title 5 coverage to title 10 coverage as recommended by FotF's authors would strip many authorities that have long been housed in OPM and its predecessor agency – the Civil Service Commission – and transfer these functions to DoD (with limited OPM oversight). This change would also compromise current civil service system which is subject to OPM policies and rules. The proposed shift to title 10 from title 5 is the single most objectionable item that the FotF group has advanced and AFGE categorically opposes such a shift and urges DoD and law makers to oppose it in its entirety.

To put this proposed change in context, in the late 1800s, the United States moved from a so-called "spoils system" (i.e., political patronage) civil service to a merit-based system with individuals hired without regard to political affiliation, and solely based on their skills and merit. Since then, the civil service system has adopted significant protections to ensure that merit-based concepts are preserved as this leads to professionalism in public administration. The most disconcerting aspect of the Force of the Future proposal to shift civilians to title 10 is that it would begin the dismantlement of the merit-based civil service system. Congress must not let this occur.

With regard to hiring, the civil service examination process assure that individuals are hired competitively and decisions to hire are based on merit. Most federal jobs are classified as “competitive service” which means that the sole basis for being hired is skill and merit. This protection assures that no one receives a federal job based on partisan political affiliation or other non-merit factors. Title 10 makes civilian jobs “excepted service” rather than “competitive service” and thus undermines the merit system protections against politicized hiring.

With regard to pay, civil service protections assure that wages and salaries are an attribute of a job, not the individual who holds the job. The Federal Wage System for hourly workers and the General Schedule for salaried workers both assign pay to positions solely on the basis of objective factors. This approach has allowed federal pay systems, unlike their non-union counterparts in the private sector, to avoid pay discrimination on the basis of race, gender, age, politics or any other non-merit factor. These pay systems allow for individual performance-based financial awards (such as step increases, quality step increases, bonuses, promotions, and time off awards), but annual adjustments are provided across-the-board and are based on market data, not favoritism. One of the fatal flaws of DoD’s NSPS pay system is that pay adjustments were distributed in a discriminatory way; women, racial minorities and those working at a distance from the Pentagon were, on average, given smaller pay adjustments than white males even when their official “performance” scores were similar or the same. With regard to due process rights, civil service protections guarantee that federal managers and political appointees are held accountable in a merit system. This is as much a protection for taxpayers and the public as it is for federal employees. No one in government should have the ability to appoint or fire permanent civil service employees without some objective basis, or without third-party review of such decisions. While federal employees can be and are fired from their jobs for poor performance or unacceptable conduct, due process assures that such actions are based on evidence presented in a transparent legal context.

These processes protect the public from a federal government staffed by political partisans, or others who lack the proper qualifications to perform public service positions. Due process rights for employees, as described in title 5, also provide protections for whistleblowers to report waste, fraud, or abuse without fear of retaliation.

It is difficult to make direct comparison between title 5 and title 10 because while title 5 includes most civil service protections, title 10 contains just a few *ad hoc* civilian personnel provisions that apply to very specific or unique DoD functions or positions. For example, current title 10 allows DoD to hire limited numbers of personnel for their educational functions (service academies, specialized schools, etc.) without regard to the competitive service requirements contained in title 5. In addition, many of these title 10 provisions grant significant leeway to DoD in setting pay because they are not subject to regular GS pay plans, but instead rely on “administratively determined” decisions to establish pay for an employee. Moving more employees to title 10 coverage could significantly expand the excepted service, and provide opportunities for favoritism, whether in hiring, pay setting, or other aspects of employment.

As title 10 currently makes no provision for collective bargaining or adverse action appeals, moving DoD's civilians under its authority could necessitate the development of new provisions to address these matters. Currently, some title 10 appointing authorities limit the tenure of an appointee to a maximum number of years, or require re-appointment after a certain amount of time has elapsed. Other title 10 provisions may limit or completely eliminate appeals from adverse actions, effectively making the civilian appointee an "at will" employee lacking due process rights. It is impossible to generalize about each of these title 10 provisions without reference to a specific provision, as each is written to address different personnel issues. In some cases, a provision may be written solely to remove a position from the competitive service examining system. In other cases, pay setting matters may be the primary reason for the specific title 10 provision. In yet others, limitations on tenure protections may be primary. Title 10 personnel provisions must not be allowed to undermine consistency and objectivity when service personnel decisions are made.

Force of the Future's Pay Plan: A Return to NSPS

Tied to moving civilian employees from title 5 coverage to title 10 coverage, FotF recommends restoring an NSPS-type pay system. Because the NSPS label was so poorly received, FotF has insisted that its plan will be somehow different. Yet it is clear that they would impose a cost-neutral redistribution of payroll, nominally on the basis of market and performance data, which would necessarily involve the same flawed structure as NSPS. Although they claim that it will be modeled after the Acquisition Demonstration Projects (Acq-demo), Science and Technology Reinvention Laboratories (STRL) demonstration project and the Defense Civilian Intelligence Personnel pay system (DCIPS), these are not cost neutral redistributions systems as FotF claims it would be.

It is crucial to note that many pay demonstration projects guarantee that no one will be any worse off financially than they would have been if they had remained under the GS system. That is, while there is a potential for earning higher salaries, there is no risk of earning a lower salary than would exist under the GS system. This was not the case under NSPS, and has not been a feature of any of the multitude of "pay for performance" schemes that are proposed as replacements for the General Schedule. All proposed alternative pay plans argue that they would be cost-neutral. As such, they redistribute payroll. One person's gain is necessarily another person's loss.

Apart from opening a Pandora's Box and allowing corruption, politicization and other discrimination, pay-for-performance systems that rely on subjective measurements of "performance" and try to make very fine distinctions among workers are counter-productive. Jeffrey Pfeffer, Thomas D. Dee II Professor of Organizational Behavior at the Graduate School of Business, Stanford University, one of today's most influential management scholars, famously denounced pay-for-performance schemes because "they take up a tremendous amount of resources and make everyone unhappy." Pay for performance pits workers against one another, undermines teamwork and collaboration, and ultimately destroys morale. DoD should not risk this outcome again; NSPS taught us a lesson we must not forget.

Using Shibboleths About “Poor Performers” to Justify Elimination of Due Process

Another of the initial FotF proposals called “Hold Low Performers Accountable” outlined a process to ease firings and demotions. The Secretary of Defense would obtain far-reaching power to remove or demote workers deemed “low performers” and current timelines for investigating and challenging allegations of poor performance would be reduced. This would allow immediate suspension of employees without pay if merely *accused* of “poor performance” or “misconduct” and keep employees suspended without pay during the process of determining the validity of the charges. Not only would these provisions violate due process rights but they penalize workers by suspending them without pay prior to receipt of written notice of the reasons for suspension.

Simply put, FotF would abolish current Merit System Protection Board (MSPB) procedures and accepted case law in firing employees. Employee notification periods for adverse actions would be curtailed, hearings would be held before adequate discovery could be made and employees would be put on unpaid leave and financially punished prior to their case ever having been heard. This will inevitably raise Constitutional concerns because punishment would be imposed prior to adjudication. Whistleblowers and others targeted for non-merit reasons such as politics, personal animus, or other discriminatory reasons would all be swept up in this unconstitutional “off with their heads” approach.

The FotF focus on reactivity and punishment could not be more different from the spirit of New Beginnings. New Beginnings strives to create a performance management system that empowers workers, provides positive incentives and better trains managers to solve problems instead of focusing exclusively on punishment. FotF is about management by fear and intimidation, creating a workforce subject to absolute management discretion concerning issues of pay, hiring, firing, and discipline. FotF is all stick and no carrot.

Force of the Future: A Backward March to a Politicized Civil Service

FotF undermines New Beginnings and recapitulates NSPS in the following ways:

1. FotF gives DoD full control over all civilian appointments without regard to title 5 protections, rules and requirements; competitive hiring would be optional.
2. FotF restricts tenure so that DoD’s civilian employees, in many cases, will have more in common with “at will” employees than with other federal employees,
3. FotF would set DoD civilian pay at the sole discretion of the agency (presumably subject to a pay cap imposed by Congress); with no systematic correction to title 5 pay setting rules or laws,
4. FotF would replace current civil service due process procedures with a severely restricted process and provide far fewer rights to appeal adverse actions.

Some FotF proposals would duplicate changes that are underway in the New Beginnings process. For example, both FotF and New Beginnings call for increased scholarship opportunities, ways to streamline hiring processes and increasing the Voluntary Separation Incentive Pay (VSIP) caps.

Furthermore, FotF allocates many workplace benefits to those in specific fields instead of making them widely available to the workforce. In contrast, New Beginnings creates systems and benefits that apply equally to all DoD employees. For example, FotF discusses how workers with desirable technological skills should be recruited from universities, but it ignores that many installations, including shipyards, are concerned that they will face a lack of skilled tradespeople in the future. New Beginnings covers university scholarships as well as policies for crafts and trades. FotF has no initiatives to attract or benefit the majority of workers in the DOD work force. However, when it comes to punishing workers with policies such as removing due process, all workers are treated equally in FotF. The benefits of FotF would accrue to only a few elite workers, but the negative features would affect almost everyone.

Force of the Future Proposal Revisions

In response to AFGE's strong rejection and intense lobbying against the first set of FotF proposals, DoD issued a draft that delayed the initiative to put DoD civilian employees into title 10. Just two weeks later AFGE was told in a briefing that many of the proposals were on hold and would be rewritten, including the hiring and firing provisions. We believe that DoD has shown its hand and we will continue to urge DoD to repudiate these proposals.

At the moment, FotF plans to study alternatives to the General Schedule and the advisability of shifting the civilian workforce from title 5 coverage to title 10 coverage. The proposed study outline uses biased parameters that are likely to produce predictable outcomes, i.e. the desirability of an NSPS pay and personnel system as described in FotF's initial report. This is a common tactic and one that must be noted – it seems DoD is backing away from the initial plan with the intent of building evidence that just happens to support moving forward with the original plan. Not surprisingly, the study team excludes labor representatives. Instead it will be conducted by a team handpicked by the FotF architects.

In mid-November, Secretary Carter announced in a speech at George Washington University that he had approved 20 reform elements from the Force of the Future proposals and that he would be implementing those as the "First Link to the Force of the Future." Twelve reforms applied to military personnel and eight affected civilian employees. The initial civilian proposals are as follows:

1. Improve and Enhance College Internship Programs (to better attract students)
2. Launch an Entrepreneur-in-Residence Program (for 3 Entrepreneurs from private sector)

3. Designate a Chief Recruiting Officer (to act as a DoD headhunter for specialized professions)
4. Establish an Office of People Analytics (to utilize information from “big data”)
5. Create a Center for Talent Development (to provide civilian personnel development opportunities)
6. Create a Civilian Human Capital Innovation Laboratory (to identify best practices and launch pilots to implement those practices)
7. Create a Defense Innovation Network (to allow cross component and military/civilian connections to spur innovation)
8. Establish the Defense Digital Service (to create a more robust in-house technical capacity)

None of the “first link” proposals are objectionable to the DoD civilian workforce.

**NO MORE ARBITRARY CUTS:
REDUCTIONS IN DOD CIVILIANS SHOULD BE BASED ON CUTS IN WORKLOAD AND BUDGET**

THE FOLLY OF ARBITRARILY SLASHING THE CIVILIAN WORKFORCE: Legislation (H.R. 340) was introduced in the House of Representatives in 2015 that would have arbitrarily cut the civilian workforce by 15%, or almost 120,000 jobs. Although it attracted much attention, the bill itself garnered only nine cosponsors. The legislation would not have reduced the Department’s workload—instead, DoD would simply have been told to do the same with less—and it would not have required any cuts in service contract spending, which has doubled over the last ten years.

Just to put the immensity of DoD service contract spending in perspective, consider the bipartisan report language in the Senate FY12 NDAA: *“Over the last decade, DoD spending for contract services has more than doubled from \$72.0 billion in fiscal year 2000 to more than \$150.0 billion (not including spending for overseas contingency operations), while the size of the Department’s civilian employee workforce has remained essentially unchanged.”*

Please see the accompanying DoD chart which details the staggering increase in service contract spending, compared with modest increases in spending on military and civilian personnel.

THE SIZE OF THE CIVILIAN WORKFORCE IS ALREADY BEING ARBITRARILY CUT: Over the objections of the White House and the Pentagon, the FY13 NDAA included a provision (Section 955) that by 2017 requires DoD to cut civilians and contractors by the same percentage as it will reduce military personnel. Because of Section 955 and the Department’s own cuts, DoD is actually cutting civilian personnel not deemed critical at a faster rate than military personnel,

but it is not cutting contractors. Through FY19, according to the Comptroller in 2014, civilian personnel are being reduced by 9.1% and military personnel by 8.7%. No long-range reductions are available for contractor personnel. However, spending for contractors increased slightly in FY15, particularly on Operations and Maintenance.

INCREASES IN THE SIZE OF THE CIVILIAN WORKFORCE ARE JUSTIFIED—AND HAVE SAVED MONEY FOR TAXPAYERS: DoD's civilian workforce grew approximately 17% from FY01 to FY12, or from 700,000 to 800,000. According to the Office of Personnel and Readiness, the civilian workforce consisted of 772,332 employees in 2015. The growth in the size of the civilian workforce is essentially the result of five factors, according to reports from the Department and the Government Accountability Office (GAO):

1. Secretary Donald Rumsfeld oversaw the mid-decade conversion of 50,000 military positions to civilian employees in order to relieve stress on the military workforce and return military members to operational duties. DoD has acknowledged that “civilians typically prove to be a more cost effective source of support than their military counterparts.” Moreover, the Congressional Budget Office recommended that 70,000 military positions be converted to civilian positions, which it said would save taxpayers \$20 billion in less than 10 years. In other words, the largest part of the increase in the civilian workforce complained of by federal employee-bashers came from switching positions from military to civilian, which reduced both the size and the cost of the Department's overall workforce!
2. After years of counter-productive in-house cuts that essentially allowed contractors to be supervised by other contractors, 20,000 civilians were also added to the acquisition workforce.
3. Another 8,000 civilians were hired to bolster the Department's increasingly-important CYBER/IT capacity.
4. 7,000 civilians were added to the medical workforce in order to care for wounded warriors.
5. Insourcing also increased the size of the civilian workforce. In FY10 and FY11, DoD created 28,000 positions through insourcing. More than one-half of those positions were, according to the Department, created in order to save money. The rest were created because the work was too important or sensitive to privatize, also per the Pentagon.

IMPOSING ARBITRARY CUTS ON ONE OF THE DEPARTMENT'S THREE WORKFORCES IS SELF-DEFEATING: If the Congress wants the Department to cost less, then the Congress must reduce the Department's responsibilities. It is incumbent upon the Congress to determine which functions the Department should no longer perform, so that the relevant workforce(s) can be downsized commensurately.

The Department should perform its mission on the basis of budgets and workloads. If it has work to do and money to pay for that work to be done, then there is no reason why DoD managers should be prevented from using civilian employees, contractors, or military personnel. Rather, performance decisions should be based on law, cost, policy, and risk.

However, through 2019 only the civilian workforce is supposed to be no larger than it was in 2010—it is arbitrarily capped. The imposition of a unique constraint on the size of the civilian workforce drives work that had been performed by civilians towards the other two workforces, regardless of law or cost.

DoD told the Senate Homeland Security and Governmental Affairs Committee in 2012 that

"(t)his `civilian cap' has reduced the flexibility of the Army to utilize the types of manpower it sees as most beneficial to the performance of its mission...The current caps on federal employees hiring have hampered agencies from actually making cost-analysis based decisions when contracting...In practical terms, if the Army cannot hire civilians, then it must turn to other sources of labor--like contracting--when it needs to execute missions..."

DoD officials have admitted that contractors cost more than civilian employees. Former DoD Comptroller Robert Hale acknowledged in 2013 testimony before the Senate Defense Appropriations Subcommittee that service contractors generally cost two to three times what in-house performance costs, particularly for long-term functions, a view subsequently affirmed by the Army Chief of Staff.

In fact, civilian employees are now in such short supply that the Department is, increasingly, using more expensive military personnel to perform routine functions that could be performed more efficiently by civilian personnel, which, as was pointed out in FY14 NDAA report language by the House Armed Services Committee, is increasing costs and diminishing readiness. In other words, imposing further arbitrary reductions on the civilian workforce will actually cause DoD to rely even more on more expensive contractors and military personnel, significantly increasing costs to taxpayers.

WHAT HAPPENED IN 2015 AND WHAT WE SHOULD EXPECT IN 2016: Thanks to the leadership of Representatives Tom Cole (R-OK), Rob Bishop (R-UT), and Austin Scott (R-GA), as well as House Armed Services Subcommittee on Readiness Chairman Rob Wittman (R-VA) and House Defense Appropriations Subcommittee Chairman Rodney Frelinghuysen (R-NJ), the bill to arbitrarily downsize the civilian workforce by 15% was rejected last year on a bipartisan basis. However, at the insistence of the Senate Armed Services Committee, significant cuts were imposed in the Department's headquarters workforce. The FY16 NDAA requires DoD to achieve \$10 billion in savings between FY15 and FY19 through at least a 25% reduction in its headquarters, administrative and support activities. AFGE opposed such cuts for several reasons. While DoD should always strive to reduce the cost of its headquarters activities,

arbitrary cuts are bad policy. The headquarters workforce should be managed by workloads and budgets. Rather than impose arbitrary cuts, Congress should identify functions which should no longer be performed in headquarters. Imposition of arbitrary cuts in headquarters activities also establishes a precedent for similar reductions in the civilian workforce, broadly defined. And headquarters activities, particularly if broadly defined, include rank-and-file civilian employees represented by AFGE, both in the National Capital Region as well as around the world.

The Honorable Peter Levine, the Deputy Chief Management Officer, and the official responsible for implementing cuts in headquarters activities, has acknowledged that work won't be done or done as well because of the arbitrary cuts. He says his office will be very aggressive in ensuring cuts are made in contractors. He distinguished his effort from previous efforts to reduce contractors which were focused on a narrow category of service contracts—i.e., staff augmentation—but he and his staff will review almost all relevant contracts, excluding military construction and medical care.

AFGE is concerned that the Department lacks an inventory of service contracts that would allow for contractors in headquarters to be reduced. In the Office of the Secretary of Defense, the number of contractors exceeds that of military and civilian personnel combined. In the Army, almost one-third of headquarters personnel are contractors. However, the other services have no idea how many headquarters contractors they have paid for historically; so, how do they know the extent to which they are reducing their contractors. Worse, the Army revealed that 90% of its contractors are funded by contracts paid for out of non-headquarters accounts, so will the cuts in spending on contractors in headquarters be made in just 10% of the money used to pay for such contractors? And even worse, the Army projects that its headquarters contractors will hold steady for the next several years, while headquarters civilians will continue to decline.

Mr. Levine is still working to define headquarters civilian personnel, but he believes it includes 60,000-80,000 civilian employees, or approximately one-tenth of the overall workforce. Not until later would the definition be developed and the extent of the civilian personnel reductions known. Offices would be credited for cuts implemented earlier, and it was believed that many offices have already achieved cuts of 20%.

It is likely that the civilian workforce will be confronted with other misguided attempts to reduce spending by arbitrarily cutting the DoD civilian workforce. When those proposals are served up, here are three facts to keep in mind, all of them according to the Pentagon:

1. the civilian workforce is the cheapest of the Department's three workforces;
2. the civilian workforce has grown the least of the Department's three workforces; and
3. the civilian workforce is being cut more than the Department's other workforces.

RETAIN THE PROHIBITIONS ON USE OF FLAWED OMB CIRCULAR A-76 PRIVATIZATION PROCESS

WHAT OMB CIRCULAR A-76 IS: It is a privatization process that was last revised during the Bush Administration, which attempted to review for outsourcing almost one million federal employee jobs. Thanks to bipartisan opposition to the Bush Administration's pro-privatization crusade, the use of the A-76 circular was prohibited for particular functions, for particular agencies, and, finally, for the entire federal government. Support for the government-wide A-76 prohibition was fueled by serious concerns raised by the Government Accountability Office (GAO) and the DoD Inspector General (IG).

WHAT THE RELEVANT LAW IS: Since FY09, the Financial Services Appropriations Bill has retained a provision that would prevent new A-76 privatization studies from being launched by any federal agency. A temporary suspension of new A-76 privatization studies 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.

EVEN THE BIGGEST BOOSTERS OF A-76 OPPOSE STRIKING THE SUSPENSION: In his exit interview with *The Washington Post*, the previous Administrator of the Office of Management and Budget's Office of Federal Procurement Policy Joe Jordan, who was leaving to take a job with a contractor, "agree(d) with the congressional moratorium on a contracting-out process known as A-76, because he says it uses flawed methodology." The Administration, in its budget submissions, has recommended retention of the government-wide A-76 prohibition.

DoD is the one agency that, historically, has used the A-76 privatization process. However, DoD, like OMB, has also strongly opposed efforts to repeal the prohibition:

"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...”

WHY THE A-76 PROCESS IS FLAWED: Even after years and years of costly and disruptive privatization studies across the federal government, GAO reported in 2008 that A-76 supporters 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...”

According to GAO and the DoD Inspector General (IG), the A-76 privatization process failed to keep track of costs and savings:

“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...” (DoD IG)

“[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...” (GAO)

This resulted in the actual costs of conducting the privatization studies exceeding the guesstimated savings, according to 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.”

The A-76 process also included a fundamental bias against the in-house workforce, according to the 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...”

WHAT HAPPENED IN 2013, WHAT DIDN'T HAPPEN IN 2015, AND WHAT MIGHT HAPPEN IN 2016: An amendment to the FY14 NDAA to strike the requirement that DoD certify compliance with the inventory of service contracts before starting new A-76 privatization studies was rejected by a vote of 178-214. There were no such amendments in 2014 or 2015. There were also no serious attempts to revive the A-76 process in the Senate during the previous Congress. The government-wide prohibition on new A-76 privatization studies was extended in the FY16 omnibus funding measure.

It is expected that there will be efforts in 2016 to strike both the DoD specific A-76 prohibition as well as the government-wide prohibition, despite consistent opposition from the two agencies that historically have been the biggest boosters of the controversial process, OMB and DoD. It is imperative that OMB remind the Congress that the A-76 process is flawed, as acknowledged by the previous procurement czar; that the circular’s problems have not been rectified; that the federal workforce was subject to onerous A-76 quotas in both the Clinton and Bush Administrations of 200,000 and 1,000,000 federal employees, respectively; and that the federal government’s service contractors have not been subject to the same systematic scrutiny for insourcing that federal employees have endured with respect to outsourcing.

