

AFGE 2017 Issue Papers
Table of Contents

Federal Pay – General Schedule.....1

Federal Pay – Blue Collar16

Federal Retirement.....20

Federal Employees’ Health Benefits Program.....24

Sourcing: Complying with the Law.....28

Official Time is Essential to Federal Government Efficiency and Productivity..... 40

Congress Must Protect Federal Employees’ Right to Choose
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.....62

 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.....73

 8. Use Insourcing to Save Taxpayer Dollars and Improve
 Performance Warfighters.....75

 9. Save the Earned Commissary Benefit for America’s Warfighters.....78

 10. Preserve DFAS to Keep Financial Management Costs Down.....80

11. Carefully Consider the Consequences Before Undertaking New Rounds of BRAC.....	82
12. Preserve and Protect DoD’s Industrial Facilities.....	87
13. Cuts to Federal Employees’ Per Diem Allowance for Long-Term Official Travel.....	92
Department of Veterans’ Affairs.....	95
Federal Prisons.....	106
Transportation Security Administration.....	119
Voter and Civil Rights.....	126
Paid Parental Leave.....	129
Equality	132
The Case for an Apolitical Civil Service and Due Process Rights.....	133
AFGE Council 216 Will Urge Congress to Stop a Detrimental Hiring Freeze and Sequester Furloughs and Press EEOC to Prioritize Frontline Staff, Who Carry Out its Vital Civil Rights Mission.....	138
One America, Many Voices Act.....	150
AFGE District 14.....	152
Federal Employees’ Compensation Act.....	155
Food Safety Inspection Service.....	159
Federal Budget.....	163
Expansion of the Law Enforcement Officer Statutory Definition.....	172
Census Bureau AFGE Council 241 Legislative Issues.....	175

2017 Legislative Issues Supported by AFGE Firefighters Steering Committee.....	176
Federal Retirees.....	178
Budget for Social Security Administration.....	180
Pretrial Services Agency for the District of Columbia AFGE LOCAL 1456 Legislative Issues.....	183

Federal Pay – General Schedule

Introduction

General Schedule (GS) pay is governed by the Federal Pay Comparability Act 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 Obama administration failed to implement the changes recommended by the two statutorily-mandated advisory committees on federal pay. This administrative “freeze” was lifted in 2016, 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 2011, federal pay has been adjusted by a total of 5.4 percent, leaving the inflation-adjusted value of federal wages and salaries lower than it was six years ago.

The 115th Congress should recognize that federal employees, more than any other group of Americans, bore the brunt of budget austerity that followed the Great Recession and were forced to suffer \$182 billion in compensation cuts as a result. The first step in reversing the substantial decline in living standards should be to restore the purchasing power of federal wages and salaries by providing for substantial real, inflation-adjusted, increases in each of the next four years. For 2017, AFGE is asking Congress to support a 3.2 percent overall adjustment, to be divided between across-the-board and locality components.

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 salaries set at levels just five percent less than those 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 was to be accomplished by providing federal employees with annual pay adjustments that had 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 that use 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 2018 is the 12-month period ending September 30, 2015, during which time the ECI rose by 2.4 percent. 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 2018 ECI adjustment should be 1.9 percent. This year (2017), the nationwide raise should have been 1.6 percent rather than 1 percent, and locality pay should have closed the gap to within 5 percent of market rates. President Obama issued an Executive Order implementing an alternative, 2.1 percent which honored the tradition of military-civilian pay raise parity. The 2.1 percent allowed 1 percent across the board and 1.1 percent of payroll allocated differentially among the various federal pay localities.

2018 General Schedule Adjustment

AFGE is calling for a 3.2 percent adjustment for 2018. This increase, divided equally between nationwide and locality adjustments, would represent a small advance toward restoring the living standards of the working and middle class Americans who make up the federal workforce. Although it would not restore the losses suffered during the pay freeze and subsequent perfunctory adjustments, 3.2 percent would be a sign that Congress and the President are serious about addressing the decline in living standards of middle class Americans.

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 percent, 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 percent, compared to 35.18 percent 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 five 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 percent employment interchange) and adjacent single counties (20 percent).
- Use micropolitan areas if they are part of any Combined Statistical Area, whether or not of 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 its Aftermath

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 percent 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 stopped the Obama administration or Congress from voting repeatedly for the freeze, two consecutive years of 1 percent adjustments, a 1.3 percent adjustment and finally a 2.1 percent adjustment this year. This has been an unsurprising response 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 electrician running 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: Performance Pay and 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 (\$5.41 billion in revenue in FY 2016, 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 devastating to the majority of workers, 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 10 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 4.6 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. <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/pay-agent-reports/2015report.pdf>

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 as do household incomes. 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, 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

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 made a mockery of market sensitivity. Budget prudence has been used as an all-purpose excuse for a reluctance to allow federal pay to keep up with inflation. And there remains a steady drumbeat for the view 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 President's Budget makes the opening bid for annual adjustments in federal wages and salaries, and AFGE urges the Trump Administration and Congress to propose a 3.2 percent pay increase for 2018, a raise that will begin to restore living standards for a workforce that has suffered \$182 billion in losses over the last eight years. When politicians propose to freeze federal pay again, the response must be an emphatic rejection of their effort to drive down living standards for these middle class workers again, either now or in the future. Federal employees deserve better than the role of pawn 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 2016, 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. AFGE 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 \$182 billion toward deficit reduction, including an unprecedented three-year pay freeze, a 2.3 percent increase in pension contributions by employees hired in 2013, and a 3.6 percent 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 percent</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 percent</i>	<i>\$6 billion</i>
<i>2014 pay raise of only 1 percent; lower than baseline of 1.8 percent billion</i>	<i>\$18</i>
<i>2015 pay raise of only 1 percent; lower than baseline of 1.9 percent billion</i>	<i>\$21</i>
<i>2016 pay raise of only 1.3 percent; lower than baseline of 1.8 percent billion</i>	<i>\$23</i>
<i>Total</i>	<i>\$182 billion</i>

Federal employees hired after 2013 already pay 4.4 percent of their salaries toward their defined benefit pension and 6.2 percent 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 percent of salary. Federal Employees Retirement System (FERS) employees would have gone from paying 0.8 percent of salary to their pension to 6.3 percent of salary to their pensions. Civil Service Retirement System (CSRS) employees would have gone from paying 7 percent of their salary to 12.5 percent 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 percent.

The House 2015 Budget Resolution proposed increasing federal employee retirement contributions by 5.5 percent of salary. This was justified on the absolutely false argument that private sector workers with defined benefit pensions pay this amount of salary for similar benefits. According to the Bureau of Labor Statistics, 96 percent of private sector and state and local government employees with defined benefit pensions pay nothing for this element of their compensation. That is, 96 percent of American workers who receive a defined benefit from their employer are not required to make any “contribution” from their salaries for this benefit.

Also, the 5.5 percent of salary that the Republican House Budget would require from federal employees derives from a fundamental misunderstanding of the difference between private and public sector finance. Because federal pension assets are invested exclusively in Treasury bonds, they have a lower rate of return than private sector pension assets that can be invested in both public and private equities. Because of this investment restriction (which AFGE strongly supports), the cost of providing/saving for a dollar of retirement income to a federal worker is higher than that for a private sector worker. The federal government needs to save more to provide the same benefits to its employees than a private sector employer. Federal employees should not be forced to pay this differential either.

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.

Efforts to Take Away Earned Pensions from Federal Employees

Representative Rokita's (R-Indiana) PAGE Act would allow the government to deny earned pensions to any current or future federal employee who is convicted of a felony. Section 6 of the legislation, which was introduced in the 114th Congress and will soon be re-introduced, proposes to require forfeiture of an earned annuity for any felony conviction relating to an employee's work. This raises serious due process and property rights issues, and goes far beyond what is permitted in the private sector for pension forfeiture under ERISA. For example, an employee performs 30 years of flawless service. During year 31, the employee misuses a government charge card, and is convicted of a felony. Under Rokita's bill, the employee would forfeit all pension rights going back to their first year of service.

Also in the 114th Congress, there were numerous bills that attempted to require pension forfeiture from employees of the Department of Veterans Affairs, both from senior executives and front-line, non-management health care professionals. AFGE opposed these efforts not only because of the violation of due process and property rights, but also because the forfeiture would rob alleged victims of the potential for monetary damages against the employee.

Eliminating Defined Benefit Pensions for New Federal Employees

The Heritage Foundation's "Blueprint for Reform" http://thf_media.s3.amazonaws.com/2016/BlueprintforReform.pdf#page=109 recommends eliminating the FERS defined benefit altogether for new employees. After assertion of a number of false and misleading arguments about private sector vs. federal retirement plans, Heritage puts forth a plan that would allow those with at least 25 years of service to retain their benefits, force those with between five and 25 years of service to choose between paying more for their benefits or have their benefits frozen (or receive a lump sum of 75 percent of the present value of their FERS benefit's accrued value) while receiving an additional three percent of salary toward the Thrift Savings Plan. For federal employees with less than five years, FERS would end. Heritage proposes a lump sum refund of their contributions (not the government's!), and going forward would receive just 3 percent of salary more into their TSP accounts.

AFGE strongly opposes this Heritage plan because it is an entirely unjustified reduction in compensation for federal employees and is based on false assumptions concerning private sector practice and the source of the federal retirement system's costs.

Conclusion

AFGE strongly supports legislation such as that introduced in the 114th Congress by Representative Donna Edwards (D-MD), H.R. 785, the **Federal Employee Pension Fairness Act of 2015** which would have repealed the draconian increase in employee contributions to retirement for those hired after 2012. Likewise, AFGE strongly opposes all additional efforts to reduce or eliminate defined benefit pensions for new or current employees. Finally, AFGE will vigorously oppose efforts to enact legislation that would allow the government to force employees to forfeit their earned pensions under any circumstances apart from those currently in law.

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 attacks on FEHBP are likely to continue in Congress this year and may be intensified by those who support voucherizing federal health insurance. AFGE strongly opposes dismantling either FEHBP or Medicare by replacing the current premium-sharing financing formula with vouchers.

Even if FEHBP's current structure remains in place, federal employees continue to be forced to bear a greater share of premiums each year because of the peculiarities of the program's financing. While average premiums in the program rose by 4.4 percent for 2017, the process of shifting costs onto employees continues. The average employee share will rise by 6.2 percent in 2017 while the government's share will go up by just 3.7 percent. This shift in the costs of health insurance away from the government would be intensified by a voucher program.

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.

The implementation of the “Cadillac tax” has been delayed 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.

Turning FEHBP into a Voucher System

House Republicans have repeatedly proposed turning FEHBP into a defined-contribution or voucher system that they call “premium support.” Premium support or voucher plans provide a fixed subsidy that is adjusted by an amount unrelated to changes in premiums. One proposal would adjust the voucher by the growth in Gross Domestic Product (GDP).

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 coordinated by the Office of Personnel Management, 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. With a voucherized plan, the government’s “defined contribution” or voucher would not rise in step with premium increases and thus, every year, employees would have to pay a larger percentage of the cost of their insurance. For example, between 2012 and 2016, FEHBP premiums went up

by an average of 4.1 percent (4.4 percent for 2017). The government's contribution largely kept pace with the employee contribution, although for 2017, the government contribution increase will be 2.5 percentage points lower than the contribution increase required from employees. If the voucher proposal would have been in effect, the government's "contribution" or voucher would have gone up by GDP + 1 percent. During periods of slow growth, the voucher program would not cover premiums; for example, GDP in 2015 was estimated to have grown by 2 percent. Adding an additional percentage point to that, the voucher would have risen by 3 percent, not enough to cover the 4.1 percent average rise in premiums over the last 5 years.

Conclusion

AFGE strongly opposes all efforts to replace FEHBP with a voucher or "premium support" structure for health insurance. The current program already does a poor job providing affordable care to federal employees and their families, with a financing formula that allows gradual cost-shifting from the government to employees each year. Voucherizing the system would only exacerbate this problem, leading to ever-lower living standards for federal employees as the cost of health insurance outpaces wages and salaries.

During the past 6 years, including the three year pay freeze, federal pay rose by just 5.4 percent (0 percent for 2011-2013, 1 percent for 2014 and '15 and 1.3 percent in '16 and 2.1 percent in '17). But in that same 6 years, federal employees' premiums are over 24 percent higher in dollar terms in 2017 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 2017, federal employees will pay 6.2 percent more for their healthcare premiums – similar to the increase from 2016– and employees will only realize a 2.1 percent rise in their wages and salaries. In addition, while the average employee percentage share of the premiums will increase 6.2 percent in 2017, the average increase in the government share of the premiums will be only 3.7 percent.

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. Although AFGE has been successful in maintaining both governmentwide appropriations restrictions on use of A-76, as well as specific DoD authorization restrictions, we must redouble our efforts for 2017. The new Congress and President have made no secret of their desire to privatize much of government operations as they can. They cloak their rhetoric in taxpayer friendly language, claiming to be interested in saving money. However, make no mistake, this is ideologically driven. Every neutral study of contracting-out has clearly illustrated the additional costs to taxpayers, often coupled with shoddy performance and disputes with the contractors.
- 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? AFGE’s concern in 2017 is that even using a totally flawed and contractor biased A-76 process may not be enough for the privatizers. Knowing they can’t win if they play by the rules, they may attempt to throw the rules out. The desire to simply convert federal employee work to private companies cannot be overstated. We must do everything we can to prevent, particularly by appealing to local Congressional delegations with large federal employee installations.
- 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 eight 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 issue this guidance, but with the new Administration, all bets are off.

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 be 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.

Unfortunately, the FY 2017 NDAA scales back on the requirement for DoD to compile inventories of service contractor employees. Rather than compiling inventories of all service contractor employees, the inventories will be limited to counting only employees working on contracts in excess of \$3 million in four selected “acquisition portfolio groups”: 1) Logistics management services; 2) Equipment-related services; 3) Knowledge-based services; and 4) Electronics and communications services.

We must continue to document and highlight instances of inappropriate and wasteful spending on contractors. It is important that attention be focused on the privatization and increasing corporatization of public services.

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. The FY 2017 NDAA loosens the restrictions on capping DoD’s in-house workforce, although DoD must now provide a written explanation of “changed circumstances” that require civilian personnel to be managed subject to caps and/or limitations. Since the prior limitation was frequently observed in the breach, it should be interesting to see what types of explanations DoD may use to further contractor performance of work currently being performed in-house.

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 percent 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 than 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 percent overhead charge on in-house bids. All in-house bids are slapped with an overhead charge, which works out to 12 percent 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.

Make no mistake. The incoming Administration, along with their Congressional allies, will do everything possible to directly outsource federal jobs to the private sector. AFGE needs to make these matters of local politics for Congressional delegations with federal facilities in their backyards. Members of Congress will need to understand that privatizing good middle-class jobs is not only bad policy, but makes for very bad politics.

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 percent 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. It is imperative that in the current environment that AFGE continue to press the point: Direct conversions are a lose, lose, lose. First, experienced workers with years of on-the-job knowledge are no longer able to serve their agency’s mission. Second, replacing good federal jobs with contractors hurts workers and serves as an incentive to “race to the bottom,” with regard to pay, benefits and a dedicated and professional workforce. Lastly, “direct conversions”, “privatization”, “right-sizing” or whatever euphemism is employed, hurts communities and the people the government workforce is supposed to be serving.

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.

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 percent 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 unlawful 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 unlawful, 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.*

Laws that forbid the arbitrary privatization of work designated for performance by the government’s own reliable and experienced workforce are laxly enforced, and very possibly in danger of repeal. The incoming Administration’s love affair with private sector contractors, and stated hostility to its own agencies and workforce will raise a host of serious questions and problems in the coming year.

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 a 2011 study by the Project on Government Oversight (POGO), which compared the costs of federal employees and contractors, taxpayers may well wonder why the 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 expanding 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. 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.

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 finally implemented the inventory requirement. 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 that emphatically required contractors to routinely provide information needed to complete the inventory for their contracts.

Fast forward to the FY 2017 NDAA, and we have taken a step backward. Egged on by contractors and DoD’s own acquisition bureaucracy, Congress took the unfortunate step of scaling back the required inventories of service contractors. Rather than requiring the

compilation of inventories of all service contractor employees, the inventories will now be limited to counting only employees working on contracts in excess of \$3 million in four selected “acquisition portfolio groups”: 1) Logistics management services; 2) Equipment-related services; 3) Knowledge-based services; and 4) Electronics and communications services.

Despite strong protestations by AFGE and DoD’s own “manpower” experts, who have a major 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, Congress went along with the contractor advocates. While AFGE was successful in keeping the entire inventory from being gutted, we will need to redouble our efforts in 2017. They are strong vested and **monied interests** whose only goal is to suck the maximum amount of dollars out of the government while obscuring the results of their rapacious appetites at the public fisc. 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 unlawful 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: *AFGE needs to continue to press Congress to pressure DoD to finish even the scaled-back version of 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. If the incoming Administration and Congress are as serious about controlling government costs as they claim, then getting a tight grip around contractor costs, which eat up almost 50 percent of the discretionary federal budget, needs to be job one.*

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.

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.

It is well-known that for civilian agencies, at least, OMB's tacitly establishes personnel ceilings, which are reflected in the annual Budget Appendix. OMB should direct agencies not to establish personnel ceilings, unless specifically required by law. Instead, OMB should encourage agencies to manage their finances wisely, using either civilian employees or contractors, or a mix, depending on costs, performance and agency mission.

Among the many myths that should be dispelled by 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 insource 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 needs to issue guidance to ensure that agencies discontinue the imposition of caps and freezes on the size of their civil service workforces, especially when doing so is actually more costly to taxpayers. 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 is Essential to Federal Government Efficiency and Productivity

Congress must oppose any attempts to eliminate the use of official time within the federal government. Official time is the use of volunteer union representatives to conduct limited representational activities while in an official duty status. Under the Federal Service Labor-Management Relations Act, official time is a longstanding, necessary tool that gives federal agencies and their employees the means to expeditiously and effectively utilize employee input to address mission-related challenges, as well as bring closure to conflicts that arise in all workplaces.

Bipartisan Congressional coalitions have supported the use of official time for decades. In fact, repeated legislative attempts to eliminate official time have been defeated with strong bipartisan support for many years. During the 114th Congress, on April 29, 2016, Representative Jody Hice, (R-GA) 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 by a vote of 190-232, with all Democrats and 49 Republicans voting against the elimination of official time within VA.

Official time gives federal employees a right to provide input to improve workplace policies and procedures, as well as protection if they are discriminated against or treated unfairly. Eliminating official time, eliminates basic, much needed employee protections for America's public servants—federal workers 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.

How Official Time Works

In the federal government union membership is optional—it is a choice. Employees only join the union if they choose to join. 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 join the union or pay dues. Federal employee unions are also forbidden from collecting any fair-share payments or fees from non-members for the services 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 is limited to that which the labor organization and the agency agree is reasonable, necessary, and in the public interest. The law states that, "(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 1/10 of 1 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. In an era of downsizing and 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.

Official Time Produces 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 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

Congress must protect federal employees' official time rights and oppose any attempts to eliminate the use of official time within the federal government. 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.

Congress Must Protect Federal Employees' Right to Choose Payroll Deduction of Union Dues

Federal Employee Payroll Deduction of Union Dues

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. Federal employees in bargaining units choose whether to join the union and pay dues. Federal employee unions do not collect fair share fees. **Federal employees only pay dues if they choose to join the union.** 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.

