

# AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES 2024 ISSUE PAPERS

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## **FEDERAL PAY**

### **Introduction**

Wages and salaries paid to federal employees are governed by statute. Two pay systems cover the vast majority of federal employees. Hourly workers in the skilled trades are paid under the Federal Wage System. Salaried workers in professional, administrative, and technical occupations are paid under the General Schedule's Locality Pay System. Both pay systems are based on the principle of local labor market comparability. Successive Congresses and administrations have failed to adhere to this principle, causing federal wages and salaries to fall far below the standards set in the private sector and state and local governments. Federal employees in both pay systems are underpaid relative to their non-federal counterparts and have experienced a decline in living standards over the past decade.

Federal wages and salaries need a substantial adjustment both to restore the living standards of federal employees and to help agencies recruit and retain a federal workforce capable of carrying out the crucial missions of our government. Not only are federal employees paid less than their counterparts in the private sector and state and local government, but their wages and salaries do not begin to keep up with the cost of living. This practice is penny-wise and pound foolish, undermining agencies' best efforts at recruitment and retention and imposing tremendous costs associated with hiring and training. Throughout the government, experienced and highly effective federal employees reluctantly leave federal service in order to obtain higher wages and salaries from other employers.

### **White Collar Pay**

The Federal Employees Pay Comparability Act (FEPCA) provides the basis for the operation of the pay system that covers most salaried federal employees. The law defines market comparability as 5% below salaries paid in the private sector and state and local government for jobs that are performed by federal employees. Recognizing that labor markets vary by region, FEPCA created distinct pay localities among urban areas with large concentrations of General Schedule, or salaried, federal employees.

Under FEPCA, annual pay adjustments are supposed to include two components. The first is a nationwide, across-the-board adjustment based on the Bureau of Labor Statistics (BLS) Employment Cost Index (ECI), a broad measure of changes in pay in the private sector and state and local government. The second is the locality adjustment. Locality adjustments are based on the size of gaps between federal salaries and those paid to workers in the private sector and state and local government who perform the same jobs as federal employees. Pay gaps are calculated using BLS Occupational Employment Statistics data.

FEPCA set a schedule for gradual closure of gaps until 2002 when full comparability payments would be made, with full comparability defined as five percent below market rates. However, remaining pay gaps still average around 27%. In fact, no administration or Congress has provided pay adjustments according to the law's schedule for closing locality pay gaps since 1994. Nevertheless, in 2021 the Trump administration had frozen locality rates, so the 0.5% allotted to

locality increases in 2022, 2023, and 2024 were welcome even though they were inadequate. The Biden Administration did respond to AFGE's request, conveyed through the Federal Adjustment of Income Rates or FAIR Act of 2023, of 8.7% for 2024 by providing 5.2%, the largest federal pay adjustment in 40 years.

For 2025, AFGE urges the Congress to provide at least a 7.4% pay adjustment for federal employees. The formula used to arrive at 7.4% for 2025 follows FEPCA's calculation of the relevant ECI (September 2022 to September 2023) plus an additional 4.0% to be distributed among the localities. The ECI adjustment would be 4.0% (ECI of 4.5% minus half a percent). The locality adjustment for 2025 should be at least 3.4%. As was the case last year, it is meant to begin the process of reducing the locality pay gap that currently averages in excess of 27% nationwide, and help to maintain the purchasing power of federal employees.

The proposed 7.4% adjustment for 2025 is still modest relative to the size of the pay gap between federal and non-federal wages and salaries, and low compared to the lost purchasing power federal employees have suffered over the past decade. However, an increase of 7.4% would demonstrate respect for the hard work and dedication of federal employees and start to make up for losses imposed during previous budget battles.

Perhaps most important, it would do more for recruitment and retention of the next generation of federal employees than any of the changes to hiring practices being contemplated by those eager to weaken civil service protections. Direct hiring and excepted service hiring, both of which undermine the competitive service and the apolitical civil service, would be entirely unnecessary if federal wages and salaries were closer to market rates. Meaningful progress toward closing the federal-nonfederal pay gap not only does right by the civil service, it protects the system's integrity for future generations.

## **Blue-Collar Pay**

Federal blue-collar workers' pay is governed by a statutory "prevailing rate" system that purports to match federal wages with those paid to workers in skilled trades occupations in the private sector. That system has never been permitted to function as intended. Instead, annual adjustments have been capped at the average adjustment provided to white collar federal employees under the General Schedule (GS). Prevailing rates are defined in the law as fully equal to market rates paid in the private sector, unlike "comparability" in the white-collar system, which is defined as 95% of market rates.

The white-collar system uses BLS data to determine non-federal rates and thus the gap between federal and non-federal pay. However, the blue-collar system relies on surveys conducted by local teams that include union and management representatives from the agency in the local wage area with the largest number of blue-collar employees. These local survey teams are prohibited from using any data from local building trades union scales. The data are used to create wage schedules that describe local prevailing rates.

For the past two decades, Congress has added language to appropriations bills that guarantees that blue-collar federal employees receive the same annual adjustments as their white-collar coworkers. Although the boundaries of local wage areas are different from the General Schedule, the language grants the same annual pay adjustment to all salaried and hourly workers within a given white-collar locality.

This policy of equal annual pay adjustments solves just one inequity between the two systems. On the upside, it assures that no hourly worker's pay adjustment is less than the adjustment received by GS workers in that locality. The establishment of this floor on annual increases for FWS workers was a tremendous AFGE accomplishment. But the imposition of a ceiling in the annual Financial Services General Government Appropriations bill, which has been in effect for decades longer than the floor, actually reduces the size of the annual pay adjustment that some WG workers would receive if that ceiling were not in place. As such, AFGE supports retaining the floor but lifting the ceiling on annual pay adjustments for FWS workers.

The issue of equalization of local pay area boundaries is separate and apart from the issue of pay adjustment caps. The GS locality boundaries are drawn according to commuting rates, which is the proper way to define local labor markets. The FWS locality or wage area boundaries were drawn mostly in the 1950s, reflecting the location of large military installations that employed the majority of federal hourly workers at that time.

Today, some GS localities include several FWS wage areas. Thus, while everyone in a given GS locality receives the same annual raise, hourly workers in a given GS locality may receive vastly different base wages. For example, the salaried workers at the Tobyhanna Army Depot in Monroe County, Penn., are paid according to salaries in the New York City locality because according to census commuting data, Monroe County is part of the overall New York City labor market. However, the hourly workers there are considered to be in a different local labor market. Hourly and salaried workers at Tobyhanna who work side-by-side in the same place for the same employer and who travel the same roads to get to and from work are treated as though they are in different locations.

### **The Biden Administration's \$15 per Hour for Federal Employees**

In January 2022, the Biden Administration used its administrative authority to implement a \$15 per hour minimum wage applicable not only to hourly workers in the Federal Wage System (FWS), but also to salaried workers paid under the General Schedule (GS) as well as other federal pay systems. At the same time, federal employees earning close to \$15 per hour prior to implementation of the new minimum also received a pay adjustment. It's estimated that approximately 67,000 federal workers, most of whom are civilians who work for the Department of Defense.

Without this administrative action by the Biden Administration, several hundred federal employees would still earn just \$7.35 per hour, or its equivalent. Several thousand more would earn wages and salaries barely above that level. On average, it is estimated that the \$15 per hour minimum adds over \$3,000 to annual earnings for full time workers at the lowest pay levels.

The federal minimum wage has not risen since 2009. Its purchasing power has fallen by almost

30% since then. The “Fight for \$15” movement began in 2012, twelve years ago when even then, \$7.25 per hour was not enough to live on. In the years since 2012, this movement has been successful in raising the minimum in several states and localities, but no federal increase has occurred in spite of passage, numerous times, most recently in the House version of the American Rescue Plan of 2021. Currently, there are 30 states plus the District of Columbia that have passed laws setting the minimum wage in their jurisdiction above the federal minimum. Federal agencies are required to follow state minimum wage laws when the state’s minimum is higher than the federal minimum; however, when state minimum wage rates are lower than the federal rate, the federal government rate applies. Maryland, New Jersey, California, Connecticut, Massachusetts, Washington, and the District all have minimum wages that exceed \$15 per hour so federal employees in those states are paid at the higher rate.

It should be noted that there are seven states either without a minimum wage law or else a law that sets minimum wages for certain employees below the federal rate. Among these states are Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee. Although these states are outliers as compared to others, they employ fully 23% of African American workers even though the minimum wage workforce in each of these states is racially diverse.

Although \$15 per hour would have been adequate in 2012, it is not enough. IT is estimated that a “living wage” that allows an individual to support him or herself without either food or housing insecurity is at least \$20 per hour in most cities. In households with more than one person, the minimum for a “living wage” is closer to \$25 or \$30 per hour. As such, in addition to working for the passage of a higher federal minimum wage, the Biden Administration should apply at least a \$25 per hour minimum rate for federal employees.

### **Efforts to “Reform” the Federal Pay Systems**

Over the past several years, there has been a concerted effort to disparage and discredit the locality pay system for General Schedule employees. It has been derided as inflexible, antiquated, and inadequate for recruiting and retaining a talented federal workforce. The pay gap calculations have been ridiculed as “guesstimates” despite being based on BLS data using sound and objective statistical methods. These arguments are window-dressing for a much more malicious agenda. Advocates of replacing the GS locality system with a so-called pay-for- performance system actually propose to reallocate federal payroll dollars in ways that will disadvantage lower paid employees.

The outlines for a new system received backing from the former Trump administration and supporting organizations like the Heritage Foundation, the Cato Institute, and the government contractor Booz Allen Hamilton. They have proposed paying higher salaries to those at the top of the current scale and lower salaries to those in the middle and bottom. This reallocation would occur through a formal system that considers both market data by occupation and individual performance. Although the reallocation is not explicit, in the absence of a large increase in the overall federal payroll, some salaries would have to be reduced to pay for increases for those at the top. The Trump administration used the Federal Salary Council and the Pay Agent to advance just such a plan.

The National Security Personnel System (NSPS), a short-lived experiment in “performance pay” in the Department of Defense during the George W. Bush administration, provides ample evidence of the pitfalls of such a plan. Indeed, Congress repealed authority for this system a mere three years after its inception because the discretion given to Pentagon managers over pay adjustments produced larger raises for white males and much lower raises for everyone else. It was found to be profoundly discriminatory in outcome with no measurable improvement in productivity or performance. Morale and trust in the integrity of the system both plummeted.

Contractors posing as “good government” groups have also argued against paying federal employees market-rate wages and salaries by claiming that non-salary benefits should be included when comparing private and public sector compensation. This approach would penalize federal employees for the fact that their employer provides subsidized health insurance and retirement benefits unlike some of the largest private employers in the U.S. The fact that roughly half of American workers receive no retirement benefit from their employer<sup>1</sup> should not be grounds for denying federal employees pay adjustments that allow them to keep up with the cost of living.

The virtues of the current system are rarely acknowledged. A December 2020 study by the Government Accountability Office (GAO) confirmed that the federal pay system does a far better job of avoiding pay discrimination by gender than private-sector pay systems, which allow broad discretion in pay-setting and pay adjustments. The GAO study<sup>2</sup> found that the gender pay gap in the federal government was 7 cents on the dollar as of 2017. Similar studies of the private sector reveal a gender pay gap of 18 cents on the dollar, more than double that of the federal sector. On average, for every \$35,000 earned by males, women in the private sector are paid \$28,700 and in the federal sector are paid \$32,550. Of course, these gender-based differences should not exist at all, but the federal government has made more progress than the private sector in closing these gaps.

This relative advantage in the area of pay equity is not the only systemic virtue of the current pay system. Its structure is designed to create a good balance among several factors: market sensitivity, career mobility, internal equity, flexibility and recognition of excellence. All of these are attributes of a functional pay system if the system receives adequate funding. However, budget politics, “bureaucrat bashing,” and a lack of understanding of the statistical processes used to compare federal and private sector pay combine to deprive a very fair system of the funds it needs to operate well. There is no fundamental problem with the GS system that adequate funding would not solve.

### **Congressional Requests:**

- 1) Provide at least a 7.4% federal pay increase for 2025, as described in H.R. 7127 and S. 3688. The adjustments set forth in these bills aim to bring federal pay in line with private sector pay. In the 34 years since the passage of FEPCA, the nationwide average pay gap has barely budged. This is the year to make substantial progress on closing the pay gap for purposes of market comparability, retention, recruitment, and to help restore the living standards of federal employees.
- 2) Resist the calls for pay “reform” that will reduce pay and benefits for federal employees who are in the middle and lower grades of the General Schedule by reallocating their pay toward those in the top grades. Any system that rewards those at the top by providing less to

those at the bottom and middle of the pay system should be strongly opposed, no matter how compelling the obfuscating rhetoric of modernization might sound.

- 3) Codify the directive report language from previous National Defense Authorization Acts and require equalization of non-Rest of US local pay area boundaries between the Federal Wage System and the General Schedule. Eliminate the cap on pay adjustments for Federal Wage System employees found in Section 737 of the Financial Services and General Government Appropriations bill so that the prevailing wage system can operate as intended.