SCRAP THE CAP: FREE THE CIVILIAN WORKFORCE FROM ARBITRARY CONSTRAINTS ON ITS SIZE

SUMMARY: Absent any requirement in law, DoD has imposed a cap on the size of its civilian workforce—through 2019, the civilian workforce should not be larger than it was in 2010. Work that should be performed by civilian employees because of law or policy must sometimes instead be performed by military personnel or contractors. Work that could be performed more cheaply by civilian employees is sometimes instead contracted out or given to military personnel. And even when new work is assigned to civilian employees, adherence to the cap often requires an offsetting reduction—which means that the jobs of a comparable number of civilian employees elsewhere must be eliminated and their work converted to performance by military personnel or contractors.

In short, the cap has so significantly undermined sourcing and workforce management laws and policies that DoD managers are unable to always make performance decisions that are consistent with law, cost, policy, and risk mitigation. The imposition of an arbitrary cap on the size of the civilian workforce is in defiance of 10 USC 129, which forbids the application of such constraints on the size of the civilian workforce, instead requiring the Department to manage its civilian workforce by workloads and budgets—which means that if there is work to be done and money to pay for that work to be done, managers should not be prevented from using civilian employees to perform that work.

DoD claims that the cap is not illegal because the Pentagon has a process by which exceptions to the cap may be secured. However, that exceptions process is forbidding and cumbersome; and, as noted earlier, even when an exception is granted, it usually means that the civilian workforce must be reduced elsewhere in order to offset the increase. Worse, the arbitrary cap is unique to the civilian workforce. The Department has imposed no cap on service contract spending, and reductions in military personnel are based on changes in military strategy. Skeptics can argue that the Pentagon’s cuts in force structure are too steep, ill-conceived, and excessively budget-driven, but they do have a strategic basis, unlike the purely arbitrary cap imposed on the civilian workforce.

AFGE’s DoD members understand that the Department will likely become smaller because of geopolitical and budgetary realities, which will mean that the military, civilian, and contractor workforces also get smaller. However, the cap makes it more difficult for DoD managers to use the civilian workforce—which the Pentagon acknowledges to be the cheapest, the one which has grown the least, and the one which is being cut the most—at a time when defense dollars are exceedingly precious. The Congress should force the Pentagon to finally scrap the cap.

HOW THE CIVILIAN WORKFORCE CAP WORKS SPECIFICALLY IN THE ARMY: In no part of DoD is the cap on the civilian workforce imposed more stringently than in the Army. In a 2014 report to Congress on compliance with the prohibition against arbitrary constraints on the civilian workforce, Army Secretary John McHugh acknowledged: “(I)t has come to my attention that

there may be elements of the Army that appear to be operating with de facto caps on the civilian workforce.”

However, as the Army itself had admitted earlier, the application of the cap on the civilian workforce is neither isolated nor merely an appearance. As the Army testified in 2012, more than two years ago, before the Senate Homeland Security and Governmental Affairs Committee:

“As a result of the civilian cap, individual Army Commands have a cap on their own manpower, in order to ensure the Army’s ongoing compliance with policy. This cap limits the flexibility that the Army has, both as a whole and in individual components, when managing its manpower mix. If a civilian cannot be hired, then the only remaining options are to contract the function, or use borrowed military manpower. The use of military personnel is usually not an option, which leaves only contracting as a viable means of executing a mission.

“When faced with hiring decisions, people are therefore being placed in the unenviable position of having to decide whether to comply with the civilian cap, or to comply with the other statutes and policies governing the workforce (like the prohibition on the performance of inherently governmental functions by contractors).

“Although the goal of the civilian cap—the reduction in overall Department of Defense expenditures—is clearly a good one, the workforce cap has had the unintended consequence of limiting the flexibility of the Army in managing its workforce. 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, and in that sense it would seem to be a positive potential step forward.”

The Army thus acknowledged that its application of the cap resulted in higher costs to taxpayers and the illegal performance by contractors of functions too important or sensitive to privatize. Implicitly, the Army acknowledged that the cap also caused it to defy 10 USC 129.

AFGE’s members in the Army report without hesitation that the application of the cap has become even more onerous as the budget’s vise has been further tightened. For example, as the Army itself acknowledged, in “POM 14-18 Realignment of Resources, As of 5-30-2012,” hundreds of civilian security guards, all of them veterans and many of them partially disabled veterans, were arbitrarily eliminated because of the cap:

“Headquarters Department of the Army directed IMCOM to execute a cost and risk-informed functional prioritization to identify offsets for emerging manpower requirements. After a careful and deliberate review of programs and functions, IMCOM has identified authorizations to adjust or eliminate in order to meet these requirements.

“A total of 988 DA Civilian authorizations across the command will be eliminated by FY '14 to offset the emerging manpower requirements for programs and services...”

“Authorizations to be eliminated are 598 Security Guard authorizations at 13 FORSCOM installations...”

This example of the perverse impact of the cap is particularly pertinent because the conversion of work was entirely dictated by the cap on the civilian workforce. There was no attempt to establish a Military Occupational Specialty linkage between the security guard positions and the incoming soldiers. There was no attempt to determine if this massive conversion was cost-effective. At a time of heightened concern over security, there was no attempt to determine if military personnel could perform the work as reliably and comprehensively as it had been performed by civilians. And, of course, this directive was issued by Secretary McHugh’s own office. The Army’s only consideration: adherence to an arbitrary cap on the size of the Army’s civilian workforce.

The application of the cap is not just an appearance, as the Army maintains, but reality, and the inevitable results are illegal and costly mis-assignments of work. As the Army suggested in its 2012 testimony, the cap should be lifted because of its “unintended consequences.”

Instead, the Army should manage by budgets and workloads. If it has work to do and funding to pay for that work to be done, no Army manager should be prevented from using civilian employees because of a cap. Performance decisions should be driven by law, cost, policy, and risk-mitigation. The Army knows which functions it must perform and how much funding it will be given to perform that work.

Consequently, the Army should think of its workforce holistically and assign work to military personnel, civilian personnel, and service contractors based on approved criteria, rather than arbitrary constraints on the civilian workforce. This approach would be consistent with 10 USC 129, allow the Army to reduce the size of its entire workforce, enhance compliance with laws and regulations which require work to be assigned to particular personnel, and reduce costs since work could be assigned to the most efficient workforce when costs are the sole criterion. Of course, none of this discussion—both the problems caused by the cap and the appropriate remedy—is unique to the Army because the cap perverts assignments of work throughout DoD.

IF CIVILIANS ARE TO BE CAPPED, SERVICE CONTRACT SPENDING MUST ALSO BE CAPPED: The Congress had understood that the imposition of an onerous cap on the size of one workforce can simply drive work to a less constrained workforce. As the Senate Armed Services Committee wrote in its report to the FY12 NDAA mark:

“The committee concludes 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.”

This cap first imposed in the FY12 NDAA covered FY12 and FY13, and the cap was subsequently extended to FY14 and FY15. Unfortunately, as a result of opposition from the Senate Armed Services Committee, an amendment identical to the provision in the House FY16 NDAA filed by Senator Ben Cardin (D-MD) was blocked from consideration, and the cap was not extended for FY16. As a result, the size of the civilian workforce is capped, but spending on service contractors is uncapped, which will inevitably incentivize even the most reluctant managers to pay for service contractors even when the use of civilian employers would be less expensive or consistent with law and policy. As Senate Armed Services Committee Chairman John McCain has correctly noted, growth in the service contractor workforce has “exploded”. However, the failure to extend the cap on service contract spending will leave taxpayers with even bigger bills for DoD service contractors.

ENSURE DOD COMPLIES WITH PRIVATIZATION SAFEGUARDS

HOW WE CAN PROMOTE COMPLIANCE WITH PROHIBITIONS AGAINST DIRECT CONVERSIONS:

Thanks to two longstanding, bipartisan safeguards—a perennial general provision in the defense appropriations bill and 10 USC 2461—DoD must at least guesstimate, based on a formal cost comparison process, that contractor performance would be marginally more efficient before work designated for performance by civilian employees may be privatized. These prohibitions still apply during sequestration.

To the Pentagon’s credit, the Office of Personnel and Readiness has promulgated several iterations of guidance to enforce the safeguards. That office has also helped AFGE to satisfactorily resolve some instances of direct conversions, the term used to describe when our work is contracted out in defiance of the laws. Nevertheless, some DoD managers either remain ignorant of the safeguards or willfully defy them, resulting in bargaining unit work being illegally privatized.

An AFGE Local that experiences a direct conversion should alert the General Counsel’s Office which will help the Local document any illegal contracting out; then, working with the Legislative Department, the Local can pursue administrative and legislative remedies. Success is not guaranteed, but even unsuccessful efforts have deterred management from undertaking additional direct conversions as well as focused Congressional attention on the need for serious reforms.

ADDITIONAL STEPS TO ENSURE ENFORCEMENT OF SAFEGUARDS AGAINST DIRECT

CONVERSIONS: The Pentagon should both build on its earlier guidance and comply with recent Congressional direction to require acquisition personnel to review a checklist of relevant sourcing laws and regulations before outsourcing work designated for performance by civilian employees.

1. **EXPAND ON GUIDANCE:** Administrative and legislative requirements to reduce the size of the civilian workforce do not trump the prohibitions against direct conversions. In fact, there are laws which specifically forbid DoD from using its own arbitrary in-house personnel ceilings as well as cuts required by Congress in the size of the civilian workforce to contract out work designated for performance by civilian employees:
 - a. 10 USC 2461(a)(3)(B), which forbids contracting out work designated for performance by civilian employees in order to circumvent a personnel ceiling; and
 - b. Section 955 of the FY13 NDAA, P.L. 112-239, which forbids “unjustified transfers of functions between or among the military, civilian, and service contractor personnel workforces” in order to comply with arbitrary reductions in those workforces, and affirms the imperative to comply with four important sourcing laws.

The Pentagon should expand on its original guidance to ensure that DoD managers comply with these additional laws. Based on AFGE’s experience, here are three myths about direct conversions that are sometimes entertained by DoD managers and which could be addressed in the Pentagon’s expanded guidance:

- a. No harm, no foul MYTH: we can wait until civilian employees retire or are reassigned and then contract out their work—without having to follow the law.
 - b. Focus on core MYTH: we want civilian employees to focus on their core responsibilities and then contract out everything else—without having to follow the law.
 - c. More of the same is somehow new MYTH: when an agency gets more of the same work or wants to do differently work already designated for performance by civilian employees, we can call that work new—so we don’t have to follow the law.
2. **COMPLY WITH CONGRESSIONAL DIRECTION:** In the FY15 NDAA, Congress required that DoD components and agencies establish a standard checklist of sourcing laws and regulations that must be reviewed before contracting for services, after previous administrative efforts to adapt a checklist Department-wide failed because of internal opposition. This Congressionally-directed checklist would impose no new requirements; rather, it would merely ensure that all relevant legal and regulatory requirements are integrated into one convenient, easy-to-use checklist.

For several years, the Army has been using a checklist of laws and regulations that makes it more difficult to privatize bargaining unit work:

<http://www.asamra.army.mil/scra/documents/ServicesContractApprovalForm.pdf> Since

management must actually use the checklist and comply with the laws and regulations listed, it is not foolproof. However, the Army checklist does make it harder for management to directly convert our work and easier for AFGE Locals to independently review the legality and appropriateness of their installation's service contracts.

In appreciation of the Army's efforts, the Congress included this language in the FY15 NDAA:

"We direct the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the senior acquisition executive for the Department of the Navy and the Department of the Air Force, no later than March 30, 2015, to issue to the Defense agencies and the military services, respectively, policies implementing a standard checklist to be completed before the issuance of a solicitation for any new contract for services or exercising an option under an existing contract for services, including services provided under a contract for goods. We recommend that the Under Secretary and the senior acquisition executives, to the extent practicable, model their policies and checklists on the policy and checklist relating to services contract approval currently used by the Department of the Army."

The House and Senate Armed Services Committees must ensure that the Department follows this direction and that a checklist of laws and regulations like the one devised by the Army is always used before any work designated for performance by civilian employees is privatized.

CIVILIAN-TO-MILITARY CONVERSIONS MUST BE COST-EFFICIENT COSTS TO TAXPAYERS INCREASE WHEN DOD DECREASES USE OF CIVILIANS

It seems difficult to believe given how precious DoD dollars have become, but taxpayers are paying more for work that had been performed by civilian personnel to instead be performed by more expensive military personnel. And DoD civilian employees are losing jobs because their work is being given to military personnel, arbitrarily and permanently. There are many different terms to describe this process: borrowed military manpower, re-greening, re-purposing, and blending.

WHAT THE CAUSES ARE: There are several causes of civilian-to-military conversions: The cap on civilian personnel incentivizes managers to find alternative workforces to accomplish work. Sequestration—at the election of the President—exempts military pay, making military personnel seem like a free alternative to civilian personnel. DoD masks the impact of civilian furloughs by using military personnel to nominally perform civilian functions. Despite the military drawdown, components, particularly the Army, are attempting to find alternative positions for returning military personnel.

IT'S NOT ANTI-MILITARY TO BE CONCERNED: Most AFGE members in DoD and the Department of Veterans Affairs are veterans. Many contractors believe military personnel should never perform functions that would otherwise be performed by civilian personnel or contractors. Not AFGE, which believes that there are justifications for using military personnel

to perform some routine commercial functions: recruitment, retention, and career development. However, with the military drawdown—e.g., the Army going down to its smallest size since WWII—and the need to cut costs, there should be fewer military personnel performing non-military functions, not more. DoD has acknowledged that “civilians typically prove to be a more cost effective source of support than their military counterparts.” Moreover, the Congressional Budget Office recommended that 70,000 military positions be converted to civilian positions, which it said would save taxpayers \$20 billion in less than 10 years.

The House Armed Services Committee was critical about the use of military conversions in report language to its mark of the FY14 National Defense Authorization Act:

“As DoD makes reductions in its Total Force workforce composition, military, civilians, and contractors, the committee is increasingly concerned about the use of military manpower to perform functions previously performed by either civilians or contractors. While the Department of the Navy and the Department of the Air Force have indicated they do not anticipate wholesale substitutions using military personnel, the Secretary of the Army, in testimony before the committee in April 2013, predicted that the Army could use as many as 8,000 uniformed personnel to fill positions during the current fiscal year because reduced funding for training has created time gaps in the duty day and freed up soldiers for other duties. The committee understands the need for temporary, limited local command use of military personnel performing civilian work to accomplish mission objectives, but the committee notes that use of military manpower outside the service member’s military occupational specialty poses risks to readiness and training, and raises issues of unsustainable costs. Consistent with ‘Guidance Related to the Utilization of Military Manpower to Perform Certain Functions,’ issued March 2, 2012, by the Under Secretary of Defense for Personnel and Readiness, the committee expects the Department of Defense to calculate the cost of using military personnel in lieu of civilian personnel or service contractors to perform non-military tasks in accordance with Directive Type Memorandum (DTM)-09-007, ‘Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support’ or any succeeding guidance.”

WHAT RULES APPLY: There are no laws that govern the conversion of work from civilians to military. The Army and the Office of Personnel and Readiness (P&R) have issued guidance in order to rationalize the conversion of civilian and contractor positions to military personnel. The Army’s October 2011 guidance required a link between soldiers’ Military Occupational Skill (MOS) and the functions to be performed. In order to replace civilians or contractors with military personnel, the Army was required to perform a formal cost comparison. P&R’s March 2012 guidance imposes a requirement of military essentiality. If a function is not military essential, then a formal cost comparison is required. If a function is military essential, then no cost comparison is required. Here are the seven examples of military essential functions (which are summarized from DoD Instruction 1100.22):

1. *Missions involving operational risks and combatant status under the Law of War.*
2. *Specialized collective and individual training requiring military unique knowledge and skills based on recent operational experience.*
3. *Independent advice to senior civilian leadership in Department requiring military unique knowledge and skills based on recent operational experience.*
4. *Command and control arrangements best performed within the Uniform Code of Military Justice.*
5. *Rotation base for an operational capability.*
6. *Career progression.*
7. *Esprit de corps (such as military recruiters, military bands).*

Personnel and Readiness' guidance insists that any use of military in lieu of civilians should be temporary and short-term. In April 2013, Army Secretary John McHugh wrote to AFGE that the "Army's (borrowed military manpower) policy is a short-term solution...to address emergency requirements associated with the current budgetary situation does not contemplate the permanent conversion to military performance of work presently allocated to civilian employees." In November 2013, Secretary McHugh wrote that "(t)he use of 'Borrowed Military Manpower' continues to be a short-term, stop-gap measure..." Even during sequestration, substitutions of military personnel for civilian personnel are supposed to be temporary and short-term.

AFGE'S EXPERIENCES: At Fort Rucker, AL, the Army announced that 20 civilians performing support functions would be converted to military. Management told AFGE that the Army needed to find slots for returning military personnel and acknowledged that the military personnel taking the civilian positions had no relevant MOS links. Moreover, no costing was done. At Fort Stewart, GA, more than 40 civilian security guards, all veterans and almost all partially disabled, were replaced by military personnel. No costing was done, and there were MOS links for only some of the military personnel. Worse, this conversion was done explicitly because of an illegal constraint on the size of the civilian workforce—the Army was getting new work and had to eliminate comparable numbers of positions elsewhere in the civilian workforce. And the Army is planning to withdraw from the Defense Finance and Accounting Service and reconstitute its own financial operations, using military personnel instead of civilians.

WHAT DIDN'T HAPPEN LAST YEAR: The FY16 House NDAA included a provision authored by House Armed Services Subcommittee Ranking Member Madeleine Bordallo (D-GU) that would have essentially codified the pertinent parts of the Army's October 2011 guidance and Personnel and Readiness' March 2012 guidance: If a function comes under the first four examples of military essential functions, then it can be converted from civilian or contractor performance. However, if a function comes within the latter three examples of military essential or is not military essential at all, then there must be an MOS link between the function and the military personnel involved as well as a formal cost comparison which determines that performance by military personnel is cheaper.

A comparable amendment was filed by Senators Robert Casey (D-PA) and Lisa Murkowski (R-AK) to the Senate version of the FY16 NDAA, but it was blocked from consideration, and opposition from the Pentagon and the Senate Armed Services Committee killed the Bordallo amendment in the conference, which is essentially the same result as last year.

Consequently, there are no statutory limitations on the extent to which DoD can arbitrarily shift work from civilians (and contractors) to military personnel, regardless of the increased costs to taxpayers. And because of the onerous cap on the size of the civilian workforce and the resumption of sequestration, it is expected that civilian-to-military conversions will only increase in size and frequency.

The big difference between the FY16 NDAA and the FY15 NDAA with respect to military conversions is that independently corroborated authoritatively corroborated in 2015 what AFGE has been saying about the use of borrowed military personnel for the last two years.

Per the Government Accountability Office's MILITARY PERSONNEL: Army Needs a Requirement for Capturing Data and Clear Guidance on Use of Military for Civilian or Contractor Positions, 15-349, GAO reported that the Army does not track

- a. how long borrowed military personnel are used in lieu of civilians and contractors;

"An Army regulation required borrowed military personnel assignments normally should be limited to 90 days , but...(t)he Army did not track the actual amount of time soldiers served in this temporary status..."

- b. whether borrowed military personnel are used consistently with their professional specialties;

"Borrowed military personnel were used in various capacities outside of their Military Occupational Specialty, including as lifeguards, grounds maintenance personnel, and gym attendants because the Army did not provide specific guidance on what functions it considered appropriate to fill with borrowed military personnel."

Note: *"Army data show that for the three installations, on average 38% of soldiers were performing special duty within their Military Occupational Specialty and 62% of soldiers were performing duty that was not related to their specialty."*

- c. how much more borrowed military personnel cost than the civilians and contractors they replace;

"The Army did not consider full costs in fiscal years 2013 and 2014 when deciding to use borrowed military personnel and the Army did not provide the oversight that was necessary to ensure that commanders documented and reported the full costs of using borrowed military personnel in these years. This is important because the full costs of borrowed military personnel can be greater than civilian personnel performing the same function. GAO reviewed special duty data reported in February 2014, and found that none of the 13 commands and installations reviewed reported the full costs for all military, civilian, and contractor personnel."

Note: *"In cases which the full cost of civilians performing gate guard and lifeguard duties do not exceed \$3,908, then the average full cost of military personnel performing those duties may be double or more than the costs of civilian personnel conducting those activities."*

d. and what impact the use of borrowed military personnel has on readiness and training. *“(T)he Army does not know the extent to which the use of borrowed military personnel affected readiness and training...(T)he Army does not now have a requirement to monitor this usage even though Army officials said this usage of borrowed military manpower would continue...Without a continued requirement and clear guidance for identifying and monitoring the extent to which borrowed military personnel are used, the Army risks allocating its resources inefficiently and ineffectively and may be unable to identify any potential problems with this use of personnel, including any impacts on training and readiness.”*

To the extent that DoD and the Army have issued guidance, GAO’s report indicates that such guidance has been unclear, ignored, unenforced, and suspended. Leaving the Department to its own discretion has clearly not worked, despite the significant interests at stake, particularly when defense dollars are precious and force structure is being dramatically reduced. Therefore, the Congress should have acted to ensure that rules based on the Department’s own guidance are actually codified. The only reservation AFGE has about GAO’s report is that it focused exclusively on the Army—because that component was the only one that confessed to GAO that it undertook civilian-to-military conversions, even though the practice is widespread.

And per Replacing Military Personnel in Support Positions With Civilian Employees, the Congressional Budget Office (CBO) reported that, “In 2012, about 340,000 active-duty military personnel were assigned to commercial positions that support functions.” The CBO recommended: “To cut costs, DoD could transfer some of those positions to civilian employees and then reduce the number of military personnel accordingly. The Congressional Budget Office estimates that doing so for 80,000 full-time positions could eventually save the federal government \$3.1 billion to \$5.7 billion per year.” Of course, following through on CBO’s recommendation would require the Pentagon to lift the cap on the size of the civilian workforce and the Congress to repeal the arbitrary cuts in the number of civilian employees. What’s more important to the Congress and the Pentagon—cutting costs or cutting more efficient civilian employees?