Legislative Background

During the 114th Congress, Representative Tom Price (R-GA) introduced H.R. 4661, the "Federal Employees Rights Act, which proposed elimination of automatic payroll deduction of federal union dues. 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, it costs the government virtually nothing 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 right to provide electronic payroll deductions for all of the above, then it is just as right to allow electronic payroll deduction.

Conclusion

AFGE 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. Any legislation that aims 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. Congress must protect federal employees' right to join a union and have their dues automatically deducted.

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 has been suspended 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 identified service contracts. The A-76 process has not been fixed, as OMB and DoD both acknowledge, which is why they have opposed repealing the prohibitions on its use. It remains to be seen with the new Administration and Congress will continue this policy, or blithely proceed with unjustified privatization.

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 unlawfully 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 has already succeeded in convincing Congress to partially junk 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 EARNED 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 percent 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 2015, 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 percent, 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.”*

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 percent and military personnel by 8.7 percent. 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 percent 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 2016 AND WHAT WE SHOULD EXPECT IN 2017: 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 percent 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 percent 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 percent 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 percent 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 percent.

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 MIGHT HAPPEN IN 2017:

It is expected that there will be efforts in 2017 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 percent of soldiers were performing special duty within their Military Occupational Specialty and 62 percent 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 2017: 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,¹

“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.”

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

¹ 10 USC 2330a

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 percent were added because the work was actually inherently governmental, 41 percent because work was exempted from contractor performance (to mitigate risk, ensure continuity of operations, meet and maintain readiness requirements, etc.), and 50 percent 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 percent were added because the work was inherently governmental, 13 percent because work was exempted, and 81 percent 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 EARNED COMMISSARY BENEFIT FOR AMERICA'S WARFIGHTERS AND THEIR FAMILIES

Congress must preserve the earned commissary benefit for servicemembers, veterans and their families. The commissary benefit is a benefit treasured by servicemembers and veterans, and their families. Through the Defense Commissary Agency (DeCA), servicemembers, veterans and authorized members of their families buy items at cost plus a five percent surcharge, which covers the costs of building new commissaries and modernizing existing ones. Veterans and military families 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.

The core goals of DeCA are to "provide service members and their families with a quality benefit at significant savings, sustain a capable, diverse, and engaged civilian workforce, and be a model organization through agility and governance." Despite the undeniable benefits that the commissaries provide servicemembers and their families, DeCA is under attack. The FY 2017 National Defense Authorization Act includes provisions that authorize the Department of Defense (DOD) to convert the commissary system to a non-appropriated fund (NAF) status with

operating expenses financed in whole or in part by receipts from the sale of products and the sale of services, and gives DOD the authority to identify and convert employee positions that are funded through the appropriations process to a NAF status. The FY 2017 NDAA also creates a variable pricing program that will allow the prices of commissary goods to be established in response to market conditions and customer demand, as well as authorize the Department to charge military families an additional surcharge of not more than five percent of sale proceeds.

Converting commissaries to a NAF status will have severe consequences for the agency's workforce and the long-term viability of the commissary benefit. Converting the DeCA workforce to a NAF status means a significant pay cut for many employees who are veterans and/or the spouses of military members. DeCA employees will face a severe reduction in pay as wages for NAF employees are an average of 20 percent lower for DeCA employees; hourly NAF employees are paid approximately 35 percent lower than DeCA employees, and salaried NAF employees are paid approximately 10 percent lower than DeCA employees.

DeCA employees who are converted to a NAF status will face a reduction in benefits. NAF employees are not eligible for the Federal Employees Health Benefits Program (FEHBP), but obtain health insurance through the Department, which offers far fewer options for coverage. NAF employees are not eligible for the Federal Employees Retirement System and participate instead in the NAF retirement program which makes lower employer contributions and has higher retirement ages. DeCA employees will also lose civil service protections against job loss. While DeCA employees in a non-NAF status are subject to formal Reduction in Force (RIF) procedures that honor performance and seniority, NAF employees have few job protections. They are "at-will" employees subject to business-based actions, which means management can change their hours and employment conditions at will.

Moreover, the Department arbitrarily excludes NAF employees from Title 10 United States Code, Section 2461, the law that requires that there at least be a formal guesstimate that conversion to contractor performance could result in marginal savings before functions performed by civilian employees may be outsourced. When converted to a NAF status, DeCA employees will be performing the same work, but because they would be in a NAF status, the new personnel system will allow management unfettered discretion to fire them or contract out their jobs.

The Department can certainly save money by paying DeCA employees less, providing them with inferior benefits, and making their jobs disposable, but those are false savings, particularly given that the working and middle class Americans who work for DeCA are often veterans and military spouses—which means converting commissaries to a NAF status hurts military families.

Various rationales have been offered 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 lavishly on her modest paycheck. In fact, many DeCA employees are veterans and military spouses whose families depend on their jobs.

AFGE believes that 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 appropriation is a tiny fraction of the Department’s budget.

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. AFGE strongly opposes converting commissaries and positions of DeCA employees who are paid with appropriated funds to a NAF status. AFGE urges Congress restore and maintain the defense commissary system and fully fund DeCA through the appropriations process.

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.

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 2016 AND WHAT WE CAN EXPECT IN 2017: 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 this 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 Department of Defense (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 recommended by a Commission. It is important to align AFGE Locals with their communities and other interested parties so that the public understands the importance to their regions of the military facilities and the government employees who make those facilities possible.

The political environment is not favorable for federal employees, particularly for those working in DoD facilities. The current Administration is calling for massive cuts in federal employees. 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 percent at some bases and the totals are climbing. According to FY15 DoD documents, 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 puts 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. The FY16 and FY17 budget requests repeated the request, each asking for 2 years of BRAC rounds. Fortunately, Congress has voted "NO" each year. The budget development exercise leading to the FY18 President's Budget Request likely included a request for another BRAC round; however, it is unclear at this point whether or not President Trump will forward this request to Congress.

It should be noted that for several years, DoD military and civilian leadership have estimated that the Department has between 20 percent to 25 percent excess capacity based on the status of the facilities' footprint 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 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. In 2016, the Defense Business Board recommended a BRAC for the organic industrial base, indicating a belief there is up to 30 percent excess capacity in at least one of the military services.

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 FY17, the NDAA cut funding for BRAC planning and forbade a BRAC. However, most offices and Members acknowledge that a BRAC is a matter of when, and not if, at this point. Even if it turns out to be after this current Administration, actions taken now will set the stage for the future BRAC as the impact of many current actions in DoD often take up to five years to come to full fruition.

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 locally 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 Officers 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 Armed Services Committees declined to authorize a new BRAC round in FY17 and the final conference report for the FY17 National Defense Authorization Act (NDAA) forbade a new BRAC round. Additionally, the House and Senate versions of the Defense Appropriations Act failed to approve funding for a new BRAC round or planning for a new BRAC round. Furthermore, the House defeated an amendment by Congressman O'Rourke (D-TX) to repeal language in the House version of the FY17 DoD Appropriations bill prohibiting the use of funds for BRAC. AFGE opposed the O'Rourke amendment. Additionally, the Defense Business Board released a report recommending a BRAC focused on organic industrial base facilities.

WHAT COULD HAPPEN THIS YEAR: AFGE should expect that either the Administration or a Member of Congress will once again request a BRAC round in FY18 or beyond to deal with perceived excess infrastructure based on the national military strategy or recommended changes to public law that allows outsourcing of public jobs to the private sector.

It is expected that all of the top four leaders of the HASC and SASC remain in place for the coming year. The House and Senate Armed Services Committees may continue to oppose BRAC for the moment, while beginning to give some indication for future support. The

current 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.” Further, the current Ranking Member of the House Armed Services Committee has repeatedly called on Congress to pass a BRAC resolution.

Since BRAC will almost surely happen eventually, AFGE has begun reaching out to pro-BRAC lawmakers in order to urge them not to include controversial language in any base closure proposals that could be used to promote the practice of privatization-in-place (PIP). We are not changing our minds on BRAC and they are not changing our minds on BRAC, but we do not want their BRAC proposals to be used to push outsourcing. This will be particularly important in a new Trump administration.

AFGE has also suggested the inclusion of language that would affirm that BRAC should be conducted pursuant to existing sourcing and workforce management law, perhaps by requiring the Secretary and the Commission to certify, separately, that the recommendations they submit are consistent with sections 129a, 2330a, 2461, and 2463 of title 10, United States Code. We do not pick those laws at random. Rather, those are the statutes that are singled out by Section 955(e) of the FY13 NDAA--which required the Department to reduce its military, civilian, and contractor workforces consistent with existing sourcing and workforce management law. We have also suggested that the comparable laws in the depot maintenance context be added, specifically sections 2464 (core), 2466 (50/50), 2469 (\$3 Million rule) and 2472 (management by end strength) of title 10, United States Code, because those laws have been breached in the past in order to accommodate recommendations of prior BRAC commissions.

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 the Department of Defense continues its shift in military strategy and continues to live under the reality of sequestration. DoD’s stated commitment to preserve the defense industrial base must extend to the organic industrial base. It is vital that the House and Senate 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 manufacturing 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 percent floor for depot maintenance work performed 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 FY18 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 FY18. 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. In FY16 Congress made it clear that it expects DoD to comply with core at all levels of maintenance. However, AFGE remains very concerned about the ongoing reports of personnel caps and arbitrary cuts at some 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 FY18 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 FY16, the Congress 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. However, the language included specific verbiage related to sequestration that is confusing at best and damaging at worst. This language needs to be removed and it should be clarified that even under a sequestration scenario, as long as funds are available, working capital fund employees should not be furloughed.

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 during the previous sequestration of funds 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 sequestration 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 years 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: DoD and the military services 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) or data rights, 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 across the board 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. (While this trend is being reversed at the Air Force, it still remains in force for other areas of the depot and arsenal systems.) 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 capabilities, provides 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.

Acquisition reform efforts must be leveraged to ensure that the definition of commercial item supports maintaining critical weapons systems in organic depots by government employees and that organic arsenals have access to workload assignment and competition. Further, data rights must be negotiated so that up-to-date maintenance and sustainment data is delivered to the depots in order to maintain and sustain core and critical weapons systems necessary for our national defense and military readiness.

Items, which are currently sole-sourced to companies located in foreign countries or to foreign-owned companies, should be sent to arsenals or depots for completion. The Army should invest in appropriate tooling to encourage additional workload for arsenals.

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 FY17 NDAA contained a number of provisions directly related to depot maintenance. The final version of the conference report amends the definition of commercial item to ensure that the depot core statute is not breached. This amendment request that the current Title 10 definition for commercial items for core depot maintenance, as reaffirmed last year, continues to be used throughout DoD for depot maintenance.

AFGE successfully opposed several amendments to establish barriers to workload transferring to depots or amendments designed to circumvent core and 50/50 statutes indirectly. These amendments would have established arbitrary barriers and unnecessary and burdensome layers that would have undermined readiness and the balance of workload in the depot system. AFGE was also successful in pushing back several amendments to privatize workload, including defeating the Hunter amendment at the Houses Rules Committee, which would have changed the definition of commercial items to include almost all items produced for DoD.

AFGE was successful in getting language passed in the final FY17 NDAA that gives DoD industrial facilities (depots, arsenals and shipyards) direct hiring authority for 2 years. This should help speed the hiring process for critical skill gaps.

To also help with maintaining critical skills and ensuring readiness, we were successful in getting language in both bills that give DoD industrial facilities (depots, arsenals and shipyards) authority to transfer term and temporary employees to permanent status if they were hired competitively to permanent positions and if they have already worked at least 2 years. The direct hiring authority was particularly important to the Air Force Logistic Complexes and the transfer of terms and temporaries was particularly important to the Army depots and arsenals and the USMC depots. We achieved victory on both items. This is an issue we will continue to address and monitor next year, particularly if there is a hiring freeze.

The final FY17 NDAA includes the requirement for a detailed report from the Army on the specific steps to be taken to strengthen the organic industrial base, including arsenals and depots.

AFGE helped rewrite directive report language on the C-130 that would discourage utilization of our nation's organic depots for critical and core workload for mission essential equipment through use of inaccurate assumptions and biased reporting requirements. The original offensive language was withdrawn and underlying language changed to positive language requesting report on C-130 depot maintenance. Since this was report language in the House, there was no need for conference language. Air Force will need to comply on the basis of the House language.

AFGE worked with the HASC to insert Directive Report Language (DRL) on STEM, as well as depot and arsenal employees, that are downsized as a result of the headquarters cuts mandated by the FY16 NDAA. This DRL in the FY17 NDAA House Report requires DoD and the military services to report on skill gaps created by any cuts in these critical skill areas. This is an issue we will continue to pursue next year on an incremental basis. There is no need for additional conference language since the DRL requires action.

WHAT COULD HAPPEN THIS YEAR: WCF furloughs will likely be an issue in 2017 if sequestration is not lifted or relieved and it is possible that an amendment will be offered to either the FY18 National Defense Authorization Act or the FY17 Defense Appropriations Act or any future Continuing Resolution or any combination of the above. 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. AFGE depot and arsenal Locals will need to work to reinstate the inventory for contractor services for contracts for maintenance, sustainment and fabrication workload since this workload is not considered inherently governmental.

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

Background

In November 2014, the Department of Defense (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. The American Federation of Government Employees (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.

DOD Per Diem Cuts

DOD cut the per diem allowance for employees traveling 31 to 180 days to 75 percent of the current per diem rate, and further reduced the per diem allowance to only 55 percent 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.

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 Background

During the 114th Congress, Representatives Derek Kilmer (D-WA) and Walter B. Jones (R-NC), introduced H.R. 1193, which prohibited DOD from reducing the per diem allowance for long-term travel. The FY 2017 National Defense Authorization Act included language that authorized DOD to waive the reduced per diem rate for long-term travel and pay employees actual expenses up to the full per diem rate when the reduced rate is deemed insufficient.

While authorizing the Department to waive the reduced per diem rate will allow for some employees to travel without the concern of having to personally pay for official travel expenses, many employees will still travel for months at a time trying to balance their personal expenses back at home and pay for expenses such as food, transportation, and laundry with a per diem

that is lower than what has been nationally prescribed as the amount needed for their assigned location. Therefore, AFGE urges Congress to fully repeal the DOD per diem cuts for long-term travel. While AFGE understands the need to identify cost savings within the Defense budget, reducing the per diem for long-term travel is a misguided attempt to find cost savings at the expense of the servicemembers and civilian employees who are required to travel on assignments for 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.

Department of Veterans' Affairs

Introduction

A strong Department of Veterans Affairs (VA) workforce is essential to a strong VA. The intense, relentless VA employee bashing that is very likely to continue in 2017 is a direct threat to the VA health care system and other VA services. The VA will not be able to fill vacancies or keep its experienced, dedicated employees if the workforce loses civil service protections and can be fired at will without an ability to challenge poor treatment, pay discrimination, unsafe and exhausting work schedules, and supervisor retaliation. If employee bashing legislation succeeds, it will undermine the VA's success in hiring clinicians and reducing the claims backlog, which in turn will fuel the flames of efforts to shut down VA hospitals, and privatize medical care and benefit claims functions provided directly by the VA.

Therefore, in 2017, AFGE will intensify its efforts to stop the dismantling of the VA health care system and efforts to privatize other VA services. The VA health care system is veterans' first choice for care and the VA consistently provides better care than the private sector. Veterans Benefits Administration (VBA) contracts also have a dismal track record and like VA health care, VBA in-house services are more cost effective than the private sector.

AFGE will continue to advocate for appropriate pay and promotion opportunities for all VA employees. We will also continue to advocate for adequate staffing in medical centers and benefit offices, and increased oversight of contractors. In VHA, we will advocate for equal collective bargaining rights for VA health care professionals, an end to at-will employment for Veterans Canteen Service employees and equal veterans' preference protections for VA health care professionals. In VBA, we will advocate for improved performance standards, fair policies on overtime, telework and promotion and reform of the appeals process.

Veterans Prefer a Strong VA Health Care System with Adequate Staffing

VHA Privatization Threats: The VA health care system has been subjected to "death by a thousand cuts" privatization threats since the start of George W. Bush's administration including closures of emergency rooms and intensive care units, inpatient bed closures, and overreliance on contractor-run outpatient clinics. While the VA has long had statutory authority to contract directly with non-VA providers to fill gaps in VA care, the Bush Administration took privatization to a new level by shifting resources and control from the VA to the private sector through pilot projects that created non-VA provider networks established and operated entirely by corporate health care entities. A severe lack of transparency or oversight has made it impossible to assess the true cost effectiveness, quality, or timeliness of non-VA care provided through these pilots.

Since 2014, the threat of immediate annihilation of the VA health care system has only intensified. In response to calls to turn the VA into an insurance company providing vouchers to

seek care in the private sector, a compromise was reached as part of the Veterans Access, Choice and Accountability Act of 2014 (Public Law 113-146) (“Choice Act”). The law has vastly expanded the use of non-VA care at every VA medical center under a three-year pilot project that is currently set to expire in August 2017. The resulting chaos created by the Choice Program - including delays, lack of care coordination, and additional burdens on short staffed VA medical centers - has been widely reported. Yet, some lawmakers seek to extend the duration of the Choice Program and eliminate all eligibility restrictions despite evidence of its success or affordability, and strong countervailing evidence that the VA outperforms private sector health care and is strongly preferred by the vast majority of veterans.

Furthermore, The VA Commission on Care, which was established under the Choice Act and intended to guide and shape VA healthcare for the next 20 years, released its final report in July 2016. While the final report stopped short of complete privatization, its core recommendations, including a corporate governance board, unrestricted use of non-VA primary care and specialty care, and a BRAC-like process to close VA hospitals, would lead to the destruction of the VA health care system and fewer health care services for fewer veterans.

The most significant recommendation (#1) that could lead to the privatization of VA care would allow unrestricted access to non-VA primary and specialty care. Allowing such a massive shift of care to the private sector would siphon resources away from the VA’s own facilities and would all but eliminate the VA’s ability to effectively manage the coordination of veterans’ care. This recommendation also relies on the faulty logic that the private sector can meet such a demand for services and that those services are better than what the VA provides.

AFGE also recognizes that attacks on workforce protections are part of the path to privatization, the two issues cannot be put into separate silos. For the VA to provide high-quality healthcare, it must continue to be a high-quality employer. Given that, AFGE also opposed Commission recommendations to eliminate all civil service protections under Title 5 for the VHA workforce, eliminate seniority-based pay that is crucial to retaining experienced clinicians, and elimination of an annual bed count reporting requirement would lead to the permanent loss of thousands of veterans’ beds and irreparable harm to smaller VA facilities.

In summary, VHA staff must remain our nation’s primary source of inpatient, outpatient and long term clinical care for veterans, as well as related services including compensation and pension examinations. VHA must retain the critical size and mix of patient care functions to ensure the viability of its integrated, specialized system, roles as primary source of training for medical professionals in the U.S, leader in medical research, and resource during natural disasters and national emergencies.

Congressional Action Needed:

- Conduct comprehensive oversight on the use and implementation of the Choice Act to include: impact on the VA workforce, work of third-party administrators, and the impact to care received by veterans.
- Oppose all legislation that would extend or expand the Choice contract care program.
- Enact legislation to implement proposals that ensure VHA retains control over the use of non-VA care through VA-run local integrated care networks and consolidation of all non-VA care programs already negotiated by the Veteran Service Organizations, AFGE, and the VA.
- Conduct a report on the impact of the secondary and tertiary functions of VHA such as its role in training medical professionals and serving as a resource during natural disasters and national emergencies.