<sup>1</sup> <http://www.pensionrights.org/publications/statistic/how-many-american-workers-participate-workplace-retirement-plans>

<sup>2</sup> U.S. Government Accountability Office, "GENDER PAY DIFFERENCES: The Pay Gap for Federal Workers Has Continued to Narrow, but Better Quality Data on Promotions Are Needed," GAO-21-67 (<https://www.gao.gov/assets/720/711014.pdf>)

## **FEDERAL RETIREMENT**

### **Introduction**

Since 2011, federal workers have involuntarily contributed more \$246 billion to deficit reduction. One source of this unwanted contribution is the cumulative effect of three years of pay freezes followed by nominal pay adjustments far below the amounts called for by law. Federal employees hired in 2013 have also faced mandatory increases in employee pension contributions of 2.3% of salary; for those hired after that year, the mandatory increases amount to an additional 3.6% of salary more than what federal employees hired before those dates pay into the Federal Employee Retirement System (FERS). There was no increase in retirement benefits associated with these salary reductions; the effect has only been to shift costs for retirement from the government to workers in the name of fiscal austerity. During the Trump administration, Congress enacted massive tax cuts that primarily benefited corporations and the wealthy, but Congress has never revisited the permanent tax placed on federal salaries in 2011.

These increases in mandatory pension contributions for federal employees hired after 2013 make it all but impossible for lower-graded federal employees to take full advantage of the government's defined contribution retirement benefit. That is, federal employees whose salaries have been reduced to finance a flat defined benefit often must forgo the full matching funds for their Thrift Savings Plan (401(k) equivalent) accounts, resulting in a serious shortfall in their retirement income security, and a substantial lowering of their standard of living for decades into the future.

### **AUSTERITY BUDGET POLITICS HAS CAUSED SEVERE HARM TO FEDERAL EMPLOYEES**

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 have occurred were it not for the perverted logic of austerity budget politics. The Budget Control Act of 2011 was a grave mistake, and the spending cuts it imposed year after year have been



ruinous for federal employees, and for the government services on which all Americans depend. Spending cuts hurt not only the middle class, 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**

At the end of 2013, the then House and Senate Budget Committee 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 mandatory pension contributions/salary reductions for employees hired after 2013 to 4.4% of salary. Reducing federal workers' retirement security should not be used to facilitate budget deals. It was entirely unjustified and unjustifiable in 2013 and 2014 and the ongoing salary reductions first imposed during those years should be repealed. The \$246 billion forfeited by the middle- and working-class public servants who make up the federal workforce has been an unconscionable tax increase on one small group of Americans.

*In wake of the recent tax cuts granted to wealthy individuals and corporations, AFGE urges lawmakers not to repeat the mistakes of the past and require federal employees to make up for revenue losses from the wealthiest Americans whose ability to pay far exceeds the modestly paid federal workforce.*

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 will harm the budget and economy in the long term. 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. As the deficit has ballooned as a result of tax cuts to corporations and wealthy individuals, it is even more unconscionable to reduce the pensions of working-class federal employees as a means of deficit reduction. AFGE will continue to oppose any additional efforts to undermine the statutory retirement promises on which federal employees rely. There have been repeated efforts to further increase federal employee retirement contributions so that employees pay fully half of the cost of the FERS defined benefit amounts, which would result in a 6.2% pay cut for those hired before 2013. These proposed cuts have been 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% of American workers who receive a defined benefit from their employer are not required to make any "contribution" from their salaries for this benefit.

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 a dollar of retirement income to a federal worker is higher than that for a private-sector worker. Federal employees should not be forced to pay this differential and the unique circumstances of the

federal retirement system must be taken into account in all situations where federal retirement benefits are compared to those in the private sector and state and local government.

### **Congressional Requests:**

- Support legislation that repeals the draconian increases in employee contributions to retirement for those hired after 2012.
- Oppose efforts to expand the government’s ability to force employees to forfeit their earned pensions apart from those currently in law.
- Support the Federal Retirement Fairness Act. Introduced last Congress by Derek Kilmer (D-WA), this bill will allow former seasonal and temporary federal employees the option to ‘buy back’ retirement contributions to retire on time.
- Support H.R. 866/S.3194, the Equal COLA Act so FERS retirees are not punished by receiving a COLA that is less than CSRS and Social Security and less than the cost-of-living increase calculated under the law.

## **FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM**

### **Federal Employees Health Benefits Program**

The headlines focused on the fact that federal employees’ and retirees’ average premiums would increase by 7.7 percent in 2024. In 2023, the average premium increase was 8.7% so putting these two years together means a terrible period of premium inflation. However, unlike previous periods of large increases in the employee share of FEHBP premiums, this time there are actually some valuable new benefits.

For 2024, FEHBP is finally joining the practice in large private sector and state and local government health insurance programs and requiring coverage of some fertility treatments. The two treatments which were mandated for 2024 are artificial insemination and IVF-related prescription drugs. There is large variation among the plans, which will exacerbate the problem of risk selection that already plagues FEHBP and makes the whole program more expensive than it should be in actuarial terms. For example, some plans will require enrollees to pay half of fertility costs, while the Blue Cross Blue Shield Standard option, the largest FEHBP plan and the most expensive PPO plan, will provide \$25,000 per year for various fertility treatments, however they won’t charge the cost for IUI or Artificial insemination or fertility drugs against this amount. BCBS Standard now has a \$25,000 annual maximum for assisted reproductive technologies . Also, because of variations in state laws, the plans that are state-specific have some unique fertility benefits, as do several HMOs.

In 2024, there will also be higher limits on healthcare-related “tax preferred” or tax avoidance accounts. FEHBP has numerous High Deductible plans that deposit non-tax monies into Health Savings Accounts (HAS). Several of these plans have increased the maximum amounts that they

will pass through to HSAs. The IRS will soon announce the limit for Flexible Savings Accounts (FSAs), but reports suggest that it will increase to \$3,200 in 2024.

Finally, there are 48 FEHBP plans where the employee or annuitant share of premiums is higher for the Family Option than for the Self Plus One Option. Open Season for enrollment or changing enrollment runs from November 13 through December 11. We have shared this information with members through various AFGE publications but urge everyone to be careful in checking out new premiums and enrollee costs for 2024, as well as benefit changes in the plans being considered.

The Federal Employees Health Benefits (FEHB) Program, which covers more than eight million federal employees, retirees, and their dependents, is the nation's largest employer-sponsored health insurance program. FEHB Program is also a target of those who would force federal employees to forfeit their earned benefits to finance deficit reduction. The attacks on FEHB Program are likely to continue in Congress this year as part of any focus on deficit reduction. AFGE strongly opposes dismantling either the FEHB Program or Medicare, including by replacing the current premium-sharing financing formula with vouchers.

### **Issue and Background - Maintain Quality and Control Escalating Employee Costs for the FEHB Program**

At present the FEHB Program is a cost-sharing program. On average, the government contributes approximately 70 percent of the premium cost for most employees, although this number can vary considerably depending on the plan chosen by a covered employee and his/her family. (This formula is 72 percent of the weighted average premium; in practice, this has meant an average contribution of 70 percent).

In order to lower the overall costs of the program, the Office of Personnel Management (OPM), the federal agency administering the FEHB Program, has been promoting employee enrollment into lower premium plans, e.g., the Blue Cross/Blue Shield Blue Focus plan. While this plan and other lower premium plans may appeal to those seeking to pay lower upfront costs, the plans offer inferior benefits, and very high out-of-pocket costs. For employees and their families who experience high overall health care costs in a given year, these plans are a very bad choice.

It is vital to federal employees that the government's current premium sharing formula for the FEHB Program be maintained, and that the share of cost attributable to employee-paid premiums be kept as low as possible. In addition, all plans should be required to offer comprehensive benefits. That is, the FEHB Program must continue to be financed with the government's paying a percentage of premiums, not a flat rate or cash voucher, and every plan must cover essentially the same set of comprehensive benefits.

The largest FEHB Program plans contract with OPM on a fixed price re-determinable basis with retroactive price redetermination. This means that even as the insurance companies receive only a fixed amount per contract year per "covered participant," 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 FEHB insurance companies’ interests to keep costs and profits high and benefits low.

That is why it is imperative that FEHBP plans be subject to the government’s Cost Accounting Standards. The government cannot verify the experience claims of FEHB carriers without these standards, yet due to lobbying and threats of exit from the program, the insurance companies, alone among federal contractors, have continued to be exempt from adherence to these cost accounting standards. AFGE will continue to monitor OPM’s administration of the FEHB Program and urges all members to actively engage with their Congressional representatives to ensure that any attempts to scale back the government’s FEHB Program share of premiums be defeated.

### **Issue and Background - Turning FEHB Program into a Voucher System**

House Republican Members of Congress have recommended changing FEHB Program into a “premium support system.” This is a euphemism for vouchers. Acting through the Republican Study Committee (RSC), a powerful caucus of conservatives, these Members suggest that because the government covers a set percentage of an employee’s health premium, FEHB participants have an incentive to choose higher-priced health plans.

Under the RSC proposal, the government would offer a standard, i.e., fixed dollar amount, federal contribution towards the purchase of health insurance and employees would be responsible for paying the rest. The RSC has said, “This option would encourage employees to purchase plans with the appropriate amount of coverage that fits their needs.”

What this means is that they propose turning the FEHB Program into a defined-contribution or voucher system. 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 the FEHB Program 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 FEHB Program 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 voucher-based 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. Congressional Republicans have already announced that they intend to hold the ability of the government to finance its operations hostage through limitations on the statutory debt ceiling. They tried this approach during the Obama Administration, and nearly wrecked the economy, causing U.S. Treasury securities to be downgraded by some bond rating agencies, now that Democrats are back in the White House, Republicans have once again rediscovered the “evils” of deficit spending (ignoring this completely during the Trump Administration) and continue to push for cuts in healthcare expenditures, including the FEHB Program. We will carefully guard against using federal employees or retirees health benefits as a source of deficit reduction.

### **FEHB Program – Employee Share of Premium Increases**

Between 2012 and 2019, FEHB premiums increased by about 4.0 percent per year. For 2020, federal employees and retirees saw an average increase in their FEHB premiums of 5.6 percent. This was the largest increase since the 2018 plan year, when premiums for employees jumped 6.1 percent. For 2021, the average enrollee premium increase was 4.9 percent. For 2022, FEHB premiums increased 2.4% above the previous year. As in prior years, due to the statutory FEHB cost sharing formula, the government’s share of the premium will only increase by 1.9% while the employee share will increase on average by 3.8%. This is less than the FEHB Program premium increase of 4.9% in 2021 and the 5.6% increase in 2020, but still more than the 1.5% increase in 2019. For 2022, federal pay increased on average by about 2.7% (including locality pay). Thus, the percentage increase in the employee’s share of the FEHB Program premiums (3.8%) outstripped the pay raise.

For 2023, FEHB premiums increased 7.2%, with the government contribution increasing 6.6%, and the enrollee share increasing an average of 8.7% above 2022 rates. AFGC notes that OPM’s description of premium increases for enrollees is the average of all FEHB plan premium increases. However, the largest plan by far, Blue Cross/Blue Shield Standard option increased premiums from 10.7 – 11.7% depending on whether an enrollee chooses self or family coverage. As in prior years, due to the statutory FEHB cost sharing formula, the government’s share of the premium increase will be significantly less than the employee share.

As Congress increased federal pay by about 4.6% (on average) for 2023, the increase in the employee’s share of the FEHB premiums will once again far outstrip the pay raise. The retiree COLA adjustment was 8.7% for CSRS annuitants (one percent less for FERS annuitants and they do not start until age 62).

During the past five FEHB premium setting years (2019–2023), the government’s percentage contribution increase has been less than the increase in the employee contribution. In 2019, the government’s increased contribution was 20 percent less than the employee’s increased contribution. In 2020, the government’s contribution was 40 percent less than the increase in the employee contribution. In 2021, it was about 33 percent less than the employee contribution. In 2022, the government’s increased contribution was about 25 percent less than the increase in the

employee contribution. Now in 2023, it is effectively 50% less (more if one is enrolled in Blue Cross – Standard). If a voucher proposal had 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 could provide significantly less than premium increases; 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 4.3 percent average rise in premiums over the last 5 years. This amounts to additional cost shifting to employees.



## **Issue and Background - Scaling Back FEHB Program for Retirees**

Yet another attack on the FEHB Program is likely to be continued by conservatives and their allies, based on a Heritage Foundation proposal. Again, the proposal will likely be justified on the basis of the “urgent need” for deficit reduction, a rather familiar refrain when a Democratic president is in office.

The key part of the Heritage proposal, which has Republican support, is to shift more federal retiree health care costs away from the FEHB Program. Heritage proposes that all federal retirees be required to purchase Medicare Part B insurance even if they already have better FEHB Program coverage and do not have either the means or the desire to pay two insurance premiums instead of one. Mandatory Medicare Part B coverage would be useless to veterans who use the FEHB Program in combination with Department of Veterans Affairs (VA) care to cover their costs. Heritage includes in its proposal a loss of all health insurance for retirees who refuse to pay two premiums.

The Postal Reform bill recently enacted by Congress establishes a bad precedent regarding FEHB and Medicare Part B premiums. Under the Postal Reform law, as of January 1, 2025, all newly retiring Postal Service employees (with some few exceptions) will be required to pay Medicare Part B premiums to maintain the Postal Service equivalent of the FEHB Program.

While the Postal Reform bill has no direct effect on non-Postal employees, it can reasonably be expected that Congressional Republicans will push mandatory Part B premiums on retiring federal employees at some point in the future to maintain their FEHB Program coverage.