AFGE Locals which are losing bargaining unit work to military conversions should contact AFGE’s General Counsel’s Office, which will assist in documenting the conversion and determine whether it is inconsistent with the Department’s guidance; then, working with the Legislative Department, the Local can pursue administrative and legislative remedies. Such efforts have sometimes prevailed; even when they don’t, fighting back often deters management from undertaking additional military conversions and helps to focus Congressional attention on the need for serious reforms. As Senate Armed Services Committee Chairman McCain has correctly noted, “less than one-quarter of active duty troops are in combat roles, with a majority instead performing overhead activities.” It is unfortunate that AFGE’s effort to at least rationalize civilian-to-military conversions have been frustrated two years in a row.

IDENTIFY AND CONTROL SERVICE CONTRACT COSTS

INTRODUCTION: DoD spends two and one-half times more on service contracts than on civilian employees, with service contract costs having more than doubled during the last ten years. Nevertheless, DoD still can’t identify and control its spending on service contracts because it has yet to compile an inventory of its service contracts that is integrated into the budget,

despite having been required to do just that since 2008. However, because of opposition from contractors and their allies in the acquisition community, DoD has failed to comply with the law.

Thanks to pioneering work by the Army, it seemed as if DoD might be on the path towards compliance; DoD, contractors, AFGE, Congress, and GAO agreed that the Army's methodology should be the basis for the contractor inventory. However, stubbornly snatching defeat from the jaws of victory, the Pentagon suspended work on the inventory in 2014 and is now considering junking the Army's methodology in favor of another that will leave unaccounted for significant contractor costs.

GAO has reported that DoD can get service contract costs under control—or at least limit the growth in such costs—by requiring DoD to complete the inventory of service contracts and enforcing the longstanding cap on service contract spending.

DOD DEFIES LAWS AND COMMITMENTS FOR IMPLEMENTATION OF THE INVENTORY: In the FY08 NDAA, a statutory requirement to inventory service contracts was enacted, the one with which DoD has yet to comply.

In the FY10 NDAA, based on GAO findings that the Department had made little discernible progress towards the implementation of an inventory of contracted services, the Congress codified a requirement that the Department better project and justify requested budgetary resources for contracted services—a requirement that the Department still struggles to meet.

Pursuant to the FY10 NDAA, Congress directed the Department to make resources available to adopt a proven Army data collection methodology.

In the FY11 NDAA, Congress assigned responsibilities to the Under Secretary of Defense for Personnel and Readiness with regards to the collection of data that would enable improved oversight of contracted services consistent with management of the Department's Total Force—the military, civilian, and contractor workforces.

In the FY11 Defense Appropriations Bill, Congress required the Pentagon to submit detailed plans for all DoD organizations to come into compliance with longstanding statutory requirements for the inventory.

In the FY12 NDAA, Congress directed the Department to use the inventory to ensure a balanced and effective workforce; inform strategic workforce planning; justify budget requests for service contracts; and identify poor, wasteful, illegal, or inappropriate service contracts.

The Under Secretaries of Defense for Personnel and Readiness and Acquisition, Technology, and Logistics jointly submitted to Congress, in November 2011, a comprehensive plan delineating a path forward to full compliance with Congressional direction by the end of fiscal year 2014.

This plan was subsequently endorsed by former Secretary Leon Panetta, in a letter to the chairman and ranking member of the House Armed Services Committee.

In accordance with those plans, in early 2012 the Department made commitments to service contractors and the public through the Paperwork Reduction Act process regarding implementation of the inventory.

In November 2012, the Under Secretaries for Personnel and Readiness and Acquisition, Technology, and Logistics jointly signed guidance to begin Department-wide use of and reporting into the enterprise-wide Contractor Manpower Reporting Application (eCMRA) for inventorying service contracts—a system predicated on a proven Army business process.

As reported by GAO, the Department allocated dedicated resources, beginning with fiscal year 2015, to ensure continued implementation of Congressional direction.

The importance of dedicated resourcing of this effort was endorsed by two Deputy Secretaries of Defense—then Secretary Ashton Carter and Acting Secretary Christine Fox.

In spite of that lengthy history, ample precedents, and senior level commitments, the Office of Personnel and Readiness decided in September 2014 to suspend work on the inventory and consider an alternative methodology to collect information from contractors for the inventory. GAO and DoD IG have also reported that the Department is not providing the inventory effort with sufficient resources.

WHAT SHOULD HAPPEN IN 2016: Rather than get bogged down in arcane, internal disputes about methodology and responsibility, AFGE urges the Office of Personnel and Readiness (P&R) to adhere to the commitments for the inventory of contract services that it made in writing in 2014 to the Congress. P&R made five broad, overarching commitments for the inventory, which are reproduced in the italicized language, below. Some progress has been made towards the first two commitments, but little if any progress has been made with respect to the latter three commitments:

1. Taking the Department of the Army’s centralized Contractor Manpower Reporting Application (CMRA), and

“The Department adopted the reporting tool and successful processes that the Army has used for the past several years with its centralized Contractor Manpower Reporting Application (CMRA).”

2. Adopting it for Department-wide use through the Enterprise-wide Contractor Manpower Reporting Application (ECMRA), and then

“The cornerstone of these improvements is the software we made available for all Components based on the Army’s CMRA; we call it the `Enterprise-wide Contractor Manpower Reporting Application (ECMRA).”

3. Providing the ECMRA with the support necessary to implement it across the entire Department,

“I am also pleased to share with you that in FY2015 the Department will have additional dedicated resources in this area. We are currently establishing a Total Force Management Support Office to comprehensively implement the ECMRA across the Department.”

4. So that it can be used as required by law to review and analyze service contracts for possible correction, whether that be modifying the contract or insourcing the function,^[i]

“This will ensure a consistent review and analysis process related to the performance of functions under contract. This analytical feature of the ECMRA business processes complements policy formulation, oversight of reporting, and consequent actions for all Defense Components.”

^[i] 10 USC 2330a

... (e) Review and Planning Requirements.-Within 90 days after the date on which an inventory is submitted under subsection (c), the Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall-

(1) review the contracts and activities in the inventory for which such Secretary or agency head is responsible;

(2) ensure that-

(A) each contract on the list that is a personal services contract has been entered into, and is being performed, in accordance with applicable statutory and regulatory requirements;

(B) the activities on the list do not include any inherently governmental functions; and

(C) to the maximum extent practicable, the activities on the list do not include any functions closely associated with inherently governmental functions; and

(3) identify activities that should be considered for conversion-

(A) to performance by civilian employees of the Department of Defense pursuant to section 2463 of this title; or

(B) to an acquisition approach that would be more advantageous to the Department of Defense.

5. Under the overall direction of the Office of Personnel and Readiness, consistent with its statutory responsibilities.

“This office, in coordination with the Comptroller’s office, will leverage the Army’s established processes to ensure that the contract component of the Total Force is incorporated into the Department’s Planning, Programming, Budgeting and Execution process in order to fully implement the statutory mandates within section title 10, USC, section 235.”

USE INSOURCING TO SAVE TAXPAYER DOLLARS AND IMPROVE PERFORMANCE FOR WARFIGHTERS

WHAT INSOURCING ACTUALLY IS AND WHY CONTRACTORS DON’T LIKE IT: Insourcing refers to the process by which work performed by contractors is brought in-house because the work is too important or sensitive to have been outsourced, performance can be improved, or costs can be reduced. Insourcing is common in the private sector as well as at lower levels of government.

Contractors don’t like insourcing because it cuts into profits. Pro-contractor lawmakers sponsor legislation to prevent agencies from insourcing. Senior acquisition executives, most of whom have worked for contractors and / or will go to work for contractors, refuse to insource. Arbitrary constraints on the size of in-house workforces—whether pursuant to caps, freezes, or cuts—make it very difficult to insource, no matter how many taxpayer dollars might be saved.

Pursuant to 10 USC 2463, DoD is required to develop insourcing policies for new work and outsourced work, in particular to give “special consideration” to insourcing contracted out work that:

1. is too important or sensitive to privatize,
2. was contracted out without competition and is now presumably more expensive than it should be, or
3. has been deemed poorly performed.

The insourcing law for DoD was enacted through the FY08 NDAA. DoD is not compelled to insource; rather, with respect to certain categories of work, DoD is simply required to give “special consideration” to insourcing. 10 USC 2330a, also enacted through the FY08 NDAA, requires DoD to use reliable and experienced civilian employees to the “maximum extent practicable” to perform closely associated with inherently governmental functions, which includes such work as developing regulations, preparing budgets, and interpreting regulations. Nobody would ever consider having such work performed by contractors—except, of course, contractors, who have continually tried to repeal the law.

HOW DOD HAS INSOURCED: DoD officials told the Government Accountability Office (GAO) that, *“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.”

In FY10, the Department added nearly 17,000 new civilian positions as a result of insourcing. Of those, 9% were added because the work was actually inherently governmental, 41% because work was exempted from contractor performance (to mitigate risk, ensure continuity of operations, meet and maintain readiness requirements, etc.), and 50% solely because of cost savings, according to the Department. In FY11, the Department added almost 11,000 new civilian positions as a result of insourcing. Of those, 6% were added because the work was inherently governmental, 13% because work was exempted, and 81% because of cost savings, again according to DoD.

According to GAO, DoD reported, in FY10 alone, \$900 million in savings from insourcing. The Army, which had conducted the most robust insourcing effort in DoD, reported savings from between 16 and 30 percent. More significantly, "During the much smaller period from Fiscal Year 2008 to 2010 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 last year issued its own assessment of the costing methodology, which implicitly rejected the CSIS critique. If anything, GAO's report revealed that the methodology is more biased against civilians than contractors.

WHAT HAPPENED TO INSOURCING: However, insourcing has been essentially shut down by DoD because of the imposition of an in-house personnel cap which inhibits the civilian workforce from becoming larger than it was in 2010. Now, insourcing can only occur if proposals are signed off on by senior officials after going through a daunting and cumbersome approval process. Moreover, insourcing proponents are often compelled to find comparable numbers of in-house jobs to eliminate in order to stay below the cap. DoD has imposed no comparable size constraint on contractors and required no additional authorization before entering into new contracts or expending on existing contracts.

INDEPENDENT SUPPORT FOR INSOURCING: In 2011, the Project on Government Oversight (POGO), which accepts no union contributions, compared the costs of federal employees and contractors in a seminal study entitled *Bad Business: Billions of Taxpayer Dollars Wasted on Hiring Contractors*, the first to compare service contractor billing rates to the salaries and benefits of federal employees. POGO determined that "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 new report, it was cheaper to hire federal workers in all but just 2 cases.”

WHY INSOURCING IS MORE IMPORTANT THAN EVER: Senior DoD officials have acknowledged that contractors cost more than civilian employees. Former DoD Comptroller Robert Hale acknowledged in 2013 testimony before the Senate Defense Appropriations Subcommittee that service contractors generally cost two to three times what in-house performance costs, particularly for the performance of long-term functions, a view subsequently affirmed by General Ray Odierno, the Army Chief of Staff, in House Armed Services Committee testimony.

Nevertheless, spending on service contracts has far exceeded investments in civilian personnel. As the Senate Armed Services Committee noted in bipartisan report language to the FY12 NDAA: *“Over the last decade, DoD spending for contract services has more than doubled from \$72.0 billion in fiscal year 2000 to more than \$150.0 billion (not including spending for overseas contingency operations), while the size of the Department’s civilian employee workforce has remained essentially unchanged.”*

WHAT HAPPENED IN 2015: DoD should be required to finally hold contractors accountable to taxpayers. DoD should be required to use its costing methodology to determine whether new work, which is not required by law, regulation, or policy to be performed by military or civilian personnel, should be performed by military, civilians, or contractors. Right now, because of the cap on civilian employees that work is almost automatically given to contractors. Also, given the Comptroller’s assessment that civilian employees are cheaper for long-term functions, DoD should be required to review such workload and determine whether it might be performed by civilian employees, using its own costing methodology. In both instances, DoD should be required to raise its cap on the civilian workforce to accommodate any new positions created because in-house performance promised to be less expensive.

The House FY16 NDAA included a bipartisan provision which codified existing DoD policy that the Department use its own costing methodology in assigning new work to military personnel, civilian personnel, or contractors if the work did not need to be assigned to a particular workforce because of law, policy, or risk. Contractors opposed the provision because they generally prefer to avoid having their costs compared to those of in-house workforces, even after their think-tank’s criticisms of the DoD methodology were rejected by GAO.

Because of opposition from the Senate Armed Services Committee, an amendment filed by Senator Sherrod Brown (D-OH), which was comparable to the House provision, was blocked from consideration, and the House provision was dropped in conference. Consequently, the “explosion” in service contracting lamented by Chairman McCain will continue.

SAVE THE COMMISSARY BENEFIT FOR AMERICA'S WARFIGHTERS

AFGE IS PROUD TO SERVE MILITARY FAMILIES: AFGE is proud to represent civilian employees who work for the Defense Commissary Agency (DeCA), which provides groceries and household goods through more than 250 commissaries to active-duty, Guard, Reserve, and retired members of all seven uniformed services of the United States as well as eligible members of their families.

WHY DECA WORKS SO WELL: Authorized customers buy items at cost plus a 5% surcharge, which covers the costs of building new commissaries and modernizing existing ones. Shoppers save an average of more than 30 percent on their purchases compared to commercial prices—savings that amount to thousands of dollars annually when shopping regularly at a commissary.

Commissaries provided military households with \$2.7 billion in price savings and another \$200 million in income for military family members employed by DeCA; 90% of active-duty military families used the commissaries in 2012, helping to rack up almost 100 million customer transactions at DeCA. As a core military family support element, and a valued part of military pay and benefits—according to surveys of military personnel—commissaries enhance the quality of life for America's military and their families, and help recruit and retain the best and brightest men and women to serve our country.

ROBBING THE WORKERS TO KEEP THE COMMISSARIES RUNNING: Thanks to Senators Jim Inhofe (R-OK) and Barbara Mikulski (D-MD), the Senate's FY16 NDAA was stripped of a provision that would have led to the privatization of the commissaries. However, having saved the commissaries from abolition and privatization, now the commissaries face a new threat—loss of almost all appropriations funds and conversion of DeCA to a non-appropriations funded agency, which would have severe consequences for the agency's workforce and the long-term viability of the commissary benefit.

The FY16 NDAA included a provision that requires the Department to report how it would provide the commissary benefit as revenue neutral. In other words, the substantial benefit that DeCA provides to military families would somehow have to pay for itself—with no subsidies. DoD had earlier hired a business consultant, the Boston Consulting Group (BCG), to provide recommendations for how to go "off budget."

The three most important recommendations made by BCG are to:

1. Introduce private labels, which many retail experts say is not feasible because DeCA's sales are not significant enough;
2. Use variable pricing, which is code for increase prices, and which many fear will drive away military families and lead to the end of the commissaries; and

3. Convert DeCA from appropriations fund status to non-appropriations fund (NAF) status, which would have a severely adverse impact on the workforce.

With respect to the third recommendation, conversion to NAF status would cut the pay of DeCA workers by as much as one-quarter, force them to pay significantly more for health care insurance, render them ineligible for retirement benefits, and make it easier to fire them and privatize their jobs. Here are relevant excerpts from BCG's report:

"The primary cost-saving benefit of NAF conversion for DeCA would be tangible reduction in labor costs...the NAF environment tends to provide for lower and more flexible wage schedules compared to APF. We estimate that annual run-rate savings in wages and benefits combined could be \$95-155M."

"Our analysis suggests that NAF conversion could enable 15-25% wage savings for in-store positions, while maintaining the same level of pay for above-store positions. Beyond differences in pay, there are also potential cost savings from benefits."

"Furthermore, DeCA would become more agile in terms of personnel actions. DeCA would be able to more speedily hire and separate employees, use business-based actions to adjust the size of the workforce, increase the use of flexible employees who do not receive benefits..."

"DeCA's share of full-time store level employees is greater than what we see in private sector grocers. Today, 63% of DeCA's in-store employees are part-time, which is 7-12% less than the 70-75% range we typically see in the private sector. Furthermore, all DeCA employees receive pro-rated benefits, even when working fewer than 30 hours per week. By shifting the labor mix towards industry levels and shifting some part-time employees to a flexible, non-benefitted status, DeCA could reduce store labor costs by \$10--25M."

"DoD instructions that govern NAFIs constrain employers significantly less in defining employment terms than OPM regulations which cover APF entities. Major categories of differences include reduction and realignment, employee relations, and staffing. First, NAFIs are able to use Business Based Actions (BBA) to reduce force, which use more flexible criteria than Reduction in Force (RIF) procedures that APF entities must follow. For example, whereas RIFs are restricted to specific purposes such as reorganization, lack of funds, and elimination of duties, BBA procedures can be used for a wider range of reasons including business realignments and a need to be competitive with the local labor market. Moreover, NAFIs have greater flexibility in determining which employees to separate because the primary factor in the BBA selection process is performance, whereas the APF RIF process is seniority-focused. Additionally, APF employees tend to have more formal recourse for grievances and appeals. For example, they are able to appeal adverse actions to the Merit Systems Protection Board (MSPB), and APF employers have the burden of proving that their actions were justified. In contrast, NAF

employees only have the right to appeal to MSPB for issues concerning retirement portability and specific violations of their employment rights.”

A senior DoD official has already acknowledged that it would be “impossible” for the commissary benefit to continue to be meaningful for military families if DeCA were required to be revenue neutral, and that appropriations for the agency would continue to be necessary. The question is: how much funding will DeCA continue to receive?

DeCA should continue to strive to achieve efficiencies in the provision of the commissary benefit. However, there is no shame in taxpayers continuing to subsidize this important earned benefit, as just about anything of real value must ultimately be paid for. And although the commissaries have attracted extraordinary attention from policymakers in the legislative and executive branches, it must also be acknowledged that DeCA’s \$1.4 billion appropriation is a tiny fraction of the Department’s budget.

Lawmakers should reject proposals to use the FY17 NDAA to reduce the cost for the provision of the commissary benefit through the imposition of extraordinary sacrifices on DeCA’s already modestly compensated workers, many of whom are veterans and military spouses. Given the undeniable and substantial benefit provided to military families by the commissary benefit, it is imperative that we proceed carefully with proposals such as the introduction of a private label, use of variable pricing, and conversion of DeCA to non-appropriations funded status. The FY16 NDAA provided the Department with pilot project authority, and it makes sense to use that authority before attempting to implement major reforms.

WHAT HAPPENED IN 2015 AND WHAT WE CAN EXPECT IN 2016: This is not the first time that DeCA’s existence has been threatened. Fortunately, DeCA enjoys broad support—from the private-sector vendors which supply the commissaries to the military families who can balance their budgets because of cheaper DeCA products to the hard-working and dedicated civilian workforce that makes DeCA an integral part of the compensation package for our warfighters and their families. Previous efforts to abolish and privatize the commissaries have failed.

Various rationales will be offered in 2016 to justify robbing the employees to keep the commissaries running:

“If we don’t do this, they will privatize the system or get rid of the commissaries.” However, stripping the commissaries of their subsidies makes it more likely that prices will have to be increased—which will drive off customers and lead to DeCA’s demise.

“Commissaries are losing money on every sale—we have no choice!” Commissaries provide a substantial benefit to military families, one which just about everybody acknowledges is vital to personnel retention and the creation of military culture, so why shouldn’t taxpayers pay for it? Such subsidies certainly better support the Department’s mission than the billions upon billions of taxpayer dollars wasted annually on bad service contracts.

“Somebody has to sacrifice to keep the commissaries running, so why not the employees?” No DeCA employee is living large on her modest paycheck. In fact, many DeCA employees are veterans and military spouses whose families depend on their jobs.

“Well, maybe the cuts will only apply to future workforce, we can grandfather current employees. But let’s remember, DeCA employees earn more than their counterparts in the exchanges and the private sector.” Why should the Congress arbitrarily pay workers significantly less for doing the same work? Why should the Congress engage in beggar-thy-neighbor economics and race-to-the-bottom politics? Why shouldn’t the Congress be building up the middle class, as opposed to tearing it down?

PRESERVE DFAS TO KEEP FINANCIAL MANAGEMENT COSTS DOWN

AFGE is proud to represent the civilian workforce at the Defense Finance and Accounting Service (DFAS), which is responsible for paying all DoD military and civilian personnel, retirees and annuitants, as well as major DoD contractors and vendors. The agency is responsible for processing annually tens of millions of pay transactions, travel payments, commercial invoices, and General Ledger accounts, and transacting hundreds of billions of dollars of Military Retirement and Health Benefits Funds, disbursements, and Foreign Military Sales. DFAS is based in Indianapolis, IN; but it also has offices in Columbus, OH; Limestone, ME; Rome, NY; Cleveland, OH; Texarkana, TX; as well as in Europe and Japan.

WHY DFAS HAS BEEN SUCH A SUCCESS: In 1991, the Secretary of Defense created DFAS in order to standardize, consolidate, and improve accounting and financial functions throughout DoD. DFAS allowed the Department to reduce the cost of its finance and accounting operations while strengthening its financial management.

Consolidation has generated significant savings. According to DFAS, since its inception, the agency has consolidated more than 300 installation-level offices into 9 DFAS sites and reduced the number of systems in use from 330 to 111. As a result of BRAC efforts begun in FY 2006, DFAS has closed 20 sites, realigned its headquarters from suburban Washington, DC, to Indianapolis.

DFAS pays for itself—literally. The agency's operations are financed as a Working Capital Fund (WCF), rather than through direct appropriations, so DFAS charges its agency customers for the services provided. DFAS sets annual rates two years in advance based on anticipated workload and estimated costs calculated to offset any prior year gains or losses.

HOW THE ARMY WANTS TO BUST UP DFAS: Throughout the last two years, the Army has been engaged in intensive planning to pull out of DFAS in order to reconstitute its own financial management office which would be largely staffed by military personnel in various Army installations across the world, an initiative it calls the Army Financial Management Optimization (AFMO). Currently, DFAS' civilian employee workforce performs work for the Army in Rome,

Indianapolis, and Limestone. DFAS's own internal estimate is that implementation of the Army's plan would cost more than 600 jobs in Rome and at least 1,800 jobs in Indianapolis.