Adequate VHA staff essential to increasing veterans' access to care: Chronic short staffing of VA medical professionals continues to be the number one cause of VA wait list problems. The VA health care system's ability to attract and keep VA physicians and other clinicians in short supply is undermined by multiple factors, including poor hiring practices, unreasonable workloads and schedules, intimidation and silencing of clinicians through the denial of collective bargaining rights, discriminatory pay practices, ineffective staffing plans and inadequate support for clinician continuing medical education essential to maintaining skills and credentials.

Management needs to solicit and consider the valuable input of front line employees and their labor representatives, including ways to expedite hiring, eliminate unnecessary workload burdens, and improve processes for setting competitive pay for clinicians.

VA also needs to expand and update its data collection efforts for identifying VHA recruitment/retention barriers, especially for physicians and professionals in very short supply. This data gap hides the significant turnover problem among recent hires who often leave after management fails to deliver what was promised to recruit them. The data gap also masks barriers to retention of more experienced providers, including age discrimination in pay, excessive panel sizes and unreasonable schedules (including widespread noncompliance with the VA 40-hour workweek policy).

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 for patient safety. AFGE will continue to support safe staffing legislation that includes specific protections for VA Title 38 nurses.

As discussed below, perhaps the most destructive VHA recruitment/retention barrier is the lack of equal bargaining rights for "Full Title 38" clinicians (physicians, dentists, registered nurses (RN), physician assistants (PA), optometrists, podiatrists, chiropractors and expanded duty dental assistants). So long as critical health care professionals are denied the right to grieve and

negotiate over routine matters such as overtime pay, assignments, training and schedules, the VA will never be able to effectively compete with other agencies and other health care employers.

Congressional Action Needed:

- Reintroduce physician assistant locality pay legislation (included in S. 1676 in the 114th)
- Reintroduce safe nurse-patient ratio legislation (H.R. 1602 in the 114th)
- Introduce legislation to increase physician/dentist continuing medical education (CME) reimbursement (that has not been increased since 1991!) and mandate study of CME needs of other VHA personnel.
- Conduct oversight of VHA recruitment and retention data collection needs with mandate to solicit input from labor and other stakeholders.
- Conduct oversight of VHA independent provider (physician, dentist, physician assistant, nurse practitioner) workload, including ways to reduce computer view alerts and assessment of VA's compliance with physician/dentist 40-hour week policy.
- Conduct oversight of VA physician/dentist pay setting process and impact of changes to market pay enacted in H.R. 1646 (114th) that eliminated use of peer compensation panels.

Due process attacks and other VA employee-bashing legislation directly undermine the VA's ability to take care of veterans

The relentless attacks on the due process rights of VA employees during the 114th Congress targeted every front line VA employee, including all health care, benefits and cemetery employees, and all 115,000 veterans in the VA workforce. AFGE successfully fought back against firing bills that would have turned every service-connected disabled housekeeper, cemetery caretaker, claims processor, doctor and nurse into at-will employees.

We expect these due process attacks on the VA workforce to be reintroduced in the 115th. These are likely to include bills that would extend probationary periods (during which employees are at-will with virtually no workplace protections) and shorten the number of days that employees have to gather evidence to fight a proposed termination. Existing rights to secure representation, receive a written decision at termination, and be informed of specific instances of poor performance are also at risk, despite the essential roles that they play in helping to employees challenge unfair terminations and demotions.

In addition, we expect reintroduction of proposals to weaken the rights that most VA employees currently hold to appeal to the Merit Systems Protection Board (MSPB) by reducing the number of days employees are given to file appeals, and depriving employees of all rights to MSPB review if the agency has a large backlog.

Currently, all frontline VA employees working in benefit offices and cemeteries, VHA Title 5 support personnel and VHA Hybrid Title 38 health care professionals can appeal terminations to the MSPB. New proposals to eliminate the MSPB rights of every VA employee may emerge in the 115th Congress particularly in light of the final Commission on Care recommendation to eliminate all VA Title 5 rights.

Finally, we have already seen legislation that eliminates the ability to expunge reprimands from personnel files. We are likely to see continued attacks on earned compensation, including recoupment of pensions already earned by front line clinicians convicted of certain crimes, relocation payments already provided to employees who moved to take VA jobs, and recoupment of bonuses already provided.

Hire a Vet or Fire a Vet? Many of these proposals to diminish rights have been justified by the myths that current workplace protections make it too hard to hire good VA employees and too hard to fire bad ones. In actuality, hiring delays are caused by poor managers and hiring officials. In addition, our members consistently report that; the VA is very capable of conducting a quick hiring process when a manager is motivated and properly trained.

Medical professional credentialing could be expedited to shorten the hiring process with commonsense fixes. Similarly, poor management is the main cause of poor discipline and termination practices at the VA. The VA already has -- and uses -- existing tools to fire poor performers and front line employees engaged in misconduct. As discussed below, VA firing bills will disproportionately impact veterans who make up nearly half the new hires in the federal sector.

Lawmakers leading this effort have made it very clear that the VA is the testing ground for eliminating the due process rights of federal employee covered by the civil service system. It should also be noted that calls to decrease due process rights are “dog whistles” for making the career service subject to the partisan or personal whims of supervisors and political appointees. Prior to enactment of the Pendleton Act of 1883, all Executive Branch employees were considered to be “at will” and were largely appointed based on patronage principles. This resulted in a highly partisan civil service weakened by the appointment of unqualified people to offices that required increasing technical expertise. The Civil Service Reform Act (CSRA) of 1978 provides the modern-day basis for both the selection of most career civil servants, and their protection from unwarranted personnel actions, including removals.

Congressional Action Needed:

- Oppose all legislation to reduce or eliminate VA workplace protections.
- 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.

- Increase funding for agencies that investigate and decide whistleblower claims and other prohibited personnel practices
- Increase training for managers responding to employee reports of mismanagement.

Adequate funding for new construction and infrastructure improvements carried out through project labor agreements: Insufficient clinical space has contributed to VHA delays in providing timely care and has fueled efforts to provide unrestricted contracted care for veterans. The Choice Act of 2015 provided funding to address this shortage but more resources are needed. AFGE shares the concerns of veterans’ groups about the urgency of addressing the long-term neglect of VHA’s infrastructure needs, including safety risks from seismic deficiencies and nonrecurring maintenance needs.

Recently, there have been several pieces of legislation aimed at establishing public-private partnerships (P3s) for the construction of VA facilities. AFGE urges caution in the use of P3 for construction of VA facilities and seeks a full analysis of the risks of a poorly structured P3s. When private capital from investors is used to finance public infrastructure projects, the overall costs to taxpayers of project capital are likely to be higher than if government financing were used. In addition, P3s frequently do not adequately protect the public interest and are less transparent and accountable than a fully public construction process. Too often, the governmental entity cedes critical decision making authority to the P3s. In the medical facility context, it is critical to understand how the P3s will impact the amount of public funding used for direct care instead of other costs, and to ensure that the agency retains the ability to respond to unforeseen veterans’ medical needs.

The VA has historically resisted the use of project labor agreements (PLAs) for construction of its facilities, contrary to Executive Order 13502 encouraging the use of PLAs. One of the obstacles at the VA appears to be its use of procedures to evaluate whether to use PLAs, including burdensome market survey and biased local labor studies, as well as lack of training for acquisition staff.

Congressional Action Needed:

- Conduct oversight on the impact of public-private partnerships on the VA health care system.
- Significant increases in funding for major construction of VA health care facilities as well as sufficient funds for long neglected maintenance and minor construction needs.
- Improved procedures and training to promote the use of project labor agreements.

Equal Protections for Veterans in the VA Health Care Jobs

AFGE will seek support to provide equal rights to veterans hired under the Title 38 personnel system. Current law must be changed 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 deserve the same employment rights as other veterans in Title 5 and Hybrid Title 38 positions at the VA, Department of Defense and other federal agencies.

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.
- Conduct oversight into the retention rate of veterans past the probationary period and reasons for not retaining veterans past the probationary period.

Equal Representational Rights

Equal Bargaining Rights for Title 38 Clinicians Ensure Greater Access to Care

In 1991, Congress enacted 38 USC § 7422 to clarify that registered nurses (RNs), physicians and other VA health care professionals with full Title 38 rights have the same collective bargaining rights as other federal employees. However, since 2003, the VA has endorsed a "7422" policy that directly contradicts Congressional intent and deprives these employees of their right to bargain (i.e. negotiate, grieve or arbitrate) over routine workplace matters such as scheduling and reassignment.

This VA policy has severely weakened workplace morale and greatly undermines the VA's ability to compete with other public and private health care employers for primary care physicians and other scarce medical professionals. Collective bargaining rights also give health care professionals a voice in workplace matters that leads to increased quality of care and better workplace morale.

In contrast, employees covered by the Hybrid Title 38 Personnel (including psychologists, social workers and licensed practical nurses providing similar medical and mental health care services as their Full Title 38 counterparts) are afforded full Title 5 bargaining rights.

Equally confounding and arbitrary, physicians, dentists, registered nurses and other clinicians at Department of Defense and Bureau of Prison facilities, who work in the identical positions as these VA covered employees, are afforded full bargaining rights under Title 5.

These disparities have had a harsh impact on dedicated VA health care personnel and the veterans they serve. A single mother working as a VA registered nurse can be forced to work mandatory overtime, even though her co-worker is willing to volunteer to work those extra hours, because VA managers can refuse to bargain over schedules under current policy.

Similarly, physicians have no recourse when managers refuse to adjust market pay to keep pay competitive with pay rates set by other local health care employers.

In 2011, the VA issued a new “7422” policy as an outgrowth of a labor-management workgroup. This “Decision Document” expanded the right of Title 38 employees to grieve and bargain, but the VA continues to interpret the law to exclude most bargaining. Consequently, VA continues to use Section 7422 to silence dedicated clinicians by refusing to come to the bargaining table over routine matters regularly resolved through collective bargaining at other federal agencies.

Past “7422” reform proposals (most recently S 1256/HR 2193 in the 114th Congress) have received bipartisan support and the backing of several national veterans’ groups. 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:

- Reintroduce legislation to amend 38 USC 7422 and restore equal bargaining rights to Full Title 38 clinicians (S. 2157/H.R. 2193 in the 114th Congress.
- Mandate oversight of past “7422” decisions made by the VA Secretary to determine extent of VA compliance with the 2011 policy changes that expanded bargaining rights.

Put an end to at-will employment and mistreatment of the VA Canteen Service workforce

The Veterans Canteen Service (VCS) operates over 200 retail stores in VA medical centers and its annual sales exceeded \$400 million in 2016. The VCS mission includes food assistance for low income veterans and homeless veterans and disaster relief in national emergencies.

Its own workforce practices tell a different story. It is not well known that the public face of VCS – the employee serving food to veterans and visitors and ringing up merchandise – has fewer rights and lower pay than other VA employees doing similar work. In fact, VCS is an at-will employer; canteen employees have no appeal rights when they are fired because they are not covered by the same laws as other federal employees. As a result, these employees are more vulnerable to discrimination, sexual harassment and other mistreatment, and some are forced to rely on public assistance.

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.

- Conduct oversight of VCS employment practices and front line employee pay scales.

VA Benefits Issues

Adequate VBA staffing and fair treatment of staff are essential to ending claims backlog:

AFGE remains committed to ending the backlog of veterans' disability claims and providing veterans with the benefits they earned. Veterans Benefits Administration (VBA) must commit to hiring and training a significant number of additional employees and stop using mandatory overtime as a solution for achieving arbitrary performance goals.

Arbitrary performance standards have caused widespread employee burnout and morale problems at the regional offices. Recommendations by AFGE and veterans' groups to develop evidence-based performance standards have gone unheeded. And, the recent labor-management workgroup established to revise performance standards was unilaterally disbanded by VBA leadership.

Employees must be accommodated and treated with respect and integrity to foster the most productive and healthiest 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.

Congressional Action Needed:

- Appropriate sufficient funding for a significant increase in claims processors for disabilities claims, appeals and additional work products.
- Reconvene the labor-management performance standards workgroup and enact legislation to abolish arbitrary performance standards.
- Greater oversight of the National Work Queue (NWQ), an electronic workload management initiative that was rolled out in to improve productivity.

Appeals Reform: While VBA has made progress on reducing the backlog of initial claims, it has paid inadequate attention to the appeals backlog. Enactment of legislation to implement the comprehensive appeals reform plan developed through collaboration between the VA and veterans' groups is urgently needed (S.3328 and related bill H.R. 5083 in the 114th Congress). The bill would fix issues with effective dates for veterans, create "lanes" for faster appeals, which would be similar to the lanes for disability compensation, provide *de novo* review of appeals, and require a detailed notification letter for disability claims to assist in creating fully developed appeals.

Unfortunately, despite the overwhelming bipartisan and stakeholder support for such legislative reform, the appeals modernization language did not pass during the 114th Congress. Congress must take up the already agreed to appeals modernization language, without tying it

to egregious attacks on due process rights, and quickly pass it to provide VBA the tools it needs to address the appeals backlog.

Congressional Action Needed:

- Reintroduce legislation to modernize the appeals process (S. 3328 and related bill H.R. 5083 in the 114th Congress).

Increased VBA Contract Oversight: AFGE remains focused on preventing contracting out of veterans' benefits cases, particularly in regards to dependency claims and compensation and pension exams.

VBA continues to employ a highly problematic dependency claims contract. 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.

The most recent effort to increase the contracting out of veterans' benefits cases came in the form of a VA initiative to quietly dismantle VHA's compensation and pension (C&P) exam function. This was done through massive VBA direct contracts with examiner companies, without analysis of its impact on the quality of exams, veterans' disability ratings or the ability to provide veterans with integrated care.

Congressional Action Needed:

- Conduct oversight of the current dependency claims contract and mandate VBA compliance with federal laws banning direct conversions and other illegal outsourcing.
- Conduct oversight of the current use of contract C&P exams that includes an analysis of the quality of the exams, veterans' disability ratings, and the ability to provide integrated care.

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 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 Trump Administration and the 115th 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 sentencing reform for non-violent first time offenders.
3. Support the Federal Prison Industries (FPI) prison inmate work program.
4. Reintroduce and pass the Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act, 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.
5. Reintroduce and 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.
6. Oppose any changes to the use of segregated housing units (SHU) in BOP facilities.
7. 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.
8. Prohibit BOP from meeting additional bed space needs by incarcerating prison inmates in private prisons.
9. 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 190,000 prison inmates are confined in BOP correctional institutions today, up from 25,000 in 1980, 58,000 in 1990, and 145,000 in 2000. 154,840 of those inmates are confined in BOP-operated prisons while 13,965 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 such as:

- 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.

Serious correctional officer understaffing and prison inmate overcrowding problems have resulted 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.

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 Trump Administration and the 115th Congress to:

- Increase federal funding of the BOP Salaries and Expenses account so BOP can hire additional correctional staff to return to the 95 percent 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 sentencing reform for non-violent first time offenders

AFGE and the Council of Prison Locals support sentencing reform that will target non-violent first time offenders. In no way do we advocate for the release of career criminals or those convicted of violent crimes; though we do believe there is a better way to do sentencing for certain types of low level offenders. By returning discretion to judges to make sure the sentence handed down matches the crime committed and by putting these inmates through programming that has been statistically proven to reduce recidivism rates these offenders will be rehabilitated. This is a much better outcome than allowing them to learn how to be career criminals while serving an overly punitive mandatory minimum.

The statistics in the previous section 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 and the Council of Prison Locals have urged Members of Congress to reintroduce and pass the Smarter Sentencing Act 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.

3. 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 AFGC and the Council of Prison Locals 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 percent less likely to recidivate than those who had not participated, and (2) 14 percent 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 percent 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).

Significant 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 have resulted in serious sustainability problems for 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 percent. 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 percent.

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.

4. Reintroduce and pass the Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act, 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 and urge Members of Congress to reintroduce and pass this important workplace safety legislation.

The Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act 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.

5. Reintroduce and 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 support the Thin Blue Line Act so that any time a member of the law enforcement community is targeted and killed that murder will have a greater chance of facing the death penalty. We are urging Members of Congress to reintroduce and pass this important legislation because 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 Trump Administration must send a message that our lives and our safety matter. We demand action on this legislation so that every inmate will know that if they kill one of our brothers or sisters they will be facing the possibility of the death penalty.

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

Like local cops on the beat who arrest and detain citizens 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 breaks out, correctional workers would be able to place the offending inmate into a segregated housing unit to restore control in the area. They would then be able to 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 seat at the table. We must be given the ability to represent the interests of the workers called to protect America from 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. It is imperative that lawmakers remember that the decisions they make impact the lives of thousands of correctional workers across the country; their lives and safety matter.

7. 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 strongly urges the Trump administration and the 115th Congress to continue to include the Section 211 language in the FY 2017 and FY 2018 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.)

8. Prohibit BOP from meeting additional bed space needs by placing 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 that prison privatization is neither a cost-effective nor a 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 produce evidence that private prisons cost less 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 Trump administration and the 115th 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.

9. Support legislation that would provide registered nurses employed at BOP Federal Medical Centers and other BOP institutions with the same right to full time-and-a-half overtime pay as private sector registered nurses.

AFGE strongly urges the new Administration and the 115th Congress to support legislation that would provide registered nurses employed at the 122 Federal Bureau of Prisons (BOP) institutions, including the six BOP Federal Medical Centers located at Devens, MA; Rochester, MN; Butner, NC; Carswell, TX; Lexington, KY; and Springfield, MO; with the same right to full time-and-a-half overtime pay as registered nurses in the private sector under the Fair Labor Standards Act (FLSA) (29 U.S.C. 201-219). Many BOP registered nurses currently receive a more limited overtime pay capped at the General Schedule (GS) -10, Step 1 rate, pursuant to 5 U.S.C. 5542(a)(2).

BOP registered nurses should be provided the same right to full time-and-a-half overtime pay as private sector registered nurses because:

- They perform the same nursing duties as private sector registered nurses and they are paid on the same hourly basis as private sector registered nurses.
- Providing them with the same right to full time-and-a-half overtime pay as private sector registered nurses would help mitigate somewhat the serious BOP registered nurse staffing shortages. The primary reason for such shortages is that GS position grades and compensation are not competitive with private sector markets.
- Other federal government registered nurses – those who are employed by the Department of Veterans Affairs and the Department of Defense – already are provided the same right to full time-and-a-half overtime pay as private sector registered nurses.

This legislation is necessary because the AFGE General Counsel Office (GCO) has determined that it would not be able to successfully argue in federal court that BOP registered nurses should be classified – like private sector registered nurses – as FLSA nonexempt because they are hourly employees under the Department of Labor (DOL) FLSA regulations. (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 - the appellate court which reviews federal employee pay cases – held that that the Office of Personnel Management is not required to apply the “salary basis” test of the DOL FLSA regulations (29 C.F.R. 541.602) to federal employees. This forecloses the argument that federal employees should be deemed to be FLSA nonexempt because they are hourly employees under the DOL FLSA regulation's salary basis test.

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

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

Notwithstanding paragraphs (1) and (2) of this subsection, for an employee of the Bureau of Prisons 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. 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 who is a registered nurse, shall not be permitted, except as voluntarily requested in writing by the employee in question.

Transportation Security Administration and Transportation Security Officers (TSOs)

“Fairness is what justice really is.”