## **Congressional Requests Needed to Address FEHB Program Issues**

- During the past 12 years, including the three-year pay freeze, federal pay raises totaled just 20.6 percent (0 percent for 2011-2013, 1 percent for 2014 and 2015 and 1.3 percent in 2016, 2.1 percent in 2017, 1.9 percent in 2018 and 2019, 3.1 percent in 2020, 1 percent in 2021, 2.7 percent in 2022, and 4.6 percent in 2023). The compounded rate of increase in pay is just shy of 24 percent. But in that same period, federal employees’ FEHB Program premiums are more than 60 percent higher in 2023 than they were in 2011. The cost to employees of participating in the FEHB Program continues to rise by more than either the general rate of inflation or the rate of growth of their ability to pay, i.e., average pay adjustment rates, including locality pay. Congress should ensure that federal employee pay raises are at least sufficient to offset the ever-increasing cost of FEHB health insurance premiums, which consistently outpace inflation.
- FEHB Program’s funding structure should be maintained in its current form. All attempts to convert the formula into a voucher or “premium support system” should be



rejected.

## **TELEWORK AND REMOTE WORK**

Long before the Covid-19 pandemic, the federal government was required to permit both remote work and scheduled telework. Telework and remote work are distinct from one another. Telework is defined by the Office of Personnel Management (OPM) as “a work arrangement that allows an employee to perform work, during any part of regular, paid hours, at an approved alternative worksite (e.g., home, telework center). It is an important tool for achieving a resilient and results-oriented workforce....” Remote work is “an alternative work arrangement that involves an employee performing their official duties at an approved alternative worksite away from an agency worksite, without regularly returning to the agency worksite during each pay period.”

The Telework Enhancement Act of 2010 allowed for the expansion and utilization of telework throughout the federal government for positions deemed telework eligible. It was enacted with the express purpose of achieving greater flexibility in managing the federal workforce, providing agencies with a valuable tool to meet mission objectives and address recruitment and retention issues while helping employees enhance work- life effectiveness. Telework agreements are written agreements and between the manager and the employee.

While the benefits of telework were already well documented, some agencies were reluctant to permit its full use, and did not always allow its use by eligible employees for reasons having nothing to do with whether the job could be successfully performed away from the regular duty station. Some agencies such as the Social Security Administration had severely restricted the use of telework just before the pandemic, leaving the agency less prepared to serve the public when the pandemic forced widespread telework. The necessary technology and equipment, along with policies and means to protect private information were and are available to agencies, but prior to the pandemic, they were not utilized at each agency.

In its latest annual report on telework productivity, covering Fiscal Year 2022, the Office of Personnel Management found that federal agencies reported improvements in their goals related to mission outcomes with employees who engaged in telework. The also noted an increase in retention, higher employee engagement and higher productivity due to fewer distractions and disruptions. They also reported increased management practices to ensure accountability and increased performance in annual reviews.

When utilized fully and fairly, telework contributes to employee engagement and morale, and has a positive impact on recruitment and retention. Telework also reduces traffic and its attendant environmental effects, costs associated with office space and parking, as well as flexibility and continuity of operation in weather and other emergencies. Use of telework promotes healthier workers who do not endure as much burnout or use as much sick leave and can enjoy a more robust work-life balance.

Under the law, federal agencies, and workers and OPM must meet certain obligations regarding telework. Agencies’ responsibilities are as follows:

- Establish a policy under which eligible employees may be authorized for telework.
- Determine employee eligibility to participate in telework.
- Notify all employees of their eligibility to telework.
- Enter into a written telework agreement between supervisors and employees.
- Provide training for eligible employees and their managers.
- Be effective managers of telework to ensure employee performance and adherence to agency operations.
- Deny telework where on-site activity or handling of certain secure materials is required.
- Manage non-compliance with telework arrangements and potentially terminate a telework arrangement if non-compliance is not corrected.
- Treat teleworkers equitably with respect to performance appraisals, training and work requirements.
- Designate a Telework Managing Officer on behalf of telework matters at the agency.
- Incorporate telework into the agency's Continuity of Operations Plans (COOP).
- Satisfy collective bargaining agreements. (However, they are not required to bargain telework eligibility or terms. Some agencies have specifically refused to bargain telework.)

OPM's responsibilities to agencies are as follows:

- Maintain a central telework website ([www.telework.gov](http://www.telework.gov)).
- Consult with agencies and provide policy guidance on telework including pay and leave, agency closure, performance management, recruitment and retention, and accommodations for individuals with disabilities.
- Assist agencies with qualitative and quantitative measures of teleworking goals.
- Consult with other agencies including the General Services Administration, the Federal Emergency Management Agency and the National Archives and Records Administration on effective operations and record-keeping.
- Submit an annual report on the telework programs of each agency and identify successful practices and recommendations.

A key difference between "telework" and "remote work" is that remote work arrangements do

not require the employee to report to a physical work location. For pay purposes, the remote worker's duty station is their home and their locality pay is calculated based upon that location.

Remote work arrangements have been effective tools for agencies experiencing difficulties with recruitment and retention of employees with rare or in-demand skills or disabilities that would limit or prevent reporting to a regular duty station. It also allows agencies to consider applicants from a wide geographic range and supports the competitive service and veterans preference in these respects.

In OPM's most recent annual report to Congress for Fiscal Year 2022, reported in December 2023, the following facts were noted:

- Of the 52 percent of federal employees who were eligible for routine or situational telework, 87 percent participated for a total participation rate of 46 percent in FY 22. 94 percent of telework eligible employees participated in 2021.
- One significant finding was that teleworking employees and those who choose not to telework have comparable levels of engagement. Employees who telework 3 or more days per pay period are more likely to score higher (77.1 percent) on the Employee Engagement Index than those who do not (58.5 percent). Employees who choose not to telework also report high levels of engagement (73.2 percent).
- Of those agencies that tracked cost savings from telework, the most significant savings were related to transit/commuting costs (46 percent) and reduced employee absences (16 percent). These numbers are virtually identical to 2021, even with significant numbers of employees returning to traditional office space.
- Among the best practices identified by agencies utilizing telework, positive factors included recruitment and retention of employees, continuity of operations in an emergency and providing work-life balance for employees.
- In terms of routine telework, 56 percent teleworked three or more days per two-week period, 11 percent teleworked one to two days per two-week period, and three percent teleworked no more than once per month.
- Agencies reported a decrease in commuting miles and a positive relationship between telework and job performance, a reduction in distraction and in real estate costs and energy use.
- Director Ahuja: "Implemented intentionally and balanced with meaningful in-person work telework can lead to greater operational resilience, increased productivity, higher employee engagement, lower employee attrition, expanded recruitment pools, and cost savings for both agencies and employees. Such arrangements have also increased access to employment opportunities for underrepresented communities such as rural communities, people with disabilities and military spouses."

Despite this positive report on the benefits and increased use of telework, AFGE members continue to report that some agencies are denying workers the opportunity to telework. There is frustration across the government with agencies refusing to expand or continue successful teleworking arrangements as the severity of the pandemic eases. Some are insisting that federal employees cease telework in order to improve the business and commercial real estate climate in their cities. Those ignorant of the multitude of benefits of telework continue to assert that telework reduces productivity.

In Washington DC, Mayor Muriel Bowser announced in January that she will be reducing telework days for city workers from two per week to only one day each week effective March 10<sup>th</sup>, 2024. Many employees in the district, including most of those represented by AFGE, already work full time in person, but this policy will eliminate flexibility in telework to all offices under the mayor's authority, including infrastructure and government, health and human services, executive offices, education and public safety. Revoking such benefits is not only a threat to collective bargaining agreements; telework is an important recruitment and retention tool that should be utilized based on the ability to perform the duties of the job in a telework setting.

### **Legislative Action**

- AFGE opposes the “Return to Work Act,” H.R. 101 by Congressman Andy Biggs (R-AZ) that would unilaterally return all agencies to pre-pandemic telework policies. Such an across-the-board approach does not take into account empirical data on the value to employees’ and agencies’ expanded telework.
- AFGE opposes the “SHOW UP Act (Stopping Home Office Work’s Unproductive Problems Act of 2023),” H.R. 139 by House Oversight and Accountability Committee Chair James Comer (R-KY) which would also require a return to pre-pandemic telework policies and a review of office usage and eligibility for locality pay. The name alone leads with an erroneous conclusion that telework is not productive, which is contrary to widespread data supporting the benefits of telework. The bill passed the House in February 2023.
- AFGE opposed the Perry Amendment (#77) to H.R. 3935, the Transportation/HUD Appropriations bill which would have struck the bill’s telework provisions and applied the language of SHOW UP to FAA employees. The amendment failed by a vote of 195-226 with 21 Republicans joining all Democrats in opposing.
- Members of Congress, led by Senator Joni Ernst (R-IA) have leveled unsubstantiated accusations that federal workers who are teleworking or working remotely are claiming to reside in a higher-paying locality while having moved to a part of the country that is not in a locality and has a lower cost of living.
- Senator Ernst also offered anti-telework amendments No. 1123 and 1177 to a “minibus” appropriations bill in September 2023 that would have required extensive new reporting from federal agencies, on an unrealistic 30-day timetable, concerning the telework and remote work activities of hundreds of thousands of federal employees. We noted the

requests were premised in part on *a single report* of an alleged poor performer at the U.S. Patent and Trademark Office that occurred in 2014, nearly a decade ago. We also pointed out the amendments conflate and confuse remote work, where an employee is assigned full-time to a remote duty station that may be far from agency offices, with telework, where under existing OPM rules employees must report to an office twice per pay period. In either case, existing rules govern locality pay and there is no evidence of widespread misapplication of these rules.

- AFGE also opposed Amendment No. 1154 offered to the same minibus bill by Sen. Marsha Blackburn (R-TN). This amendment would have prohibited any form of telework at the Federal Aviation Administration, arbitrarily denying agency managers and personnel the discretion to collaboratively develop and implement telework policies that promise to address specific workplace needs and improve productivity.

The House Committee on Oversight and Accountability held two hearings in the latter half of 2023, both entitled “Oversight of Federal Agencies’ Post-Pandemic Telework Policies.” The first hearing involved agencies the Committee asserted had been forthcoming in reporting use of telework – the National Science Foundation, NASA, Nuclear Regulatory Commission and the Department of Homeland Security. The second hearing had witnesses from agencies the Committee Republicans said had not provided as much information on their use of telework – the Social Security Administration, Department of Commerce, Agency for International Development and the Department of Health and Human Services. The treatment of the agency witnesses at the first hearing was respectful and most committee members acknowledged there is benefit in the use of telework. The second hearing involved unsubstantiated accusations and assertions that workers who are teleworking are not working at all, only with much more colorful and disrespectful language.

## **GOVERNMENT-WIDE SOURCING ISSUES**

### **Issue**

The Office of Management and Budget (OMB) and agencies have not addressed specific problems with public-private competitions pursuant to OMB Circular A-76 that prompted a Congressional moratorium on use of A-76. The moratorium was first imposed as a result of a scandal at the Walter Reed Army Hospital, staffing shortages caused by A-76 resulted in substandard care for wounded warriors. Numerous GAO and DoD Inspector General audits found that A-76 competitions had substantial unprogrammed investment costs and overstated savings, even after the establishment of a “Most Efficient Organization.” Additionally, there is a virtual absence of contractor inventories, contract services budgets, and adequate review processes to ensure that inappropriate contracts, and contracts involving inherently governmental functions, are not awarded.

Many government service contracts have been found to involve “personal services,” which are unlawful under existing statutory authority for most agencies. OMB has also allowed continuing

abuses to persist with contracts that are characterized as involving services that are “closely associated with inherently governmental functions.” OMB has even allowed such contracts to be classified as “commercial” in nature, a characterization criticized by both Congress and the Commission on War Time Contracting. These concerns were embodied in Congressional findings with direction to OMB to revise the inherently governmental guidelines. To date, neither OMB nor any agencies have fully addressed these findings.

Sourcing of work among civil service employees, contractors, and other labor sources is affected by pro-contractor procurement policies, anti-civil service hiring limitations, and the absence of planning to encourage a strong career civil service. Also contributing to a pro-outsourcing agenda are weaknesses in agency budget development and execution and the lack of adequate compliance mechanisms with existing sourcing laws, including the current A-76 moratorium.

As a result of pro-contractor policies, Congress and the Trump administration pushed for outsourcing many medical functions at the Department of Veterans Affairs, such as critical compensation and pension examinations. This was done despite the superior quality and lower cost of having the exams performed by VA’s own clinicians. As a result, the VA has had to reperform many improperly or hastily conducted contractor provided exams, which are incentivized by contract to be performed as quickly as possible.

In a related vein, despite knowing exactly how many civil servants are employed at any given federal agency, the Government Accountability Office (GAO) continues to criticize agencies – especially the Department of Defense – for not even having an adequate inventory of its service contracts, let alone any idea of how many people are employed on these contracts. (GAO-17-17, DOD Inventory of Contracted Services: Timely Decisions and Further Actions Needed to Address Long-Standing Issues.) Indeed, under the Trump Administration, the more robust Enterprise Contractor Manpower Reporting Application (ECMRA), which had been committed to DoD-wide, and potentially government-wide during the Obama Administration, was divested in DoD for the less useful government-wide inventories designed by OMB and issued by the GSA through the System for Award Management (SAM). The GAO recently documented this move by the Department of Defense as resulting in a loss of ability to identify the fully burdened costs for services contracts, track requiring organization (the actual government customer for the contract, as distinct from the contracting activity, which simply awards the contract) and location where the work is performed by contracts, and tracking program and budget data through funding sources in the appropriations process. See, GAO 21-267(R) “SERVICE ACQUISITIONS: DoD’s Report to Congress Identifies Steps Taken to Improve Management, But Does Not Address Some Key Planning Issues” (Feb. 22, 2021).