AFMO initiative planning is already very far along. Of the 31 financial management functions performed by DFAS in whole or in part, the Army has already recommended that DFAS be allowed to retain exclusively just two of those functions. The Army has also already identified at least six Army facilities that would perform DFAS work if the Army deems the pilot project to be a success. Army planning documents consistently plan for bottom-up consolidation of financial management transactional activities within the dozen hubs and transfer of transactional activities currently provided by DFAS to the Army. Moreover, work is already shifting from DFAS to the Army's Fort Stewart.

A pilot project to evaluate Army performance of more than 22 different functions has progressed slowly. AFGE's Local in Rome, NY, is using the required Army briefings to involve its Congressional delegation. The next briefing will likely include information on the productivity of Army personnel involved in the pilot project and their associated costs. The pilot project is scheduled to end in March with cost and production information due for third party review by the end of next September. Other AFGE DFAS Locals are taking similar steps to involve their Congressional delegations. The more Congressional scrutiny of the pilot project the more likely the Army will be honest in reporting on the cost and quality of its work, and the more likely that DFAS employees will continue to be allowed to perform their work.

After expressions of Congressional concern which were inspired by AFGE's own DFAS Council, the Army claims that no decisions will be made until the pilot project has been evaluated. However, given the extent to which the Army has already planned for the wholesale transfer of functions from DFAS to the Army, it is doubtful that the Army's analysis of the results of the pilot project will be independent and objective.

Moreover, it is not clear that the Army will consider the substantial start-up costs that would inevitably be required if the Army reconstitutes its financial management operation, particularly those associated with training an entirely new workforce. The compelling rationale for DFAS' creation is that significant savings are possible through the consolidation of financial management functions for various parts of DoD in a single entity. Nothing relevant has changed since the establishment of DFAS that would undermine the rationale for its establishment. The bottom line is that the Army can't save money for the taxpayers by duplicating DFAS' already existing capacity because consolidation has lowered costs.

Indeed, performance of financial management functions by the Army would cost more because the Army plans to use military personnel to staff its version of DFAS. Military personnel cost more than civilians and contractors. Of course, using military personnel to perform financial management functions decreases readiness as well as increases costs. Permanently converting financial management functions from civilian to military is not just contrary to policy issued by the Secretary of Defense's Office of Personnel and Readiness but also to written commitments

made by Army Secretary McHugh to AFGE National President J. David Cox, Sr., that any substitution of military personnel for civilian personnel would be short-term and temporary.

WHAT HAPPENED IN 2015 AND WHAT WE CAN EXPECT IN 2016: An attempt to rationalize the practice of converting functions performed by civilians and contractors to military performance was killed because of opposition from the Senate Armed Services Committee. The discarded bipartisan House FY16 NDAA provision, which Senators Robert Casey (D-PA) and Lisa Murkowski (R-AK) were blocked from offering as an amendment, would have essentially codified current Pentagon and recent Army policies would have prevented the Army from converting work performed by civilian DFAS employees to military performance, absent a finding that such conversions would have been cost-efficient.

The AFMO pilot project is more limited in scope and duration than the Army initially intended. Nevertheless, the Army appears committed to shifting significant amounts of work from civilian personnel to military personnel, regardless of costs, and it's not clear that the Army can be objective in reviewing the results of the pilot project. Firm Congressional action will be necessary next year in order to prevent the Army from busting up DFAS and needlessly increasing costs to taxpayers of financial management functions.

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 federal employees, particularly for those working in DoD facilities. After more than a decade of war, the defense budget is being reduced dramatically as result of sequestration and the removal of troops from Iraq and Afghanistan. In some sectors of the military services, we have already seen civilian reductions of more than 30% at some bases and the totals are climbing. Across the board, planned civilian downsizing will exceed the cuts to military and contractor workforces between now and FY 2019. And this is before sequestration! In the absence of some sort of budget agreement to remove the threat of sequestration, the threats only mount. Failure to reach agreement on a greater long-term budget agreement put DoD at risk for almost another half trillion dollar series of across the board spending cuts over the next several years of sequestration. Each impacted Secretary of Defense has characterized sequestration as devastating to the US military force structure, personnel and infrastructure.

The President's FY15 Budget requested a BRAC round in 2017 and estimated costs of \$1.6 billion through FY19, but savings of \$1.6 billion to begin in FY20. For several years, DoD military

and civilian leadership have estimated that the Department has between 20% to 25% excess capacity based on the status following BRAC 2005. As budgets have tightened, 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. In the FY15 DoD budget proposal, DoD stated that BRAC is needed to accomplish civilian workforce reductions (presumably in compliance with Section 955 of the FY13 NDAA beyond in some cases) and to garner future, multi-year savings. The Strategic Review included BRAC as a centerpiece and the Quadrennial Defense Review (QDR) followed 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. The services, and particularly the Army, have stated that they plan to invest in larger, more established bases and rid themselves of older infrastructure. With few exceptions, congressional reaction to the updated BRAC proposal from the President has continued to be almost universally negative—at least publicly. Once again, for FY15, the NDAA cut funding for BRAC planning and forbid a BRAC. However, most offices and Members acknowledge that a BRAC is a matter of when, and not if, at this point.

AFGE Locals at DoD facilities should begin now to protect their jobs by strengthening the military value and the political position of their military bases. Regardless of protestations to the contrary, BRAC is political at every stage of the process, beginning with the development of the initial list of bases for closure proposed by the military services and ending with the vote of the BRAC Commission. On the other hand, there are factual, data-driven components that are considered with significant weight when determining military value. The specific elements that will be considered in the military value of facilities will be unknown for some time; however, history has shown certain areas are always factors such as cost, efficiency and military necessity based on mission and unique capabilities. Other intangibles, such as quality of life, are always considered. AFGE members should unite to address these factors in a systematic manner.

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. Energize and Organize Elected Officials: 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. 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 AFGE 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 your 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.

WHAT HAPPENED LAST YEAR: Both the House and Senate declined to authorize a new BRAC round in FY15 and cut \$4.8 million from the Secretary of Defense Operations and Maintenance account to prohibit funding for a study of a new BRAC round. The House version of the FY15 NDAA included a provision requiring DoD to submit with the FY16 budget two force structure plans (one compatible with the QDR and one aligned to the sequester law) and an inventory of all installations worldwide, along with an assessment of infrastructure needed to support the force structure plans; an assessment of excess infrastructure based on the inventory and force structure; justification for possibly keeping excess infrastructure; and economic impact of closures. This language was modified in conference to less specific report requirements. The new report requirements are less specific, and therefore less open to criticism that the findings would provide ammunition for a future BRAC round.

WHAT COULD HAPPEN NEXT YEAR: AFGE should expect that the Administration will once again request a BRAC round for FY17 or beyond to deal with perceived excess infrastructure based on the new national military strategy. Additionally, officials from the DoD Office of Installations and Environment have stated that DoD plans to implement the congressional guidance for a study, so we should expect some sort of infrastructure capacity study that outlines and quantifies excess capacity across the military services—though it will not be as specific as the one originally mandated by the House.

Further, DoD recently announced a number of base closures in Europe so we should expect DoD to tout those closures and realignments as further justification for domestic closures in the United States. Only one of the top four leaders of the HASC and SASC remain in place for the coming year; however, Congress may continue to oppose BRAC for the moment, while beginning to give some indication for future support. The incoming Chairman of the House Armed Services Committee has stated that he is uncomfortable with approving a BRAC until he has a clearer picture of the roles and missions of BRAC; however, he was quick to say that he was not saying “NEVER BRAC.”

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 continue to affirm Title 10 statutory provisions that assure the viability of an organic logistics 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 fabrication and manufacturing capabilities 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. AFGE opposes 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.

For FY16 Congress must designate a core workload for arsenals and ammunition plants or at a minimum provide enforcement tools for the Arsenal Act to strengthen the manufacturing arm of our organic industrial base. This workload should not come at the expense of workload already being performed by the Army organic sector. The intent is not to pit facilities against each other or to shift work from one organic facility to another, but to have arsenals perform the work that is critical to our national defense, where there is no domestic manufacturing, fabrication or production capability or very limited supply available at a reasonable cost.

AFGE applauds the Appropriators and the Congress providing Industrial Mobilization Capacity (IMC) funding for arsenals to reduce rates and improve efficiency to enable competitiveness and support continued funding in FY16. As importantly, we urge the Administration and the Army to seek expanded and non-traditional new manufacturing opportunities to meet the workload levels determined as the amount necessary to be efficient in accordance with the Army Organic Industrial Base Strategy Report.

AFGE also opposes DoD and the military services using sequestration, funding uncertainties, furloughs, and arbitrary civilian personnel cuts and caps as an excuse to breach the 50/50 depot maintenance law or to circumvent fully meeting core requirements. Congress made it clear in FY15 that it expects DoD to fully comply with 50/50 statute and the investment in the upgrade

and maintenance of organic depots and AFGE fully applauds those efforts. However, AFGE remains very concerned about the ongoing reports of personnel caps and arbitrary cuts at organic depots. These cuts undermine the integrity of the working capital fund and the statutes in Title 10 that require that depots and depot personnel be managed to workload and budgets rather than end strength.

In addition to opposing arbitrary personnel ceilings, AFGE strongly supports legislation in FY16 that would eliminate sequestration related furloughs, which are devastating to military readiness and to civilians and their families. This is especially true of the unnecessary furlough of working capital fund employees, who are not paid through direct appropriations, but rather through customer orders. In FY15, the House passed legislation prohibiting the furlough of any employees whose work is charged to a working capital fund as long as there is money in the working capital fund to pay for the workload. While in the end, only report language survived in the NDAA, AFGE asks that similar bill language be enacted in FY16.

Under this legislation, before the Secretary of Defense or of a military service could furlough a working capital fund employee, he/she would have to certify to Congress that no funds are available in the working capital fund and that the workload will not be transferred to the private sector, uniformed military or any other civilian workforce. This amendment makes the furlough provision permanent rather than specifically tying to sequester budget cuts; however, it would also apply to sequester furloughs. Furloughing working capital fund employees saves no money because they are funded through customer orders in a revolving fund and not directly through appropriations. For example, depots and arsenals would not have had to furlough workers the previous summer because they had sufficient funds and workload.

During the shutdown furlough in 2013, working capital fund employees were exempt even if their work was not considered excepted. The furloughs cost more money than they saved in many cases by increasing overhead and raising rates plus delaying delivery of orders. In some cases work was transferred from government facilities to higher priced contractors in violation of multiple statutes. The military services are still complaining of large backlogs caused by the furloughs ordered by the Secretary of Defense—even 18 months after the fact! This legislation is common sense. It doesn't prevent a furlough if a program runs out of money. It only prevents a furlough if there is money available.

As Congress and the Administration consider Acquisition Reform, AFGE urges Members, especially those who support depots and arsenals, to be on alert for unintended consequences and impacts to organic depots, arsenals and ammunition plants. Issues of special concern include: encouraging the blanket use of Performance Based Logistics (PBL) contracts, which call into question the whole issue of government control and government owned workload and have been used in some cases as an excuse to move work from organic facilities to contractors in spite of protestations to the contrary by DoD; streamlined acquisitions that fail to create programs of record, thus circumventing milestones and criteria that are the "hooks" in statute, policy and direction to bring core and new workload into the organic depots; ownership of so-called intellectual property (IP), which impacts the ability for depots to secure and obtain

unfettered access to data rights necessary to maintain and overhaul weapons systems and components (examples exist where they can have the data, but can't "see" it because of technicalities); and accounting for core and workload that is designated at the very "minimum" versus the statutory definition of "efficient."

Further, depot and arsenal advocates must continue to watch closely the workforce numbers and the arbitrary constraints on the workforce. In spite of exemptions from the cuts imposed by Section 955 of the FY13 NDAA, requiring a reduction in the percentage of civilian personnel equal to the percentage in military personnel, depot personnel across DoD have been reduced at a greater rate than the average for all DoD personnel, including those who were not exempt from the reductions and exceeding the rate of military personnel. The reductions in this workforce far exceed the reductions for any other group of exempt employees. When combined with DoD comments about the need to get at depot employees and depots and arsenals for BRAC, Members of Congress should be very concerned about Administration actions. This is in spite of DoD reporting an uptick in the funding for commercial depot maintenance and the fact that the DoD comptroller has reported that contractors cost more than 2 times as much as having work completed by civilians.

In summary, an analysis of historical data reveals that organic depot level maintenance, as well as arsenal and ammunition plant manufacturing capability may 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.

WHAT HAPPENED LAST YEAR: The Senate version of the FY15 NDAA changed the Arsenal act to now prohibit the Secretary of the Army from closing any arsenal that he deems unnecessary without any restraint. This closes a loophole in the law and puts arsenals back on even footing with other DoD facilities. Further, the FY15 Omnibus Appropriations bill contained \$225 million in funding for Industrial Mobilization Capacity (IMC) to help arsenals keep their rates competitive. This helps arsenals compete more effectively for workload to sustain capacity, cost efficiency and technical competency.

Efforts to establish a Commission to review depot laws and to undermine Title 10 depot-specific requirements were successfully rebuffed to the point that they were never considered publicly. The House version of the FY15 NDAA and the House Appropriations version of the FY15 Defense Appropriations Act required greater auditing of reports that the military services provide on 50/50 compliance to be sure that there is full documentation of all dollars spent in the private sector and not guesstimating that underestimates the total cost of contractor dollars spent. Also, both the Senate authorizers and appropriators expressed concern that the military services were failing to meet their statutory obligation to fund capital investments to modernize depots at 6% of the budget and directed DoD to comply with Title 10. Both initiatives sent a strong signal to DoD that Congress continues to support depots, including a robust workload and technological modernization, and expect DoD to comply with the law.

The House passed an amendment to the FY15 NDAA that prohibited the non-disciplinary furlough of any employee whose salary is charged to a working capital fund (WCF) as long as there is money in the working capital fund to pay for the workload. Before the Secretary could furlough a WCF employee, he/she would have to certify to Congress that no funds are available in the WCF and that the workload will not be transferred to the private sector, uniformed military or any other civilian workforce. This amendment would have made the furlough provision permanent rather than specifically tying to sequestration budget cuts; however, it would also apply to sequestration furloughs. In conference the House and Senate decided to change the amendment to report language urging the department to abandon furloughs of all employees and especially condemned the furlough of WCF employees.

WHAT COULD HAPPEN NEXT YEAR: WCF furloughs will likely be an issue in 2015 and it is possible that an amendment will be offered to either the FY16 National Defense Authorization Act or the FY16 Defense Appropriations Act or both. As the House and Senate Armed Services Committees, as well as the Department of Defense, pursue acquisition reform, Locals and Members representing arsenals and depots, as well as ammunition plants, must be on alert for provisions and policy directives that would either strip or downgrade protections in statute such as 50/50, core, A-76 prohibitions, etc.;

provisions that would prevent the public sector from competing for manufacturing or maintenance workload; provisions that fail to secure necessary data rights in order to work effectively on warfighting platforms; or provisions that mandate logistics and sustainment strategies that have negative long-term impacts on the organic industrial base. Funding shortfalls may be expected in some areas based on budget cuts.

CUTS TO FEDERAL EMPLOYEES' PER DIEM ALLOWANCE FOR LONG-TERM OFFICIAL TIME

DOD PER DIEM CUTS: DOD cut the per diem allowance for employees traveling 31 to 180 days to 75% of the current per diem rate, and further reduced the per diem allowance to only 55% of allowable expenses for travel longer than 180 days. These cuts to DOD employees' per diem allowance for lodging, meals and incidental expenses is a misguided and misplaced attempt at meeting the goal to reduce DOD travel expenditures. This new policy penalizes the federal employees who work to support the men and women of the U.S. armed forces, and spend significant amounts of time away from their families and homes.

Specifically, this new policy requires DOD employees to identify reduced rate lodging when they are required to travel for more than 30 days, often resulting in substandard lodging accommodations or employees having to complete a cumbersome approval process when lodging is not available at reduced per diem rates. This process will delay mission assignments and could ultimately increase overall costs to DOD. Mandating employees to find "discounted" lodging in a market with rental and hotel rates continuously rising is unreasonable.

Cuts to the per diem allowance will inevitably lead to DOD employees who travel for long periods of time having to personally pay for expenses directly related to official travel, cutting into employees' personal finances. The current cuts to long-term TDY travel penalizes the military and civilian employees who have already been asked to spend a significant amount of time away from their homes and families. Many of these employees have school aged children and family obligations for which they are still responsible while on official travel. DOD military and civilian employees should not have to worry if they have enough money for both their personal responsibilities at home as well as money to cover basic necessities such as food, laundry and transportation to and from their duty assignments while on official travel.

LEGISLATION TO PROHIBIT DOD PER DIEM CUTS: Representatives Derek Kilmer (D-WA) and Walter B. Jones (R-NC), introduced H.R. 1193, which if enacted, would stop DOD from cutting the per diem allowance for long-term travel. This bill has been endorsed by both business and labor, and currently has strong bipartisan support with 26 cosponsors. AFGE fully supports this legislation, and urges the Administration and Congress to enact legislation that would prohibit DOD from cutting the per diem allowance for long-term official travel.

AFGE strongly opposes reducing the per diem rates of DOD employees who are required to travel for more than 30 days. Federal employees have had to sacrifice and work through years of pay freezes, furloughs, and reductions in pay to reduce the federal deficit. Further cost

savings should not be at the expense of federal employees who are required to regularly travel for long periods of time.

Department of Veterans' Affairs

Introduction

In 2016, AFGE and the National VA Council (AFGE) will work with lawmakers and veterans' groups to increase access to VA health care services through more adequate staffing and greater oversight of contract care. AFGE will work to improve VA accountability through greater protections for whistleblowers and initiatives to improve management performance. AFGE will continue to advocate for appropriate pay and job classifications for all VA employees, equal rights for VA Title 38 clinicians, canteen employees and veterans with veterans' preference. AFGE will also work to reduce the claims backlog through adequate staffing, improved work credit system, and a more respectful workplace culture.

Veterans Prefer a Strong VA Health Care System With Adequate Staffing

When President Obama signed into law the Veterans Access, Choice and Accountability Act of 2014 (P.L. 113-175), the VA received a strong mandate to strengthen the VA's in-house capacity to provide quality, timely care to our nation's veterans. AFGE is carefully monitoring the implementation of this law and the Department's November 2015 plan to coordinate and consolidate all non-VA care programs. Recent polling of veterans who use the VA confirmed that veterans prefer receiving their health care from VA's own providers and that the VA should have additional staff to increase veterans' access to timely care.

AFGE urges lawmakers to conduct oversight of the widespread elimination of key medical center functions, including emergency room care, inpatient beds and intensive care units. These closures deprive veterans of access to their health care provider of choice, and undermine efforts to recruit and retain providers who need to work in full-service facilities to maintain their skills. Widespread "bed count gaming" is occurring across the nation through the excessive use of "virtual beds" and observational beds that mask the number of operational beds that are permanently closed due to severe short staffing of nursing personnel.

Multiple barriers to recruitment and retention of health care personnel persist. VA does not adequately consider the input of the front line providers who have the most effective ideas for recruitment and retention, streamlined hiring and faster credentialing. Recent increases in physician and dentist pay ranges should be applied equally to new hires and more senior employees.

Currently, VA collects very limited data on its ability to retain health care professionals. This data gap hides the significant turnover problem among recent hires who did not get what they were promised. Pay inequities, excessive panel sizes, schedules (including widespread noncompliance with a new VA 40-hour workweek policy), inadequate continuing education benefits, and a toxic workplace culture fueled by unequal bargaining rights for "Full Title 38" clinicians including physicians and registered nurses, whistleblower retaliation and other

practices that harm clinician career opportunities are significantly undermining recruitment and retention. Short staffing of primary care (Patient Aligned Care Teams or “PACT”) teams continues to adversely impact patient care and clinician recruitment and retention.

Mandatory nurse-patient ratios, already in place in some states, are the only way to hold managers accountable for proper staffing plans and adequate staffing levels. AFGE will continue to support safe staffing legislation that protects Title 38 nurses and whistleblowers.

Congressional Action Needed:

- Oversight and investigation of reduced services at VA medical centers, including closed inpatient beds, reduced emergency room care and closed intensive care units.
- Oversight of short staffing of PACT teams.
- Overhaul of VHA data collection to properly assess recruitment and retention issues, with input from AFGE and other stakeholders.
- Mandate VA medical center compliance with new 40-hour week policy for physicians and dentists and new pay tables.

VA Cannot Fire Its Way to Success; Management Improvement and Due Process are Essential to Components of VA Accountability

AFGE has vigorously opposed VA bills to reduce front line employee due process rights including S. 1082 introduced by Senator Rubio (R-FL) and H.R. 1994, introduced by Rep. Jeff Miller (R-FL). AFGE instead supports alternative bills, S. 1856 introduced by Senator Blumenthal (D-CT) and H.R. 2999 introduced by Rep. Mark Takano (D-CA) that improve management performance, curb mismanagement including improper “revolving door” management-contractor relationships, and increase protections for whistleblowers.

AFGE has also strongly opposed related bills that would require that all reprimands remain in a VA employee’s personnel file permanently, and bills that arbitrarily recoup bonuses and awards.

Congressional Action Needed:

- Enact legislation to implement management improvement measures, including management training and performance measures focused on employee engagement and management compliance with laws prohibiting whistleblower retaliation and other prohibited personnel practices.

VA Downgrades

Approximately seven years ago, the VA undertook a major initiative to downgrade low wage positions at VA medical centers, including the vast majority of positions that employ large numbers of service-connected disabled veterans. The pace of these downgrades accelerated

over time, spreading to more facilities and medical center positions as well as a few positions in VBA regional offices. Between 2008 and 2012, approximately 1,600 low wage VA employees lost pay, retirement benefits, future promotion opportunities and job security as a result of downgrades. These downgrades have had a disproportionate adverse impact on women and employees of color, as well as veterans.

As a result of AFGE's efforts to expose the extensive mismanagement and questionable tactics involved in carrying these downgrades, the Department imposed a moratorium on downgrades in 2012. However, some medical centers have continued to initiate new downgrades and also often engage in "backdoor downgrades" by hiring many new medical support personnel at lower grades than incumbents.