Potter Stewart, Supreme Court Justice ('58-'81)

The over 42,000 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 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. Although TSA claims it lacks the authority to apply important title 5 statutory rights and protections such as compensation under the General Schedule (GS) wage system and important procedures and statutory protections under the Federal Labor Standards and Civil Rights Act, 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. TSA has issued three Determinations on Collective Bargaining, most recently during August, 2016, based on the same authority under the Aviation and Transportation Security Act (ATSA) the agency denies when it comes to TSO rights. AFGE calls upon President Trump to direct the TSA Administrator to immediately apply all laws, guidelines and regulations applicable to Title 5 workers to the TSO workforce.

Congress must act in the absence of a Presidential or administrative directive. Basic workforce protections should have the permanence of enacted law and not be subject to the politics of successive administrations. AFGE will continue to work with TSO and federal employee champions Representatives Bennie Thompson (D-MS) and Nita Lowey (D-NY) to reintroduce the Transportation Security Workforce Enhancement Act in the House, and with Senator Brian Schatz, (D-HI) who introduced The Strengthening American Transportation Security Act (SATSA) with lead cosponsor Sherrod Brown (D-OH). SATSA marked the first TSO rights bill introduced in the Senate since 2007, the year 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 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

The TSA bargaining unit membership of Council 100 overwhelmingly ratified a contract negotiated under circumstances that are unique to TSA. The contract reflects limitations on negotiable issues, timing of negotiations and process. AFGE strongly objects to the restrictive process under which the union was forced to negotiate. 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.

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.

TSA Privatization is Not the Response to Staffing Shortages

During 2016 the public became aware of what TSOs have known for years: TSA's staffing decisions have left airports chronically understaffed. After months of long checkpoint wait times, lines stretching throughout entire terminals and missed flights *prior* to summer travel schedules, Congress took steps to investigate the reasons for the staffing shortages, and to address identified problems. On May 26, 2016, AFGE National President J. David Cox testified before the subcommittee on Transportation Security of the House Committee on Homeland Security entitled "Long Lines, Short Patience." In addition to highlighting that TSA allowed the TSO staffing levels to fall even when it was clear that the public did not participate in the PreCheck program at the levels necessary to support a smaller workforce and continued diversion of the Security fee to be applied to deficit reduction instead of funding adequate staffing levels, President Cox emphasized that TSA's increasing dependence on an array of non-federal workers to address staffing issues did not address shortages and could have a negative security impact. AFGE opposes privatization of any TSO duty, and opposes the administration of the Screening Partnership Program (SPP) that facilitates privatization against the interests of the workforce and the public.

Checkpoint Staffing

In response to concerns raised by members of Congress and outright threats from various airport authorities to "fire" TSA and apply for private screeners, on May 4, 2015, Department of Homeland Security Secretary Jeh Johnson issued a statement requesting Congressional approval for \$34 million in reprogrammed DHS funds to hire about 700 TSOs and pay for

expanded TSO overtime in addition to “collaborating” with airports and airlines to use their employees to distribute bins at checkpoint. AFGE’s position is that TSA needs to hire more full time TSOs, and work harder to retain the current workforce by increasing wages and granting title 5 rights.

Although reprogrammed funds were made available, AFGE later learned most of the funds were used by TSA for overtime, and relatively little was used to hire additional TSOs. TSA Council 100 reports a very high quit rate among the TSOs hired during the summer to address the shortage. TSA Administrator Peter Neffenger has stated the FY 18 TSA budget request will reflect continued attention to staffing issues. Female TSOs continue to bear a significant burden of short-staffing, and report denial of shift or line bids and delayed breaks during the day. AFGE is documenting the disproportionate negative effect of short staffing on female TSOs and will share our findings with Congressional offices.

The Screening Partnership Program (SPP)

The most recent example of the many faults of the SPP is the application of the South Jersey Transportation Authority (the Authority) to privatize screening at Atlantic City International Airport (ACY). Airlines at ACY strongly objected to TSA management refused to hold open checkpoints even though delayed international flights carried passengers who required screening before they could connect to domestic flights. Passengers were only able to board connecting flights the following day when TSA reopened checkpoints. There were no “union rules” or contract provisions that prevented overtime to screen the passengers. TSOs were notified of the Authority’s SPP application months after it was filed, and the Authority held not public meetings or votes on the decision. AFGE opposes the SPP as a privatization program that lacks transparency, fails to save taxpayer money and potentially jeopardizes airport security as long-term, experienced TSOs are replaced with newly trained private screeners employed by contractors looking to turn a profit at the security’s expense.

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. TSA has failed 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 but 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. AFGE strongly supports the Contract Screener Reform Act, introduced by Representative Bennie Thompson in the 114th Congress, that would provide transparency to the public. AFGE also supports changes in the SPP would require TSA to notify the union when an SPP application is filed and allow the union to comment on the petition on behalf of its members.

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

The year-long efforts of Council 100 forced TSA to apply additional fairness to this year's The Transportation Officer Performance System (TOPS) pay system. Unlike the previous year's payout which resulted in over half (53 percent) of the TSO workforce receiving no pay raise, all TSOs who achieved Expectations or better received a performance award. Even as AFGE fights for fairness under TOPS, our union's resolve to fully reform TSA's pay system is stronger than ever.

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 last in "performance-based rewards and advancement" out of 303 agencies in the *2016 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.

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

The Checkpoint Optimization and Efficiency Act

Despite limited input prior to the introduction of the Checkpoint Optimization and Efficiency Act, AFGE successfully worked with Homeland Security Committee Ranking Member Bennie Thompson to ensure AFGE is provided staffing information and has the same input as other TSA stakeholders. The bill, introduced by Transportation Security Subcommittee Chair John Katko (R-NY) was included in the FAA Extension, Safety, and Security Act of 2016, which was signed into law by President Obama on July 15, 2016. TSA is now required to share information about the Staffing Allocation Model with the union, airline and airport representatives. The legislation also requires Behavior Detection Officers (BDOs) to work the Ticket Documents Check, or TDC, positions during shortages. Although there was some erroneous information provided to BDOs at some airports, BDOs will not be demoted or suffer a pay cut based on the law. TSA is now allowing TSOs to be "certified" as BDOs and acquire the position of TSO/BDO, but not receive a promotion or a raise.

Pregnancy Discrimination/Medical Eligibility

Several 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

Forty-six members of Congress, including Representative Lamar Smith (R-TX) joined Representative Julia Brownley (D-CA) in reintroducing the Honoring Our Fallen TSA Heroes Act in the 114th Congress. The bill grants TSOs Public Safety Officer benefits in the event of their death or severe injury while in the line of duty. AFGE strongly believes TSOs protect the public and are deserving of these benefits.

H.R. 5340, the Funding for Aviation Screeners and Threat Elimination Restoration (FASTER) Act

Immediately following House Homeland Security Committee hearings on TSO staffing shortages and checkpoint lines, Representatives Peter DeFazio (D-OR), Bennie Thompson D-MS) and Bob Dold (R-IL) introduced the Funding for Aviation Screeners and Threat Elimination Restoration (FASTER) Act. The bill would have ended the diversion of the 9-11 Security Fee and returns the proceeds to TSA. The cosponsors project the return of \$14 billion in funding to the agency. The bill is supported by AFGE, Airlines for America and the U.S. Travel Association. Representative DeFazio has expressed interest in reintroducing the bill during the upcoming Congress.

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 unacceptable, and 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. Because 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 allow TSOs to 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 many 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 recognized as the first and best line of defense against those who desire to harm the U.S. aviation system and have persevered as a workforce despite the lack of fundamental statutory rights and protections. Their commitment to protect the public is matched only by their determination to fight for their rights. AFGE will continue the fight for TSO title 5 rights and statutory rights and protections into the 115th Congress and the Trump Administration.

Voter and Civil Rights

The American Federation of Government Employees, AFL-CIO, (AFGE) continues its historic 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, Jr. 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 around 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.

There is no evidence of mass (or even minimal) illegal votes, states implemented draconian voting restrictions prior to the 2016 Presidential election. 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.

Voting rights restrictions have a direct impact on federal workers. Statistics from the American National Election Studies indicate that union household turnout is 5.7 percent higher than that of nonunion households. A 2010 article in the *Social Sciences Quarterly* stated that public sector voting turnout was 2 percent – 3 percent 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.

Judicial and Legislative Remedies

Voting rights advocates scored significant judicial victories during 2016. In April, 2016, the Supreme Court decided the case of *Evenwel v. Abbott*, holding that states or localities could use total populations counts for redistricting. The attempted change by the Texas state legislature would have diluted the representation of fast-growing Latino populations in certain states and would require many state House and Senate districts to be redrawn. Justice Ruth Bader Ginsberg stated in the Court's 8-0 decision that "representatives serve all residents, not just those eligible or registered to vote." Rev. Barber's Moral Mondays movement won an important victory before the U.S. Court of Appeals for the 4th Circuit when the court struck down North Carolina's voter restrictions. The decision held that North Carolina selectively chose voter identification requirements, reduced the number of early voting days and changed registration procedures to harm African Americans voters with "surgical precision". A U.S. District Court held that North Dakota voter restrictions disproportionately disenfranchised Native American voters. Though positive steps in the right direction, these and other judicial decisions must be matched with legislation to restore the full Voting Rights Act.

The Voting Rights Enhancement Act

AFGE strongly supports the Voting Rights Advancement Act. 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 years) 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 remains concerned that House Judiciary

Committee Chairman Robert Goodlatte (R-VA) refused 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 Paycheck Fairness Act. The bill would close loopholes that 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. The Obama Administration stated that a woman working fulltime still earns \$.79 for every \$1 a man earns. The gap is higher for working women of color. Working families can lose hundreds of thousands of dollars over the course of woman’s lifetime due to the pay gap.

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

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 (FEPPLA) should be advanced in the 115th Congress and sent to the President's desk for signature.

The Federal Employee Paid Parental Leave Act or FEPPLA was introduced in the House by early supporter Rep. Carolyn Maloney (D-NY) and in the Senate by Sen. Brian Schatz (D-HI). If enacted, FEPPLA would 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. President Obama'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 encouraged agencies to utilize Employee Assistance Programs to assist workers who need emergency care for children, seniors, and adults with disabilities. These policies recognized that the committed federal workforce is strengthened by helping employees balance their work and family obligations. As a candidate, President Trump offered parental leave proposals that excluded fathers, single women and adoptive and foster parents. This is not the respect for working parents AFGE demands.

The House and Senate versions of FEPPLA would provide federal employees six weeks of paid parental leave upon the birth, adoption or fostering of a child. The Senate bill ensured that paid parental leave will extend to the nation's 45,000 TSO workforce.

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 all 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.

There is public – private employer agreement that improving the quality of life for working families is good policies. 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 percent of U.S. workers have paid family leave and only 61 percent 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 FEPPLA 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 three days of sick leave per year close to five 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 two 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 115th 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 because we agree with Attorney General Loretta Lynch that “the founding ideas that have led this country—haltingly but inexorably—in the direction of fairness, inclusion and equality for all Americans.”

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 based on 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, introduced during the previous session in the House and Senate 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.

The Case for an Apolitical Civil Service and Due Process Rights

Introduction

The modern civil service was created by the Pendleton Act, enacted in 1883.

Prior to that time, all Executive Branch employees were considered to be “at will” and were largely appointed based on patronage principles (“to the victor go the spoils”).

This resulted in a highly partisan civil service, which frequently changed when a new Presidential administration took office. Unqualified people were appointed to offices that required more and more technical expertise in an emerging modern state.

The assassination of President Garfield in 1881 by a disappointed office seeker (Charles Guiteau) finally provided the impetus for passage of the Pendleton Act. The public recognized that partisanship needed to be removed from day-to-day government administration, and that professionalism should be at the core of the government workforce.

The notion of a professional civil service, hired based upon merit, and removable only for “good cause” became a potent political force in the 1870s. It was the “good government” program of its time.

Today, both “competitive service” and most “excepted service” positions are covered by laws protecting the civil service from politics and favoritism.

A “merit-based” civil service system is a cornerstone of all modern Western democracies. It ensures that technical expertise is brought to bear on performing agency missions, without the threat of overt partisan agendas driving day-to-day operations.

Agency career employees remain accountable to politically-appointed officials, but those appointees, and supervisors who serve under them, may not take actions against career employees for misconduct or poor performance without at least providing some level of due process to the employee, including third-party review by neutral decision-makers.

The Civil Service Reform Act (CSRA) of 1978 provides the modern-day basis for both selection of most career civil servants, and their protection from unwarranted personnel actions, including removals (unwarranted = motivated by politics, bias, etc.). This law protects the public from having their tax dollars used for hiring political partisans for non-political jobs, and helps ensure the efficient and effective governance of federal agencies.

Current Due Process Requirements

The CSRA provides that employees may be removed for either misconduct or poor performance. The employee merely needs to be informed of his or her alleged deficiency and the reason that management proposes to take an action against him or her (removal, demotion, suspension, etc.).

Unlike prior law, the CSRA provided more bases for managers to take action against federal employees.

Under CSRA, employees may be removed for either misconduct or poor performance if:

1. the employee is informed of the problem and the reason that management proposes to take an action against him or her (removal, demotion, or suspension) – this is referred to as a proposed “adverse action”;
2. the employee is given a reasonable opportunity to respond, both in writing and orally, if requested; and
3. the agency’s final decision is adverse to the employee, (e.g., removal, demotion, suspension for more than 14 days).

An employee is subject to a final adverse action by an agency 30 days after receiving an adverse proposal.

An employee may appeal an adverse action to the Merit System Protection Board (MSPB), a third-party agency that hears and adjudicates civil service appeals.

MSPB administrative judges (AJs) hear the matter in an adversarial setting and decide the case in accordance with established legal precedents. If dissatisfied with the AJ’s decision, either the agency or the employee may appeal the decision to the full three Member MSPB.

The CSRA does not give unfair advantages to federal employees. Agencies generally prevail in 80 percent - 90 percent of all cases at the AJ level, and only about 18 percent of all AJ decisions are appealed. AJs are upheld by the full MSPB in about 80 percent of all appealed cases.

It is very important to note that following an agency’s adverse decision against an employee, the agency’s decision is automatically effected (e.g., the employee is removed from the agency’s payroll the day of issuance of the decision or within several days following the decision). An employee removed by an agency receives NO PAY during the appeal process.

The MSPB appeals process is efficient and expeditious. Most AJ decisions are rendered within 70 days of the filing of an appeal. An appeal to the full MSPB from an AJ decision takes about 210 days . (The agency’s decision remains in effect during the entire appeals process.)

The importance of maintaining a nonpartisan, apolitical civil service in an increasingly partisan environment cannot be overstated. First, most federal jobs require technical skills that cannot simply be obtained through non-merit based appointment. Second, career employees must be free to perform their work in accordance with objective professional standards. Those standards must remain the only basis for evaluating employee performance or misconduct.

Calls to decrease due process rights are “dog whistles” for making the career service subject to the partisan or personal whims of supervisors and political appointees.

Whatever lack of public confidence in government exists today (usually because of political partisanship) will be magnified a hundredfold if all civil servants become de facto political appointees, serving at the whim of supervisors.

What to Expect in the 115th Congress

During the 114th Congress, Congressional Republicans, especially in the House, made it clear that they would work hard to weaken long-standing workplace due process rights for federal employees.

Congressman Todd Rokita of Indiana introduced a bill, H.R. 6278, the “Promote Accountability and Government Efficiency Act” (“PAGE Act”) that would make all federal employees hired a year after the effective date of the act “at-will”. This has already been identified as a “high-priority” by the 115th Congress by some in the House leadership.

The PAGE Act is a venomous assault on working families that would politicize the federal government’s workforce and give political appointees and managers who serve them unchecked authority to fire, demote, and discipline employees at will. It would remove the checks and balances that keep everyone honest. It is the antithesis of government accountability.

The PAGE Act’s “at will” employment provision would mean that federal workers could be suspended or fired for any reason or no reason. It also would allow politically appointed agency heads to immediately suspend current workers, deny them pay, and give them just 10 days to appeal.

The PAGE Act will **reduce** accountability and government efficiency by allowing supervisors to arbitrarily fire and discipline employees who speak up against mismanagement and wasteful spending. The bill actually states that a federal employee can be fired for no cause or **bad cause**. The bill will also make it harder for the federal government to attract and retain the top quality professionals the American people expect.

In addition, the PAGE Act would:

- Deny any pay adjustment whatsoever to workers who fail to receive a performance rating above “fully successful” in a new, management-designed rating system that would inevitably allow subjectivity, favoritism, and politics to influence ratings.
- Allow the government to deny earned pensions to any current or future employee who is convicted of a felony.
- Eliminate an employee’s right to representation at the worksite by no longer allowing union representatives to resolve disputes, address issues of discrimination or retaliation, or propose improvements in the workplace during the workday.
- Allow agencies to continue workplace investigations even after employees have quit or retired.
- Allow political appointees to demote career executives and reduce their pay without cause.

In essence, the PAGE Act would give political appointees and their subordinates unchecked authority to target workers at random.

Other Noxious “Reforms”

While AFGE intends to work assiduously to stop the PAGE Act, other changes to federal employee rights can be expected from the 115th Congress.

For example, various iterations of Department of Veterans Affairs (VA) “reform” bills during the 114th Congress all focused on reducing due process rights for VA employees. Some simply reduced Merit Systems Protection Board (MSPB) appeal filing times, while other bills would leave it to the VA Secretary (or a board appointed by the Secretary) to decide upon an employee’s performance or disciplinary status.

It seems likely that the 115th Congress, coupled with a “You’re fired!” President, will seek to substantially reduce both federal employee tenure and due process rights.

Probationary period: Efforts are likely to be made to further extend probationary periods for new employees (as has already been accomplished at DoD), or eliminate “completion of probation” altogether.

For current employees who have passed the probationary period, they will likely face changes to MSPB procedures that will reduce filing, response, hearing and appeal times. It is possible that there will be efforts to make even current employees “at will”.

Conclusion

AFGE strongly opposes legislative, judicial and/or any administrative attempts to deny untold numbers of federal workers their due process rights. The civil service must not return to the “Spoils System” of the 19th century. Federal appointments should be made on the basis of merit

and objective standards. And, continued service should also be objective and merit-based, with full due process rights to ensure that arbitrary, capricious and politically motivated retaliation cannot occur. Recent Congresses have often claimed that they are friends of “whistleblowers.” However, the proposals being considered in the 115th Congress would spell the end of whistleblower rights, and invite outright retaliation and other politically motivated behaviors.

The PAGE Act is an example of the most extreme attempt to politicize the civil service, taking us back to the 19th century before enactment of the Pendleton Act in 1883. The services that federal employees provide are too important to the American public to allow this to happen again.

Every day, federal workers provide vital services to communities in your Congressional District and the PAGE Act will only make it more difficult for federal employees to patrol our borders, provide our veterans with the care they have earned, ensure that seniors and disabled individuals receive their essential support, keep our communities safe from dangerous criminals, keep travelers safe, and keep our military supplied and ready.

AFGE Council 216 Will Urge Congress to Stop a Detrimental Hiring Freeze and Sequester Furloughs and Press EEOC to Prioritize Frontline Staff, Who Carry Out its Vital Civil Rights Mission

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.

EEOC has historically been hobbled by budget constraints, inadequate numbers of frontline staff, low morale, and a failure to implement common-sense efficiencies. EEOC is already a small agency and the impact of the anticipated hiring freeze and the return of sequestration will really be felt by the dedicated staff and the public they serve.