## **Background/Analysis**

Sourcing of work among the federal government’s civil service workforce and contractors or other sources of labor is affected by:

- 1) Procurement policies devised to promote contracting-out of so-called “commercial” functions – very loosely defined and without regard to sufficient oversight over costs.
- 2) Hiring restrictions (such as Full Time Equivalent personnel caps imposed by OMB) and limitations on insourcing disconnected from human capital planning and agency workload requirements or cost considerations.
- 3) The way agencies develop, defend, and execute their budgets for the civil service workforce as opposed to contractors, who are not subject to any personnel ceilings (including inventories of contractor performed work). The focus is on fully executing agency budgets and wasting resources in the fourth quarter of each fiscal year by focusing on awarding contracts to fully obligate agency funds. Once contracts are awarded, there is little concern about the cost of performance, and various “acquisition reforms” have focused on weakening oversight and audit capabilities – leaving agencies defenseless to contractors. The civilian workforce is used as an offset or billpayer for under execution of an agency’s budget or to fund new requirements not fully funded by OMB or Congress. Insourcing is discouraged even when allowed by statute. Vacant civil service positions are not automatically filled but often cut during this process. Contractor inventories exclude so-called “commercial item” contracts and are otherwise curtailed and sabotaged.

The absence of oversight mechanisms to ensure an agency complies with the A-76 moratorium and other legal limitations on contracting-out. Section 815 of the Fiscal Year 2022 National Defense Authorization Act, “Modification to Procurement of Services, Data Analysis, and Requirements Validation,” which the Department is still in the process of implementing, promises to improve oversight of A-76 compliance. Once fully implemented, it will require senior officials to complete a checklist certifying that statements of work and task orders submitted to contracting officers comply with longstanding statutes that prohibit replacing DoD civilian employees with contractors, subject to annual DoD Inspector General reviews, and require that service contract budgets comply with these requirements.

### **Veterans’ Healthcare Privatization: Private Contract Care Access Standards**

The MISSION Act required the Department to implement access standards to determine when veterans should be referred outside the VA health care system for care in the private sector through the Veterans Community Care Program (VCCP). These standards consider how long veterans wait to access VA in-house care and how long it takes for the veteran to drive to the closest VA medical facility to determine if the veteran should be referred to a VCCP provider. If a veteran must wait more than 20 days for VA or drive more than 30 minutes for VA in-house primary care or wait 28 days or drive 60 minutes for VA in-house specialty care, then he or she can choose to go outside the VA to a VCCP provider instead.

The access standards have been flawed from the outset and AFGE has continued to urge the VA

Secretary to make several significant changes to ensure that veterans receive the most appropriate and highest quality care in a timely manner. In addition, changes are urgently needed to rein in the unprecedented number of costly VCCP referrals that are threatening the VA's long-term capacity to carry out *all* its missions, including its core mission of providing comprehensive, integrated, specialized care to veterans, as well as medical training, medical research and emergency preparedness that yield tremendous benefits to all health care consumers.

First, the current double standard must be eliminated; a revised access standard must be applied equally to the VA and VCCP providers. Currently, the access standards do not consider the wait times and driving times that veterans will face to access care outside the VA. This double standard has resulted in many veterans waiting longer and driving further for non-VA care than they would have if they continued receiving VA in-house care.

In addition, the drive-time component of the access standard creates one-size-fits-all standard that don't consider regional differences in population density, provider capacity, traffic, or geographic barriers. VA should implement standards that are achievable across the country and apply them equally to VCCP providers so that private care supplements rather than supplants the VA. Multiple studies have shown VA's own care to be of higher quality with better health outcomes, and less costly than private sector care.

The access standards also apply a double standard to care provided by telehealth including mental health care. The VA has long been recognized as a leading telehealth model by other health care systems. Yet, the access standards do not count VA in-house telehealth services in determining if the VA has met the standard. As a result, veterans who would have not had any wait for VA-provided telehealth care are sent to VCCP providers who treat them through telehealth programs of unknown quality and at greater cost to taxpayers.

In 2022, Secretary McDonough testified before the Senate Veterans' Affairs Committee that he was considering revising the access standards to address the skyrocketing costs of VCCP care. He also committed in his testimony to propose changing the way that telehealth is counted. The VA is in the process of writing a rule that would allow VA telehealth to count toward satisfying the wait and drive-time access standards.

Legislation was introduced in 2023 that would have locked in these biased access standards making it more difficult to change them and would have prohibited VA from finishing its rule allowing VA telehealth to satisfy the access standards or limited the way could do so. S. 2649, the "Making Community Care Work for Veterans Act" (Sen. Tester, D-MT), would codify the wait-time and drive-time access standards and allowed VA to use in-house telehealth to satisfy these access standards but *only at the veteran's preference*. S. 1315, the "Veterans HEALTH Act" (Sens. Moran (R-KS) and Sinema (I-AZ)) and H.R. 3520, the "Veteran Care Improvement Act" (Rep. Miller Meeks, R-IA) would codify the existing wait-time and drive-time standards and completely prohibit VA from counting in-house telehealth to satisfy the access standards.

Lawmakers should also consider the burdens that the VCCP program is placing on VA's own staff, who are already struggling to take care of patients under chronic short staffing conditions. Additional VA staff have not been provided in any systematic way or in adequate numbers to



assist with the large number of VCCP consults that VA medical personnel must now issue and manage as patients and their medical records move in and out of this chaotic contract care arrangement.

### **Congressional Action:**

- Continue the OMB A-76 moratorium and mandate enforcement mechanisms for all statutory sourcing limitations for the entire government modeled after section 815 of the Fiscal Year 2022 National Defense Authorization Act;
- Eliminate FTE caps on civilian hiring, allow insourcing, and promote better human capital planning informed by workload and costs; and
- Improve agency budgets to highlight contractor workforce costs informed by comprehensive contractor inventories. Inform Senate Homeland Security and Government Affairs Committee, House Oversight and Accountability Committee and the Financial Services and General Government Appropriations subcommittees that their continued acceptance of SAM as meeting meaningful contractor inventory requirements has resulted in providing DoD the excuse to divest the more robust ECMRA contractor inventory capability, to the detriment of the entire government. Recommend CBO do a specific comparison, pulling from prior work done by GAO and DoD IG, and prior Army testimony on its ECMRA effort in 2013 to HSGAC, to establish that it is, indeed feasible and cost effective to do ECMRA type contractor inventories that are actually useful, to upgrade the currently defective SAM contractor inventories.

### **Congressional Requests Related to VA:**

- Oppose legislation that would codify current VCCP access standards.
- End the current double standard and apply the same wait times and driving times to both in-house care and VCCP care.
- Urge the VA Secretary to revise the current access standards to increase the drive time limit and count VA in-house telehealth when determining whether the VA has met the standards.
- Ensure that standards are realistic given differences in factors such as population density, provider capacity, and traffic patterns.
- Ensure that each facility receives additional staff at appropriate levels to ensure that veterans' needs for in-house care are not compromised by workloads associated with VCCP referrals.

## **OFFICIAL TIME IS ESSENTIAL TO FEDERAL GOVERNMENT EFFICIENCY AND PRODUCTIVITY**

### **Protect the Use of Official Time Within the Federal Government**

Official time is a legal term that describes time spent by federal employees who volunteer to be union representatives and who are engaged in representational duties required by the Civil Service Reform Act of 1978. According to that law, the amount of official time granted by a federal agency to volunteer union representatives is subject to collective bargaining and should be granted in amounts that are “reasonable, necessary, and in the public interest.” (5 U.S. Code § 7131).

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. No official time is utilized that has not been approved by management.

### **Bipartisan Congressional Coalitions Have Supported the Use of Official Time for Decades**

The Civil Service Reform Act of 1978 requires federal employee unions to represent all federal employees in a bargaining unit, even employees who choose not to pay union dues, and therefore gives unions the right to bargain over amounts of official time. Over the years, repeated legislative attempts to eliminate official time have been defeated with strong bipartisan support. During the 117<sup>th</sup> Congress, no official time legislation came to the floor for a vote in the House or Senate.

In 2018, the previous administration issued an executive order to eliminate federal employees’ right to bargain over this aspect of union representation. The executive order prohibited official time for the purpose of pursuing grievances or representing employees in negotiated grievance procedures. The executive order also set an arbitrary limit on the number of hours of official time that agencies could grant union representatives. Congress soundly rejected the executive order with statements of bipartisan opposition.

On August 29, 2018, a federal judge ruled that the executive order was in violation of current law; however, the administration successfully appealed this decision to the U.S. Court of Appeals for the D.C. Circuit, which ruled that the District Court did not have jurisdiction to rule on the lawsuit. Thus, the executive order was in effect until 2021, when the Biden administration revoked the anti-official time order to restore federal employees’ collective bargaining and representation rights.

In FY 2022, AFGE urged the inclusion of language in Financial Services and General Government (FSGG) Appropriations bill that would require agencies to bargain in good faith and give unions the opportunity to fairly negotiate the use of official time. The House-passed FY 2022 FSGG bill included the language: “None of the funds made available by this or any other Act may be used to prevent Federal workers from— (1) using official time for union activities. (2) teleworking for telework deemed positions or when the health or safety of an employee is in question; or (3) using space in Federal buildings for union activities.”

## **Official Time Legislative Action**

On April 29, 2015, Rep. 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.

However, official time is brought up by its opponents in Congress in each Congress. There were several anti-official time actions in the 117<sup>th</sup> Congress:

- H.R. 2793 “Official Time Reporting Act” by Rep. Jody Hice (R-GA) requiring OPM to report to Congress on the use of official time, how much is granted to personnel, the actions for which it is granted and the total compensation of those utilizing official time.
- H.R. 1902 “Do Your Job Act of 2021” by Rep. Dan Bishop (R-NC) to completely repeal official time as allowed under title 5 U.S. Code.
- S.Con.Res. 5 During consideration of FY 2022 budget reconciliation, Sen. Rand Paul (R- KY) proposed Senate Amendment 375 to eliminate all official time. The amendment did not receive a vote in the Senate.
- On July 30, 2021, Sen. James Lankford (R-OK) and others sent a letter to OPM and 54 agency heads calling for an accounting of what he dubbed “taxpayer-funded union time.” The letter, which was co-signed by Senators Richard Burr (R-NC), Ron Johnson (R-WI), Rand Paul (R-KY), Mitt Romney (R-UT) and Mike Braun (R-IN), called for the job titles and total compensation of every employee utilizing this misnamed activity.

## **Congressional Action in the 118<sup>th</sup> Congress**

- Congressional harassment of federal workers has largely taken different shape in this Congress and little has happened with respect to official time. Senator Mike Braun (R-IN) introduced S. 1053 to ban the use of official time at the Internal Revenue Service during five months of the year that are considered tax season. While AFGE does not represent those workers, we oppose limiting or banning official time for such purposes.
- Senators Jim Lankford (R-OK) and Marcia Blackburn (R-TN) launched an inquiry in December 2023 regarding the Office of Personnel Management’s decision to take certain reporting of agencies’ use of official time off its website. They were joined by eight other Republican Senators. In the letter, they were critical of any use of official time.
- In March 2023, the House voted 207-223 to reject a Perry-Foxo amendment that would have symbolically attacked official time by prohibiting union workers on official time from allegedly engaging in social media censorship. Sixteen Republicans voted no on the amendment.

## How Official Time Works

In the federal government union membership is optional – it is a choice. Employees join the union and pay dues only if they choose to do so. By law, federal employee unions are required to provide services to all employees in units that have elected union representation, even for those who choose not to join the union and pay dues. Federal employee unions are 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 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 duties while on duty status.

Legally Permitted Representational Activities are Limited to:

- Creating fair promotion procedures that require that selections be based on merit, to allow employees to advance their careers.
- 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.
- Participating in improvement of work processes.
- Providing workers with a voice in determining their working conditions.

The law limits the amount of time to what 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 that may **not** be conducted on official time include:

- Solicitation of membership.
- Internal union meetings.
- Elections of officers.

To ensure its continued reasonable and judicious use, all federal agencies report basic information on official time annually to the Office of Personnel Management (OPM), which then compiles a governmentwide report on the amount of official time used by agencies. In 2017, OPM reported that the number of official time hours used per bargaining unit employee was 2.97

hours in FY 2016, and that official time costs represented just 0.1% of the total of federal employees' salaries and benefits. With severe restrictions on the use of official time, which OPM then dubbed "Taxpayer Funded Union Time," that number fell to 1.96 hours per bargaining unit employee in FY 2019, fully one third less representational time per employee.

### **Official Time Makes the Government More Efficient and More Effective**

Through official time, union representatives can work with federal managers to use their time, talent, and resources to make our government even better. Improvements in quality, productivity, and efficiency across the government would not be 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 operational efficiency 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 will be successful if labor and management maintain an adversarial relationship. In an era of tight budgets, it is essential for management and labor to develop a stable and productive working relationship.

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

### **Official Time Produces Cost Savings from Reduced Administrative Expenses**

Union representatives use official time for joint labor-management activities that address operational, mission-enabling issues in agencies. Official time is used for activities such as joint design of training for employees on work-related subjects and the introduction of new programs and work methods initiated by the agency or by the union, or both.