AFGE has shared with VA Secretary McDonald our recommendations for modernizing outdated job classifications to better reflect the current mission of the Department that have a direct impact on VA's customer service goals, including appropriate classifications for the complex duties required of police officers dealing with violence in VA medical centers and the infection control techniques that VA housekeepers utilize to prevent hospital-based infections.

AFGE has also urged the Department to exercise its existing authority to confer law enforcement officer (LEO) status on VA police, a change that would improve safety at VA facilities and strengthen recruitment and retention of a strong police workforce.

Congressional Action Needed:

- Continue the current VA moratorium on downgrades pending joint labor-management discussions on modernizing outdated job classifications.
- Conduct oversight of the VA classification process and ensure that employee representatives, veterans' groups and other stakeholders have a meaningful participation in the classification review process.
- Convert VA police to LEO status through legislation or VA administrative action.

Equal Protections for Veterans in the VA Health Care Jobs

AFGE and the National VA Council will seek support for reintroduction of legislation to provide equal rights to veterans hired under the VA Hybrid and Title 38 personnel systems (the vast majority of VA health care employees). In the 113th Congress, Representative Tim Walz (D-MN) introduced legislation (H.R. 2785) to address this inequity and extend veterans' preference rights to reservists.

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 rights are violated.

The men and women who are healing veterans at VA medical centers, including the growing number of active duty personnel who are transitioning to VHA jobs as physicians, RNs, PAs, among others, deserve the same employment rights as other veterans in Title 5 positions at the VA, Department of Defense and other federal agencies. 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).

Congressional Action Needed:

- Reintroduce legislation to extend coverage of the Veterans Employment Opportunities Act, including appeal rights, to VA employees hired under the VA Hybrid and Title 38 personnel systems.

Equal Representational Rights

Bargaining Rights for Title 38 Health Care Professionals

The lack of equal bargaining rights for VA physicians, registered nurses and others covered by the VA's arbitrary and abusive "7422" policy (interpreting 38 USC §7422) is directly undermining Secretary McDonald's physician hiring initiative, and similar efforts to recruit other clinicians in hard-to-recruit professions. VA regularly uses Section 7422 to silence dedicated clinicians by refusing to come to the bargaining table over routine matters regularly resolved through collective bargaining by employees with Title 5 rights at the VA and other federal agencies.

Legislation is needed to put an end to VA Secretary "7422" determinations that violate agency policies on pay, schedules, assignments, training, workload and numerous other matters *without any accountability*. The VA needs to return to the common sense 7422 policies in place prior to 2003, when labor and management operated under an agreement that vastly reduced the number of labor management disputes and fostered valuable collaboration on innovations in health care delivery.

Congressional Action Needed:

- Enact S. 2157 introduced by Senator Sherrod Brown (D-OH) and companion bill H.R. 2193 introduced by Rep. Mark Takano (D-CA) to restore equal bargaining rights to Title 38 health care professionals.
- Urge Secretary Robert McDonald to reconsider all "7422" determinations made since issuance of its revised 2011 policy that allowed bargaining over all disputes involving violations of agency regulation or policy.
- Urge Secretary McDonald to enter into a new labor-management agreement permitting bargaining over routine scheduling and compensation matters, modeled after the 1997 agreement that vastly reduced the number of medical center workplace disputes.

- Extend the current North Chicago VA pilot project giving all VA health care personnel full bargaining rights for another five-year period and expand to other facilities.

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 3,000 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.

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. The lack of basic workplace rights has led to an environment of fear and abuse in many VCS workplaces.

Congressional Action Needed:

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

VA Benefits Issues

AFGE remains committed to ending the backlog of veterans’ disability claims and providing veterans with the benefits they bravely earned. Veterans Benefits Administration (VBA) must commit to hiring and training a significant amount of additional employees and stop using mandatory overtime as a solution for achieving arbitrary performance goals. Employees must be accommodated and treated with respect and integrity in order to foster the most productive and healthy culture possible. VBA must take steps to end employee burnout, raise morale, create promotion opportunities within the agency, and create a work credit system based on a scientifically based time motion study.

AFGE recently developed a White Paper presenting the expenditures of hiring additional staff to process claims in comparison with the funding that has been dedicated towards mandatory overtime. While production numbers have steadily increased over the past several years, so has reliance on mandatory overtime. AFGE believes that in order to guarantee long term success of VBA, Congress must provide funding for a significant increase in claims processors for not only disabilities claims, but appeals and additional work products.

AFGE will continue to work to fix unfair performance standards and a broken work credit system through legislation and discussions with VBA. AFGE urges 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. Last year, National VA Council President Alma Lee had discussions with then Undersecretary Allison Hickey about the current performance

standards, which the Undersecretary agreed were “unattainable.” AFGE and VBA created a working group to discuss a new performance standard system, but additional Congressional pressure will be necessary for accountability and compliance from VBA.

AFGE remains focused on preventing contracting out of veterans’ benefits cases, particularly in regards to dependency claims. VBA continues to employ a highly problematic dependency claims contract. VBA employees were specifically told to not focus on those claims, creating an artificial backlog. Other types of non-rating claims have also built up as the majority of the focus continues to be on eliminating the disability claims backlog. The dependency claims from the contractor often do not have the correct effective date among other issues, so every case must be checked and often reworked by federal employee claims processors. This is a major waste of taxpayer money. AFGE urges Congress to provide oversight on future contracting out of claims and work to bring dependency claims back in house.

Congress must continue to provide oversight for allow VBA to implement changes for the, the Veterans Benefits Management System (VBMS), VBA’s claims processing system. AFGE recently conducted a survey of VBA Regional Offices and received over 170 responses. Respondents consistently agreed that VBMS has improved dramatically since its inception. However, significant improvements must be made in order for the system to be fully effective.

AFGE remains concerned about the backlog of veterans’ appeals cases and the lack of attention VBA places on appeals. Decision Review Officers are regularly removed from working on appeals and required to work initial claims, while veterans appealing their cases wait years for a decision. AFGE urges Congress to investigate the appeals process at Regional Offices and require VBA to report appeals data in the Monday Morning Workload Report.

Congressional Action Needed:

- Provide funding for hiring a significant number of claims processors for disability claims, appeals, and additional work products.
- Pass legislation requiring a scientifically valid time motion study of VBA’s work credit system.
- Conduct oversight of VBMS technical issues and mandate a formal, permanent process for regular input from AFGE and frontline employees for reporting issues and finding solutions for issues with VBMS.
- Provide oversight of the current dependency claims contract and mandate VBA compliance with federal laws banning direct conversions and other illegal outsourcing.

VA Outsourcing Hurts Employment Opportunities for Tomorrow’s Veterans

AFGE has secured statutory bans (both VA specific and government wide) against “direct conversions,” i.e., management actions to contract work by federal employees without a formal cost comparison. Current law also prohibits the VA and other agencies from conducting an “A-

76” cost comparison. In addition, Title 38 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 working in VHA, VBA and NCA. Hardest hit are service-connected disabled veterans in low wage jobs 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. AFGE urges the 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. All moderately skilled VA jobs should be insourced and reserved for veterans, especially those recovering from a disability. Numerous other VA functions should be insourced, because they are more appropriately performed by the agency rather than a for profit contractor,

Congressional Action Needed:

- Require the VA to issue direct conversion guidance in order to ensure compliance with statutory prohibition.
- Expedite the development of VA’s insourcing plan.
- Require VA to produce an inventory of service contracts to identify which cost too much, are poorly performed, or include functions too important or sensitive to privatize.

Federal Prisons

Summary

Over the past several years, 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-fatal, inmate-on-staff assaults that have occurred at many BOP institutions illustrate that painful reality.

AFGE strongly urges the Obama Administration and the 114th 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 the primary cause for the explosive growth in the BOP prison inmate population by passing broad spectrum sentencing reform.
3. Pass the Eric Williams Correctional Officer Protection Act, a bill that would allow BOP correctional officers and employees who work in high or medium security institutions to routinely carry pepper spray to defend themselves if physically attacked by dangerously violent inmates.
4. Support the Federal Prison Industries (FPI) prison inmate work program.
5. Pass the Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act of 2015, a bill that would require the warden of each BOP-operated institution to provide a secure storage area located outside of the secure perimeter of that BOP-operated institution for personal firearms carried to and from work by BOP correctional officers and staff.
6. Pass the Thin Blue Line Act, a bill that would make murdering a law enforcement officer an aggravated factor in sentencing for a capital crime.
7. Oppose any changes to the use of segregated housing units (SHU) in BOP facilities.
8. 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.
9. Prohibit BOP from meeting additional bed space needs by incarcerating prison inmates in private prisons.

10. Support legislation that would provide registered nurses employed at BOP Federal Medical Centers and other BOP institutions, as well as at the various Department of Defense medical facilities, with the same right to full time-and-a half overtime pay as private sector registered nurses.

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 196,000 prison inmates are confined in BOP correctional institutions today, up from 25,000 in 1980, 58,000 in 1990, and 145,000 in 2000. 160,485 of those inmates are confined in BOP-operated prisons while 13,140 are managed in private prisons.

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 88% level, as contrasted with the 95% staffing percentage levels in the mid-1990s. This 88% 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 4.58 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 30% nationwide. Inmate overcrowding is of special concern at higher security institutions—with 52% overcrowding at high security prisons and 39% at medium security institutions.

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.

BOP has performed a rigorous analysis of the effects of prison inmate overcrowding and correctional worker understaffing on inmate-on-worker rates of violence. It 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 114th 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, particularly at the high and medium security institutions.

2. Address the primary cause for the explosive growth in the BOP prison inmate population by passing broad spectrum sentencing reform by passing either the Smarter Sentencing Act or the Sentencing Reform and Corrections Act.

Smarter Sentencing Act:

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 urging Members of Congress to pass the Smarter Sentencing Act of 2015 (S. 502 and its companion H.R. 920), 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.

The Smarter Sentencing Act 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.

The Smarter Sentencing Act would provide 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.”

The Smarter Sentencing Act would reduce 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.

Sentencing Reform and Corrections Act of 2015

On October 1, 2015, Senate Judiciary Chairman Chuck Grassley (R-IA) introduced S. 2123, the Sentencing Reform and Corrections Act. This legislation is the much anticipated criminal justice reform package that Senate Judiciary members have been negotiating for the better part of 2015. AFGE and the Council of Prison Locals have voiced support for this legislation by sending a letter to every member of the Committee. Our letter was entered into the Record for the Committee’s October 19, 2015 hearing.

While this legislation is not as broad in scope as the Smarter Sentencing Act, it does take modest steps toward reducing mandatory minimums and easing overcrowding. Chairman Grassley’s bill does not eliminate mandatory minimums, but instead lowers the maximum sentences allowable (or “ceilings”) for certain non-violent drug offenders. The bill also expands the federal safety valve, eliminates the federal “three-strikes” law, reinstates the federal parole system, and eases overcrowding by allowing inmates to earn time off of their sentences (“good time credit”) through good behavior and participation in recidivism reduction programming. A significant win for AFGE is the inclusion of the Eric Williams Correctional Officer Safety Act (pepper spray authorization) into the underlying text of the bill.

While Chairman Grassley has referred to this bill as “the most significant criminal justice reform bill in a generation” it’s still a compromise. AFGE and the Council of Prison Locals believe that the best way to reduce the dangerously overcrowded federal prison population is through the remedies spelled out in the Smarter Sentencing Act, though given the political climate it may be an unreasonable expectation for the 114th Congress. The Grassley bill has overwhelming bipartisan support with 28 cosponsors (15 Democrats, 13 Republicans) mostly consisting of

members of the Senate Judiciary Committee. On Thursday, October 22, 2015, the Senate Judiciary Committee passed the bill with a bipartisan 15-5 vote.

3. Pass the Eric Williams Correctional Officer Protection Act, a bill that would allow BOP correctional officers and employees who work in high or medium security institutions to routinely carry pepper spray to defend themselves if physically attacked by dangerously violent inmates.

AFGE and the Council of Prison Locals support the Eric Williams Correctional Officer Protection Act of 2015 (S. 238 and H.R. 472), a bill to authorize the Director of the Federal Bureau of Prisons (BOP) to routinely issue oleoresin capsicum spray – commonly known as pepper spray – to BOP correctional officers and employees who work in high or medium security prisons.

This important legislation would:

- Allow BOP correctional officers and employees who work in high or medium security prisons to routinely carry pepper spray so they may defend themselves and others if physically attacked by dangerously violent prison inmates.
- Require such BOP correctional officers and employees to complete an annual training course on pepper spray use before being issued pepper spray.
- Require the U.S. Government Accountability Office (GAO) to evaluate the effectiveness of issuing pepper spray to BOP correctional officers and employees who work in high or medium security prisons on reducing acts of violence committed by prison inmates in such prisons.

Allowing BOP correctional officers and employees to routinely carry pepper spray in high or medium security prisons is vitally necessary given the increasing number of violent acts committed by prison inmates. A painful illustration of that fact was the savage murder of Correctional Officer Eric Williams on February 25, 2013, by an inmate at the high security United States Penitentiary in Canaan, PA.

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

(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.

Pilot Program

Since August 2012 BOP has been evaluating the routine use of pepper spray at certain institutions. While the original pilot included only some high security institutions, it has been expanded to include all high security institutions, detention centers and jail units. On April 14, 2014, BOP further expanded this pilot to include members of the unit team: unit managers, case managers, counselors and unit secretaries. On February 26, 2015, the pilot program was again extended to include every all high and medium security facilities, Federal Detention Centers and jail units, and Federal Medical Centers. While we are excited that BOP has taken such a leap forward, we remain leery of the Bureau's insistence to keep this program housed under the "pilot program" umbrella. As a result a great deal of uncertainty still exists as to the future of this very important workplace safety program.

Path Forward

AFGE has been successful in lobbying for the inclusion of the Eric Williams Correctional Officer Protect Act (S.238) into a larger prison reform package, the Sentencing Reform and Corrections Act of 2015 (S. 2123). In addition to securing this language in broader legislative packages, AFGE successfully lobbied for the passage of the standalone bill (S. 238) by the U.S. Senate. S. 238 passed the U.S. Senate on December 16, 2015. AFGE and the Council of Prison Locals intend to turn our full lobbying effort on the House of Representatives to get this bill over the finish line for our members.

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 over 11,000 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 net sales revenues: While FPI in FY 2009 had sales revenues of \$889,355,000 in FY 2009, it only had revenues of \$389,131,000 in FY 2014—a decline of \$500,224,000 or 56% over five years.
- 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 12,468 inmates as of September 30, 2014 – a decline of 6,504 inmates or 34% over five years.

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

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.

5. Pass the Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act of 2015, a bill that would require the warden of each BOP-operated institution to provide a secure storage area located outside of the secure perimeter of that BOP-operated institution for personal firearms carried to and from work by BOP correctional officers and staff.

AFGE and the Council of Prison Locals support the Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act of 2015 (S. 368 and H.R. 1545). S. 368 was introduced on February 4, 2015, by Senator Pat Toomey (R-PA), and H.R. 1545 was introduced on March 23, 2015, by Rep. Richard Nugent (R-FL).

S. 368 and H.R. 1545 would require that the Director of the Federal Bureau of Prisons (BOP) ensure that each warden of a BOP institution provides a secure storage area located outside of the secure perimeter of that BOP institution for personal firearms carried to and from work by BOP correctional workers.

Currently, BOP correctional workers are unable to carry their personal firearms to and from BOP institutions because BOP refuses to provide a place to secure those personal firearms. Many workers, particularly those who work in or near large cities, want to carry their personal firearms because they have real worries that former prison inmates and others may attempt to harm them.

BOP management has argued that providing a storage area for personal firearms carried to and from work by correctional workers would lessen security at BOP institutions. However, we believe that BOP is refusing because it does not want to be put in a publicly embarrassing situation if a BOP correctional worker accidentally shoots himself/herself with his/her personal firearm while driving to and from work.

AFGE and the Council of Prison Locals strongly believe that BOP correctional workers' very real personal safety interests should outweigh BOP management's concerns about a hypothetical, publicly-embarrassing situation.

In addition, we believe it is ironic that BOP is so reluctant to provide BOP officers with a place to secure their personal firearms when BOP is already providing such secure places for certain non-work, non-BOP firearms. FDC Guaynabo, one of the many BOP institutions that provides on-site housing for BOP correctional officers, provides a place on-site (the institution's armory) for those officers to secure their personal firearms. In addition, when county and local law enforcement officers transport criminals to BOP institutions, those BOP institutions provide a safe place for those county and local law enforcement officers to secure their firearms.

6. Pass the Thin Blue Line Act, a bill that would make murdering a law enforcement officer an aggravated factor in sentencing for a capital crime.

AFGE and the Council of Prison Locals believe that Congress must punish those who actively target and kill our members. Too many times we have witnessed our fallen brothers go without justice. Our fallen officers deserve respect and their families deserve better than plea bargains. These men and women are heroes, and we demand that Congress treat them as such.

That's why AFGE and the Council of Prison Locals are actively supporting the Thin Blue Line Act (H.R. 814, S. 2034) so that any time a member of the law enforcement community is targeted and killed that murderer will have a greater chance of facing the death penalty. We believe there is no justice in giving second-consecutive life sentences to cold blooded killers. The Council of Prison Locals refuses to stand by while our men and women are put in harm's way every single day. Congress and the Obama Administration must send a message that law enforcement lives and safety matter. We demand Congress to pass, and President Obama to sign, the Thin Blue Line Act so that every inmate will know that if they kill one of our brothers or sisters they will be forfeiting their life.

7. Continue to oppose any changes to the way the BOP uses and administers segregated housing units (SHU).

Like local cops on the beat arrest and detain citizens daily who engage in disorderly conduct in our communities, correctional workers need the same authority behind the prison walls and fences to maintain good order. One of the most important tools currently available for correctional workers is the use of segregated housing units – commonly referred to as “solitary confinement.” Most often segregated housing is used to separate violent inmates from the general population.

For example, if a fight would break out correctional workers would place the offending inmate into a segregated housing unit to restore control in the area. They would then conduct an in-depth investigation as to what caused the disturbance and make sure that any problem is addressed before putting that inmate back into the general population. While it's certainly possible to have smart prison reform, AFGE and the Council of Prison Locals believe that labor must have a sit at the table. We must be given the ability to represent the interests of the workers called to protect America from some of society's worst of the worst - enemies foreign and domestic.

As front line employees, AFGE and the Council of Prison Locals caution Congress from implementing any type of “one size fits all” corrections policy, particularly as it relates to segregated housing. We must remind these legislators that as they deliberate legislative changes it is imperative that they remember that the decisions they make impact the lives of thousands of correctional workers across the country; their lives and safety matter.

8. 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.

H.R. 2029, the Consolidated Appropriations Act of 2016 (P.L. 114-113), which contains the FY 2016 Commerce-Justice-Science (CJS) Appropriations bill, includes a general provision—Section 211—to prohibit the use of FY 2016 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 successfully lobbied the House and Senate CJS Appropriations Committees to reverse course on their initial proposal to make changes to this existing language. When the House CJS Committee released their initial proposal last spring, they removed the language that would protect BOP employees from A-76 competition. AFGE actively worked throughout the summer and fall to get this language included in the final funding package. Our efforts were successful and this important language was restored to the final funding package.

AFGE strongly urges the Obama administration and the 114th Congress to continue to include the Section 211 language in the FY 2017 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.)

9. 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.

Private Prisons Are Not More Cost Effective

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 114th 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.

10. Support legislation that would provide registered nurses employed at BOP Federal Medical Centers and other BOP institutions, as well as at the various Department of Defense medical facilities, with the same right to full time-and-a half overtime pay as private sector registered nurses.

AFGE strongly urges the Obama administration and the 114th Congress to support legislation that would provide registered nurses employed at all 121 BOP institutions, including the six BOP Federal Medical Centers located in Rochester, MN; Butner, NC; Carswell, TX; Devens, MA; Springfield, MO; and Lexington, KY, as well as at the various Department of Defense (DOD) medical facilities, with the same right to full time-and-a-half overtime pay as private sector registered nurses. BOP and DOD registered nurses currently receive a more limited, pay-capped overtime pay pursuant to 5 U.S.C. Section 5542(a).

This legislation is necessary because the AFGE General Counsel Office (GCO) has determined that it would not be able to successfully argue in court that BOP and DOD registered nurses – like private sector nurses - should be classified as nonexempt under the Fair Labor Standards Act (FLSA) because they are hourly employees. (FLSA nonexempt employees are entitled to receive full time-and-a-half overtime pay; FLSA exempt employees are not.)

AFGE's GCO made this determination after reviewing Billings v. U.S., 322 F.3d 1328 (Fed. Cir. 2003), a case in which the Court of Appeals for the Federal Circuit ruled that the Office of Personnel Management is not required to apply the same regulatory "salary-basis" test to federal employees as the Department of Labor applies to private sector employees because "federal employees are subject to Title 5 suspensions not present in the private sector."

Here is the language that is needed to provide BOP and DOD registered nurses with full time-and-a-half pay for overtime work:

5 U.S.C. Section 5542(a)(6):

Notwithstanding paragraphs (1) and (2) of this subsection, for an employee of the Bureau of Prisons or Department of Defense who is a registered nurse, the overtime hourly rate of pay is an amount equal to one and one half times the hourly rate of basic pay of the employee, and all that amount is premium pay. These employees shall receive overtime for performing officially ordered or approved hours of service in excess of 40 hours in an administrative workweek, or in excess of eight hours in a day.

5 U.S.C. Section 5543(e):

Notwithstanding paragraph (a) of this subsection, compensatory time off instead of payment under section 5542 or section 7 of the Fair Labor Standards Act of 1938 for an equal amount of time spent in irregular or occasional overtime work for an employee of the Bureau of Prisons or Department of Defense who is a registered nurse, shall not be permitted, except as voluntarily requested in writing by the employee in question.

It is only fair that BOP and DOD registered nurses receive the same full time-and-a-half overtime pay as private sector nurses. They perform the same work and are paid the same way – by the hour.

Transportation Security Administration and Transportation Security Officers (TSOs)

"It always seems impossible until it's done."