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. EEOC ended FY16 with only 2,202 FTEs nationwide. In FY16, investigator staffing sunk to 551, while filings rose to 91,503 charges of discrimination. This is the third consecutive year that receipts have increased.

Consequently, EEOC ended FY16 with a backlog of 73,508 cases. The public must wait on average ten 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. EEOC promotes a digital charge system (DCS) pretending it is a panacea for its woes, but adequate frontline staff is still needed to process charges, whether they are digital or hardcopy.

For FY18, Council 216 will urge Congress to increase EEOC's funding to at least \$367M, i.e. the FY10 funding level and avoid or limit a freeze on frontline hiring and stop the return of sequestration, which would harm the public. AFGE Council 216 will also press EEOC to avoid furloughs by implementing real efficiencies e.g., the Union's dedicated intake plan, smart-staffing EEOC's frontlines, reducing supervisor to employee ratio, cutting management travel, eliminating contracts for work that can be performed in-house, and improving morale to reduce costly turnover.

Discussion

1. Inadequate Frontline Staffing Levels and High Workload Have Had Disastrous Public Impact. An Across the Board Hiring Freeze Would be Detrimental to an already Understaffed EEOC.

- *AFGE Council 216 will lobby Congress to avoid or limit a hiring freeze and adequately fund EEOC and ensure that the agency prioritizes backfilling frontline staff.*

Enforcing Title VII and other laws that prevent employment discrimination from costing jobs 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.

The FY17 continuing resolution funds EEOC at \$364.5M. This is the fourth straight year of level funding. To provide perspective, EEOC's FY17 funding is actually less than EEOC's FY10 budget of \$367M. Meanwhile the price of airline tickets, postage, leased space, etc. has increased.

EEOC still has not recovered from the most recent hiring freeze that lasted from FY11 until the end of FY14. EEOC's workforce plummeted from 2,453 to a record low of 2,098 FTEs. With modest hiring since then, EEOC ended FY16 with only 2,202 employees nationwide. A combination of attrition and the anticipated hiring freeze will quickly bring staffing back down to historic low levels.

EEOC particularly cannot afford to continue to lose staff when charge filing increased for the third straight year. In FY16 EEOC took in 91,503 new charges of discrimination. EEOC ended FY16 with a backlog of 73,508 cases. EEOC's FY16 Performance and Accountability Report credits a 3.7 percent reduction in the backlog to: "Front-line staff hired late in fiscal year 2015 contributed to this increase in resolutions; however, some of the increased productivity of new staff was offset by additional staff losses in fiscal year 2016."

EEOC's recently released Strategic Enforcement Plan FY2017-2021 recognizes that "demand for EEOC's services continues to outpace our resources." Investigators are the primary resource in the agency's efforts to process discrimination claims. However, investigator staffing has sunk from a high of 917 in FY01 to approximately 551 in FY16. Sinking ranks of investigators at a time when charge filings are increasing spell trouble for the public. As things stand, EEOC's average case processing delay is a dismal 10 months. Jobs are lost during that wait, as applicants are turned away for discriminatory reasons, qualified individuals with disabilities are not accommodated, harassed workers are fired or forced to quit, and those brave enough to raise a complaint are retaliated against.

While EEOC's mediation program receives high marks from participants, mediator staffing levels meant only 10,461 mediations were conducted in FY16, far less than 11,513 just three years ago, in FY13.

EEOC's in-house call center has shrunk from 65 intake information representatives (IIR) to approximately 30. The IIR shortage means the public waits at least 45 or more minutes to speak to a live person.

EEOC receives close to 18,000 Freedom of Information Act requests (FOIA) annually, which are processed by less than 39 full time staff. The FY16 Chief FOIA Office report acknowledges that the FOIA backlog increased, attributable to increased requests, the loss of staff, and issues arising from transitioning to a new system on the computer.

An anticipated across the board hiring freeze will devastate an already short-staffed EEOC. As EEOC frontline staff depart and are not replaced, haphazard vacancies will disrupt operations. Clerical staff will leave for promotional opportunities and those they support will spend valuable time at the copier, scanner, postage meter and covering the front desk. Senior investigators will retire and their cases will get added to those few who are left, driving up caseloads and aged inventory. Another disruption will be the transfer of thousands of old cases across the country from short-staffed offices to those with a few more bodies. Transferred cases are often old, inefficient to investigate from another state, and typically result in speedy closures for EEOC's bottom line.

A sounder plan for efficiency in operations would be to allow frontline backfills during any hiring freeze. This way, frontline employees, who serve the public, can remain focused on their duties and not pulled away to cover other responsibilities. To the extent that the hiring freeze is implemented across the board, backfilling frontline staffing losses must be the priority when the freeze is lifted.

For FY 2018, Council 216 will urge Congress to support EEOC's jobs focused mission by increasing funding to at least \$367M, i.e. the FY10 funding level. Council 216 will urge Congress to avoid a hiring freeze or limit it to not apply to frontline staff. If the across the board hiring freeze proceeds, Council 216 will press EEOC to prioritize frontline backfills when the freeze ends.

2. EEOC Should Improve Its New Digital Charge Initiatives So That They Accomplish the Purported Goal of Efficiency.

- *AFGE Council 216 will lobby Congress to improve DCS to Support Constituents*

Generally, expanding technology enhances efficiency and access. However, EEOC rolls out "efficiencies" that provide limited substantive assistance to the public and force more work on the agency's already overwhelmed staff without adding resources. In FY16, EEOC completed its roll out of Phase I of the Digital Charge System (DCS), which allows Respondents to receive and respond to charges electronically. Unfortunately, EEOC did not provide offices the scanners and digital equipment necessary to digitize hard copy documents. After a post-implementation survey suggested by the Union raised an outcry, EEOC provided some additional scanners, but more are needed.

Also, DCS's platform relies on a preexisting electronic record system (IMS) and separate e-mail system. As a result, the systems are not fully integrated, so staff must expend a great deal of time downloading, saving, and uploading from one to the other. Also, because DCS is not user-friendly in terms of pulling up and comparing documents, bookmarking, etc., investigators often print the digital documents in order to analyze the case files.

In January, 2017, EEOC begins piloting Phase 2 of DCS. Phase 2 involves "technology to provide the public with the option to perform self-screening, [and] submit a pre-charge inquiry." Similar past experiments resulted in increased work for investigative staff as a flood of self-filed inquiries poured in with every box checked out of caution and confusion. Another component of Phase 2 is an online scheduling vehicle for the public. Since EEOC lacks staff to address and absorb these appointment requests, the effectiveness of this system remains questionable.

Another new digital system provides complainants the ability to track online, the status of their charge. Given that the average processing delay is 10 months, this does not help the public - it just gives them a way to track EEOC's bottlenecks, likely leading to constituent services calls.

EEOC must improve these digital systems so that they support frontline staff in serving the public. But even then, EEOC must prioritize frontline staff so that when the public pushes "send" there is someone left at the agency to receive and assist with these charges and inquiries. Also, given recent security breaches, EEOC must be able to assure that the online systems do not pose risks for this personal information. Finally, EEOC must retain access for those who do not use computers or cannot access one for online charge filing.

3. Sequestration Significantly Impacted EEOC's Important Work

- *AFGE Council 216 will Lobby Congress to End Sequestration*

Congress should take action to stop the harmful impact of sequestration, which is set to return full force in FY18. Previously, 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 suffered 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. EEOC Should Implement Real Efficiencies and Cut Costs, In Order to Prioritize Frontline Services and Avoid Furloughs If Sequestration Does Return in Full Force in FY18**
 - *AFGE Council 216 will lobby Congress to make EEOC implement efficiencies to prioritize frontline staff.*

EEOC is expanding online access, but missing efficiencies that would make a real difference. EEOC should prioritize frontline services and prepare for the return of sequestration in FY18 and avoid furloughs by saving money on unnecessary expenses/travel and working smarter.

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

AFGE Council 216’s Full Service Intake Plan addresses the efficient use of resources and the backlog, both of which benefit the public. The heart of the plan is utilizing well trained investigator support assistants (ISAs) and other support staff grades (GS-5 through GS-9) as dedicated units to advance the intake process from pre-charge counseling through charge filing and to 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 73,508 case backlog and 10 month wait times.

AFGE Council 216 first submitted the plan eight years ago. EEOC’s failure to implement the plan or even a pilot remains a missed opportunity. The intake plan would achieve EEOC’s Strategic Plan’s emphasis on consistent implementation of customer service goals and the priority charge handling process [PCHP]. The Intake plan could also be a means of using the digital initiatives to actually make EEOC work smarter.

AFGE Council 216’s National Intake Plan also helps the Information Intake Group, which was based on the premise of having 65 Information Intake Representatives (IIRs) but is down to approximately 30 IIRs. Turnover rates are high for IIRs, given oppressive quotas. The few remaining IIRs report that callers are angry and frustrated after waiting, often up to one hour. 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 bouncing the person to DCS or to an EEOC investigator. The intake units could also receive the new DCS online pre-charge inquiries and appointment requests, to conduct interviews and draft charges where appropriate.

- **EEOC Must Prioritize Frontline Staffing**

It is now critical that EEOC implement real efficiencies and push resources to frontline staff, who serve the public. First, any hiring should be used to backfill frontline vacancies. Promoting staff to management without ensuring the resulting vacancies are backfilled, exacerbates the impact of lack of front-line staff.

Second, by filling more GS-13 Lead Systemic Investigator positions, EEOC could retain talent and match staffing to its stated emphasis on systemic cases. EEOC increased the number of lead systemic investigators in FY15 from 9 to 18 nationwide, and “more” in FY16, but this remains a small number given the relevant workload and is less than one per office.

Third, 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 this reasonable goal has never been realized. In FY15, the last time EEOC provided the information, the bloated ratio was one supervisor for every six employees. EEOC continued to hire top managers before the start of the FY17 freeze. Flattening the agency would make it more efficient by focusing budget dollars on less costly frontline staff and would reduce micromanagement.

Finally, EEOC should smart staff offices in the manner recommended by Council 216’s People First Plan. The premise of the plan is to rely on building blocks of staff. For instance, no EEOC office should have less than one full investigative team or block, 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 that will continue to suffer arbitrary vacancies caused by attrition and the impact of the anticipated hiring freeze.

- **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 costly turnover by taking actions to improve employee working conditions and morale.

The agency continues to receive scores below the government average in important areas of the Federal Employee Viewpoint Survey (FEVS). Foremost, EEOC must do what is needed to prevent retaliation, as demonstrated by the poor scores for this FEVS inquiry: “I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.” EEOC’s 55.8 percent

score is below the governmentwide 62.1 percent. Almost half of EEOC employees report fear of retaliation. It is a sad irony that retaliation for protected activity is a basis that EEOC enforces. Another dismal score is that only 40 percent of its Field employees believe their workload is reasonable, compared to 57 percent governmentwide. An equally dismal score is that only 39 percent of respondents at EEOC report having sufficient resources, “people, material, budget,” to get the job done.

EEOC ranked second to last in its category of mid-sized agencies in the work-life balance score. However, on a positive note, at the end of 2015, the Union struck agreements with the agency for a maxiflex pilot and to finally implement an extra day of telework per pay period. Employees started taking advantage of these opportunities to work smarter in 2016. Also, an MOU to allow in-house call center staff to telework 100 percent was signed. These initiatives will improve work-life balance and create work efficiencies.

EEOC also must improve its response to reasonable accommodation requests made by its own qualified individuals with disabilities. The system is fraught with delays and denials resulting from its failure to conduct the interactive process. Recent EEO losses due to its failure to timely provide reasonable accommodations are emblematic of this problem.

EEOC should turn its recent efforts to “reboot” harassment prevention for the public to its in-house employees. Not only do EEOC employees complain of harassment and retaliation, but they are demoralized as they see their employer focus on an initiative that it does not apply in-house.

EEOC formed a committee of managers to improve FEVS scores (BEST), which disburses a flurry of communications right before each year’s survey drops. The agency succeeded in driving up participation rates and improved a few composite scores. However, the Union encourages EEOC to focus with consistency on substantive areas that impact morale. By doing so, EEOC can benefit from reduced turnover costs, employee engagement and innovation, and other efficiencies of a satisfied workforce.

- **EEOC Should Eliminate Expendable Contracts and Unnecessary Management Travel**

The EEOC should eliminate contracts for work which is or could be performed in-house. 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 FY17.

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, it simply cannot afford:

- 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.

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 critical office safety issues go unaddressed for alleged lack of resources.
- Management has largely 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. The option to purchase lower cost tickets is not explored or explained.

5. 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 processes.*

In February 2015, EEOC issued an advance notice of proposed rulemaking (ANPR) 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. EEOC’s federal sector quality enforcement plan continues to push summary judgement decisions rather than hearings.

AFGE Council 216 will continue to object to and scrutinize a new case management categorization 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 danger of this case management system is a 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. Categorizing cases without staff or other efficiencies simply leaves a pool of languishing cases yet to be decided. 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 conference.

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

As of FY16, EEOC has only 69 Administrative Judges. AFGE Council 216 will continue to address the loss of EEOC Administrative Judges (AJs), caused by inadequate support staff, threats to judicial independence, and Administrative Law Judge (ALJ) status available at other agencies. EEOC’s Strategic Plan acknowledges that: “In addition to improving systems and streamlining procedures, additional resources would be necessary for EEOC to increase timeliness to its federal sector program by reducing the ratio of hearings to administrative judges and the ratio of appeals to attorneys.” AFGE Council 216 will maintain pressure to backfill AJ positions and provide them support staff.

AFGE Council 216 supports 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.

6. EEOC's Updated Strategic Enforcement Plan Raises Concerns

- *AFGE Council 216 Will Fight for the Plan to Best Serve the Public*

EEOC recently approved an updated Strategic Plan for 2017-2021. The Strategic Plan continues to emphasize systemic cases, relying for its rationale on making the most emphasis given its "resources." However, without the efficiencies suggested by the Union, this is rife with problems. First, systemic cases are very labor and resource intensive. EEOC's plan does not call for adding needed frontline staff, like additional systemic investigators, paralegals and investigator support assistants. Instead, EEOC relies on band-aids like "one EEOC" and the "national law firm," as euphemisms for pushing work from one overwhelmed office to another. 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 in all phases.

The Council remains concerned about the unintended consequences of so explicitly leaving individual claimants in the cold. Many precedential employment cases have been brought by individual claimants. Also, private counsel is not going to take cases with small damages or mostly injunctive relief which the Commission also may ignore in favor of a systemic case. Individual workers with individual claims will remain vulnerable as employers know their cases are of no interest to EEOC.

Last year the agency 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 of enforcing discrimination does not lend itself to a widget scorecard. EEOC's drive for numbers has never served either its employees or the public well.

The Union's Accomplishments

In 2016, AFGE Council 216 aggressively raised awareness with Congress and the civil rights community of what EEOC needs to succeed. The promise of America is not fulfilled when discrimination prevents people from working and supporting their families.

As a result of AFGE Council 216's efforts this year:

1. The ten-year-old national overtime grievance finally was settled for \$1.53M and other relief.
2. AFGE Council 216 successfully negotiated an MOU to pilot a Maxiflex program. The program is allowing staff to work smarter.
3. In 2016, EEOC employees were finally able to telework and additional day per pay period, due to a successful result of AFGE Council 216's campaign.

4. AFGE Council 216 obtained, through settlement of a national grievance, needed software for affected staff to redact digital documents.
5. AFGE Council 216 pushed for a staff survey of EEOC's new digital charge system. The public outcry of staff for needed equipment resulted in scanner additions and upgrades in many offices- though more are still needed.
6. AFGE Council 216 has continued to work to improve through negotiations the agency's next generation performance management system and performance standards.
7. 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.
8. In a tough budget year, the administration requested \$376.6M for FY17, which would have been a modest increase for EEOC.
9. AFGE Council 216 provided written testimony for the House CJS Subcommittee open witness hearing in support of an increased budget.
10. Appropriators ultimately marked up EEOC's budget at \$364.5M for FY17, i.e., level funding with no cut. However, the budget falls below EEOC's FY10 \$367M budget.
11. Both House and Senate Appropriators included report language requiring EEOC to prioritize the backlog. Appropriators also specifically retain oversight of any reorganization.
12. AFGE 216 attended the White House Summit on the United State of Women.
13. AFGE 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.
14. AFGE Council 216 aggressively took the fight to the agency as labor management relations have deteriorated, including ULPs for union busting and failing to negotiate in good faith, and settling a national grievance for violating the Staff Development Enhancement Program.

15. AFGE Council 216 kept up the pressure on EEOC's administration to act on the Union's National Intake Plan.
16. AFGE Council 216 responded to EEOC's Sexual Harassment Reboot, advocating to improve the internal harassment program.
17. AFGE Council 216 fights every day to improve the working conditions that have led to the poor morale that is documented in key areas of the annual Federal Employee Viewpoint Survey.

AFGE Activists should urge their lawmakers:

- To avoid or limit an across the board hiring freeze which would be detrimental to efficiently carrying out EEOC's civil rights mission.
- To request FY18 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 on average 10 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 travel and implementing efficiencies.
- To reduce costly turnover by improving poor morale reported on Federal surveys, including applying its harassment reboot in-house, taking a stand against harassment, and providing reasonable accommodations to disabled employees.
- To require EEOC to quickly implement Council 216's Cost-Efficient Intake Plan to provide timely and substantive assistance to the public.
- To direct EEOC to flatten the supervisor to employee staffing ratio to 1:10. EEOC's last reported the ratio to be 1:5.
- 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 Sector 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 percent 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 percent 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 115th 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.

Federal Employees' Compensation Act

The Federal Employees' Compensation Act (FECA) is administered by the U.S. Department of Labor's Office of Workers' Compensation Programs and currently covers roughly 3 million civilian federal employees from more than 70 different agencies. FECA benefits include payments for (1) loss of wages when employees become injured or ill through a work-related activity, (2) schedule awards for loss of, or loss of use of, a body part, (3) vocational rehabilitation, (4) death benefits for survivors, (5) burial allowances, and (6) medical care for injured employees.

The FECA program is particularly important to those men and women whose work-related activity is inherently dangerous – Bureau of Prison correctional workers, U.S. Customs and Border Protection officers, federal firefighters, and other federal law enforcement officers. Unfortunately, it has not been significantly reformed since 1974, and as a result, a number of challenges have emerged.

Support the reintroduction of the Federal Workers' Compensation Modernization and Improvement Act of 2011 (H.R. 2465)

AFGE strongly urges the reintroduction of the bipartisan Federal Workers' Compensation Modernization and Improvement Act (H.R. 2465), which the House passed by voice vote on November 29, 2011.

The reintroduced H.R. 2465 will enhance and update the FECA program, thereby ensuring the program meets the needs of both employees and taxpayers. The bill would reform the FECA program by:

- Authorizing physician assistants and advanced practice nurses, such as nurse practitioners, to provide medical services and to certify traumatic injuries.
- Updating benefit levels for severe disfigurement of the face, head, or neck (up to \$50,000) and for funeral expenses (up to \$6,000) – both of which have not been increased since 1949.
- Making clear that the FECA program covers injuries caused from an attack by a terrorist or terrorist organization.
- Giving federal workers who suffer traumatic injuries in a zone of armed conflict more time to initially apply for FECA benefits and extending the duration of the “continuation of pay” period from 45 days to 135 days.
- Including program integrity measures recommended by the Inspector General and the Government Accountability Office.