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 gives federal employees the ability to provide input to improve workplace policies and procedures, as well as protection if they are discriminated against or treated unfairly. Any prohibition on the use of official time eliminates basic, much-needed protections for America's public servants—federal workers who support our military, make sure the Social Security checks are sent out on time, ensure a safe food supply, enforce clean water and clean air laws, and care for wounded veterans.

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. For instance, 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, restrict, 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**

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 elect 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 in 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 to join the union, nor are they under any obligation to pay for that representation or pay any other fee to the union.*** When federal employees choose to join the union, they sign a form, most file a Standard Form (SF) 1187 or other form which establishes their union membership and sets up the payroll dues deduction. When federal employees choose to pay union dues, most utilize this process, one that was established by the agencies to facilitate deductions for many purposes, not just collecting union dues.

### **Legislative Background**

During the 113<sup>th</sup> Congress, Rep. Mark Meadows (R-N.C.) and Sen. Tim Scott (R-S.C.) introduced legislation (H.R. 4792 / S. 2436) to prohibit federal agencies from allowing federal employees to pay union dues through automatic payroll deduction. In 2013, Senator Scott also offered a Senate floor amendment to eliminate payroll deduction of union dues. This amendment was rejected, 43 to 56. During the 114<sup>th</sup> Congress, Rep. Tom Price (R-Ga) introduced H.R. 4661, the "Federal Employees Rights Act," which likewise proposed elimination of automatic payroll deduction of federal union dues.

In the 115<sup>th</sup> Congress, Rep. Todd Rokita (R-Ind.) introduced H.R. 3257, the “Promote Accountability and Government Efficiency Act.” This legislation would have made all new federal employees “at will,” would have eliminated employee due process rights, and potentially prohibited all federal agencies from allowing voluntary payroll union dues deduction. AFGE strongly opposed this legislation.

In the 118<sup>th</sup> Congress, Representative Ralph Burlison (R-MO) introduced the inappropriately named “Paycheck Protection Act,” H.R. 4971, which would prevent agencies from making “automatic” dues deductions from employees’ paychecks in spite of the fact that union members have requested such deductions.

Additionally, AFGE succeeded in defeating an amendment to the FY’24 Financial Services and General Government Appropriations bill offered by Representative Andy Ogles (R-TN) that would have blocked implementation of a Federal Labor Relations Authority (FLRA) rule to set a regular schedule for when federal union members could cancel their union dues. With intensive lobbying by AFGE, the amendment was defeated by a vote of 223-196 with 19 Republicans voting with all Democrats to reject this misguided amendment.

Opposition to payroll deduction of union dues is sometimes justified on the basis of the false premise that elimination of payroll deduction would produce cost savings to the government. Since payroll deductions are performed electronically, it costs the government virtually nothing to deduct union dues. The federal government currently provides payroll deductions for the following:

- Combined Federal Campaign (Charities)
- Federal, state, and local taxes
- Federal Employees Retirement System annuity funding
- Thrift Savings Plan (TSP) contributions and TSP loan repayments
- Federal Employees Health Benefits (FEHBP) and Federal Employees’ Group Life Insurance (FEGLI) 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, bankruptcy, and commercial garnishment
- Flexible spending accounts for payment of health costs not covered by insurance
- Collection of debts owed to the United States

- Professional Association dues
- Personnel account Allotments (savings accounts)
- IRS Paper Levies
- Military Service Deposits

If it were wrong to provide employees with electronic payroll deductions for union dues, then it would be equally wrong to provide the service for these other worthy and important goals.

## **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. Such attacks 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.

## **FISCAL COMMISSION**

### **Background**

Over the past two decades, Congress has supported various costly wars that were never paid for through revenue increases, trillion-dollar bailouts for banks and employers affected by the pandemic and subprime mortgage crises, and tax cuts that largely benefited corporations and the wealthy. As a result, the national debt has ballooned from \$2.8 trillion in 1989 to over \$34 trillion today.

The beneficiaries of this extraordinary fiscal largesse have been the ultra-wealthy. The top 0.1% of Americans – people with individual net worth in excess of \$30 million – have seen their total wealth grow from \$4.6 trillion in 1989 to a staggering \$48 trillion today, the greatest windfall in human history. Meanwhile, the wealth of the bottom 50% – a group representing 500 times as many people as the top 0.1% – have gained less than \$3 trillion in total wealth, barely keeping pace with inflation.

Despite clear evidence that the growth of the national debt results from misguided and inequitable tax policies, some in the House and Senate have called instead for a “fiscal commission” to improve U.S. government finances. According to proponents, the commission would “put everything on the table” including tax changes and potentially deep cuts to social insurance programs like Social Security and Medicare, as well as federal agency payrolls and budgets. AFGE strongly opposes these proposals.



## **Is the National Debt Too High?**

The amount of debt that the U.S. government has on the books right now is large, especially given that there was a surplus as recently as 2001. The biggest drivers of the debt in the past two decades were tax cuts for the wealthy pushed through Congress by George W. Bush and Donald Trump, the wars in Iraq and Afghanistan, the stimulus package passed in response to the 2007-2009 Great Recession, and the enormous costs associated with the Covid-19 pandemic, including President Biden's American Rescue Plan.

Aside from the tax cuts for wealthy individuals and corporations, and an unfunded war based on false information, the expenditures that have driven up the debt were all necessary to address social needs and restore the health of the economy. The size of the debt is large but so is the size of the U.S. economy. Interest on the national debt, however, is a significant cost, particularly as interest rates have risen in recent years. Paying interest on the debt now amounts to 13% of overall federal spending, comparable to the 15% of spending directed to national defense. However, economists have widely varying opinions about what level of federal debt is sustainable.

It is important to remember that social insurance programs and federal employee pay, and benefits are not drivers of the debt. However, they are likely targets of a commission. Social Security is financed through its own trust fund, which receives money from federal payroll taxes. Social Security does not contribute to the federal deficit. The Social Security trust fund will begin to experience a shortfall in about 13 years, and absent any action this would result in automatic benefit cuts, which are unacceptable to most Americans. Congress needs to intervene well before 2037 to ensure that Social Security benefits continue to be paid in full. It can do this by enacting, for example, Rep. John Larson's "Social Security 2100 Act" (H.R. 4583) which would fully fund Social Security for the next 75 years by raising payroll and investment taxes for the wealthy. Currently all income over \$168,600 is exempt for Social Security taxes, as is investment income.

Instead of dealing with these challenges head on, the divided Congress of 2023 has been consumed by meaningless but destructive bickering over issues of federal spending and debt. Republicans, who showed little concern about the debt during the Trump administration – even enacting a \$1.9 trillion tax cut in 2017 – rediscovered the deficit as a supposed existential threat. To emphasize the point, House Republicans refused to increase the federal debt limit as soon as they took power, though such increases were routine and uncontroversial under Trump.

As a result, the government reached its legal debt limit in January 2023 and began instituting extraordinary measures to prevent a default, which was predicted to occur in June 2023. In case of an actual default, the government would be unable pay all of its obligations, including interest on U.S. treasury bonds, threatening global economic upheaval.

As a result of this manufactured and unnecessary crisis, the U.S. came within days of a default. To avoid this, the president and Congressional Republicans negotiated a suspension of the debt limit until after the next election, together with statutory spending caps for FY 2024 and FY 2025 under the so-called Fiscal Responsibility Act (FRA), signed into law by President Biden on June 3, 2023.

Although AFGE and others had serious concerns about the FRA, it is the law of the land – the result of hard-fought negotiations between the parties – and its targets should guide Congressional spending decisions for 2024. Almost immediately after the FRA was enacted, however, conservatives began demanding further cuts to federal spending, backed by the threat of a federal shutdown. In the House, this resulted in a number of individual spending bills that were funded far below the levels that would be consistent with the FRA.

In addition, a chorus of Republicans, joined by a handful of Democrats, bemoaned the growing national debt and proposed creating a “fiscal commission” that would have extraordinary powers to bypass normal Congressional procedures and propose measures to further reduce the federal deficit.

### **Commission Proposals**

In September 2023, a small bipartisan group of House members introduced H.R. 5779, the “Fiscal Commission Act of 2023.” The ostensible goals of the commission would be to “achieve a sustainable debt-to-GDP ratio” to “improve solvency” for federal programs like Social Security and Medicare. The Fiscal Commission would consist of 16 members, including 12 members of Congress and 4 outside “experts,” and would develop recommendations that would receive an expedited up-or-down vote in Congress, with no possibility of amendments. If signed by the president, the recommendations would then go into effect. In the Senate, similar legislation was introduced by Senators Mitt Romney (R-UT) and Joe Manchin (D-WV), the “Fiscal Stability Act” (S. 3262).

The idea of a fiscal commission is not new. In the aftermath of the subprime mortgage crisis, President Obama established what became known as the Simpson-Bowles Commission with a charter almost identical to that proposed in the Fiscal Commission Act. In the end, the Commission’s recommendations, such as raising the Social Security retirement age – embodied in a 2010 final report entitled “The Moment of Truth” – mostly languished. However, some of the Commission’s most pernicious recommendations, such as a multi-year federal civilian pay freeze and cutting the value of federal pensions, did come to pass. These unfortunate changes made an utterly insignificant contribution to deficit reduction (dwarfed by the magnitude of the 2017 tax cuts) but they continue to harm federal employees to this day.

The U.S. Constitution is plain. The preeminent function of Congress is to “lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.” Congress has carried out this function for more than 230 years through a deliberative and transparent process that involves committee hearings, oversight meetings, consultation with constituents, and good-faith negotiation and compromise among legislators who are directly accountable to voters for the legislation they write and pass. Outsourcing this function in order to make it easier for legislators to vote for measures that could include deep cuts to Social Security, Medicare, Medicaid, the federal civil service, and any number of other essential programs and services is, fundamentally, an abdication of duty. In the words of Rep. James McGovern (D-MA) before the House Budget Committee in late November:

*There already is a bipartisan forum where these kinds of decisions should get made – it’s called Congress. And we shouldn’t pass the buck to a fiscal commission to do the work that we*

*ourselves don't want to do. If we don't want to do it, maybe we should leave. There isn't some secret formula, we either cut spending, tax the rich, or a combination of both. We don't need a commission to tell us that. We just need common sense. And I want to echo what the former chairman of this committee, Mr. Yarmuth, said in October on the same issue: "The problem is not the process, it's the people."*

Based on the structure of the proposals, it is reasonably obvious that a fiscal commission will fulfill its charter by exacting further cuts from those least able to bear them: working people, those approaching retirement, the elderly, the sick, and the destitute. There is no documented history of similar commissions proposing significant tax increases. In fact, in 2010 the Simpson-Bowles commission actually recommended *capping* government revenue, and possibly lowering marginal tax rates, an extraordinary gesture from a panel tasked with reducing the deficit.

Indeed, a new fiscal commission would effectively replicate the enormous challenge that House Republicans have faced this year passing FY24 appropriations bills. Resistant to any discussion of revenue increases, House Republicans, over the course of 2023, have proposed extreme cuts to the federal domestic nondefense budget, ranging from 20-40%, even though the domestic budget, excluding veteran programs, is a small fraction of federal spending. Indeed, eliminating *all* federal government agencies, while sparing the Departments of Defense and Veterans Affairs, would barely reduce the deficit. It would still exceed a trillion dollars a year. Gone would be our national parks, farm programs, food and drug safety, scientific research, and environmental protection. Borders would be open and skies unregulated. Prisons would be not be guarded. Yet we would still have a considerable deficit, the result of reckless federal tax policies. A fiscal commission, because of its novelty and unaccountability to the American people, may well propose and induce representatives to vote for measures that are as extreme, one-sided, and misguided as those House Republicans have tried unsuccessfully to enact.

America's civil servants, whom AFGE represents, have already done more than their fair share of deficit reduction. The pay gap between the public and private sectors has only widened; federal pay now lags the private sector by more than 25% according to the Office of Personnel Management. The last fiscal "crisis" following the subprime mortgage debacle led to the unsuccessful Simpson-Bowles commission and the Congressional supercommittee, all of which failed to reach meaningful agreements. However federal workers were repeatedly and successfully targeted, suffering three years of pay freezes and a seemingly permanent 3.6% surtax on federal salaries, ostensibly to pay for retirement benefits. Federal workers have thus already contributed hundreds of billions to "deficit reduction," a sacrifice asked of no one else. Federal civilian employment today is less than it was in the 1960s, even as the U.S. population has nearly doubled. Workers at federal agencies like the Social Security Administration are already at the breaking point, the result of years of chronic underfunding.

The history of fiscal commissions is a history of ignominious failure. On January 11, 2024, Reps. John Larson (D-CT) and Jan Schakowsky (D-IL) led a group of 116 House Democrats, including 12 full committee ranking members, who wrote to Speaker Johnson opposing the fiscal commission proposals and demanding that no fiscal commission be attached to any must-pass spending bills. According to the letter, to call for a commission "is no profile in courage, it's a direct circumvention of the [legislative] process to expedite cuts to Social Security."

## **Congressional Actions**

- Defeat any proposal for fiscal commission that will have fast-track authority to cut federal spending and social insurance programs like Social Security and Medicare, including H.R. 5779, S. 3262, and H.R. 710, and reject any spending bill that includes a fiscal commission.
- Ensure that Congress lives up to its own agreements by funding government agencies and programs at the levels prescribed in the bipartisan Fiscal Responsibility Act.
- Enact legislation such as H.R. 4583, the “Social Security 2100 Act,” to guarantee the long-term viability of Social Security.