Nelson Mandela

The 45,000 Transportation Security Officers (TSOs) represented by AFGE have upheld their obligation to be an integral part of national security by ensuring public safety as they screen passengers and baggage at our nation's airports, mass transit and large public gatherings such as Presidential inaugurations and the Super Bowl. Recent attacks around the world document terrorists' ongoing fixation on attacking public transportation. It should follow that the Transportation Security Administration (TSA) would treat the TSO workforce as trained professionals who are partners in providing aviation security. Sadly, the opposite continues to be true of TSA's relationship with its frontline workforce: TSA stubbornly refuses to grant TSOs real due process rights, including the right to appeal adverse personnel decisions to an objective third party, and other workplace rights and protections afforded to all federal workers.

No federal agency head, regardless of the mission of the agency, should be above the law. All TSA employees, including TSA managers, follow the Federal Aviation personnel management system, including the right to file appeals to the Merit Systems Protection Board (MSPB), except TSOs. The so-called "New Determination" issued at the end of December, 2014, as a Grinch-like surprise from former TSA Administrator John Pistole is Exhibit A in the case for full Title 5 rights for TSOs. TSA has no excuse for refusing to follow the same laws, Office of Personnel (OPM) regulations and guidance as the rest of the Federal government. AFGE calls upon President Obama to direct the Acting TSA Administrator to immediately apply all laws, guidelines and regulations applicable to Title 5 workers to the TSO workforce.

AFGE also calls for the reintroduction of the Transportation Security Workforce Enhancement Act, championed by Representative Nita Lowey (D-NY), Rep. Bennie Thompson (D-MS) and Rep. Sheila Jackson Lee (D-TX). Basic workforce protections should have the permanence of enacted law and not be subject to the politics of successive administrations. In 2007 majorities in both the House and Senate agreed to include TSO Title 5 rights legislation in the 9-11 Commission Report Act. TSA's behavior toward the TSO workforce has shown that the sweeping authority granted to it by an ill-considered management rights provision included in the Aviation Transportation Security Act (ATSA) was a grave mistake.

A statutory footnote has no relationship to the goal of defending the country against those seeking to commit harmful acts. AFGE will continue the fight for rights for TSOs and respect for the important work that they do. Our goal is not impossible to achieve. No matter the trials and obstacles, AFGE will obtain justice for TSOs.

AFGE and Council 100 Continue the Fight for a Fair Contract

On August 25, 2015 the American Federation of Government Employees, AFL-CIO (AFGE) began collective bargaining on behalf of 45,000 Transportation Security Officers (TSOs) for a second contract with the Transportation Security Administration (TSA). Despite negotiating for almost 13 weeks, TSA unilaterally declared that negotiations were required to end at 11:59 PM on Wednesday, December 9. On this date, the 90 calendar day time period and the 30 day extension period unilaterally set by TSA expired.

Under provisions of the Second Determination issued by former TSA Administrator John Pistole on December 29, 2014, unless an arbitrary benchmark of 50% of the contract provisions were agreed to by the parties, the current contract would expire. Under normal contract negotiations, the parties continue negotiating until they have an agreement or reach impasse. The only reason the current contract does not remain in effect is that TSA management unilaterally decided not to allow a rollover. TSOs represented by AFGE have been presented with provisions that do not represent a full collective bargaining agreement that addresses matters of significance to the workforce. AFGE strenuously objects to the restrictive process under which the union was forced to negotiate and the subsequent unfair outcome. We call upon the House and Senate to immediately pass legislation to provide to TSOs the same workplace rights—including collective bargaining rights—and protections that other federal workers have as a matter of law.

Even though TSA management constantly tries to speak for its employees, they do not speak for the employees in this regard. The exclusive representative is AFGE. The union will recommend that the employees vote against ratification of the partial collection of provisions. During the negotiations, TSA was unwilling to agree to provisions that would improve the working condition of its employees. AFGE intends to invoke arbitration on all remaining provisions that were not agreed upon by the parties, including:

- The performance management system;
- The awards and recognition program;
- Grievance and arbitrations system;
- Shift and annual leave bids;
- Selection for special assignments;
- The uniform allowance, approved uniform combinations, initial uniform allotment upon hire and annual uniform replacement;
- Subsidized parking provisions;
- Sick leave;
- Overtime;
- Effective dates on management directives and handbooks (management wanted the ability to repeatedly change the directives and handbooks); and
- Official time.

In the context of these negotiations, AFGE and TSOs are not just fighting for a fair contract for the workforce, we are fighting as well for the integrity of public sector collective bargaining for all federal workers.

New Determination—Same Problems

The original 2011 Determination granted TSOs the right to elect AFGE as their exclusive representative for collective bargaining and established a very basic framework for a dispute resolution system. The 2015 Determination attempts to scale back those *limited* collective bargaining, representation, and appeal rights by implementing a personnel system that is even more separate and unequal than its predecessor. Despite limited arbitration rights, AFGE won over 95% of the cases brought before independent third party arbitrators between 2012 and 2014 because management consistently overstepped provisions of the 2011 Determination and the negotiated collective bargaining agreement. After years of pressure from AFGE and TSOs, TSA granted to TSOs the same parking benefits provided to other Department of Homeland Security officers working at airports. But even limited rights have proven to be more than TSA management can handle: the new Determination seeks to overturn the results of every arbitration won by AFGE over the past two years and impose on AFGE what TSA could not win during arbitrations before third party neutral panels. The new Determination even creates a precedent that could require the Administrator's permission to hold another round of negotiations when the current collective bargaining agreement expires.

Every section of the 2011 Directive has been modified to take away rights from TSOs and strengthen management's hand. These actions have nothing to do with national security. The new Determination shows an agency that believes it has absolute authority and demands to prevail in each and every dispute with TSOs. Since the second Determination was filed, TSA has further limited issues that are subject to bargaining, arbitrarily dismissed grievances and arbitrations, excluded arbitrator-imposed language as a negotiable subject, and is not bound by the finality of arbitrator decisions. The new Determination is an attack on the TSO workforce. TSA's continued attacks on its own TSO workforce must end.

AFGE calls for legislation similar to the Transportation Security Workforce Enhancement Act introduced by Representative Lowey in 2009. Although naysayers claim there is no Congressional support for TSO rights, between 2009 and 2010 the bill gained 147 cosponsors and was favorably reported by the House Homeland Security Committee on September 29, 2009. In 2007 an amendment providing TSOs title 5 rights prevailed in two votes on the Senate floor during debate of the 9-11 Commission Report Act and failed to become law only when President George W. Bush threatened to veto the bill if TSO rights were included. AFGE commits to working tirelessly with TSOs for the introduction and advancement of a TSO rights bill in the 114th Congress.

TOPS to Bottom: Replace TSA's Unfair Pay System with the Federal Pay System that Works: the General Schedule

The Transportation Officer Performance System (TOPS) pay system changed again in 2014, and as a result over half (53%) of the TSO workforce received no pay raise as compared to 24% the previous year. TSA manipulated TSO payouts by changing the pay scale provided to the workforce at the beginning of the performance evaluation year. In 2015, TSA secretly changed the scale and payouts drastically from what was announced at the beginning of the year. For the third year under TOPS, TSA management has misled the TSO workforce.

TSOs' sense that they do not receive fair pay for doing their job is reflected in the low level of trust between management and the workforce. Rampant employee dissatisfaction led to employees' ranking TSA dead last in pay and next to last in "performance-based rewards and advancement" out of 315 agencies in the *2014 Partnership for Public Service Best Places to Work in the Federal Government* survey. By contrast, if TSOs were paid under the General Schedule (GS), objective criteria would be used to accurately assign jobs by grade, including performance-related criteria. The GS system precludes management from using the bait-and-switch tactics that TSA implemented to cheat TSOs out of their pay raises and bonuses. The attrition rate at TSA remains higher than that of the federal workforce overall; TSOs routinely leave TSA to find better pay and employment rights at other federal agencies under Title 5 and the GS system. No federal employee, especially TSOs assigned an important piece of the national security framework, should have to worry about fair pay.

Administrator Neffenger has testified before Congress that TSA's current threat assessment will result in more positions being filled among the TSO workforce. This determination reverses TSA's decision to reduce the TSO workforce through attrition. TSA's threat assessment, not an arbitrary cap imposed by Congress, should determine the number of Full Time Equivalent (FTE) TSOs the agency can employ. The FTE cap and budget cuts for TSO compensation and benefits are nothing more than an example of the determination of some in Congress to re-privatize airport screening. Common sense and security standards support the agency's imperative to hire as many TSOs as necessary to ensure the safety of the flying public. AFGE strongly believes that continued budget cuts to personnel funding have influenced a number of TSA's harshest personnel actions, such as its shifting pay systems and discrimination against TSOs with medical conditions.

AFGE urges introduction of legislation that will apply Title 5 and the GS system to the TSO workforce.

TSA Privatization

On April 15th the Greater Orlando Airport Authority (GOAA) voted to accept the recommendations of the so-called TSA Committee to delay a decision on the privatization of screening at Orlando International Airport (OIA) for two years. GOAA Airport Chairman Frank Kruppenbacher recently stated that TSA at Orlando International Airport "failed" the

performance review that included separate screening standards created by GOAA. Specifically, Kruppenbacher claims the TSOs have failed to meet the GOAA standards of line speeds of 6 minutes during off-peak hours and 10 minutes during peak hours; and 3-5 minute wait times during off-peak and peak hours for Precheck. TSA has averaged a 12-minute wait time at the airport. In addition, TSA's current customer service satisfaction rate is 74% in GOAA's polling, 11 percentage points lower than the most recent Valencia College poll. TSA Federal Security Director Jerry Henderson blamed the increased delays on changes in the managed inclusion program, a decline in the number of TSA officers hired to replace retired or fired TSOs and continued customer delays in complying with screening procedures.

AFGE warned that pro-privatization forces on GOAA would use the precedent which allows local airport authorities to set screening standards and protocols to thwart ATSA's goal of standardized screening at all U.S. airports and manipulate the results to cast TSOs in a bad light.

The Transportation Security subcommittee of the House Homeland Security Committee held a November hearing to examine TSA's cost formula in determining Screening Partnership Program (SPP) applications. Several years ago TSA found that screening costs at SPP airports exceeded the cost of federal TSOs by 17% (more recently reduced to 9%). The hearing coordinated with the Government Accountability Office's (GAO) release of a report examining the federal SPP cost estimates, but failed to coordinate how drastically changing from a proven federal workforce to an untested, inexperienced private workforce would affect the security necessary for new terrorism threats. It is AFGE's position that if SPP airports are required to use the same Screening Allocation Models as those employing federal TSOs, the costs will always be higher because ATSA requires the contractor to retain TSA managers. AFGE also seeks to comment on TSA's failure to apply the ATSA requirement that contract screeners receive pay and benefits comparable to federal TSOs. AFGE's investigation of the privatization of eight Montana airports in September 2014 revealed that contractors paid the private screeners below the median wages of TSOs and offered fewer and more expensive benefits. In August TSA withdrew SPP contracts from Trinity at Kalispell and Yellowstone because the contractor was unable to hire sufficient numbers of private screeners to fulfill the contracts. Federal TSOs are working at the airport while TSA searches for a new contractor.

TSO Checkpoint Safety

On September 24th President Obama signed into law the Gerardo Hernandez Airport Security Act, named after the TSO killed during the LAX attack in November 2013. AFGE worked with Rep. Bennie Thompson (D-MS), Ranking Homeland Security Committee Democrat, to ensure that TSOs would finally be included in practical training exercises for active shooter situations. While joint exercises and training included airport and airline employees, law enforcement, and other emergency personnel, TSOs were limited to watching a video regarding an active shooter situation at an office building. The law requires TSA to certify to the House Homeland Security and Senate Homeland Security and Governmental Affairs Committees within 90 days from the date of enactment that all TSOs have received practical training.

AFGE has begun discussions with House Homeland Security Chairman Mike McCaul's (R-TX) staff regarding possible legislation to further address checkpoint safety. AFGE continues to advocate a pilot program in support of the creation of a Transportation Security Law Enforcement Officer (TS-LEO). AFGE proposed the TS-LEO unit immediately after the Los Angeles Airport (LAX) shooting that left one TSO dead and two wounded by gunfire. The proposal is supported by Representative Maxine Waters (D-CA) and Representative Sheila Jackson Lee (D-TX).

Pregnancy Discrimination/Medical Eligibility

A number of House members are actively investigating TSA's ongoing refusal to prohibit discrimination against TSOs with medical conditions. The agency's attempt to remove several TSOs due to health conditions has resulted in inquiries as to whether TSA follows the Rehabilitation Act, which Congress directly applied to TSOs in a provision included in the Whistleblower Protection Enhancement Act. The Equal Employment Opportunity Commission ruled in 2014 that TSA must now reassign medically disqualified TSOs when the worker is qualified for a vacant position in either TSA or DHS under the Rehabilitation Act. The decision does not guarantee continued employment because the agency can claim no positions are available for which the TSO is qualified or the TSO may reject the available positions.

The remedy for medical disqualifications is tied to TSO Title 5 rights. Title 5 rights include application of the Rehabilitation Act, which requires management to demonstrate that the employee's medical condition prevents him or her from performing job duties, as opposed to TSA's decisions that are based simply on the diagnosis of a condition. Representative Bennie Thompson has asked TSA Administrator Neffenger whether the agency applied different medical evaluations to TSOs and managers, and if TSA fired employees simply because they had "cancer" or other medical conditions during an October 15th hearing. Thompson included in the hearing record documentation that in a one year period TSA fired 165 TSOs simply due to a medical condition.

Honoring our Fallen TSA Heroes

In September Representative Julia Brownley (D-CA) reintroduced the Honoring Our Fallen TSA Heroes Act (H.R. 3523) with 38 cosponsors. The bill grants TSOs Public Safety Officer benefits in the event of their death or severe injury while in the line of duty.

Human Trafficking Detection Act – H.R. 5623 (Passed the House 3/4/15); S. 623

The Human Trafficking Detection Act introduced in the House by Representative Mark Walker (R-NC) and the Senate by HSGAC Chairman Ron Johnson (R-WI) mandates training within DHS components to identify victims of trafficking. AFGE lobbied to limit a provision in the bill so that TSOs would only be evaluated on the training, rather than face discipline or impact based on their TOPS evaluation.

The Securing Expedited Screening Act – H.R. 2127

On July 28th, the House passed the Securing Expedited Screening Act (H.R. 2127), introduced by Ranking Democrat Bennie Thompson, Transportation Security Subcommittee Chairman John Katko (R-NY), and Subcommittee Ranking Member Kathleen Ross (D-NY). The bill responds to TSA's use of random security risk assessments to identify passengers for expedited screening. H.R. 2127 limits expedited screening to TSA/DHS known and trusted traveler programs, military service members and veterans, passengers age 75 or older, or under the age of 12 and traveling with a parent who is enrolled in the PreCheck program. The bill also requires TSA to provide an independent assessment that future expedited screening decisions are made by reliable and effective methods to prevent passengers who may pose a security threat from being selected for expedited screening. AFGE strongly supports the legislation because it limits TSA's ability to hide chronic TSO understaffing.

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 45,000 TSOs.

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. Some 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 a result of the LAX shooting, we have learned that 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 University. 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.

Conclusion

TSOs are presented with new challenges in 2016. AFGE will work to address those challenges during the 114th Congress and by renewing calls for Executive action by the Obama administration.

Voter and Civil Rights

The American Federation of Government Employees, AFL-CIO, (AFGE) continues its historical collaboration with the civil rights movement. In 1937 the Brotherhood of Sleeping Car Porters, led by A. Phillip Randolph, became the first majority African American union to join the American Federation of Labor. The United Auto Workers supported the Montgomery bus boycott during the 1950s. In 1969 Dr. Martin Luther King was assassinated in Memphis where he was preparing to march with sanitation workers who were members of American Federation of State, County, and Municipal Employees. As Rev. William Barber, President of the North Carolina National Association for the Advancement of Colored People (NAACP) and founder of Moral Mondays stated, "I want you to know without a shadow of a doubt that the fight that labor wages, and the fight for civil rights, are two movements headed in the same direction." Even as the U.S. has made remarkable progress in the area of civil rights, inequality persists on matters of income and interactions with the criminal justice system. The work of the country in advancing rights for all remains incomplete.

AFGE is a full and active partner in the traditional alliance between the civil rights and workers' rights movement. AFGE created the Fair Practices Department in 1968 to fight racial injustice in federal employment and expanded it in 1974 to become the Women's and Fair Practices Department protecting the federal workforce. AFGE leaders marched in Selma in 2015 with many others to honor the sacrifice of those who fought for the Voting Rights Act of 1965 and to ensure those rights will not be denied or diluted by state legislatures federal judges. AFGE has recognized disparities in the criminal justice system, and has worked with advocates on sentencing reforms. AFGE fights for equal pay between men and women and against the use of discriminatory pay-for-performance schemes. AFGE fights for the federal government to become THE model employer, and for the rights and dignity of all federal workers regardless of race, sex, religion, orientation or gender identification, national origin, age, or disability status.

Legislative and Judicial Attacks on the Right to Vote

The preclearance section of the Voting Rights Act blocked discriminatory voting changes before implementation. In addition to the Southern states many are familiar with due to the history of voting discrimination (Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Texas and North Carolina), the entire states of Virginia, Alaska, and Arizona and parts of California, Florida, Michigan, New York and South Dakota were subject to preclearance following 1965. Fifty-three percent of the states covered by the preclearance requirements due to past discrimination passed or implemented voting restrictions that disenfranchised tens of thousands of voters. Virginia purged more than 38,000 names from voter rolls. Immediately following the Supreme Court's decision in *Shelby County V. Holder*, striking the preclearance provision of the Voting Rights Act, states previously subject to preclearance (Texas, Alabama, and North Carolina) implemented restrictive identification requirements, purged voter rolls, eliminated same day voting registration and limited early voting. The intent is clear: Political control will be maintained by denying the ballot those who may vote in opposition. In 2015 Alabama closed

31 Department of Motor Vehicle where citizens register to vote primarily in predominately African American counties. Restrictive voter eligibility requirements have made the fundamental right to vote much harder to exercise for the elderly, people of color, college students, low income, and disabled voters. The National Commission on Voting Rights found that voting discrimination has a significant impact on African Americans, Latinos, Native Americans and Asian Americans. The implementation of laws enacted by many state legislatures has established a modern poll tax of cost and burden on voters.

On December 8, 2015, the Supreme Court heard oral arguments in the case of *Evenwel v. Abbott*, which would change the way legislative districts are determined. The current rule requires that state legislative districts are based on population. A decision in favor of the *Evenwel* plaintiffs will require that those districts be based on the citizen voting age population instead of the total population. This change would dilute the representation of fast-growing Latino populations in certain states and would require many state House and Senate districts to be redrawn.

Any voting right restriction has a direct impact on federal workers. Statistics from the American National Election Studies indicate that union household turnout is 5.7% higher than that of non-union households. A 2010 article in the *Social Sciences Quarterly* stated that public sector voting turnout was 2% – 3% higher than private sector union households. Voters who favor a strong federal government and recognize the contributions of the federal workforce are more likely to show that support when they cast a ballot.

AFGE strongly supports H.R. 2887, the Voting Rights Advancement Act and its Senate companion in the Senate, S. 1659, introduced in the House by Terri Sewell (D-AL) and in the Senate by Senator Patrick Leahy (D-VT) on June 24, 2015. The Voting Rights Advancement Act limits discriminatory voting laws by reducing the ability of state and local government to restrict the voting rights of racial and language minority groups, creates a new national coverage formula to determine which states (states with 15 or more voting rights violations over the past 25) are subject to preclearance and would lessen the likelihood of changes in voting standards and procedures within 180 days prior to a federal election. For the first time Native American and Alaska Natives voters would see increased access to polling locations, absentee voting and voter registration locations. AFGE calls on House Judiciary Committee Chairman Robert Goodlatte (R-VA) to hold a hearing on the Voting Rights Advancement Act. Chairman Goodlatte celebrated the 50th anniversary of the Voting Rights Act, but has stated that restoring voter protections in the wake of court decisions and legislation “is not necessary”. AFGE knows otherwise, and adopted several resolutions in strong support of voting rights at the 2015 Convention.

AFGE also calls on Congress to better address the needs of the nation’s disabled voters. In addition to experiencing difficulties acquiring state-issued photo identification, disabled voters remain underserved by voting equipment and locations. In 2002 Congress passed the Helping America Vote Act, which required fully accessible voting machines for people with disabilities by 2006. Often the issue is a lack of resources to provide the equipment and accessible voting

locations disabled voters require. AFGE calls on Congress to provide adequate funding for voter access programs.

Equal Pay

AFGE strongly supports the S. 862/H.R. 1619, the Paycheck Fairness Act, introduced by Senator Barbra Mikulski (D-MD) and Representative Rosa DeLauro (D-CT) on March 25th, 2015. The bill would close loopholes that have hindered the Equal Pay Act's effectiveness and prohibit employer retaliation against employees who share salary information among colleagues and ensure that women who prove their case in court are awarded both back pay and punitive damages.

Conclusion

Application of civil rights protections in voting, employment, and other aspect of life requires constant vigilance and action by all workers. Federal government employees have a unique perspective from which to participate in the fight. AFGE is committed to voting and civil rights for workers, and the enforcement of those rights in the future.

Paid Parental Leave

Introduction

The Federal Employee Paid Parental Leave Act or FEPLA, (H.R. 532/ S. 2033) by Rep. Carolyn Maloney (D-NY) and Sen. Brian Schatz (D-Hi) in the House and Senate, respectively. When enacted, FEPLA will codify much of the January 15, 2015, Presidential memorandum updating federal leave policies by directing federal agencies to advance up to six weeks paid leave for the care of a newborn, newly adopted, or newly placed foster child. The Presidential memorandum also allows advanced leave to be used for spouses and partners to care for newborn children and newly adopted or foster children. The President's actions were necessary because despite the protections of the Family and Medical Leave Act (FMLA), federal workers are among those who must choose between a paycheck and meeting their family obligations because they currently have no paid parental leave. The Presidential memorandum also encourages agencies to utilize Employee Assistance Programs to assist workers who need emergency care for children, seniors, and adults with disabilities. President Obama's policies recognize that the committed federal workforce is strengthened by helping employees balance their work and family obligations.

The House and Senate versions of FEPLA provide federal employees six weeks of paid parental leave upon the birth, adoption or fostering of a child. The Senate bill ensures that paid parental leave will extend to the nation's 45,000 TSO workforce. AFGE calls on the House and Senate to recognize the value of this benefit to the federal workforce and working families. The Federal Employee Paid Parental Leave Act should be advanced in the 114th Congress and sent to the President's desk for signature.