AFGE supported this measure in 2011 - and will support it again if reintroduced - because it modernizes the FECA program without undercutting federal employees' compensation benefits.

Oppose the reintroduction of the Workers Compensation Reform Act of 2015, which was Title V of the Improving Postal Operations, Service, and Transparency Act of 2015 (S. 2051)

AFGE strongly opposed the Workers Compensation Reform Act of 2015, which was Title V of S. 2051 – and will oppose it again if reintroduced - especially given the troubling, critical analyses of these proposed changes conducted by the Government Accountability Office (GAO).²

AFGE opposes Title V because it:

1. Would leave totally disabled FECA beneficiaries with the worst long-term injuries vulnerable to impoverishment when they reach their full Social Security retirement ages.

Section 502 of Title V would slash the FECA wage-loss compensation rate for totally disabled beneficiaries to 50 percent of their gross wages at time of injury once those beneficiaries reach their full Social Security retirement age. Currently, totally disabled beneficiaries who have an eligible dependent are compensated at 75 percent of their gross wages at time of injury and those without an eligible dependent are compensated at 66 2/3 percent.

The rationale for making this cut provided by the Senate Homeland Security and Governmental Affairs Committee (HSGAC) report (S.Rept.112-143) is that injured federal employees garner a larger benefit at retirement age under FECA than they would have received if they had been able to work their full careers under the Federal Employees Retirement System (FERS). This has left some lawmakers with the mistaken impression that many injured federal employees have no incentive to return to work, and that their non-injured co-workers receive inequitable retirement benefits after working full careers.

However, GAO has analyzed this “reduce FECA at retirement” proposal and found the rationale is incorrect:

- Under current law, the median FECA benefit packages for federal employee beneficiaries with 30-year federal careers were on par or less than the median FERS benefit packages – depending on the amount a FERS participant contributes toward his or her TSP account for retirement. Under a scenario where there is no employee contribution and the employing agency contributes 1 percent to TSP, the median FECA benefit package is about 1 percent greater than the median FERS benefit package. Under a scenario where each employee contributes 5 percent – and receives a 5 percent

² *Federal Employees' Compensation Act: Analysis of Proposed Program Changes* (GAO-13-108); *Federal Employees' Compensation Act: Analysis of Proposed Changes on USPS Beneficiaries* GAO-13-142R; *Federal Employees' Compensation Act: Effects of Proposed Changes on Partial Disability Beneficiaries Depend on Employment After Injury* (GAO-13-143R); and *Federal Employees' Compensation Act: Analysis of Benefits Under Proposed Program Changes* (GAO-13-730T).

agency match – the median FECA benefit package is about 10 percent less than the median FERS benefit package.

- But under a proposal – like Section 502 – that reduces the FECA wage-loss compensation rate to 50 percent once beneficiaries reach the full Social Security retirement age, GAO found that the median FECA benefit packages for federal employee beneficiaries with 30-year federal careers were significantly less than FERS benefit packages – regardless of the contributions to TSP accounts. Under a scenario where there is no employee contribution – and a 1 percent agency contribution – the median reduced FECA benefit package is about 31 percent less than the median FERS benefit package. Under a scenario where each employee contributes 5 percent – and receives a 5 percent agency match the median reduced FECA benefit package is about 35 percent less than the FERS benefit package.

2. Would be extremely detrimental to totally disabled federal employees with dependents.

Section 503 of Title V would set FECA wage-loss compensation benefits at a single rate - 66 2/3 percent - for totally disabled beneficiaries, regardless of whether the beneficiary has eligible dependents. Currently, totally disabled beneficiaries without an eligible dependent are compensated at 66 2/3 percent of their gross wages at time of injury and those with dependents are compensated at 75 percent - an augmentation of 8 1/3 percent.

The rationale for eliminating the FECA augmented payment provided by the HSGRC report is that “it is out of line with benefits under state workers’ compensation systems” with “few state systems providing any augmentation for dependents.” This, of course, begs the question as to whether the state systems provide adequate wage replacement benefits for totally disabled beneficiaries with dependents. After all, the modest 8 1/3 percent augmentation for totally disabled federal employees with dependents recognizes – unlike the single 66 2/3 percent rate - the greater financial needs of beneficiaries with dependents than those without.

The GAO’s analysis of the “single rate of 66 2/3 percent” proposal found that eliminating the augmented compensation rate would be extremely detrimental to totally disabled beneficiaries with dependents. Such a proposal:

- Would increase the difference in the 2010 median wage replacement rates between totally disabled FECA beneficiaries with and without a dependent—but would reverse the direction of the difference to the detriment of beneficiaries with dependents. Currently under FECA, the 2010 median wage replacement rate of beneficiaries with dependents is *3.5 percent higher* than those without a dependent: 81.2 percent compared to 77.7 percent. But under the “single rate of 66 2/3 percent” proposal, the 2010 median wage replacement rate of beneficiaries with dependents is *5.5 percent lower* than those without a dependent: 72 percent compared to 77.7 percent.

- Would reduce the 2010 median wage replacement rate for totally disabled FECA beneficiaries with dependents by 9 percent: 81.2 percent under FECA compared to 72.2 percent under the “single rate of 66 2/3 percent” proposal. At the same time, the 2010 median wage replacement rate for FECA beneficiaries without dependents would remain the same: 77.7 percent.

Food Safety Inspection Service

Summary

The Food Safety and Inspection Service (FSIS) is the public health agency in the U.S. Department of Agriculture responsible for ensuring that the nation's commercial supply of meat, poultry, catfish, and egg products is safe, wholesome, and correctly labeled and packaged. The National Joint Council of Food Inspection Locals (Council) of the American Federation of Government Employees, AFL-CIO, which represents the 6,200 FSIS inspectors, believes that fulfilling the following "needs" would help those hardworking inspectors better accomplish the FSIS mission:

- The need for more meat and poultry inspectors.
- The need for an Executive Order to transition permissive subjects of bargaining under 5 USC 1706(b)(1) into mandatory subjects of bargaining under 5 USC 7106(b)(2)(3). This can be accomplished by deleting the authority of FSIS and other agencies to decline to elect to negotiate 5 USC 7106(b)(1) permissive subjects.
- The need for a government or academic research study on (1) the effectiveness of antimicrobial sprays on possible salmonella in chicken and (2) the potential costs of antimicrobial sprays on FSIS inspectors and plant workers.
- The need to provide individuals with minor impairments the opportunity to work as FSIS inspectors.

Need for more Meat and Poultry Inspectors

Created in 1981, the FSIS is federally mandated to continuously monitor the slaughter, processing, labeling and packaging of meat and poultry products to ensure the safety and wholesomeness of the billions of pounds of meat and poultry products that enter the market each year.

Unfortunately, the FSIS is suffering a serious shortage of inspectors at some of the nation's meat and poultry plants, a shortage that is threatening our nation's food supply. According to a 2015 Food and Water Watch analysis of USDA records, more than half of the FSIS districts are running double-digit vacancy rates for permanent full time inspectors.

This permanent inspector shortage is causing the inspection system to be strained to the point of breaking. There have been an increasing number of recalls of products under FSIS jurisdiction due to the lack of inspection. We believe that they are related to the lack of proper permanent inspection staffing across the country.

The shortages of permanent FSIS inspection personnel are the direct result of an FSIS hiring freeze policy adopted in 2012 in anticipation of a controversial proposed rule that would radically change the manner in which poultry is inspected. (*Modernization of Poultry Slaughter Inspection*, 77 FR 13512, January 27, 2012) The hiring policy capped the number of permanent federal inspectors. Any vacancies that developed were to have been filled with “temporary” inspectors who could be terminated when the new rule was finalized. However, the “temporary” inspector hiring program has not achieved its goals and left most parts of the country short of USDA inspectors. Such inspector vacancy problems remain, despite the fact the role of federal inspectors in poultry plants is reduced, turning many of those responsibilities over the companies to police themselves.

We agree with Wenonah Hauter, Executive Director of Food and Water Watch: “USDA’s own data tells the story – inspector shortages mean that some meat and poultry products are not being adequately inspected. It is time for [the new President], Congress and the USDA to make sure that meat and poultry inspection gets the necessary resources to provide continuous government inspection of meat and poultry products.”

NEED FOR AN EXECUTIVE ORDER TO TRANSITION PERMISSIVE SUBJECTS OF BARGAINING UNDER 5 USC 1706(b)(1) INTO MANDATORY SUBJECTS OF BARGAINING UNDER 5 USC 7106(b)(2)(3). THIS CAN BE ACCOMPLISHED BY DELETING THE AUTHORITY OF FSIS AND OTHER AGENCIES TO DECLINE TO ELECT TO NEGOTIATE 5 USC 7106(b)(1) PERMISSIVE SUBJECTS.

The current 5 USC 7106(b)(1) states that:

Nothing in this section shall preclude any agency and any labor organization from negotiating – (1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty, or on the technology, methods, and means of performing work.

As can be seen, these permissive subjects include the methods and means of performing work and the number of employees assigned to an organizational subdivision. However, federal labor unions have no recourse if agencies decline to elect to negotiate these 7106(b)(1) permissive subjects.

To affect the “permissive subjects to mandatory subjects” change, an Executive Order must include the following language:

Election to Negotiate – I [President Donald J. Trump] hereby elect, on behalf of all executive departments and agencies covered by this order, to negotiate over the subjects set forth in 5 USC 7106(b)(1). My election to negotiate may not and shall not be revoked by department or agency heads or their subordinate officials. For purposes of proceedings undertaken pursuant to chapter 17 of Title 5, any attempts by department or agency heads or their subordinate officials to revoke my election shall have not force or effect.

Interestingly, the *2012 Report to the President on Negotiations Over Permissive Subjects of Bargaining: Pilot Projects*, produced by the National Council on Federal Labor-Management Relations found many positive outcomes:

- Participants generally reported faster resolution of issues being address.
- Participants uniformly reported an improvement in the labor-management relationship.
- Positive prior relationships, as well as agency and union leadership commitment, likely contributed to positive outcomes from the pilot projects.
- The requirement to collaboratively plan, identify metrics, or success indicators, and measure the outcomes also appears to have contributed to the pilots' effective bargaining.

NEED FOR A GOVERNMENT OR ACADEMIC RESEARCH STUDIES ON (1) THE EFFECTIVENESS OF ANTIMICROBIAL SPRAYS ON POSSIBLE SALMONELLA IN CHICKEN AND (2) THE POTENTIAL COSTS OF ANTIMICROBIAL SPRAYS ON FSIS INSPECTORS AND PLANT WORKERS.

The line speed of meat and poultry plants have increased over the last several years, making it harder to ensure that the meat and poultry produced there are safe and wholesome. Rather than slowing down and ensuring good sanitation, the industry wants to ramp up the antimicrobial sprays they aim at bird carcasses as they zoom down the line – a chemical fix to the problem of Salmonella and other pathogens.

But how effective is this chemical onslaught on Salmonella and other pathogens?

In the August 3, 2013 edition of the *Washington Post*, reporter Kimberly Kindy reported that there is evidence that the chemical onslaught is **masking, rather than reducing**, the amount of disease-causing bacteria on our supermarket chicken.

Here's how the system is supposed to work, according to Ms. Kindy:

"As the chicken moves down the processing line, the bird is sprayed with, and bathed in, an average of four different chemicals. To check that most bacteria have been killed, occasional test birds are pulled off the line and tossed into plastic bags filled with a solution that collects any remaining pathogens. That solution is sent to a lab for testing, which takes place about 24 hours later. Meanwhile, the bird is placed back on the line and is ultimately packaged, shipped and sold."

But for the pathogen tests to be accurate, Ms. Kindy reports that:

"...it is critical that the pathogen-killing chemicals are quickly neutralized By the solution – something that routinely occurred with the older, weaker Antibacterial chemicals. If the chemicals [in the plastic bag] continue To kill bacteria, the testing indicates that the birds are safer to eat Than they actually are."

(Quotes taken from "USDA reviews whether bacteria-killing chemicals are masking salmonella," by Kimberly Kindy, Washington Post, August 3, 2013)

At the same time, what are the effects of this chemical onslaught on FSIS inspectors and plant workers?

Ms. Kindy reported in an earlier *Washington Post* article, dated April 25, 2013, that “in interviews, more than two dozen FSIS inspectors and poultry industry employees described a range of ailments they attributed to chemical exposure, including asthma and other severe respiratory problems, burns, rashes, irritated eyes, and sinus ulcers and other sinus problems.” Unfortunately, however, little or no research has been conducted. According to Ms. Kindy, no industry-wide study has been done by the USDA or any other government agency, and USDA does not keep a comprehensive record of illnesses possibly caused by the use of chemicals in the poultry industry.” (Quotes taken from “At chicken plants, chemicals blamed for health ailments are poised to proliferate,” Kimberly Kindy, *Washington Post*, April 25, 2013.)

FSIS makes great claims about their new final rule on *Modernization of Poultry Slaughter Inspection*, 79 FR 49566, August 21, 2014: that it will improve food safety while cutting taxpayer costs by \$90 million over three years. But no word yet on the potential costs of antimicrobial chemical sprays on FSIS inspectors and plant workers.

NEED TO PROVIDE INDIVIDUALS WITH MINOR IMPAIRMENTS THE OPPORTUNITY TO WORK AS FSIS INSPECTORS

FSIS inspectors – plant inspectors and import inspectors – comprise the largest category of employees in the agency, with over 6,200 nationwide. The FSIS website states that to qualify for an entry-level position, an applicant must:

- Pass a written test
- Have a Bachelors degree or one year of job-related experience in the food industry. This experience must demonstrate knowledge of sanitation practices and control measures used in the commercial handling and preparation of food products for human consumption. Qualifying experience should also demonstrate skill in applying, interpreting, and explaining standards in a food product environment.
- These FSIS inspector positions require a successful passing of a pre-employment screening.

Individuals with minor impairments who successfully meet the above requirements should be provided the opportunity to work as a FSIS inspector. It should not matter if the individual is overweight or a U.S. veterans who uses a hearing aid. Indeed, both individuals could bring compensatory attributes to the position – a specific knowledge in interpreting and explaining standards or specific leadership abilities.

Federal Budget

Summary

For more than a decade, our nation has been suffering under the burden of austerity budgets and mindless spending cuts. As a result of these austerity budgets, we have been disinvesting in national priorities such as education, infrastructure, research, job creation and health care. The Flint water crisis, response to pandemics like Zika, and decaying schools, bridges, tunnels, and highways are all examples. What's another result of austerity budgets? A weaker economy. Even though most Americans have recovered from the Great Recession, we are still experiencing a historically anemic recovery with poor job and wage growth and slow productivity. A third result is the relentless cuts imposed on federal workers, all justified by "deficit reduction." Since 2008, federal workers have endured pay freezes, paltry pay raises, and cuts to their retirement benefits, totaling more than \$180 billion.

What's the solution? First we need to increase federal discretionary spending, especially non-defense discretionary spending which funds the critical operations of our government. The new Administration and the 115th Congress should start by repealing the Budget Control Act's discretionary spending caps. Second, we should expand safety net programs which will both help the vulnerable and provide an automatic stabilizer against future recessions. Third, we should repeal the law establishing the debt ceiling which triggers budget crises, financial market volatility, and mindless spending cuts. Fourth, we should compensate federal workers for eight years of benefit and salary cuts by giving them a 3.2 percent pay raise and we should expand, not further cut, the size of the federal workforce. The federal civilian workforce is currently the same size as during the Johnson Administration fifty years ago even though the size of our population has expanded dramatically. The number of federal workers should be based on what's needed to complete the mission and not shrunk because of arbitrary caps.

We can pay for this additional spending in two ways. First, we should raise taxes on the wealthy and large corporations, neither of which are paying their fair share. Second, we should borrow by taking advantage of historically low interest rates to issue long term bonds. The deficit and national debt are at manageable levels and with additional revenue and additional growth triggered by more spending, they will remain so. And in any case, it is time to stop focusing on budget deficits and start focusing more on deficits in human capital, jobs, and infrastructure. Ending austerity budgets will help ensure our kids get good educations, veterans continue to get quality health care, law enforcement officers get the resources needed to keep us safe, and our roads and bridges are the highest quality.

Discussion

A. FEDERAL SPENDING: INVESTING IN PEOPLE

The new Administration and the 115th Congress will have the tremendous task of setting the course for federal spending policy. As a country, we have a choice between two options which stand diametrically opposed to each other: use spending policy to invest as a social good, or continue down a path of budgetary austerity. Certainly, no rational person would argue that free-wheeling spending is the be-all and end-all to the problems facing our country. However, by not increasing the amount of federal money invested in the workforce, in infrastructure, and in institutions, it's inconceivable that as a nation we can adequately face the challenges that lie ahead.

History provides several examples of how the federal government can be a force for good through building social capital by investing in people. During our darkest financial times in the 1930s, President Roosevelt's New Deal programs not only put Americans back to work, but also used those jobs to create roads, bridges, and schools. This investment has paid dividends for three generations of Americans who still benefit from the infrastructure created as a solution to dire economic times. Later, President Eisenhower used the federal government to connect the entire country through the interstate highway system. These programs provided good paying jobs as well as products that strengthened the economy, educated the workforce, and brought America fully into the new century. The new Administration and the 115th Congress have the opportunity to build on the success of the last eight years and use the federal government as a positive tool to bring about prosperity.

Even with the enormous amount of good that will come from public investment, making this a reality will not be easy. Since the enactment of the Budget Control Act in 2011, federal spending has been suffocating under the weight of sequestration. In order to meet the rising needs of everyday Americans, the new Administration and the 115th Congress should place an emphasis on increasing discretionary spending. Discretionary spending is the part of the federal budget which funds the basic operations of government. As a result of the Budget Control Act, we have spent the past five years drastically underfunding the government, which means agencies lack the resources to address national needs like funding education, protecting the environment, fixing our highways, and making advancements in health and science research. The impact of these disastrous cuts are felt across every agency throughout our government and its workforce.

Federal workers make the lofty goals of government programs and initiatives a reality. These are men and women from every corner of the country who have made public service their life's calling. Federal employees care for our veterans, provide support for our armed services, patrol our borders, and make sure social security checks are processed and delivered on time. But far too often over the last six years, federal employees have been used as an ATM for budgetary "pay-fors" in congressional agreements. For example, in less than a decade, federal employees have been forced to give up more than \$180 billion in pay and benefits all in the name of deficit

reduction. All this does is cripple federal agencies by making it harder to attract and retain the best candidates for open positions. This does not make government more efficient; if anything, it perpetuates the false narrative that the government is broken. The government has problems because Congress has spent nearly a decade trying to drive a car without any gasoline. To correct these problems, the American Federation of Government Employees makes the following recommendations:

Repeal the Budget Control Act

Throughout the first part of 2011, Congress struggled to find a bipartisan solution to raising the debt limit. The 2010 midterm elections brought about a party switch in the U.S. House of Representatives, and the new majority wanted to see significant spending cuts be made in exchange for increasing the debt limit and preventing a default on our financial obligations. After months of debate, turmoil, and uncertainty, the final product became the Budget Control Act, which President Obama signed into law on August 2, 2011. As part of the agreement, Congress authorized a debt ceiling increase but imposed spending cuts and created the Joint Select Committee on Deficit Reduction (popularly termed the “Super Committee”) whose goal was to find ways to cut \$1.5 trillion over the course of ten years. Predictably, the Committee failed to find common ground between the two parties and was unable to formulate a plan that could get through both chambers of Congress.