### **PRESERVING AND DEFENDING THE COMPETITIVE CIVIL SERVICE**

In late October 2020, then-President Trump issued an Executive Order (EO)<sup>1</sup> creating a new Schedule F in the excepted service. The EO creating Schedule F, which was never implemented, would have permitted the transfer of tens of thousands and potentially hundreds of thousands of positions from the competitive civil service into the excepted service. These newly transferred excepted service positions would have been “at will” positions, with no tenure protections, regardless of employees’ prior years of service or quality of performance.

Newspapers were filled with stories about the Schedule F plan, most decrying it as a politicization of the career civil service.<sup>2</sup> Trump has reiterated his plan to establish Schedule F should he be elected to a second term. If that occurs, it is likely that many long-time federal employees will themselves effectively serving as political appointees, subject to removal without cause or any due process rights. Nor can federal workers expect much relief from Congress if the next president chooses to implement Schedule F. The divided Congress has so far failed to adopt any law prohibiting new personnel schedules like a future Schedule F.

In one positive development, following lobbying by AFGE, in November 2023 the Republican House narrowly rejected a funding bill amendment that would have blocked OPM from issuing a rule designed to thwart future administrations from reinstating Schedule F. Fifteen Republicans joined Democrats to defeat the amendment, thus allowing OPM rulemaking to proceed. However, rulemaking alone is unlikely to do more than delay a nefarious future administration from instituting Schedule F and removing perceived opponents from government.

In addition to the Trump Schedule F plan, there remain many continuing threats to the competitive civil service. The threat to the competitive service posed by expansion of the excepted service is multi-faceted. It emerges when agencies seek and exercise excepted service hiring authority for positions where competitive service hiring authority exists – that is, in cases where there is no rationale inherent to the position that justifies an excepted service designation. These cases expose the dangers of the excepted service. In order to understand how the excepted

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<sup>1</sup> EO 13957 dated October 21, 2020

<sup>2</sup> Washington Post, [“Trump’s newest executive order could prove one of his most insidious.”](#) October 23, 2020.

service threatens the competitive service, it is necessary to clarify the differences between the two.

### **What is the Competitive Civil Service?**

The competitive civil service consists of all civil service appointments in the executive branch other than Senate-confirmed presidential appointments and other positions excepted by statute, or a presidential or Office of Personnel Management (OPM) determination.<sup>3</sup> In contrast to the competitive service are positions placed into the excepted service.<sup>4</sup> The excepted service is in many ways an alternative framework that is a legacy of the patronage system. After the competitive service was created and expanded for almost one hundred years, positions not placed into the competitive service were known as excepted or unclassified positions, i.e., excepted from the competitive service (also sometimes referred to as unclassified jobs).

Positions in the competitive service have full civil service tenure and due process rights after completion of a probationary period. “Competitive service” status confers the ability to compete for or transfer to any other competitive service position for which an employee qualifies without further examination by the U.S. Office of Personnel Management (OPM) or any agency. Until relatively recently, virtually all initial appointments, i.e., generally a person’s first appointment into a position in the competitive service, were filled only after an applicant had been competitively “examined” by OPM or an agency with delegated examining authority. The examination requirement<sup>5</sup> was designed to achieve four objectives:

- 1) Ensure there is actual documented competition for jobs in the civil service by publicly posting openings.
- 2) Ensure that only qualified or highly qualified people are appointed after a thorough
- 3) examination of a candidate’s knowledge, skills and abilities to perform the work of the position(s).
- 4) Ensure diversity in the most efficient way by enabling large numbers of candidates to be evaluated in the least burdensome way by having their knowledge, skills and abilities assessed as general “competencies” that can generate referrals to multiple jobs rather than placing the burden on job applicants to apply for similar jobs; and
- 5) Ensure that qualified veterans<sup>6</sup> are given appropriate credit for consideration in filling positions.

### **What is the Excepted Service?**

The alternative to the competitive service is the excepted service. Prior to passage of the

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<sup>3</sup> 5 U.S.C. § 2102

<sup>4</sup> 5 U.S.C. § 2103

<sup>5</sup> See generally 5 U.S.C., Chap 33

<sup>6</sup> 5 U.S.C. § 2108

Pendleton Act<sup>7</sup> in 1883 following the assassination of President Garfield in 1881 by a disappointed office-seeker, there were no laws requiring merit-based selection of employees. After President Garfield's assassination, 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. Before the Pendleton Act, the civil service had become highly partisan, with frequent turnover when a new administration took office. Because of a lack of merit-based hiring, unqualified people were appointed to offices that required more and more technical expertise in an emerging modern state. The notion of a professional civil service, hired based upon merit, and removable only for "good cause" rather than partisan loyalty to a particular president became a potent political force in the 1880s. It was the "good government" program of its time.

Although the term "excepted service" did not exist at the time, the effect of the Pendleton Act was to create the modern civil service by placing more and more positions into the "competitive service," with competitive service jobs being filled based solely on the basis of merit and not political connections.

Over time, the competitive service encompassed more than 85% of the federal workforce, with excepted service positions covering the remaining 15%.<sup>8</sup> Today most positions in the excepted service are exempt from competitive service hiring requirements due to statutory provisions, e.g., healthcare positions at the Department of Veterans' Affairs and Transportation Security Officers at the Transportation Security Administration, or because of regulatory exemptions issued by OPM, e.g., attorneys under Schedule A excepted service appointing authority (required based on an appropriations restriction prohibiting "examinations" of attorneys).<sup>9</sup> In some instances, entire agencies are exempt from the competitive service, e.g., the Nuclear Regulatory Commission and the Federal Bureau of Investigation.

The excepted service consists of all positions *not* in the competitive service (with the exception of the "Senior Executive Service" which is the third service in the civil service and is not relevant to this discussion).

Unlike the competitive service, there are no generally applicable rules for the excepted service. Some positions in the excepted service have due process rights (although they are not usually as robust as those for competitive service positions). Some positions have a few rights, and others serve at the will of the appointing agency. There are many variations among excepted service appointments, and each excepted service appointing authority must be closely examined to determine what, if any, rights apply. At some agencies, most excepted appointments are made without competition or even a public notice posting. Other agencies use a hybrid form of competition either with or without public notice. Rules for selection to excepted service positions are essentially non-existent unless an agency chooses to develop its own. Excepted service appointment authority is quite discretionary and often occupies an ill-defined world between the competitive civil service and political appointments, even when the excepted service position is

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<sup>7</sup> 22 Stat. 403

<sup>8</sup> See generally, "Biography of an Ideal, A History of the Federal Civil Service," U.S. Office of Personnel Management, 2003.

<sup>9</sup> Public Law 35, 78<sup>th</sup> Congress (1944).

nominally classified as a “career” type appointment.<sup>10</sup>

In some instances, excepted service appointments represent a long-established approach to federal hiring, e.g., for all federal attorneys. However, in many instances, excepted service appointments are authorized solely in order to deny statutory rights to groups or classes of employees, e.g., healthcare professionals at VA and Transportation Security Officers (TSOs) at TSA. The examples of VA healthcare professionals and TSOs are instructive, because both of these groups have experienced expansion and contraction of rights according to the political inclinations of different presidential administrations. In the case of VA healthcare professionals, the previous administration eliminated some collective bargaining and union representation rights. In the case of TSOs, the current administration has expanded collective bargaining and due process rights.

### **The Consequences of “Fast and Easy”**

The benign rationale offered for most of the recent upsurge in excepted service hiring is that it is faster and easier than competitive service hiring. Agencies lament the time it takes to examine and select from qualified candidates and insist that excepted service hiring is merely expedited hiring that allows agencies to fill positions quickly and efficiently. They claim that there is no intention to bypass veterans’ preference or merit principles; the entire motivation is speed and ease. They make false assertions about private sector practices, arguing that to compete for “talent” they must be able to move as swiftly as private firms or risk losing high-quality job candidates, ignoring the fact that best practices in the private sector involve extensive evaluations and rigorous scrutiny of job candidates, as well as widespread advertising to find qualified candidates.

Excepted service hiring is not just a matter of speed and ease at the beginning of the employment relationship. A position in the excepted service is not merely one that allows fast and easy hiring. It also often allows for faster and easier firing. And once there is a faster and easier way to fire for one group of federal employees, agencies want the same speed and ease for competitive service hiring and firing. As such, the most serious problem caused by the expansion of the excepted service is that in pursuit of ways to hire quickly and without competition, basic merit system principles become obscured or eviscerated.

As the excepted service becomes a larger part of the overall civil service, it undermines merit as the principal basis for obtaining and keeping a federal job. Merit-based factors like knowledge, skills, and abilities can be replaced by non-merit factors like political loyalty or other affinities. When it becomes very easy to hire people, it also makes the case that it should be just as easy to dismiss them. Some recent expansions of the excepted service, such as through the Pathways program, use excepted service appointments as a conduit for placing people into the competitive service without competition after only one or two years. This is nothing more than a workaround to avoid competitive service hiring procedures.

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<sup>10</sup> <https://oig.justice.gov/sites/default/files/legacy/special/s0807/final.pdf>

## **Excepted Service Hiring's Impact on Diversity**

Recently, some have claimed that that excepted service appointments help achieve diversity because their expanded use makes it easier to disregard veterans' preference and consider other candidates. This claim is specious as the military (and thus the population of those who can claim veterans' preference) has a higher percentage of minority members than the general population or most private sector employers.<sup>11</sup> We do not have data on the demographics of those hired in the excepted service as compared with those hired in the competitive service; however, such data would have to be adjusted to reflect the composition of jobs and occupations between the two groups.

We contend that reducing the burdens of applying for federal jobs through the competitive service examination requirement, when objective skills assessment tools are used to evaluate broad competencies, rather than tailored to specific individuals, is the most effective and efficient way of generating broader numbers of job applicants from a broad array of demographic groups.

The current process, as administered by the agencies, is in dire need of reform. Agencies have circumvented the competitive examination requirement with various workarounds so that the primary means for applying for a federal job is through submission of a resume on the USAJOBS website. Resumes are then evaluated by computer systems, using word matches, or candidate self-assessments, rather than an actual human assessment of the knowledge, skills and abilities of a candidate. Many members of the public are overwhelmed and discouraged by this process. Being required to check for job postings that are limited to a narrow window of time – and having resumes evaluated in ways that seem arbitrary and opaque – discourage applicants and lead to a cynical view that unless one is a favored insider who has already been pre-selected by a hiring manager, one has no chance of success.

## **The Future of the Competitive Service**

Former President Trump's attempt at a wholesale transfer of competitive service positions into the excepted service was an obvious ploy to politicize and corrupt the civil service but remains a real threat in the future. But there are also other pernicious and less well-known initiatives to place more jobs into the excepted service. In recent years, agencies have increasingly sought, and Congress has authorized excepted service appointing authorities throughout the executive branch. A 2018 OPM report<sup>12</sup> shows that from 1995 – 2015, the percentage of civil service positions in the competitive service declined from 80.5% to 69.9%. Conversely, excepted service appointments increased by more than half, from 19.1% to 29.7% of the entire civil service. By 2021, the competitive service was reportedly down to only two-thirds of the workforce, with excepted service positions comprising the rest. This is a far cry from a merit-based civil service system which once reached a peak of 86% of all positions being in the competitive service.<sup>13</sup>

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<sup>11</sup> <https://www.statista.com/statistics/214869/share-of-active-duty-enlisted-women-and-men-in-the-us-military/>

<sup>12</sup> OPM Special Study – “Excepted Service Hiring Authorities” available at: <https://www.chcoc.gov/content/opm-special-study-%E2%80%93-excepted-service-hiring-authorities-their-use-and-effectiveness>

<sup>13</sup> See generally, “Biography of an Ideal, A History of the Federal Civil Service,” U.S. Office of Personnel Management, 2003.



The most frequent reason given by agencies and Congress for expanding the excepted service is the common misconception that hiring for competitive service positions hampers federal agencies or prevents them from competing with the private sector for top talent. Existing civil service laws already allow higher pay for critical government needs – as much as 50% above the rates of basic pay, with OPM approval – in order to recruit for an “important agency mission.”<sup>17</sup> In our experience, many agencies’ demands for competitive-service hiring exceptions arise from a lack of proper knowledge, training or utilization of existing title 5 hiring and/or pay flexibilities including recruitment bonuses of up to 25% of pay.<sup>14</sup>

While agencies’ desire to recruit quickly for new initiatives may be well-intentioned, various excepted service hiring authorities are ripe for misuse, often resulting in the hiring of friends and political allies who may be difficult to hold accountable subsequently. One particularly prominent misuse of excepted hiring authorities resulted in a nominee for Under Secretary of Defense withdrawing his nomination while under Inspector General scrutiny.<sup>15</sup>

Following controversy over prior administrations’ use of scientific information, the Biden Administration commissioned a high-profile 46-member task force on scientific integrity, with the stated purpose of reinforcing “robust science” that was “unimpeded by political interference.” The panel’s first report, issued in January 2022, concludes that one of the principal ways that scientific integrity can be undermined is the “selection or appointment of scientific staff based on non-science qualifications.”<sup>16</sup> Ironically, just days after the Biden Administration report, a bill was introduced in the House that includes provisions that further institutionalize excepted-service hiring of scientists and other technical personnel. In practical terms agencies would have enormous discretion to hire individuals, many of whom may not be the best qualified, or even highly qualified, but rather those who have some connection to the hiring official(s) or have espoused ideological views that align with whatever administration is in power.