All research on child development and family stability supports the notion that parent-infant bonding during the earliest months of life is crucial. Children who form strong emotional bonds or "attachment" with their parents are most likely to do well in school, have positive relationships with others, and enjoy good health during their lifetimes. These are outcomes that should be the goal for all children, including those of federal employees. Spending time with a newborn, newly adopted, or foster child should not be viewed as a personal choice, or a luxury that only the rich should be able to afford. The only reason a new parent would ever go back to work immediately after the birth of a child, adoption or placement of a foster child—even with the protections of the FMLA—is because she or he could not do without his or her paycheck. And far too many workers in both the federal government and outside must make this terrible choice.

Congressional opponents of paid parental leave for federal employees have raised arguments largely based on cost, or notions that attempt to "rank" parental status. Unrealistic assertions about the ability of federal workers to accumulate and save other forms of paid leave continue. It is not difficult to speculate on the cost of failing to extend this benefit to new families. Productivity is lost when a parent returns to work too soon without securing proper daycare for a newborn or newly adopted child or when federal employees come to work when

they are ill because they used up all of their sick leave during the adoption process or caring for a newborn. A lack of paid parental leave also negatively impacts the government when a good worker, trained at taxpayer expense, decides to leave federal service for another employer, often a government contractor, who does offer paid leave.

Growing numbers of private employers, including taxpayer-funded federal contractors, and most governments across the globe have acknowledged the benefits that accrue to employers when workers are provided paid new parent leave. Only 12% of U.S. workers have paid family leave and only 61% have paid sick leave according to the Bureau of Labor Statistics. The U.S. joins Papua New Guinea as the only countries with no statutory paid parental leave for workers.

FEEPLA Equally Recognizes Mothers, Fathers, and Families Formed Through Adoption

Some opposition to the Federal Employee Paid Parental Leave Act is based on irrelevant distinctions between adoptive parents, birth parents, mothers and fathers. The FMLA settled the question of whether anyone besides a woman who has just given birth deserves time off from work to care for a child. Attempts to create an employer-financed short-term disability insurance for federal employees as a means of providing paid maternity leave for birth mothers only solves part of the problem. Such a short-term disability insurance program would not provide a solution for new fathers or new adoptive parents and is therefore discriminatory as a solution to the problem of providing paid leave to new parents. The FEPLA takes it as a given that all parents deserve equal treatment.

Congress Should Recognize the Benefits of Leave to Workers and Agencies

Congress must face the reality of the difficulties federal workers face in accumulating annual leave. Federal employees are only able to accumulate a maximum of 30 days of annual leave, not an adequate amount of time for providing care to a newborn or a newly adopted child. By most conservative estimates it would take a federal worker who takes two weeks of annual leave and 3 days of sick leave per year close to 5 years to accrue enough sick and annual leave to receive pay during the 12 weeks of parental leave allowed under FMLA. Even if a federal worker never got sick and never went on vacation it would take over 2 years to accumulate enough leave to pay for 12 weeks of parental leave. The alternatives suggested by federal employee paid parental leave opponents are far too simplistic and unrealistic to adequately address the problem. Federal workers who take unpaid parental leave too often fall behind on their bills and face financial ruin. Federal workers in their child-bearing or adopting years, earn less, on average, than other federal employees. They are at a moment in their careers when they can least afford to take any time off without pay, and least likely to have accumulated significant savings.

In 2009 the Congressional Budget Office scored an earlier version of the Paid Parental Leave Act and determined that the bill was budget neutral. AFGE believes that the Paid Parental Leave Act will result in the retention of talented workers who would otherwise leave federal government work for private sector jobs because of the availability of paid parental leave. The

federal government currently reimburses federal contractors and grantees for the cost of providing paid parental leave to their workers. Surely if such practice is affordable and reasonable for contractors and grantees, federal employees should be eligible for similar treatment.

Conclusion

President Obama has led by example by directing federal agencies to support their workers by providing paid leave for newborn, newly adopted, and newly placed foster children. But his Executive Order is not enough. AFGE knows that the federal government can only attract and keep the workforce necessary to carry out its mission by providing benefits on par with other large employers, including federal contractors. AFGE will again work with a coalition of work-family advocates to support the Federal Employee Paid Parental Leave bill. The benefits to children and families of six weeks of paid parental leave are enormous and long-lasting. AFGE strongly urges passage of the Federal Employee Paid Parental Leave Act during the 114th Congress.

Equality

Introduction

In June 2015, the Supreme Court's decision in *Obergefell v. Hodges* established the Constitutional right of same-sex couples to marry in the United States. Although the marriages of same-sex couples must be afforded the same legal rights and protections as all other marriages, in eighteen states there are no protections against workplace or housing discrimination based on sexual orientation. In 2014, President Obama signed an amendment to Executive Order 11478 protecting federal workers from discrimination based on gender identity. Despite significant advancements, Congress failed to send to the president legislation that would ensure that all workers—federal and others—are treated equally. AFGE will fight for equality until those rights are achieved.

The Equality Act

The pursuit of justice has not always been easy or popular, but AFGE stands true to a basic tenet of fairness: all individuals should be judged by the same criteria. Accordingly, AFGE strongly opposes employment discrimination on the basis of sexual orientation. Currently it is not a statutory civil rights violation to fire, deny housing, or educational opportunities to individuals simply because they are not heterosexual – and that is wrong. Although this protection has been applied administratively to federal employees for decades, the Special Counsel under the Bush Administration systematically denied federal workers a process to remedy discrimination based on sexual orientation. This demonstrated the need for statutory protections. The Equality Act (S. 1858/H.R. 3185), introduced in the Senate by Senators Jeff Merkley (D-OR), Tammy Baldwin (D-WI) and Cory Booker (D-CT) and in the House by Representative David Cicilline (D-RI) on July 23, 2015 provides federal protections for the first time. The Equality Act extends discrimination protections against discrimination in employment, housing, access to public places, federal funding, credit, education and jury service based on orientation or gender identification. AFGE supports the Equality Act.

Conclusion

AFGE strongly urges House and Senate passage of the Equality Act.

Federal Workers' Due Process Rights

The Conyers Decision: National Security or a Brazen Attempt to Convert the Civil Service to an "At Will" Workforce?

The right of federal employees to appeal adverse agency actions is under assault. In 2014 the Supreme Court refused to hear the lower court's decision in *Kaplan v. Conyers (Conyers)* upholding the ability of Federal agencies to deny independent due process appeal of adverse actions to the civil service if their positions are designated noncritical sensitive. The Office of Personnel Management (OPM) proposed regulations that, if implemented, will allow agencies to designate almost any civil service position as noncritical sensitive and create a large and growing class of federal workers with second-class due process rights. Neither OPM nor the Office of the Director of National Intelligence (ODNI) has documented why such a sweeping denial of due process rights is necessary, estimated the number of positions anticipated to be subject to redesignation, or projected the cost of never-ending background investigations. Without Congressional intervention, thousands of hard-working public servants may be subject to arbitrary, unfair or discriminatory adverse actions without meaningful review.

AFGE calls on the Obama administration to stay "national security position" redesignation, background investigations and personnel actions until justification for these actions is provided to Congress. AFGE supports the reintroduction of legislation in the House and Senate that restores MSPB appeal rights to federal workers who are found ineligible to occupy a noncritical sensitive "national security position." Executive branch accountability and the enforceability of federal workforce due process rights are on the line.

The Conyers Decision: A Step Backwards for the Rights of All Federal Workers

The Conyers case combines appeals of Department of Defense (DoD) decisions that resulted in the termination of Rhonda Conyers and the demotion of Devon Northover. Conyers had served as an accounting technician for the Defense Finance and Accounting Service (DFAS) for over 20 years when in September 2009 she learned she had been indefinitely suspended from her job. DoD notified Conyers that her job had been designated as a noncritical sensitive and that she had been deemed ineligible to access sensitive information—even though her job did not require her to access sensitive information. The agency explained that her financial circumstances, namely debts totaling less than \$10,000, precluded her from keeping her job.

Devon Northover had worked at an Air Force Base commissary for close to seven years when he learned of his demotion to a part-time store clerk in 2009. DoD had determined Northover's position, which primarily involve stocking shelves at the commissary and checking inventory, would be designated a national security position. In a manner similar to that experienced by Conyers, DoD did not elaborate on why his position suddenly impacted national security. Also like Conyers, the decision was based on financial considerations, i.e., debt. Northover requested an extension to respond to this determination and explain that family issues that led

to his financial circumstances. The agency denied his request. Sadly, these facts are not unique to Conyers and Northover.

Background

The Civil Service Reform Act (CSRA) allows employees facing adverse actions (14-day suspension or worse) to appeal their agency's decision to the independent Merit Systems Protection Board (MSPB). Under normal circumstances, the MSPB reviews the merits of the agency's decision to take an adverse action against an employee to ensure that the decision is fair.

In 1988, the Supreme Court decided in *Department of the Navy v. Egan (Egan)* that the MSPB could not review the merits of security clearance determinations while adjudicating agencies' adverse actions against employees. As a result of this decision, an agency could require an employee to hold a security clearance in order to perform a particular job, then revoke the employee's clearance, then terminate the employee because he was no longer eligible for the position because he had lost his clearance. Yet there was no requirement for the agency to explain or justify to the MSPB why the employee's clearance had been revoked. The employee could still appeal his firing to the MSPB, but his appeal would be meaningless: the agency could justify firing the employee simply because his clearance had been revoked. The MSPB was not permitted to determine whether the underlying cause of the firing; i.e., the revocation of the clearance, was fair to the employee.

Conyers and Northover in the Federal Courts

Egan was bad enough for federal workers. But at least until the *Conyers* case, federal courts interpreted *Egan* as limited to security clearance determinations. With the support of 20-plus years of legal precedent, AFGE appealed the actions against Conyers and Northover to the MSPB because their cases did not include a security clearance determination. The MSPB had jurisdiction and accepted review of both cases because DoD had decided both employees were unfit for their positions, and the board has always exercised jurisdiction over these types of determinations. The MSPB found the narrow exception stated in *Egan* did not apply to Conyers and Northover because neither position required the occupant to access sensitive or classified information.

OPM appealed the decision to a three-judge panel of the Federal Circuit, which overruled MSPB in January 2013. AFGE appealed to the full Federal Circuit which once again ruled the designation of a worker's fitness to hold a "national security position" is beyond MSPB review and that the agency's determination of fitness to occupy a position is not reviewable by the MSPB or any court. The United States Supreme Court denied AFGE's petition for *certiorari* on March 31, 2014.

OPM and ODNI Propose Regulations to Codify Conyers

The Office of the Director of National Security (ODNI) reissued regulations in May, 2013 that expanded the reach of the *Conyers* decision. Without any legitimate justification and under the guise of simplifying and modernizing the process, OPM and ODNI expanded their own power by crafting arbitrary guidelines for the designation of positions as “national security positions.” Under the proposed regulations, a national security position includes any position in a department or agency, the occupants of which could bring about a materially adverse effect on national security. The definitions provide a laundry list of examples of positions that might constitute a national security position. These vague, expansive descriptions might allow any agency to reclassify positions as “national security positions,” thereby removing them from the jurisdiction of the MSPB. There are no real limits on an agency’s so-called discretion included in the proposed regulations.

The proposed regulation authorizes department heads to designate national security positions as one of three sensitive sensitivity levels: noncritical sensitive, critical sensitive, or special sensitive. The lowest sensitivity level—noncritical sensitive—specifically mentions positions that would not require any security clearance at all. Despite the apparent lack of coherence, this regulation echoes and codifies the Federal Circuit’s ruling under *Conyers*. The repercussions are that any agency may designate any position as national security sensitive, and there will be no meaningful review of that decision or an adverse action appeal arising from it. A Justice Department attorney acknowledged that as many as 200,000 positions within DOD alone could be reclassified as one of the three sensitive designations and could not estimate the number of positions impacted at other agencies. The proposed rule would require that each newly designated position be reviewed by the agency every 24 months, basically precluding accountability, accuracy, and any legitimate appeal by the occupant of the position. The potential for agency abuse and workforce harm is beyond measure.

What’s at Stake for Federal Workers?

The jobs of hundreds of thousands of federal workers will be placed at risk by both the OPM proposed regulation and the *Conyers* decision with no legitimate motive or public policy reason expressed by the Federal government. It is important to keep in mind that both the *Conyers* decision and the OPM/ODNI proposed regulations deny review of the agency’s actions in redesignating positions as well as decisions made regarding the fitness of occupants to continue holding those positions. DOD’s actions are an example of the abuse of discretion that will spread across all federal agencies if the *Conyers* ruling stands and the OPM/ODNI proposed regulations are made final. The *Conyers* ruling itself involves federal employees who never had any access to classified information. Neither Rhonda Conyers nor Devon Northover held a security clearance. They never had access to classified or sensitive information. Neither had any plausible potential to negatively impact our nation’s safety. Rhonda was an accounting clerk and Devon worked at a commissary. Yet DOD brazenly designated both positions as national security positions with little explanation.

The federal workforce is faced with a “perfect storm” of tremendously bad potential outcomes. Federal workers have endured the injustices of frozen pay and threatened benefits. They’ve been furloughed as a result of harmful sequestration cuts. They were furloughed for 16 days as result of a pointless government shutdown, unsure how or when they’d be able to pay their bills or make ends meet. Despite these problems and resulting low morale, federal workers showed up to work protecting the country providing crucial public services. But the impact on federal worker finances is real and severe, and now the risk of job loss because of financial hardship is equally as real.

Bad credit or financial hardship is not an indication of bad character or disloyalty to the country. The implication that those with credit card debt, occasional late bill payments, or temporary financial hardships are somehow disloyal to their country is deeply offensive and patently absurd. Like most Americans, federal employees have been hit hard by the great recession and some have struggled to make ends meet. Unlike most Americans, federal employees now face baseless accusations of disloyalty to their country based on a bad credit report.

AFGE’s Department of Women’s and Fair Practices has found that the national security designations process disproportionately impacts public servants over 40 years old, women in the federal workforce, and public servants of color at DFAS. Overreliance on credit history also disproportionately affects those of lower grade positions even though lower grade positions are much less likely to pose any actual risk to national security. OPM and ODNI have simply failed to adequately document the need to create “national security positions,” or the extent of problems that would require the cancellation of civil service rights.

Congress Reaffirms its Intent that the MSPB Ensure Accountability to the Public and to Federal Employees

For over three decades Congressional intent to provide important safeguards for federal workers included in the 1978 CSRA and its subsequent amendments has stood. That intent is crystal clear: the MSPB’s mandate is to serve as a vigorous defender of the merit system to prevent the civil service from devolving to a patronage system. Chief among the MSPB’s functions is protecting federal employees from arbitrary disciplinary actions, inappropriate favoritism, and coercion for partisan political purposes. When a federal employee faces discipline or termination, he or she may challenge that decision before the MSPB. The MSPB reviews the decision to determine whether or not it complies with the principles of the CSRA.

Congresswoman Eleanor Holmes Norton (D–DC) showed tremendous leadership in assembling bipartisan support for H.R. 2272, her legislation in the 113th Congress. That bill would have overturned *Conyers/Northover* by restoring due process procedures of the CSRA to workers who do not hold a security clearance and whose work does not involve access to classified materials. Congresswoman Norton’s bipartisan efforts were echoed in the Senate by Senator Jon Tester (D–MT), who introduced S. 1809, a companion bill to H.R. 2272 during the 113th Congress. Senator Tester was joined by Senators Charles Grassley (R-IA), and Claire McCaskill

(D–MO). AFGE will work for reintroduction of the House and Senate bill during the second session of the 114th Congress.

Conclusion

AFGE strongly opposes judicial and administrative attempts to deny untold numbers of federal workers their due process rights. The CSRA and numerous amendments have made clear the will of Congress to provide the vast majority of federal workers with due process rights before the MSPB and Federal courts. AFGE joins other federal unions, good government, and whistleblower advocates in calling for reintroduction and swift passage of replacement legislation for S. 1809 and H.R. 2272 in the 114th Congress.

Equal Employment Opportunity Commission Top-Heavy Agency Suffers Backlogs, Inadequate Frontline Staffing, Poor Morale, and a Failure to Adopt Dedicated Intake Plan

Summary

AFGE's National Council of EEOC Locals, No. 216, is proud to represent investigators, attorneys, mediators, administrative judges and other Equal Employment Opportunity Commission (EEOC) staff who 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 genetics.

This past year, EEOC celebrated its fiftieth anniversary. Fifty years since opening its doors, EEOC continues to be hobbled by budget constraints, inadequate number of frontline staff, low morale, and a failure to implement common-sense efficiencies.

Frontline staff is critical to EEOC's ability to enforce anti-discrimination laws. The lack of adequate staffing harms EEOC's ability to carry out its civil rights mission. FY14 ended with EEOC's staffing at a record low 2,098 FTEs. Modest hiring slightly raised this to 2,190 FTEs in FY15. While investigators are the primary resource to process discrimination charges, their ranks in FY15 were increased by less than 2%. Instead of pushing resources to the frontline, EEOC is top heavy with a 1:5 supervisor to employee ratio.

Consequently, the EEOC's backlog worsened from 70,781 cases in FY13 to 76,408 in FY15, a trend it cannot afford. The public must wait at least nine months for EEOC to process a case. Just to have a call answered by the in-house call center takes at least 45 minutes or more. These extended delays represent lost opportunities for Americans who want to work free from discrimination.

For FY17, Council 216 will urge Congress to increase EEOC's funding to at least \$367M, i.e. the FY10 funding level. AFGE Council 216 will also press EEOC to implement real efficiencies e.g., the Union's dedicated intake plan, smart-staffing EEOC's frontlines, reducing supervisor to employee ratio from 1:5 to 1:10, cutting management travel, eliminating contracts for work that can be performed in-house, and improving morale to reduce costly turnover.

Discussion

1. Hiring Frontline Staff Must be the Priority - Record Low Staffing and High Workload Have Had Disastrous Public Impact

- *AFGE Council 216 will lobby Congress to adequately fund EEOC and ensure that the agency prioritizes backfilling frontline staff.*

Enforcing Title VII and other laws that prevent employment discrimination requires frontline staff. EEOC must have the resources to effectively remedy and deter discrimination. Ensuring Americans have a fair shot to get and keep their jobs ensures a healthy economy for all.

EEOC experienced an unprecedented budget cut in FY12, 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.

The timing of these cuts unfortunately coincided with five years of historically high discrimination charge filings. The worst impact of the consecutive years of budget cuts was 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 caused EEOC's workforce to plummet. In the second half of FY14, EEOC finally ended its hiring freeze, but EEOC's modest hiring has not restored staffing levels. EEOC ended FY14 with a record low 2,098 employees, as compared to 2,454 in FY11. In FY15, EEOC's FY15 performance accountability report, stated "retirements along with other attrition, resulted in a net increase of 123 employees." As a result, EEOC ended FY15 with only 2,190 employees nationwide. This figure is even well below EEOC's authorized staff ceiling of 2,347 and prevents timely processing of the huge workloads.

Current frontline staffing levels are insufficient to address the workloads. In FY15 EEOC took in 89,385 new charges of discrimination. The workload to staff imbalance means more victims are trapped in EEOC's backlog. The titanic backlog has risen from 70,781 cases in FY13 to an abominable 76,408 in FY15 (up almost 8%). EEOC's last reported average case processing delay is a dismal 9 months.

EEOC's FY15 performance and accountability report recognizes that "investigators are a primary resource in the agency's efforts to process discrimination claims." Nevertheless, EEOC's modest hiring of investigators in FY15 resulted in a "net increase of 16, a 1.9 percent increase." As new investigators must first be trained they will not be immediately available to reduce the backlog. More grim news from the report is, "The EEOC's Office of Field Programs reports that for 2016 it may not be able to increase the net number of investigators and could lose some." Recognizing that investigators are needed to process and prevent backlog, EEOC's focus on frontline attrition to save money is not a winning plan.

While EEOC's mediation program receives high marks from participants, mediator staffing levels meant only 10,579 mediations conducted in FY15, as compared to 11,513 in FY13.

EEOC's in-house call center has shrunk from 65 intake information representatives (IIR) to approximately 28. The IIR shortage means long delays for the public.

EEOC receives over 18,000 Freedom of Information Act requests (FOIA) annually, which are processed by less than 39 full time staff. The FY15 Chief FOIA Office report acknowledges that the backlog was not reduced, with a slight increase attributable to the loss of staff.

The result of nationwide frontline staffing losses is that the public is not being served. The FY16 Omnibus funds EEOC at \$364.5M. This is the third straight year of level funding. To provide perspective, EEOC's FY16 funding is actually less than EEOC's FY10 budget of \$367M. Meanwhile the price of airline tickets, postage, leased space, etc. has increased.

Council 216 will press EEOC to prioritize within the tight budget the backfilling of frontline staff after implementing the 1% salary increase and paying outstanding overtime claims, discussed below. For FY17, Council 216 will urge Congress to increase EEOC's funding to at least \$367M, i.e. the FY10 funding level.

2. EEOC Should Increase Real Efficiencies, such as the National Intake Plan and Reducing Supervisor to Employee Ratio.

- AFGE Council 216 will lobby Congress to make EEOC implement efficiencies to prioritize frontline staff.

EEOC' is piloting and rolling out "efficiencies" that provide limited substantive assistance to the public and force more work on the agency's already overwhelmed staff without adding resources. This past year the EEOC implemented the first phase of the ACT digital system, which focuses on Respondents receiving and responding to charge filings electronically. EEOC did not provide offices the scanners and digital equipment necessary. EEOC's frontline staff now have new manual work scanning and uploading documents. EEOC's upcoming plans include on-line tracking of charge status. For FY16, EEOC will also even release an online scheduling vehicle for the public, but lacks staff to address and absorb these requests. EEOC is also developing "technology to provide the public with the option to perform self-screening, [and] submit a pre-charge inquiry." Similar past experiments resulted in a flood of inquiries with every box checked out of caution. The resulting boom in the workload created even more work for investigative staff to address and process. Given recent security breaches EEOC must also be able to assure that the online systems do not pose risks for this personal information. Moreover, while technology and transparency can be helpful, they must provide more than a way for the public to track EEOC's bottlenecks or create new ones. EEOC should focus on pushing resources to frontline staff, who directly serve the public.