When sequestration went into effect, discretionary and mandatory federal spending became arbitrarily cut. Instead of providing a lesson in “belt tightening,” this misguided approach to cost-cutting sent us further down the path of financial mismanagement which led to another crisis - the fiscal cliff - a few short years later. As a result of the Budget Control Act, we have spent the past five years drastically underfunding the government, which means agencies lack the resources to address national needs like funding education, protecting the environment, fixing our highways, and making advancements in health and science research. In 2017, non-defense discretionary spending will equal 3.2 percent of the economy - which is just 0.1 percent above the lowest level on record going back fifty years to 1962. By 2021, it will fall to 2.8 percent. The impact of these disastrous cuts are felt across every agency throughout our government and its workforce.

With that in mind, we believe that it is in the country’s best interest to outright repeal the Budget Control Act and eliminate sequestration. Congress should spend what is needed instead of being bound by arbitrary caps on the federal budget. By repealing the Budget Control Act, appropriators would be free to actually assess the needs of the federal government and fund accordingly.

Far too frequently in the last five years, we have seen serious natural disasters damage our communities and those communities have called out to the federal government for aid and assistance. Instead of being able to move expediently to authorize aid, that money gets tied up in prolonged congressional battles because money must be shifted around to avoid running up against these arbitrary caps. Sequestration isn’t just bad policy, it’s dangerous and

unnecessarily harms those who need help the most. Surely, we can do better than allowing those in need to fall victim to political posturing.

Invest in the Federal Workforce

As the budgetary climate has grown more contentious, federal employees have been forced to step up time and time again to help get our financial house in order. Sadly, though, this has not been a shared sacrifice. Arguably, no other single group has been asked to sacrifice more than the federal workforce. Federal workers have endured three years of pay freezes and minuscule cost of living adjustments all while being asked to contribute more for their health care coverage and pensions. Congress has used the federal workforce as a piggy bank for deficit reduction, and this mindset should be changed.

Career public servants have the knowledge, experience, and skills our country needs to run the government effectively and efficiently. But in order to retain these skilled workers, we must stop demonizing them as the cause for all of our fiscal woes. In 2014, the Wall Street Journal highlighted that the federal government's workforce was at its smallest point since 1966. What's even more telling is this report showed the share of the total federal civilian workforce was at its lowest point since World War II. It's impossible to think that we can run a 21st century government with mid-20th century staffing levels. This approach has been wrong and should be remedied. The Social Security Administration (SSA) provides just one example of the price paid for workforce reductions. Because of budgets cuts, SSA had to eliminate 2,000 field office staff and reduced field office hours to 31 hours per week. What's the result? The number of applicants awaiting a disability hearing has increased to more than one million, an all-time high. The average caller to SSA's 800 number now must wait 15 minutes and almost 10 percent of callers get busy signals.

In addition to having reliable pay and retirement security, federal jobs provide a degree of certainty in uncertain times. During the Great Recession, federal workers knew that their jobs were largely safe, which allowed them to continue spending and putting money back into a desperate economy. AFGC believes that we don't need fewer federal employees, we need more. The new Administration and the 115th Congress should rely less on contracting work out and focus more on insourcing. We need to grow the federal workforce so that every agency is adequately staffed and has the resources necessary to fulfill its mission.

As discussed in the previous section, eliminating the sequester will allow appropriators to fund agencies at their true need. This means providing more boots on the ground across our borders, more correctional workers securing our prisons, more researchers developing the next big breakthrough in science and health, and more opportunity for young Americans seeking to dedicate their life to serving the country. It's impossible to have a good government without a good workforce, and we need to focus more on investing in people and opportunity rather than abiding by arbitrary calls for austerity.

Investing in Infrastructure

President Roosevelt's New Deal should serve as a roadmap for the future for the new Administration and the 115th Congress. They should lay out a bold vision for addressing our crumbling infrastructure. This means raising the level of investment we put into our roads, bridges, highway system, and power grid. Instead of following his predecessor's mistake of trying to cut and deregulate his way to prosperity, President Roosevelt took a financial calamity and turned it into an opportunity to vastly renovate our infrastructure. This is the same mindset we must use when approaching the next four years.

We are approaching crisis-level of infrastructure instability. According to the Center for Budget and Policy Priorities, our roads, bridges, and transit system faced a \$1.7 trillion-dollar funding gap in 2013. What makes this situation even more dire is that our airports and railway systems are underfunded by a rate of \$134 billion and \$100 billion, respectively. That same year, the American Society of Civil Engineers gave the United States a "D+" rating for infrastructure. This is a major problem that must be addressed – and addressed now – or else future generations will suffer and be forced to pay the cost of our inaction.

There is no doubt that this will take a significant upfront investment, but studies have shown that infrastructure improvements can actually pay for themselves in the long run by expanding the economy and broadening the tax base. According to former Treasury Secretary Lawrence Summers, "If the return is only 6 percent and the government collects about 25 cents on every dollar of GDP, the government will earn 1.5 percent on investments. This far exceeds the real cost of borrowing even over a horizon of 30 years." Secretary Summers has argued that it would be virtually impossible for the United States to overinvest in infrastructure, estimating that a small investment of 1 percent of the GDP for over a decade would end up totaling \$2.2 trillion which would allow for substantial upgrades.

The Economic Policy Institute has also argued that if we were to increase infrastructure investment by \$250 billion annually over seven years, we would actually also boost annual productivity growth. They estimate that under this scenario it would be possible for an additional one million workers to find employment each year. This type of public investment will yield returns for decades to come through stronger infrastructure, more jobs, and greater connectivity across our country. It's an ambitious goal that will require significant political courage, but if done successfully would create lasting progress.

Repeal the Debt Ceiling

We need to repeal the law requiring Congress to raise the debt ceiling in order for the government to increase borrowing. The debt ceiling has led to financial market volatility, higher costs for federal borrowing, and multiple budget crises. In 2013, congressional Republicans refused to increase the debt ceiling unless President Obama would accept \$2 trillion in spending cuts. If President Obama had not backed down, Republicans pledged to default on our

debt for the first time in our nation's history. The consequences of default on our nation and the world economy would have been catastrophic.

Aside from the damage it causes, the debt ceiling is completely unnecessary to control borrowing. Congress sets spending, revenue, and borrowing levels every year. If Congress wants to reduce borrowing, it has the power to do so either by raising taxes, cutting spending, or both. No major nation, except Denmark, even has a debt ceiling to control borrowing. And ironically, the debt ceiling was first enacted one hundred years ago to make it easier, not harder, for the government to borrow.

B INCREASE FEDERAL REVENUES

America is undertaxed, and the result is underfunding of public investments that would improve the American economy and of critical federal government programs that support low- and middle-income Americans. Fortunately, the new Administration and the 115th Congress have many policy options to raise revenue, mostly by closing loopholes imbedded in the U.S. tax code that primarily benefit wealthy individuals, profitable businesses, and multinational corporations.

I. An Undertaxed America?

America Is Not Overtaxed

The belief that Americans pay too much taxes, instead of too little, permeates our political discourse. As a result, anti-tax activists insist that any tax reform should be revenue-neutral, that is, no tax loopholes should be closed unless tax rates are also reduced. This approach is totally unwarranted because America is actually one of the least taxed countries in the developed world. According to the Organization for Economic Cooperation and Development, the United States collects less tax revenue as a percentage of gross domestic product than all but two other industrial countries – Chile and Mexico. (Source: OECD data 2014, <http://stats.oecd.org/>)

Wealthy Individuals Are Not Overtaxed

Another anti-tax argument is that the richest one percent of Americans are already paying more than their fair share of taxes. This argument is false. America's tax system is just barely progressive and it does very little to address the growing income inequality America has experienced over the last several decades. (Source: *Winner-Take-All Politics* by Jacob Hacker and Paul Pierson 2010)

Indeed, the share of total taxes paid by each income group is very similar to the share of total income received by each group. For example, the share of total taxes (including federal, state, and local taxes) paid by the richest one percent (23.7 percent) is not significantly different from the share of total income this group receives (21.6 percent). Similarly, the share of total taxes

paid the poorest 20 percent (2.1 percent) is only slightly lower than the share of total income this group receives (3.3 percent). (Source: Institute on Taxation and Economic Policy Tax Model, February 2014)

Corporations Are Not Overtaxed

Anti-tax activists also complain that the 35 percent U.S. statutory corporate income tax rate is one of the highest in the world. But they fail to mention that the *effective* corporate income tax rate, the percentage of profits that corporations actually pay, is much lower due to loopholes that reduce their taxes. In fact, some corporations pay nothing at all. A 2016 Government Accountability Office report found that for tax years 2008 to 2012, profitable large U.S. corporations paid an average effective tax rate of just 14 percent and that 20.8 percent of profitable large U.S. corporations paid no federal corporate income tax. (Source: *Most Large Profitable U.S. Corporations Paid Tax but Effective Tax Rates Differed Significantly from the Statutory Rate*, Government Accountability Office, March 2016)

II. Revenue Options Affecting High-Income Individuals

Repeal the special low income tax rates for capital gains and dividends

10-year revenue gain: \$1.3 trillion

Billionaires like Warren Buffet pay a lower tax rate than millions of middle-class Americans because federal taxes on investment income are lower than the taxes many Americans pay on salary and wage income. Because Buffett gets a high percentage of his total income from investments, he pays a lower income tax rate than his secretary. Currently, the top statutory rate on investment income is just 23.8 percent, but it's 39.6 percent on salary and wage income. To reduce this inequity, the new Administration and the 115th Congress should propose the elimination of the special low income tax rates for capital gains and dividends so they match the tax rates on salaries and wages.

Limit benefits of deductions and exclusions for the wealthy ("28 Percent Rule")

10-year revenue gain: \$498 billion

Wealthy Americans are able to get much bigger tax breaks from the same tax deductions taken by the middle class. For example, a wealthy family living in a so-called "McMansion" gets a much bigger tax deduction on the interest on their large mortgage than a middle-class family gets on their small mortgage on a two-bedroom house. The new Administration and the 115th Congress should propose to limit the tax break on deductions that the wealthiest 3 percent can take to 28 cents on the dollar. In other words, wealthy Americans would get the same tax benefit per dollar of deductions as a household in the 28 percent but not more at the higher 39.6 percent bracket.

Raise the estate tax

10-year revenue gain: \$131 billion

There are at least two reasons why we should raise the federal estate tax:

- **The estate tax is one of our nation's most progressive revenue sources.** IRS data shows that less than 4,700 estates (or the richest 0.18 percent of all estates) owed any estate tax whatsoever in 2013. Put another way, repealing the federal estate tax would do nothing for 99.82 percent of estates that already do not owe a penny in federal estate taxes. That is because the exemption levels for the estate tax are very high - \$5.3 million per individual (\$10.6 million per couple).
- **The estate tax can be an even greater source of federal revenue.** The nonpartisan Joint Committee on Taxation estimates that the federal estate tax raises about \$268 billion in federal revenues over the next ten years. (Source: *Reasons Why We Need a Robust Estate Tax*, Citizens for Tax Justice, March 26, 2015) Raising the rates on wealthy families will generate considerably more tax revenue for the Treasury.

The new Administration and the 115th Congress should restore the existing exemptions to at least their 2009 levels - \$3.5 million for an individual (\$7 million for a couple) taxed at a 45 percent top rate. This would raise an additional \$131 billion over ten years and would result in no additional taxes for 99.7 percent of estates.

III. Revenue Options Affecting Businesses

Repeal accelerated depreciation

10-year revenue gain: \$714 billion (\$428 billion permanent revenue and \$286 billion temporary revenue)

Accelerated depreciation allows a company to take these deductions more quickly than the equipment actually wears out. The deductions for the cost of capital purchase are thus taken earlier, which makes them bigger and more valuable.

Combined with rules allowing corporations to deduct interest expenses, accelerated depreciation can result in very low, or even negative, tax rates on profits from particular investments. A corporation can borrow money to purchase equipment or a building, deduct the interest expenses on the debt, and quickly deduct the cost of the equipment or building thanks to accelerated depreciation. The total deductions can then be more than the profits generated by the investment.

The new Administration and the 115th Congress should repeal accelerated depreciation. Repealing accelerated depreciation would raise \$714 billion over ten years but only 60 percent - \$428 billion – raised in the first decade should be counted as permanent revenue. A 2013 Center on Budget and Policy Priorities report found that revenue raised from repealing accelerated depreciation would be much larger in the first decade than in later decades because part of the revenue increase represents a change in timing of tax payments. That

report explained that repealing accelerated depreciation would raise only about 60 percent as much in later decades as it would raise in the first decade after enactment. (Source: *Timing Gimmicks Pose Threat to Fiscally Responsible Tax Reform*, Center on Budget and Policy Priorities, July 24, 2013.)

Expansion of the Law Enforcement Officer Statutory Definition

Congress must amend Title 5 of the United States Code to include federal law enforcement professionals whose duties meet the current statutory definition of a federal Law Enforcement Officer (LEO). Under present law, the definition of a LEO does not include positions such as officers of the Federal Protective Service (FPS), and police officers from the Department of Defense (DOD), Veterans Affairs (VA) and the U.S. Mint. Despite having duties similar to or identical to other LEOs, these law enforcement professionals do not have equal pay and benefits status with their occupational counterparts. Specifically, they have lower rates of pay and are not eligible for full retirement benefits until years after their LEO peers. As a result of this disparity, the law enforcement agencies with lower pay and benefits are greatly disadvantaged when recruiting and retaining trained law enforcement professionals, and have low employee morale.

Statutory Definition of a Law Enforcement Officer

Because law enforcement positions require officers to be “young and physically vigorous,” and LEO positions have mandatory retirement ages ranging to just age 57, the federal government makes special provision for unreduced retirement at a younger age than that applied to other federal employees. Under both the Civil Service Retirement System (CSRS) and Federal Employee Retirement System (FERS), an employee who qualifies for LEO retirement status is eligible to retire upon attaining the age of 50, and after completing 20 years of eligible LEO service. In order to be eligible for LEO retirement coverage, positions must meet both the statutory definition under Title 5 U.S.C. Section 8401 as well as LEO requirements under CSRS or FERS.

Under 5 U.S.C. Section 8401(17)(A), the term LEO means “an employee the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the U.S., or the protection of officials of the U.S. against threats to personal safety; and are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals.”

Both CSRS and FERS prescribe somewhat different standards for determining whether an employee may be eligible for LEO retirement status. In order to be eligible under CSRS and FERS, the duties of the employee’s position must be “primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States.” “Primary duties” means those duties of a position that:

- (1) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;
- (2) Occupy a substantial portion of the individual's working time over a typical work cycle; and
- (3) Are assigned on a regular and recurring basis.

The definition under FERS adds the further requirement that the duties of the position “are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals.”

The Importance of LEO Status

LEOs are entitled to many benefits that reflect the government’s acknowledgement of their unique status. Under 5 U.S.C., Section 8336(c), a federal LEO with a minimum of 20 years of service at age 50, or 25 years of service is eligible to retire with a federal annuity. In contrast, federal employees who are not LEOs may begin to collect their annuities only after reaching age 60 with 20 years in federal service. Law enforcement retirement rules mandate LEOs to contribute more of their salary toward retirement than federal employees who are not LEOs. As a result of this contribution, LEOs are eligible to continue participation in the Federal Employees Health Benefits Program (FEHBP) and the Federal Employees Group Life Insurance (FEGLI) immediately after they retire.

In contrast, employees without LEO status are not eligible for continued FEHBP or FEGLI coverage after early retirement unless the retirement was a result of a downsizing, Reduction in Force (RIF), or offered in some other context under Voluntary Early Retirement Authority (VERA). Additionally, annuities for federal law enforcement officers and firefighters are calculated according to a substantially more generous formula than that used for regular FERS employees.

Under FERS, LEOs also receive a “special retirement supplement” (SRS) if they retire when they are under age 62. This SRS provides an approximation of their Social Security benefit if they had retired at an age when they were eligible for Social Security retirement benefits. Recently, legislation was signed into law that eliminated the early withdrawal penalty fee for LEOs who retire early after age 50. Congress passed this legislation in recognition of the fact that LEOs are often forced to retire before they become eligible to receive Social Security retirement benefits or can make withdrawals from their Thrift Savings Plan (TSP) without a financial penalty.

Early retirement without financial penalties, as well as the aforementioned benefits available to retired LEOs serve as recruitment and retention tools and reflect the government’s interest in having “young and physically vigorous” individuals in law enforcement positions. All federal law enforcement personnel deserve equal treatment. The inequities in pay and benefits across law enforcement agencies lead to high turnover after law enforcement professionals are trained because they are recruited by other agencies that give them full respect, status, pay, and benefits. Ultimately, public safety suffers from this inequity because law enforcement agencies are not able to consistently maintain an adequate law enforcement workforce.

Expansion of LEO Statutory Definition

During the 114th Congress, Representative Peter King (R-NY) introduced H.R. 2254, the “Law Enforcement Officers Equity Act,” which proposes to amend the definition of the term “law

enforcement officer" to include federal employees whose duties include the investigation or apprehension of suspected or convicted individuals and who are authorized to carry a firearm; employees of the Internal Revenue Service (IRS) whose duties are primarily the collection of delinquent taxes and the securing of delinquent returns; employees of the U.S. Postal Inspection Service; and VA police officers. Senators Cory Booker (D-NJ) and Senator Barbara Mikulski (D-MD) also introduced similar legislation, S. 2946, the "Law Enforcement Officers Equity Act," to amend title 5, United States Code, to include certain Federal positions within the definition of a law enforcement officer for retirement purposes.

AFGE supported both H.R. 2254, and S. 2946, but further urged Congress to address the inequities in pay and benefits within the federal law enforcement workforce by expanding the statutory definition of a LEO to include FPS officers, as well as police officers from VA, DOD and the U.S. Mint. The primary duties of these law enforcement professionals include the protection of federal buildings, federal employees, officials, and the American public; as well as duties and responsibilities that are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the U.S., or the protection of officials of U.S. officials against threats to personal safety. These professionals are trained to use and carry authorized firearms, yet they are only considered law enforcement officers when they are killed in the line of duty and their names are inscribed on the wall of the National Law Enforcement Officers Memorial.

FPS officers, and police officers from VA, DOD and the U.S. Mint are honorable protectors of the public and they deserve recognition as law enforcement officers. The primary duties and responsibilities of these law enforcement professionals are not only rigorous, but are also in direct alignment with the statutory definition of a LEO.

AFGE strongly urges the 115th Congress to pass legislation to amend 5 U.S.C. Section 8401 to include FPS officers, and police officers from the VA, DOD and the U.S. Mint in the definition of a LEO.

Census Bureau AFGE COUNCIL 241 Legislative Issues

Support Funding Level for the U.S. Census Bureau In FY 2017 CJS APPROPRIATIONS BILL (Oppose Any Amendments to Reduce the Census Budget)

When the Congress consider the final Fiscal Year 2017 appropriation bill and the 2018 appropriation bill, the Census Bureau AFGE Council 241 urges the congress to increase funding for the U.S. Census Bureau above the levels in the House and Senate Commerce, Justice, and Science bills. Funding below the President's \$1.634 billion budget request will jeopardize implementation of a modern, cost-effective, and accurate **2020 Census**, and preservation of a robust **American Community Survey (ASC)**.