The recent creation of the Defense Cyber Excepted Service (CES) and the Defense Cyber Intelligence Personnel System are two prime examples of broad non-competitive excepted appointing authority coupled with potentially limited due process rights. Both claim to “always [be] merit based and sometimes noncompetitive if conditions warrant.” They also claim the veteran’s preference will apply “if administratively feasible,” but with “no points assigned.”<sup>17</sup> Translated into English, the Defense CES has almost no basic hiring criteria other than the ability to hire whomever officials want to hire.

In December 2023, OPM sent Congress a legislative proposal for a governmentwide Cyber Workforce initiative that would further erode the competitive service. Rather than dealing head-on with the problem of uncompetitive pay for federal workers that hinders recruitment and retention, OPM suggested establishing a vast new personnel system for information technology

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<sup>14</sup> See 5 CFR § 575.109

<sup>15</sup> <https://www.fedscoop.com/mike-brown-withdraws-nomination-for-dod-acquisition-and-sustainment/>

<sup>16</sup> Scientific Integrity Fast-Track Action Committee and National Science and Technology Council, “Protecting the Integrity of Government Science,” January 2022 ([https://www.whitehouse.gov/wp-content/uploads/2022/01/01-22-Protecting\\_the\\_Integrity\\_of\\_Government\\_Science.pdf](https://www.whitehouse.gov/wp-content/uploads/2022/01/01-22-Protecting_the_Integrity_of_Government_Science.pdf))

<sup>17</sup> DoD Cyber Excepted Service (CES) Personnel System: Authorities Comparison (Dec. 2021).

workers, with the authority to waive most provisions of title 5. Ironically, OPM argues that all agencies now need a special hiring and personnel system in order to compete with DoD and DHS for cyber talent. Among the worrisome provisions of the proposal:

- The term “cyber” is not clearly defined or limited and could eventually include tens or even hundreds of thousands of IT and IT-adjacent roles.
- Pay would be determined administratively rather than through the GS system.
- Routine pay increases could be withheld administratively, without employee appeal rights.
- The OPM director could waive most provisions of title 5 for cyber workers, notably including collective bargaining rights.
- Jobs could be filled without public notice of the vacancy.
- Veterans’ preference would be effectively eliminated.

On December 29, 2023, OPM authorized governmentwide direct-hire authority for a number of similar IT positions related to artificial intelligence (AI). OPM also authorized excepted service (Schedule A) hiring authorities for positions related to implementing the administration’s AI policies.

These twin moves continue the unfortunate trend of treating each new societal or economic trend (and each newly popular or hard-to-fill occupation) as a reason to further decimate the competitive service, which has accomplished so much for the nation for well over a century.

### **“Direct Hire” – Another Threat to the Merit System**

While the growth and expansion of the excepted service represents a threat to the continuing viability of the competitive service, yet another competitive service hiring technique also represents a challenge to merit. Under 5 U.S.C. § 3304, agencies may directly hire employees into the competitive service, without competition or consideration of veterans’ preference. Direct hire authority (DHA) was originally designed to promote and expedite hiring when OPM has determined that there exists a “severe shortage” of candidates. However, increasingly Congress has bypassed OPM and authorized various agencies, most notably the Department of Defense (DoD), to utilize DHA on a greatly expanded basis. Perhaps concerned that failure to grant agencies DHA upon request will result in even more Congressional expansion of direct hire, OPM has been granting use of this authority to many civilian agencies.

Unlike excepted appointments, DHA allows appointees to be directly hired into the competitive service without any comparative examination of qualifications. In fact, DHA requires only that an appointee meet minimum qualifications for the position. DHA also bypasses veterans’ preference. Agency use of DHA is as varied as use of excepted service appointing authorities, but it is clear that DHA represents a real threat to merit and much like the excepted service has

the potential to create a civil service staffed at least in part on patronage or favoritism principles – a return to the 19<sup>th</sup> century.

A February 2021 report by the Merit Systems Protection Board shows that DHA has expanded from less than 5% of all new hires in the competitive service in the early 2000s to nearly 30% of such hires in 2018, including almost half of all new DoD hires.<sup>18</sup> Between the increasing use of excepted service appointments and DHA, policymakers cannot help but recognize that the merit-based system created by the Pendleton Act is slowly being eroded with expedient hiring authorities. At what point will policymakers begin to question why federal employees who were hired non-competitively should be entitled to any due process rights when facing adverse actions?

### **Strengthening the Competitive Service to Ensure the Continued Integrity of the Civil Service**

The emphasis on use of excepted service and DHA appointments – effectively non-competitive hiring practices – tends to reduce the pool of candidates (often internal candidates) considered for jobs. Requiring employees to check USAJOBS on a daily basis and hunt for job announcements is a transaction-heavy, burdensome process that tends to discourage candidates unless someone in management tells a candidate about the job posting. The situation favors managers' cherry-picking preferred candidates by informing them of a job announcement (if there even is one) and leaving it posted for a limited time to reduce the number of candidates to be considered. In many instances qualified persons may never learn that jobs are available before they are filled.

To counter these negative trends, AFGE has offered its support for a significant piece of legislation which was approved, almost unanimously, by the House of Representatives in early 2023. The “Chance to Compete Act of 2023” (H.R. 159) promotes competitive service hiring as a key to a strong professional apolitical federal workforce that is free of personal or political patronage. Similar legislation (S. 59) has been introduced on a bipartisan basis in the Senate.

Over the years, our highly trained apolitical competitive civil service – representing the best workers the country can produce – has helped the nation to overcome the Great Depression, put astronauts on the moon, and won the Cold War. The need for a strong professional civil service has never been greater, as the country confronts numerous domestic and international challenges. The House bill would help to re-establish competitive service hiring as the preferred method for staffing the civil service. Specifically, it would ensure that vacancies are open to the public and to other qualified federal workers, bringing needed talent and diversity to the candidate pool.

The bill would make the system for assessing applicants fairer and more objective. It would provide for panels of knowledgeable subject-matter experts to assist with screening applicants, instead of using rigid and arbitrary criteria and buzzwords. Importantly, agencies could share

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<sup>18</sup> Direct-Hire Authority Under 5 U.S.C. § 3304: Usage and Outcomes February 2021, available at: [https://www.mspb.gov/studies/researchbriefs/Direct\\_Hire\\_Authority\\_Under\\_5\\_USC\\_%C2%A7\\_3304\\_Usage\\_and\\_Outcomes\\_1803830.pdf](https://www.mspb.gov/studies/researchbriefs/Direct_Hire_Authority_Under_5_USC_%C2%A7_3304_Usage_and_Outcomes_1803830.pdf)

certificates, so that once an applicant was determined to be qualified for certain kinds of work, he or she could be considered for multiple jobs across the federal government without having to identify and reapply for each one separately. Finally, by strengthening the competitive service, the bill supports longstanding Congressional policy that qualified veterans have an advantage – but not a guarantee – when seeking federal jobs.

While the House moved quickly to advance H.R. 159, the bill has since lost momentum. OPM has asked the Senate for various changes that could weaken the bill, allowing agencies to opt out of key provisions. AFGE has remained firm in its support for the House version, and the Senate has thus far failed to advance a bill.

### **Congressional Requests**

- Enact H.R. 159, the “Chance to Compete Act,” to further improve competitive hiring procedures.
- Reject further agency requests for expanding excepted service or direct-hire authorities, including expansive efforts to move IT, cyber, and AI workers outside of title 5 and set pay administratively.
- Support agency requests for additional HR staffing and training to conduct competitive-service hiring, where needed.
- Advocate for governmentwide solutions to the problem of uncompetitive pay, which is the fundamental barrier to recruiting and retaining the best workers. At a bare minimum, Congress must support a strong version of the annual FAIR Act to progressively reduce the pay gap with the private sector.

## **DEPARTMENT OF VETERANS’ AFFAIRS**

### **Introduction**

Effective workforce policies are critical for the Department of Veterans Affairs to deliver the exemplary health care and other services that veterans have earned through their sacrifice and service. Chronic short staffing, hostile management practices that ignore collective bargaining rights, and unsafe working conditions are further eroding this essential safety net for veterans – a net that is already severely strained by the pandemic and the relentless greed of privatizers.

In 2024, AFGE and its National VA Council (NVAC) will work to ensure that the VA fully utilizes all available tools to recruit and retain a strong workforce. We will continue to fight for the full restoration of employees’ rights to due process, improve employee benefits, collective bargaining, and official time. We will take an unwavering stand against privatization, whether it occurs through the MISSION Act’s contract care policies, the proposed closures of VA facilities, new legislation, or VA policies that promote outsourcing over hiring. AFGE will also seek comprehensive Congressional oversight of VA spending and operations in the Veterans Health

Administration (VHA), Veterans Benefits Administration (VBA), Board of Veterans Appeals (BVA), National Cemetery Administration (NCA), and other VA components.

## **ENSURING A SAFE HEALTHCARE WORKPLACE**

### **Background**

COVID-19 has become a long-term health and safety issue for VA health care employees. COVID-19 and other workplace safety risks need to be handled through sound management practices and meaningful, ongoing labor-management cooperation. Unfortunately, at most VA medical facilities, the workplace practices of the Trump administration that eliminated joint labor-management planning and problem solving continue. Instead of working with their labor partners to address the pandemic hazards, and the staffing shortages that management created and that worsened during the pandemic, management puts employees and patients at greater risk by refusing to recognize collective bargaining rights to address safety issues, overtime mandates and reassignments.

### **OSHA COVID-19 Standard**

A permanent OSHA COVID-19 standard is essential to protect VA healthcare personnel and other federal employees from the ongoing risks presented by COVID-19. The OSHA Health Care Emergency Temporary Standard (ETS) issued in January 2021 pursuant to Executive Order 13999 provided clear requirements to be met by employers to ensure a safe VA health care workplace, including mandates for personal protective equipment (PPE), physical barriers, more extensive cleaning procedures in high-risk areas, ventilation and screening of individuals entering facilities. It also provided paid leave to employees quarantining due to infection or exposure and required the VA and other employers to develop a workplace plan with involvement from employees and their representatives. Employees could file OSHA complaints when the standard was violated. The temporary standard has since expired without being replaced by a permanent standard. AFGE had urged OSHA to reinstate the temporary standard pending the development of a permanent standard. After expiration of the ETS, management at numerous VA facilities reverted to pre-pandemic practices that left employees without protections that were still greatly needed as COVID-19 persisted.

### **Administrative Requests**

- Strengthen and expand on the permanent standard, including requiring employers to provide medical leave for workers who become sick or must quarantine after an exposure.
- OSHA sent the finalized permanent COVID-19 standard to the Office of Management and Budget for regulatory review in December 2022. AFGE urges prompt issuance of a permanent standard as the nation faces the long-term threat from COVID.

## **VA'S STAFFING AND HUMAN RESOURCES CRISES ARE FURTHER FUELING PRIVATIZATION**

## Background

VHA has always had to compete with other health care employers for physicians, nurses, psychologists and others working in clinical shortage occupations. While VHA cannot be a pay leader, it has always competed by serving a unique patient population and offering good working conditions and a labor-management partnership. In March 2023, The Veterans Healthcare Policy Institute and AFGE's National VA Council released results of a survey of AFGE VA employees about the impact of H.R. modernization and staffing shortages.

Findings included:

- 96% of Veterans Health Administration respondents said their facility needs more frontline clinical staff.
- 75% said their facility needs more administrative staff.
- 77% said that there are vacant positions for which no recruitment is taking place.
- 77% reported that their VHA facilities have closed beds, units, and/or programs due to staffing and budget shortfalls.
- 55% said they have less time to deliver direct patient care and support services than they did four years ago.
- Half of respondents said that the VHA's centralized HR activities under the new Human Resources Modernization Project has worsened delays in hiring and is contributing to the hemorrhaging of staff. Over 90% said candidates lost interest due to HR delays.

While VA reports that it is making gains in hiring, there is a disconnect between its rosy reports and what AFGE members experience on the ground. Reports of hiring freezes and pauses attributed to budget shortfalls across VISNS are increasingly common. And the data that VA uses to populate its staffing data required under section 505 of the Mission Act is by VA's own admission not yet accurate. AFGE members report differences between the number of vacancies they see on paper organizational charts and the numbers that are generated by HR smart, VA's electronic human resources record system.

According to VA's June 2023 Section 505 annual report:

*VA continues to make progress with internal system changes to HR Smart, VA's authoritative system of record for human resources data, to enhance position management processes and move towards better data integrity and fidelity in the reported positions, particularly vacant positions. Validation processes and system improvements include participation from financial managers to ensure positions marked as "budgeted" have available funds to support actual hiring. **VA is not at the point yet where the vacancies recorded in HR Smart are indicative of true current and budgeted positions, but rather best estimates based on available data and systems. VA actively monitors the workforce to evaluate and take***

*action to minimize the impact of staffing gaps on capacity to care for Veterans.*

## **Hiring and Human Resources**

The VA's misguided HR practices that began in the prior administration continue to present severe obstacles to hiring staff throughout the department. Routine personnel actions such as job postings, hiring, credentialing, promotions and pay adjustments that used to be handled in person at the facility level have been replaced by "HR Smart" and other computerized, centralized systems at the VHA VISN level and the VBA regional level.