- **EEOC Should Adopt a Real Efficiency: the National Intake Plan**

Congress recognizes the need for EEOC to implement efficiencies. Nevertheless, EEOC refuses to consider the Union's Intake plan and did not even mention it in the agency's Strategic Plan, the budget, or the performance report. This is a missed opportunity, as the Strategic Plan emphasizes consistent implementation of customer service goals and the priority charge handling process [PCHP]. The National Intake Plan would achieve this desired consistency.

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 seven years ago. Council 216's Full Service Intake Plan would staff each field office with a compliment of positions and grades (GS-5 through GS-9). The heart of the plan is utilizing well trained investigator support assistants (ISAs) as a dedicated unit to advance the intake process from pre-charge counseling through charge filing and address the flood of intake questionnaires and long hold times for the public. Investigators, who now must stop investigating their cases to regularly rotate into intake, would be able to focus on their caseload and to reduce the unacceptable 76,408 case backlog and 9 month wait times.

AFGE Council 216's National Intake Plan also fixes the in-house call center by synthesizing calls and emails into a seamless intake unit. In 2006 EEOC was forced to shut down its failed contract call center, but stubbornly replicated it in-house. The in-house call center was based on the premise of having 65 Information Intake Representatives. But by second quarter of FY15 staffing was down to 28 IIRs. Turnover rates are high for IIRS, given oppressive quotas. The few remaining IIRs report that callers are angry and frustrated after waiting at least 45 minutes or more. In addition, e-mails often pile up.

Initially, the plan could be piloted in offices which have IIRs. Existing ISAs and support staff could be coupled with IIRs and trained to create efficiencies without additional expense. These dedicated intake units would both answer phones and draft charges where appropriate, rather than simply reading scripts. Moving forward, EEOC should focus backfill decisions on staffing the dedicated intake units, rather than throwing good money after bad by sticking with the failed contract call center model which continues its high turnover and burdens the investigators and backlogs.

- **EEOC Must Prioritize Frontline Staffing**

It is now 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. In addition, EEO should not promote staff to management without ensuring the resulting vacancies are backfilled.

By filling more GS-13 Lead Systemic Investigator positions, EEOC could retain talent and match staffing to its stated priorities, given its emphasis on systemic cases. EEOC increased the number of lead systemic investigators in FY15 from 9 to 18 nationwide, but this remains a small number given the relevant workload.

Second, a budget neutral way for EEOC to increase frontline staff is to reduce its current top heavy 1:5 supervisor to employee ratio. The EEOC's Republican leadership in 2006 supported a 1:10 ratio, but to date this reasonable goal has never been realized. EEOC continued to bloat the management ranks hiring one supervisor for every six employees in FY15. EEOC also created more SES positions in FY15 and filled long empty SES vacancies. Flattening the agency would make it more efficient by focusing budget dollars on less-costly frontline staff and would reduce micromanagement.

Third, EEOC should smart staff offices in the manner recommended by Council 216's People First Plan, first recommended in 2005. The premise of the plan is to rely on building blocks of staff teams. For instance, no EEOC office should have less than one full investigative team, which would consist of a supervisor or team leader, ten investigators, two investigator support assistants, and one OAA support person. Smart staffing can best utilize hiring to efficiently address priorities in offices still suffering arbitrary vacancies caused by a three year hiring freeze and resulting attrition.

- **EEOC Should Improve Retention and Avoid Costly Staff Turnover.**

Sadly, EEOC is a long way from realizing its goal to be the "model employer." EEOC should limit turnover by taking actions and using flexibilities to improve employee morale. The agency continues to receive scores below the government average on the Federal Employee Viewpoint Survey (FEVS) on adequate resources to do the job, employee engagement, trust in management, fear of retaliation etc.

The EEOC dusts off its management committee called BEST, immediately before the annual OPM survey is released. Instead of this pretending to care only when the survey will come out, EEOC should actually commit full time to improve the atmosphere and working conditions that lead to the poor scores. The EEOC should also stop hiding the district by district score breakdowns that reveal where the real problems are and work collaboratively with the Union to solve them.

EEOC ranks third on its own list of agencies most frequently accused of discrimination. EEOC must truly be a model employer when it comes to reasonable accommodations of disability. For too long, the agency has refused or delayed accommodations. A new disability program manager must be empowered to correct these longstanding problems.

EEOC ranked last in its category of midsized agencies in the work-life balance score. However, on a positive note, the EEOC ended 2015 with an agreement to stop blocking the extra day of telework negotiated in the 2013 CBA. Also, the agency has finalized an MOU to kick off a maxiplace pilot. The Union will work to ensure the agency embraces these two initiatives that will improve work-life balance and create work efficiencies.

EEOC must not only 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. EEOC must also create efficiencies so that it discontinues overtime violations. Only by focusing its limited resources on the frontline, including appropriate support staff, will EEOC at least prevent the 76,408 charge backlog from growing larger and the 9-month processing time from getting even longer.

3. EEOC Should Eliminate Unnecessary Contracts, Expenses and Management Travel to Capture Savings for the Frontline

- *AFGE Council 216 will lobby Congress to call on EEOC to implement common sense efficiencies and eliminate unnecessary contracts and travel.*

EEOC should prioritize frontline services and prepare for the return of sequestration in FY18 by saving money on unnecessary expenses/travel and working smarter.

A. EEOC Should Eliminate Expendable Contracts and Unnecessary Management Travel

The EEOC should eliminate contracts it simply cannot afford for work which is already or could be performed in-house at a lower cost. 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. Instead, EEOC requested an increase in contract mediation funds for FY16.

EEOC pays contract OIT staff and labor economists for functions that can be performed in-house. EEOC also pays contract paralegals for work 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.

- OIG contracted with the Urban Institute to conduct an evaluation of the Agency's Outreach and Education Program for a report issued March 8, 2015. OIG could have done the review.
- EEOC's OIG contracted a "Review of Evaluations," dated April 9, 2013, with 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, panned by EEOC'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."
- EEOC has resorted to three different contracts to assist "the agency in developing an improved performance management program." However, to date there is no usable performance system.
- EEOC also contracted: "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.

- EEOC contracted a 2010 “Evaluation of Priority Charge Handling Procedures,” which concluded that different EEOC offices apply the procedures inconsistently. This determination could have been made by any in-house team and already was known to EEOC.
- EEOC contracts out for hotel space to conduct “TAPS” and “EXCEL” training conferences when it could use its own offices’ conference space. Smaller conferences held more frequently in-house, would offer additional scheduling choices for the public.

Other areas at EEOC are rife for cost savings:

- EEOC wastes money for managers to travel to meetings and for office visits when offices have been equipped with video teleconference (VTC) ability, new television monitors, and updated IT capabilities.
- EEOC’s new space guidelines furnish a 42-inch television and cable television subscription for the offices of each of its 53 field directors. There is no known purpose for this expenditure. Meanwhile other office safety issues go unaddressed for lack alleged lack of resources.
- Management has ignored the recommended protocol of a cost efficiency committee for purchasing individual non-refundable airline tickets for a conference, instead purchasing more expensive government reserved contract carrier tickets.

B. Eliminating Unnecessary Costs Will Help EEOC Avoid Furloughs when Sequestration Returns in FY18

Sequestration slashed EEOC’s FY13 budget from \$370M to \$344M. To absorb this drastic cut, EEOC forced five furlough days on its employees. 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 that ended EEOC’s plan of forcing staff to furlough an additional three days.

Nevertheless, the fact remains that not only were EEOC’s workers harmed by the furloughs, but American workers still suffer 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. Continuing its downward trend in the number of workers it was able to help, in FY14 EEOC resolved 9,810 fewer cases and again said this was “likely due to the government shutdown and the effects of sequestration.”

Workers who rely on EEOC cannot afford a return of sequestration in FY18 or future shutdowns. Sequestration would again slash EEOC’s funding and further imperil the agency’s ability to enforce civil rights laws. The Council will lobby Congress to end sequestration and to ensure that in the future EEOC relies on cutting expenses not implementing furloughs that harm the public.

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

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

In February 2015, EEOC issued an advance notice of proposed rulemaking regarding the Federal sector EEO complaint process. The EEOC prompted the public to explore and answer questions on all facts of the process. Questions were included which should raise alarm bells for those concerned about the rights of Federal employees to seek redress for claims of discrimination: “Should the hearing stage be retained?” and “If the hearing stage is retained as a matter of right, should the administrative hearing take place after an investigation.” AFGE Council 216 will continue to fight for Federal employees. There should be no question about the right to a hearing premised on discovery. Moreover, efforts to move the hearing to a different stage in the process are a thinly veiled effort to foreclose discovery. This is unacceptable.

AFGE Council 216 will continue to object to and scrutinize a new 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. The 2015 performance accountability report states that “EEOC implemented a Federal Case Management System (CMS) designed to bring consistence and greater efficiencies to the federal sector complaints through the early categorization of incoming hearings and appeals.” Categorizing cases without staff or other efficiencies simply leaves a pool of languishing cases yet to be decided.

The danger of this case management system is a permanent triage system that threatens judicial independence in favor of numbers. Managers seeking to improve closure rates should not be allowed to categorize cases after a cursory review. This scheme simply increases the number of summary judgment dismissals of complainants' requests for a hearing before allowing the parties an opportunity for adequate discovery. It is critical that the AJ retains independence and control throughout, including over the initial discovery conference.

Moreover, EEOC should not attempt to adapt the Priority Charge Handling Procedures utilized in the private sector investigations to Federal sector hearing process, which differs because it is adjudicatory. Another challenge is also ensuring that EEOC itself and all Federal agencies follow the regulations and provide timely processing of Federal sector claims.

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 maintain pressure to backfill AJ positions and provide them support staff.

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 necessary to adjudicate and provide appropriate relief for Federal sector claimants. Subpoena authority will continue to be sought to improve the due process afforded to both Federal sector claimants and Federal agencies.

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. AFGE Council 216 will call for a report on these pilots and take necessary action to protect Federal employee rights.

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, left much open to further development and implementation. The most important element which remained to be finalized, was a Quality Control Plan. Until now, the EEOC has focused on touting its annual closures as a measuring stick. 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."

The agency recently released a newly named Quality Enforcement Plan. AFGE Council 216 will fight to ensure that the focus on charge processing time is not used to create a backdoor quota system that robs the public of justice. EEOC's complex work does not lend itself to a widget scorecard. EEOC's drive for numbers has never served either its employees or the public well.

EEOC nonsensically rushed to implement a new employee evaluation program to align performance with the quality plan before it was released or finalized. AFGE Council 216 fought off these plans and now will ensure that proposed performance system changes remove the unwarranted focus on numbers, meet the SMART test and provide mandatory training to managers and staff about the new standards.

The Strategic Plan continues EEOC's renewed emphasis on systemic cases. AFGE Council 216 recognizes that both individuals as well as large groups of affected employees deserve protection from discrimination. AFGE Council 216 supports a more strategic and coordinated approach to systemic cases to better utilize existing resources. Council 216 will continue to seek greater review of these cases.

The Union's Accomplishments

In 2015, EEOC's 50th anniversary, AFGE Council 216 aggressively raised awareness with Congress, the civil rights community and the press about the historic commitment of its workers to carry out the agency's civil rights mission and what EEOC needs to succeed 50 years later. As a result of AFGE Council 216's efforts this year:

1. AFGE Council 216 saw a successful result to its campaign to get its bargaining unit an additional day of telework, which had been agreed to in the 2013 CBA but then later blocked by the Agency.
2. At the August 2015 AFGE convention, AFGE Council 216's newsletter was the recipient in its division for the "Best Layout and Design" award and the "Best Article" award for "EEOC Pioneers: Profiles in Courage." This was the fifth consecutive win for "216 Works" newsletter.
3. AFGE Council 216 worked with AJs, AFGE's Women's and Fair Practices Department, Legislative Department, and the General Counsel's Office to determine the best approach to advance improvements in the Federal Sector EEO process including passing two resolutions at the AFGE convention.
4. AFGE Council 216 ensured that rank and file employees were recognized for their key role during EEOC's 50th anniversary year in 216 Works newsletter, an album prepared for the agency's official 50th anniversary celebration, a special talking points paper to Congress, and local office celebrations.
5. In a tough budget year, the administration requested \$373M, a modest FY16 increase for EEOC.
6. Congress ultimately funded EEOC at \$364.5M for FY15, i.e., level funding with no cut. However, the budget falls below EEOC's FY10 \$367M budget.
7. AFGE Council 216 provided written testimony for the House CJS Subcommittee open witness hearing in support of an increased budget.
8. Both House and Senate Appropriators included report language requiring EEOC to prioritize the backlog. Appropriators also direct EEOC to examine other efficiencies to improve customer service. AFGE Council 216 supports this language which clearly encompasses the Council Intake Plan.

9. AFGC 216 attended teleconferences following up on its attendance at the 2014 White House Summit on Workplace Flexibilities and AFL-CIO related events.

10. AFGC 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 committed a nationwide practice of willfully violating overtime laws.

11. AFGC 216 successfully fought EEOC to stop blocking an additional day of telework that had been negotiated in the most recent CBA. The Council also championed a robust maxiflex pilot MOU.

12. AFGC Council 216 has continued to vigorously battle for accommodations for disabled employees, whose requests have been fought, ignored, or delayed by the agency. Council 216 will continue seeking to have EEOC live up to the standards the law imposes on other federal agencies.

13. AFGC Council 216 aggressively took the fight to the agency as labor management relations have deteriorated, including filing a ULP for union busting, and a national grievance for violating the Staff Development Enhancement Program.

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

15. AFGC Council 216 responded to EEOC's Advanced Notice of Proposed Rulemaking and advocated to keep hearings and discovery for federal employees.

16. AFGC Council 216 fights every day to improve the working conditions that have led to the poor morale that is documented in the annual Federal Employee Viewpoint Survey for the fifth year.

For 2016, Council 216's Legislative Agenda is as follows:

- To request FY17 funding for EEOC of at least \$367M, i.e., the agency's FY10 budget.
- 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 smart-staff EEOC's frontlines.
- To permanently end sequestration, which exacerbates EEOC's already diminished ability to enforce workplace discrimination laws.
- In the event of sequester cuts, to make EEOC avoid or reduce furloughing frontline staff by eliminating unnecessary contracts and implementing efficiencies.
- 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 flatten the 1:5 supervisor to employee staffing ratio to 1:10.
- To demand that EEOC comply with applicable agency, regulatory, and Congressional oversight requirements before expanding its federal sector case management pilot or making changes to 1614.
- 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 EEOC's Quality Enforcement Plan best serves the public by genuinely focusing on quality rather than numbers.

One America, Many Voices Act

Introduction

According to the U.S. Census Bureau, 60.6 million people currently living in the U.S. speak a language other than English. Of those, 22.4% self-reported that they either did not speak English “very well” or “at all.” They are considered linguistically isolated, meaning that they lack a command of the English language and have no one to help them with language issues on a regular basis. A growing number of federal employees provide services to the linguistically isolated by using multilingual skills in their official duties to explain application processes, determine benefit eligibility and provide public safety. Increasingly, the multilingual skills of federal employees are an absolute necessity to serve the public and accomplish the mission of federal agencies. Yet there is no standard across federal agencies to provide compensation for federal workers who make substantial use of their multilingual skills in the workplace.

The “One America, Many Voices” Act

During the 111th Congress, Representative Mike Honda (D-CA) introduced the "One America, Many Voices" Act to ensure that all federal workers who use their multilingual skills in the workplace on a regular basis are fairly compensated. The bill would have amended 5 U.S.C. §5545 by adding multilingual skills to the list of factors for which a differential might be paid. Current law provides for a pay differential to federal workers for night, standby, irregular, and hazardous duty work. The modification authorizes the head of an agency to pay a 5% differential to any employee who makes substantial use of a foreign language in his or her official duties.

The necessity for a multilingual pay differential has been recognized by federal law enforcement agencies. Agencies such as the Border Patrol recognize multilingual skills through either a pay differential or bonuses. Other agencies require employees to have multilingual skills in certain languages without a bilingual pay differential while other employees serving other populations with limited English proficiency in the same manner are not required to speak a second language and are provided interpreters. Although employees who can communicate effectively with the populations federal agencies are mandated to serve greatly assist the agencies in carrying out their respective missions, there is no standard for compensating those skills across the Federal government.

In addition to adequately recognizing the skills of current federal workers, a multilingual pay differential would also help to entice young workers with multilingual skills into federal civil service. Although the private sector often pays a substantial dividend for the ability to speak fluently more than one language, many young workers with a commitment to their communities would be more likely to consider federal employment as a career option if they were to receive adequate compensation for their much sought-after language skills.

A number of federal agency offices are located in areas with a large and growing population of citizens with limited English speaking ability, such as California, New Mexico, Texas, New York, and Hawaii. An August 2013 report of the Census Bureau notes the percentages of people with limited English abilities increased in Alabama, Kentucky, Mississippi, Arkansas, and Oregon. Multilingual skills will become increasingly necessary to foster client communication for effective delivery of services and for the successful function of federal agencies. If enacted, the One America, Many Voices Act would provide both a mechanism to pay current federal workers using their bilingual skills on the job, and work as an incentive to aid in the future recruitment of bilingual applicants.

Conclusion

AFGE will work for the reintroduction of the One America, Many Voices Act or similar legislation in the House and Senate during the 114th Congress. Lawmakers elected since 2010 have brought an increase in the number of members of both chambers who were raised in homes where a language other than English was spoken. This increased diversity should yield support for bilingual skills compensation legislation. The benefits of a more efficient government and better services to the public will far outweigh the modest cost of paying this differential.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, DISTRICT 14 District of Columbia Issue Paper

2014 REVISED ABOLISHMENT ACT AND CONFORMING AMENDMENTS

In 2006, Congress extended the Abolishment Act (D.C. Code §§ 1-624.08 *et seq.*), effectively allowing the DC government to define the procedures governing any RIF initiated by an agency head by limiting the procedures to which an aggrieved employee is entitled and rendering those procedures nonnegotiable. Although this was a misguided effort by Congress to help DC government reduce costs, agencies heads exploited the Abolishment Act often using it as a means to rid their agencies of unpopular employees. The use of such improperly targeted reductions in force is an abuse of authority and does not serve the interests of the District. As a result, DC workers covered by a collective bargaining agreement have been unfairly deprived of any meaningful opportunity to assert the rights that they were intended to have under the District of Columbia Comprehensive Merit Personnel Act.

AFGE is requesting amendments to Subchapter 24 and Subchapter 6 of the Comprehensive Merit Personnel Act. The original iterations of the Abolishment Act, were limited in time to single fiscal years. More than 15 years ago, the Abolishment Act was made to apply beyond a single fiscal year.

AFGE recognizes that the District should have an interest in maintaining a stable and well-trained workforce with a wealth of institutional knowledge. Therefore, the time has come to change the Abolishment Act to reflect the District's complete emergence from the Control Board era and to eliminate the vestiges of the emergency that no longer exists.

DISTRICT ACCOUNTABILITY AND ATTORNEY FEES

Amendments to the Comprehensive Merit Personnel Act, D.C. Code §§ 1-601.01 *et seq.*, are intended to provide DC employees with similar protections to those they enjoyed under the federal Back Pay Act, 5 U.S.C. § 5596. Specifically, these amendments are intended to create a statutory authorization for the award of attorney fees in labor relations disputes involving the District and the labor organizations representing its employees.

The District government is in the process of creating a new compensation system. Once in place, it will replace all vestiges of the federal system that has existed in the District. This means that the Back Pay Act and its authorization for employees to collect attorney fees will no longer be in place for District employees.

AFGE is requesting that any changes to the Compensation System include a provision allowing for attorney's fees in labor and employment cases.

COMMUNITY HEALTH EMERGENCY LINK PARAMEDICINE PROGRAM ACT OF 2015 (C-HELP)

Civilian Emergency Medical Service (EMS) workers care about the residents of the District of Columbia. As first responders, we have to approach the challenges of the D.C. with 21st century answers—community paramedicine is a great start.

In October 2015, the DC City Council passed emergency legislation creating a pilot program to address the “crisis” in the management of Emergency Medical Services. The emergency legislation created a two-tiered strategy of EMS calls: Basic Firefighters/Emergency Medical Technicians (EMT) would respond to all EMS calls. Patients with low priority medical conditions would be required to wait for a private ambulance to transport them to a hospital. If a private ambulance does not arrive in 10 minutes, the patients would then be required to wait for a fully staffed EMS medic unit to arrive. AFGE Local 3721 strongly opposes the plan. Besides the life-saving time that would be lost waiting for qualified medical service to arrive, Local 3721 also identified the superior medical training their members receive. In addition, the privatization plan does not address the chronic shortage of EMT’s identified by the Rosenbaum Task Force Report.

The EMS stakeholders, AFGE Local 3721, consists of many unique and well-trained committed individuals who have a vested interest in the well-being of the District of Columbia residents who depend on emergency services. They are committed to delivering quality care, providing safe transport, and ensuring that DC residents receive continuous care before and during their transport to the appropriate facility.

The Community Health Emergency Link Paramedicine (C-HELP) Pilot Program Act was introduced by Councilmember Kenyan McDuffie. The Bill number is B21-506. AFGE Local 3721 has endorsed C-HELP Pilot Program of 2015. The C-HELP Pilot Program would reduce non-emergency 911 calls and hospital readmission. This pilot program would also provide education outreach resources to the community. The C-HELP program expands the paramedic’s role to a preventative care provider. While paramedics still respond to emergencies, The C-HELP program will expand the paramedic’s role to include preventive care as well as care for patients with infections, minor wounds, injuries from falls, and problems associated with chronic diseases like diabetes and congestive heart failure. This program reduces unnecessary emergency room visits and hospital stays, which can cost thousands of dollars in long-term costs.

To date, this approach has already proven its success major metropolitan areas such as San Diego, CA; Milwaukee, WI; and Pittsburgh, PA, to name a few. C-HELP Pilot Program would cost an estimated \$1,000,000.00 annually to implement in the District of Columbia.

With the implementation of the C-HELP Pilot Program, EMS will be visible in the community. Our EMS members look forward to outreach, educating, assessing and providing pre-hospital care to patients in need. Paramedicine allows EMS to assess the needs of the community and rebuild public trust. AFGE requests that members of the Council support this legislation.