The committee allocated only 60 percent of the requested increase for the agency, at a time when the Bureau must "ramp up" spending in preparation for the 2020 Census, the nation largest civilian mobilization. In FY2017, the agency must test new counting methods in rural areas and on Tribal lands (as well as in Puerto Rico); finalize questionnaire topics (required by law); finalized decisions regarding design reforms and finish production of IT and operational systems, in time for an end to end readiness test in 2018; acquire space for six Regional Census Centers, and develop a vast, nimble Integrated Communications Plan to reach an increasingly diverse population efficiently and effectively.

Without adequate funding next year, the Census Bureau could abandon new, cost-saving methods as too risky or insufficiently vetted- decision that could increase census costs by billions of dollars, or put the accuracy of the census at grave risk, given Congress' directive to keep the cost of the 2020 Census at or below the 2010 Census level.

Alternatively, the Bureau could be forced to scale back other programs, most notably the 2017 Economic Census and American Community Survey (ACS), which are irreplaceable sources of data for key economic indicators and socio-economic characteristics that support government and private sector decision-making. Congress has directed the Census Bureau to reduce the burden of ACS response, while preserving reliable and comprehensive data that guide the allocation of \$ 415 billion annually in federal grants. Budget cuts will continue to slow promising research to accomplish these goals.

An accurate census and comprehensive ACS help ensure fair political representation ACS help ensure fair political representation- for Congress down to local school boards- and the prudent distribution of federal aid to states and communities each year.

Lastly the Census Bureau data are central to sustaining our nation's democracy, facilitating informed decision-making.

2017 Legislative Issues Supported by AFGE Firefighters Steering Committee

The federal firefighters represented by the American Federation of Government Employees, AFL-CIO will work to have the following pieces of legislation reintroduced in the 115th Congress:

HR 1035: Federal Firefighter's Fairness Act of 2015, introduced by Representative Lois Capps (D-CA)

This Bill would create a presumption that a disability or death of a Federal employee in fire protection activities caused by any certain diseases is the result of the performance of such employee's duty.

The bill would provide that specified cancers of federal employees employed in fire protection activities for a minimum of 5 years shall be presumed to be proximately caused by such employment if the employee is diagnosed with the disease within 10 years of the last active date of employment in fire protection activities. If enacted, this bill would provide reporting criteria to the National Institute of Occupational Safety and Health and an analysis of the available research related to the health risks associated with firefighting; including recommendations for any administrative or legislative actions necessary to ensure that those diseases most associated with firefighting are included in the presumption created by this Act.

HR 4625: Firefighter cancer Registry Act of 2016, introduced by Representative Richard Hanna (R-NY)

This Bill would require the Secretary of Health and Human Services to develop a voluntary patient registry to collect data on cancer incidence among firefighters.

Studies conducted since the 1990s have indicated a strong link between firefighting and an increased risk for several major cancers. The cancers identified as most common among firefighters according to these studies include testicular cancer, which male firefighters are 102 percent more likely to be diagnosed with, stomach cancer, multiple myeloma, and brain cancer, among several others. The heightened incidence of cancer among firefighters has been attributed to their frequent exposure to a range of harmful substances including resultant pyrolysis products, toxic particulates, gases and fumes, metals such as cadmium and lead, chemical substances such as benzene and vinyl chloride, and minerals such as asbestos and silicates.

Many States already maintain cancer registries that collect and collate information regarding cancer diagnoses, demographic information, and treatment plans. While these State-based cancer registries undoubtedly contribute to furthering research related to assessing cancer incidence among firefighters, a special purpose national cancer registry would provide researchers and public health agencies with more direct and comprehensive access to the

specific set of information they need to conduct more robust, focused, and epidemiologically rigorous research on cancer incidence among firefighters.

HR 4729: Federal Firefighter Pay Equity Act, introduced by Representative Gerald E. Connolly (D-VA)

The purpose of this Act is to correct the manner in which retirement benefits for Federal firefighters are computed so as to account for pay earned for regularly scheduled overtime hours during a normal tour of duty.

Currently federal firefighters work a 72-hour workweek, and as such 19 hours per week is scheduled overtime; used for the computation of pay. But the pay computed for those 19 overtime hours each week are not accurately accounted for when computing such firefighters' retirement benefits; and those inaccurate computations have led to reduced retirement benefits for Federal firefighters.

The AFGE recognizes that if passed, this law would in fact make the firefighters the only federal employees covered by AFGE to have their overtime pay included in retirement computations, but understands that because of the unique nature of the what they do, the extreme hours worked and the certifications they are mandated to maintain; that such is the nature of a Special Category employee, and as such should receive credit for all scheduled hours worked; not a partial computation based on fuzzy math.

Federal Retirees

Retirees under the Federal Employee Retirement System (FERS) and some under the Civil Service Retirement System (CSRS) are also beneficiaries of Social Security and will be adversely affected by proposals under consideration in Congress.

Cuts to Social Security

AFGE strongly opposes legislation introduced in 2016 by Congressman Sam Johnson (R-TX), the Chair of the Ways and Means Social Security Subcommittee, that would:

- Cut Social Security's annual cost-of-living adjustments for all beneficiaries (and eliminate them completely for some), which would erode the value of Social Security benefits as people age into their most vulnerable years;
- Slash benefits for most retirees by flattening Social Security's progressive benefit formula; and
- Raise Social Security's full retirement age — currently rising from age 66 to 67, to 69 — which would cut benefits across the board for all new retirees.

AFGE opposes any effort to privatize Social Security, turning our guaranteed earned benefits over to Wall Street as limited private accounts subject to the whims of the economy.

Solvency and Improved Social Security Benefits

AFGE supports legislative efforts to address the long-term solvency of Social Security through progressive means such as eliminating or raising the cap on earnings subject to payroll tax.

AFGE supports expanding benefits including legislation with provisions such as:

- Enacting a consumer Price Index-Elderly (CPI-E) to provide for a fairer COLA that reflects seniors' expenditures;
- A 2 percent across-the-board benefit increase;
- Improving widows'/widowers' benefits so a household does not experience a devastating drop in income;
- Increasing the Special Minimum Benefit for low-income earners; and
- Creating a caregiver credit for workers who have taken time out of the workforce to care for children or elderly family members. This gap of service results in lower Social Security benefits. Legislation has been introduced that gives up to 5 years of credit for service to help increase the benefit, particularly benefiting women who have worked in low-paying jobs.

GPO/WEP

AFGE supports the elimination of the Government Pension Offset and the Windfall Elimination Provision, which cut Social Security benefits for federal government retirees and their

dependents because these provisions unfairly reduce both a retiree's benefit and a spouse's benefit. It applies to federal employees who retired under the Civil Service Retirement System (CSRS), as well as many state, county and municipal public servants. For 74 percent of spouses, the benefit is reduced to zero. These provisions have had the effect of disproportionately reducing the Social Security benefit Americans have earned.

Medicare

Most federal retirees become eligible for Medicare at age 65. While many opt not to enroll in Medicare Part B, the part that covers most out-patient medical services, federal retirees would be adversely affected by proposals in Congress to eliminate traditional Medicare and turn it into a voucher program.

The hospital coverage, Medicare Part A, along with the rest of the program, could be turned into a program whereby beneficiaries receive a fixed payment with which to go out and buy health insurance in the private market. Older and sicker beneficiaries would find it difficult to purchase adequate coverage to insure them for extended or chronic illness. It would be harder for seniors, particularly lower-income beneficiaries, to choose their own doctors if their only affordable options were private plans that have limited provider networks.

AFGE also opposes the repeal of the Affordable Care Act. Under this law, Medicare beneficiaries are eligible for an annual wellness examination, which extends lives and can detect serious illness early enough to take curative action. Further, the ACA has slowed the rise in health care costs, thereby saving Medicare a significant amount of money and extending its financial solvency by many years.

House Speaker Paul Ryan has proposed legislation in previous Congresses that would raise the Medicare eligibility age from 65 to 67, further straining the Medicare system by skewing to an older cohort. He has also proposed higher hospital co-payments and substantial increases in deductibles AFGE opposes these proposals that shift significantly more out-of-pocket costs to beneficiaries.

Medicaid

Medicaid provides health care for low-income children and families. It is also the largest source of funding for long-term care and community-based supports for the elderly and people with disabilities, providing about 62 percent of all such services.

Congress plans to consider legislation that would cap Medicaid and turn it into a "block grant" program to the states by replacing the current joint federal/state financing partnership with fixed dollar amount block grants. States would have less money, resulting in significant reductions to beneficiaries, including nursing home residents and their families. AFGE opposes this block grant approach to funding Medicaid.

Budget for Social Security Administration

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Budget Proposed	12,673	11,897	12,457	12,182	12,724	13,237
Budget Enacted	11,563	11,046	11,846	11,992	12,368	
SSA Full-Time Equivalents (FTEs)	64,062	61,861	61,767	63,698	64,840	66,140
Overtime/Lump Sum Leave	2,573	2,181	3,148	2,347	972	2,498
Total SSA Work Years	66,635 (-2,723)	64,041 (-2594)	64,915 (874)	66,045 (1,130)	65,832 (-213)	68,638 (2806)

Since 2010, the Social Security Administration (SSA) has endured deep budget cuts that have annihilated SSA's once proud achievement of providing World Class Service. As a result of these budget cuts, SSA has imposed hiring freezes, closed 64 offices and all 533 contact stations across the country, and reduced office hours to the public. Appointments to file for claims of retirement, disability and/or survivor benefits now take up to 60 days. Callers to SSA's 800# a busy signal more than 10 percent of the time and are forced to wait a minimum of 15 minutes on hold. Many callers complain of hold times of more than one hour. Initial disability claims and reconsideration decisions take 4-6 months, while hearing appeal decisions now take more than **18** months. As a direct result of the budget cuts, an historically high backlog exists throughout the agency, most notably is the backlog of more than 1.1 million hearing appeals.

Last year, Social Security field offices received more than 28 million calls and assisted 41 million visitors. Yet, SSA field offices have lost about 2,000 employees. In 2017, SSA expects a record number of beneficiaries due to the peak of baby boomers filing for benefits. Service delays cause difficulties for our most vulnerable citizens, including veterans, who are at an increased risk of both homelessness and disability. Appointment delays for those who just lost a loved one often cause an undue hardship for those who desperately wait for income replacement.

The Center on Budget and Policy Priorities found that "the cuts have hampered SSA's ability to perform its essential services, such as determining eligibility in a timely manner for retirement, survivor, and disability benefits, paying benefits accurately and on time, responding to questions from the public, and updating benefits promptly when circumstances change."³

³ The Center on Budget and Policy Priorities, *Budget Cuts Squeeze Social Security Administration Even as Workloads Reach Record Highs* by Kathleen Romig, published June 3, 2016.

“Level funding”, the name given to a funding freeze, for FY17 would be devastating. According to SSA officials, Level funding would result in:

- **An Agency wide hiring would be in place.**
- **Overtime availability would be limited to health, safety and emergencies only.**
- **Numerous furlough days if a long term CR is imposed.**
- **Elimination of employee awards.**
- **Reconsideration of reducing office hours and closing offices.**
- **Waiting times for services and backlogs will continue to grow.**

FY 2017 Performance Table	FY12	FY13	FY14	FY15	FY16	FY17
	Actual	Actual	Actual	Actual	Enacted	Request
Selected Workload Measures						
Retirement and Survivors Claims Completed (thousands)	5,001	5,007	5,024	5,327	5,586	5,732
Initial Disability Claims Completed (thousands)	3	2,988	2,862	5,327	2,695	2,810
Disability Reconsiderations Completed (thousands)	207	803	757	723	702	715
Hearings Completed (thousands)	809	794	681	663	703	784
National 800 Number Calls Handled (millions)	57	n/a	37	37	34	38
Average Speed of Answer (ASA) (seconds)	294	617	1,323	617	945	675
Agent Busy Rate (percent)	5 percent	12 percent	14 percent	7.50 percent	9.50 percent	7.00 percent
Social Security Numbers (SSN) Completed (millions)	17	17	16	16	16	16
Annual Earnings Items Completed (millions)	245	251	257	266	264	265
Social Security Statements Issued (millions)	24	0	4	50	38	44
Selected Outcome Measures						
Initial Disability Claims Receipts (thousands)	n/a	2,985	2,805	2,756	2,807	2,817
Hearings Receipts (thousands)	n/a	825	811	746	730	729
Initial Disability Claims Pending (thousands)	708	698	633	621	733	740
Disability Reconsiderations Pending (thousands)	198	173	170	144	136	137
Hearings Pending (thousands)	817	848	978	1,061	1,087	1,033
Average Processing Time for Initial Disability Claims (days)	102	107	110	114	113	113
Average Processing Time for Disability Reconsiderations (days)	n/a	n/a	108	113	n/a	109
Annual Average Processing Time for Hearing Decisions (days)	362	382	422	480	540	555
Disability Determination Services Production Per Work year	324	322	311	307	307	314
Office of Disability Adjudication and Review Production per Work year	111	109	102	95	94	98
Other Work/Service in Support of the Public Annual Growth of Backlog (work years)	n/a	-2100	-2800	-2100	-2,000	-2,700
Selected Program Integrity Performance Measures						

Periodic Continuing Disability Reviews (CDR) Completed (thousands)	1,404	1,576	1,675	1,972	1950	2,200
Full Medical CDRs (included above, thousands)	443	429	526	799	850	1,100
Supplemental Security Income (SSI) Non-Medical Redeterminations Completed (thousands)	2,624	2,634	2,628	2,267	2,522	2,822

SSA’s budget is performance driven. Each dollar equates to a specific level of any given workload. SSA officials explain that every \$100 million cut from the President’s request equates to:

- 826,000 fewer retirement survivors’ insurance claims processed timely; or
- 106,000 fewer initial disability claims processed timely; or
- 51,000 fewer hearings; or
- 110,000 fewer continuing disability reviews; or
- 621,000 fewer Supplemental Security Income (SSI) non-medical redeterminations.

We believe that the American public deserves better than this. They have already paid for the benefits and services of this agency with their payroll taxes. While modest at best, the President’s Budget request \$13.067 would give SSA the best chance to improve the services and address the backlogs.

AFGE requests Congress to reserve a minimum of \$220 million of the FY 17 SSA Budget, to increase the staffing levels in Field Offices and Teleservices Centers so that the basic needs of the public will be met timely and with dignity. More so, it will provide the Congress and SSA the building blocks to restore the American public’s confidence in the Social Security programs and their government.

Pretrial Services Agency for the District of Columbia AFGE LOCAL 1456 Legislative Issues

Issue: Support Legislation that would grant collective bargaining rights to the non-judicial personnel of the District of Columbia Superior Court and the District of Columbia Court of Appeals.

The District of Columbia Comprehensive Merit Personnel Act that currently excludes non-judicial personnel of the District of Columbia Superior Court and the District of Columbia Court of Appeals from collective bargaining coverage, D.C. Code § 1-602.01 (a). The Court Social Services Division staff within the District of Columbia Superior Court, supervises juveniles whom have committed criminal offenses. The lack of bargaining rights in the workplace has put community safety at risk.

Balance and Restorative Justice (BARJ) is a concept that has been translated into somewhat of an after school program for the juvenile offender population in the pre-adjudication, pre-disposition, and post disposition phase of the case. Probation Officers operate the BARJ Monday-Friday from 4:00pm-8:30pm and Saturday from 10:00am-2:00pm. The following will outline the impact on the employee which transfers to the impact on the juvenile and the community safety:

1. There is no screening process to determine the appropriateness of youth participating. There are youth with various Axis I diagnosis who are not able to function in a group setting, but are ordered/forced to be in this setting. As a result, the youth become volatile in this setting.
2. On average, every 6 out of 10 youth participating in BARJ has an IEP or some sort of educational accommodation. Unfortunately, these accommodations are not upheld in the BARJ setting with employee to youth ratio or tutor to youth ratio.
3. Employees are not trained to interact and/or de-escalate volatile behaviors in this setting. The employee is forced to retreat in situations where the youth become violent due to lack of training.
4. The youth often assault one another and have physically assaulted staff in this setting when attempts to intervene occurs. There are threats used against the employee without remedy or consequences.
5. Female employees have been sexually harassed while working BARJ; again without remedy and consequence. One instance was so serious that it was brought to the attention of the youth's judge in DC Superior Court who made a request through the Office of the Attorney General (OAG) for the charge to be petitioned. The youth was eventually found incompetent via an evaluation and should not have been placed in

BARJ, but without a screening process this cannot be determined without an incident or crime against the youth or an employee.

6. Employees (Probation Officers) are forced to cook and serve the youth dinner every evening without any certified food licenses. While these duties are not included in the current job description, POs who voice concerns about performing this duty has been targeted by management.
7. Employees (POs) have been injured while operating BARJ. Employees have gotten burned while preparing meals without being advised of their right to workmen compensation (if covered) as BARJ and cooking is not in the current job description.
8. Employees (POs) are directed to create a module for various groups such as drug education, life skills, and anger management and are directed by management to run these groups in the BARJ without any training and/or certifications in the aforementioned areas.
9. The youth are released from BARJ (10-15) at the same time 8:30pm at night and they often commit crimes against one another ranging from Simple Assault to Assault with Intent to Kill. The youth have also committed crimes against the community which includes, but are not limited Shoplifting, Fare Evasion, Robbery (cell phone related), Burglary and Theft. At one point the store manager (CVS) in the community pled with the probation office to address the behaviors of the court involved youth being released into the community all at once. This is a practice that has not changed despite pleas from the community.
10. Employees (POs) are not provided a lunch break when working BARJ. BARJ operates from 4:00pm-8:30pm and POs work from 3:00pm-11:00pm during their BARJ tour of duty. The youth are scheduled to arrive by 4:00pm and POs are scheduled to be present in the program from 3:00pm-8:30pm. During this time, POs prepare for group and meals until the arrival of the youth. Upon dismissal of the youth at 8:30pm, POs are scheduled to conduct curfew visits from 8:30pm-11:00pm; with no lunch hour and/or two fifteen minute breaks built into this BARJ schedule.
11. POs also operate BARJ (without any supervisor/management present) one Saturday per month from 10:00am-2:00pm. In order to achieve this, POs are directed to flex the original 40 hours per week Monday-Friday work schedule 4 hours once per month to accommodate the Saturday schedule. POs are not offered over-time or compensatory time for working on a weekend and the flex time is hour for hour instead of time and a half
12. POs operating BARJ loses on average approximately 36 hours per month, which in turn impacts the time spent on preparing court reports, inputting entries into court database, meeting with youth and families to address concerns with the conditions of

release/probation, meeting with community stakeholders to identify and implement services beneficial to the rehabilitation of the court-involved youth. To add, this further impacts the youth's potential for success and impacts the community when time is lost in the rehabilitation process.

There is no direct evidence that youth participation in BARJ has reduced recidivism and aided in the rehabilitation of the court involved youth. There are instances however, where BARJ participation and current operation has hindered rehabilitation and furthered juvenile delinquency as the youth are often outside of the home past their court-ordered curfew times and without supervision to return home after BARJ. The BARJ's current operations and practices impacts the POs, which impacts the youth and community safety.

Probation Officers are public servants who task with the rehabilitation of the juveniles and reducing recidivism among this population in the District of Columbia. Community interaction to include home visits, school visits, and curfew visits are an intricate part of achieving the mission of the District of Columbia Superior Court. More importantly, appropriate training is necessary in order to successfully complete the duties assigned; however, POs hired in 2009-present has not be afforded an opportunity to participate in training required to ensure his/her understanding of applying knowledge, skills, and abilities required to supervise to the juvenile population.

Lastly, granting bargaining rights will help ensure public and community safety within the District of Columbia.