Our local leaders and members have lost virtually all involvement in the hiring process where they could once advocate for more staff and assist management in identifying hiring needs.

We are encouraged by the enactment of an HR provision in the Honoring our PACT Act (PACT Act) which was signed into law on August 10, 2022. The PACT Act requires the Secretary to improve HR functions by establishing qualifications and standardized performance metrics for each HR position, as well as new systems to monitor hiring and other HR actions.

Compensation remains a key reason that VA has trouble recruiting and retaining staff. The VA has different pay systems for physicians and nurses. The current pay system for physicians, dentists and podiatrists is composed of market pay, performance pay, and longevity pay. When the VA rolled out the three-tiered system pay system, it was intended to make pay more competitive with local markets and to incentivize individual professional performance, while also rewarding retention and experience. However, since this pay system was enacted nearly two decades ago, there have been widespread management inconsistencies with processes for setting market pay and performance pay. In 2023, S. 10 the "CAREERS Act", was introduced which would have ended the three-tiered payment system for physicians and replaced it with a system based mainly on market pay. While AFGE supports making physician pay more competitive with other payers, we oppose efforts to transition physician pay to market pay before VA fixes overall problems setting market pay. For example, some similarly situated clinicians at facilities in similar markets receive radically different market pay. We frequently hear reports of long-serving, experienced, highly credentialed clinicians sometimes receiving lower market pay than new employees in the same facility. Short-sighted strategies to recruit new employees at the expense of existing employees only exacerbate problems with retention, as new doctors increasingly see VA as a good place to train but not to stay. VA must develop policies that will attract physicians over the continuum of a career and across the spectrum of specialties and pay levels; otherwise fixes to one set of problems will only create new ones.

VA is mandated to perform third-party RN locality pay surveys, which are triggered by factors such as turnover rates, resignations due to dissatisfaction with pay, or other criteria set by the facility director. But VA's lack of transparency about the underlying information needed to calculate turnover and vacancy rates makes it hard to determine whether the agency is compliant with its legal obligations under Title 38.

Widespread human resource errors create further barriers to retention and recruitment and tarnish VA's reputation as a good faith employer. Prospective employees accept VA job offers based on salaries, duties and schedules outlined in tentative offer letters. When they report to the job, they

are informed by HR or their manager that their salary, job description or schedule differs from the offer made by VA. These individuals may have given notice at a previous job, declined a competing offer, or relocated based on these erroneous offers. To make matters worse, VA employees may receive debt letters to recoup money they were erroneously paid due to HR coding mistakes. New employees already on the job have been hit with debt letters when HR discovers that they were paid more than they should have due to a coding or job offer mistake by HR. The employees are informed that not only will they receive a wage or salary reduction, but that the payroll department will claw back the money already paid to them. VA lacks a formalized, mentoring and teaching curriculum for VHA, specifically developed for the necessary HR coding requirements within HR smart that matches VHA complex policy and personnel system to assure mastery. Most troubling, if a miscoding error by a HR official occurs that results in employee debt, the agency seemingly has no systematic after-action plans for correction, so these errors don't happen again. Historically, VA has sought to remedy issues like this by asking to streamline HR processes by moving more employees to Title 38. But that is not the answer. Rather, VA must develop a stringent complete curriculum related to those HR errors that resulted in employee debt to prevent those actions from occurring again.

Limitations on employees gaining redress for HR errors under 38 U.S.C. §7422 prevent employees from using grievance procedures from a collective bargaining agreement “for any matter or question concerning or arising out of the establishment, determination, or adjustment of employee compensation.” The bar on grieving compensation means that employees cannot grieve paycheck errors even if it is clear that VA is at fault. Further, VA uses an overly broad interpretation of §7422 to improperly deny union access to information about whether market pay surveys are done at all, citing the inability to grieve compensation under §7422 as a complete bar to obtaining information about locality pay surveys mandated separately under 38 U.S.C. §7451.

### **Congressional and Administrative Requests**

- VHA must provide HR officials with proper training to code VHA personnel records and create mandated after-action plans when they inadvertently create employee debt.
- VHA should make third-party locality pay surveys accessible to help more front-line RNs and PAs secure needed pay adjustments.
- Union representatives should receive the same training on the locality pay survey process that managers receive.
- Congress should enact H.R. 543, the “VA Continuing Professional Education (CPE) Modernization Act,” which would increase the eligibility for VA clinicians to receive CPE, increase the reimbursement amount, and adjust the amount for inflation.
- Congress should undo or at least make fixes that mitigate the rupture of relationships between human resources and local facilities that have undermined effective hiring.
- VA should improve the accuracy of vacancy, turnover, and recruitment data.



- VA should regularly report information about each VA entity that conducts a market pay evaluation including whether a market pay adjustment was made following the evaluation (per occupation and specialty) and whether employees and local union representatives were notified of the evaluation.
- Congress should amend 38 U.S.C. §7422 to allow for full collective bargaining rights for title 38 employees including the ability to grieve violations of VA pay policies. In the meantime, it should pass the H.R. 6538, the “VA Correct Compensation Act”, which would allow employees to grieve common paycheck errors (See discussion below).

## **VA Needs Enforceable Safe Patient-Staffing Ratios**

Minimum patient-staff ratios ensure that all veterans receiving treatment in inpatient units and nursing facilities receive safe, high-quality care. Nurses and other clinicians need to work at adequately staffed facilities where they can focus on the veterans they are caring for without fear of medical errors or threats to their state licenses.

AFGE has long supported the Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act, led by Representative Jan Schakowsky (D-IL) in the House and Senator Sherrod Brown (D-OH) in the Senate. This critical bill follows in the footsteps of the California safe staffing law that has been in place for nearly two decades which requires all state acute-care hospitals to comply with defined nurse-patient staffing ratios.

The Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act would set minimum nurse-patient staffing requirements for public and private health care systems, including VA and Department of Defense medical facilities. It includes critical whistleblower protections for nurses who speak up for their patients by reporting unsafe staffing conditions. AFGE was successful in its efforts to ensure that the bill provides equal protections to VA nurses despite their severely limited bargaining rights under VA’s policy interpreting 38 USC 7422.

Currently, the only protection that VA nurses and other medical and mental health personnel have to ensure adequate staffing, and therefore safe and timely treatment for veterans, are VA’s own staffing methodologies and guidelines. These VA staffing policies are not enforceable under law and provide no protections for personnel who report unsafe staffing levels. Nurses in intensive care units are forced to care for excessively large numbers of acutely ill patients without adequate backup or rest. Emergency room (ER) staff have no recourse when they cannot find beds for seriously ill veterans and are forced to keep them in the ER for several days because there are not enough nurses to reopen the thousands of closed beds at facilities around the country. Mental health clinicians cannot respond adequately to veterans with mental health crises when management overloads them with patients. Without enforceable staffing ratios, VA health care personnel and veterans remain at the mercy of management whims whether to implement effective staffing plans and whether to respond to complaints of unsafe conditions.

## **Congressional Requests**

- Conduct oversight of VA’s implementation of the HR improvement provisions in the PACT Act.

- Require the Secretary to immediately reverse the harmful regional centralization of HR personnel and to return adequate numbers of properly trained HR personnel to the facility level, in proportion to size of each workforce.
- Enact the “Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act,” HR 2530/S.1113.
- Conduct oversight of VA's implementation of staffing methodology and staffing guidance including frequency of incidences when staffing levels violate VA policy.

## **FIGHTING PRIVATIZATION**

### **The AIR Commission**

The VA MISSION Act of 2018 established a nine-member Asset and Infrastructure Review (AIR) Commission to make recommendations regarding “closure, modernization and realignment” of VHA facilities. AFGE took a cautious approach at first to the Commission, hoping that the process might result in more attention to the VA significant need for infrastructure investment and modernization. However, in March 2022, the VA announced its recommendations to the AIR Commission, calling for a vast privatization of VA services through the closure or downsizing of nearly 60 VA medical centers, around a third of the total across the country. The VA’s plan called for transferring these functions to new, mostly smaller facilities that had yet to be funded or built, or to the private sector, with almost no analysis of the quality, cost, or availability of those private services. The VA used outdated, pre-pandemic analyses to support its recommendations, an approach that was lambasted by its own OIG, the Government Accountability Office, and a panel of private experts the VA convened through MITRE Corporation. Despite the obvious frailty of the VA’s process, the MISSION Act established a fast-track process for approving the recommendations, with little opportunity for Congress or other stakeholders to exert any influence.

AFGE and the NVAC mobilized across the country in opposition to the AIR Commission, holding rallies, contacting members of Congress, publishing articles, and partnering with affected veteran organizations. As the result of these efforts, in June 2022 a bipartisan group of senators including many from the Senate VA Committee announced their opposition to confirming any AIR Commission members. In July 2022, a bipartisan House majority voted to strip funding from the AIR Commission and to deauthorize the commission in the annual NDAA. In December, Congress approved the 2023 omnibus spending bill which defunded the AIR Commission and imposed new restrictions on the VA ability to close or downsize rural healthcare facilities.

Nonetheless, the threat of privatization persists. A separate section of the MISSION Act, unaffected by Congress’s recent actions, directs the department to conduct strategic infrastructure reviews every four years. In the late summer of 2022, following the collapse of the AIR process, several VISN’s contacted AFGE locals with plans to continue pursuing the hospital closures recommended to the defunct AIR Commission, with no apparent attempt to update the discredited market assessments behind those recommendations.

## **Congressional Requests**

- Oversee the VA's implementation of the strategic reviews under Section 106 of the MISSION Act to ensure that the VA uses accurate, up-to-date information about the utilization of facilities, their benefits to veterans, and their future infrastructure needs, and that the VA works in partnership with its workforce throughout the process.
- Continue language from the 2023 omnibus appropriation bill that restricts VA's authority to close rural healthcare facilities without a thorough analysis of the impact on veterans' access to care.
- Oppose efforts to codify in law the VA's current community access standards that are eroding the VA's healthcare budget and driving veterans into private care without regard to cost, quality, and timeliness of access. Instead, in order to sustain the viability of the VA, Congress and the Department should be limiting community care to instances where the VA is truly incapable of providing need healthcare and private care is demonstrably better and more readily available.

## **Contract Care Access Standards**

The MISSION Act required the Department to implement access standards to determine when veterans should be referred outside the VA health care system for care in the private sector through the Veterans Community Care Program (VCCP). These standards consider how long veterans wait to access VA in-house care and how long it takes for the veteran to drive to the closest VA medical facility to determine if the veteran should be referred to a VCCP provider. If a veteran must wait more than 20 days for VA or drive more than 30 minutes for VA in-house primary care or wait 28 days or drive 60 minutes for VA in-house specialty care, then he or she can choose to go outside the VA to a VCCP provider instead.

The access standards have been flawed from the outset and AFGE has continued to urge the VA Secretary to make several significant changes to ensure that veterans receive the most appropriate and highest quality care in a timely manner. In addition, changes are urgently needed to rein in the unprecedented number of costly VCCP referrals that are threatening the VA's long-term capacity to carry out *all* its missions, including its core mission of providing comprehensive, integrated, specialized care to veterans, as well as medical training, medical research and emergency preparedness that yield tremendous benefits to all health care consumers.

First, the current double standard must be eliminated; a revised access standard must be applied equally to the VA and VCCP providers. Currently, the access standards do not consider the wait times and driving times that veterans will face to access care outside the VA. This double standard has resulted in many veterans waiting longer and driving further for non-VA care than they would have if they continued receiving VA in-house care.

In addition, the drive-time component of the access standard creates one-size-fits-all standard that don't consider regional differences in population density, provider capacity, traffic, or geographic barriers. VA should implement standards that are achievable across the country and

apply them equally to VCCP providers so that private care supplements rather than supplants the VA. Multiple studies have shown VA's own care to be of higher quality with better health outcomes, and less costly than private sector care.

The access standards also apply a double standard to care provided by telehealth including mental health care. The VA has long been recognized as a leading telehealth model by other health care systems. Yet, the access standards do not count VA in-house telehealth services in determining if the VA has met the standard. As a result, veterans who would have not had any wait for VA-provided telehealth care are sent to VCCP providers who treat them through telehealth programs of unknown quality and at greater cost to taxpayers.

In 2022, Secretary McDonough testified before the Senate Veterans' Affairs Committee that he was considering revising the access standards to address the skyrocketing costs of VCCP care. He also committed in his testimony to propose changing the way that telehealth is counted. The VA is in the process of writing a rule that would allow VA telehealth to count toward satisfying the wait and drive-time access standards.

Legislation was introduced in 2023 that would have locked in these biased access standards making it more difficult to change them and would have prohibited VA from finishing its rule allowing VA telehealth to satisfy the access standards or limited the way could do so. S. 2649, the “Making Community Care Work for Veterans Act” (Sen. Tester, D-MT), would codify the wait-time and drive-time access standards and allowed VA to use in-house telehealth to satisfy these access standards but *only at the veteran’s preference*. S. 1315, the “Veterans HEALTH Act” (Sens. Moran (R-KS) and Sinema (I-AZ)) and H.R. 3520, the “Veteran Care Improvement Act” (Rep. Miller Meeks, R-IA) would codify the existing wait-time and drive-time standards and completely prohibit VA from counting in-house telehealth to satisfy the access standards.

Lawmakers should also consider the burdens that the VCCP program is placing on VA’s own staff, who are already struggling to take care of patients under chronic short staffing conditions. Additional VA staff have not been provided in any systematic way or in adequate numbers to assist with the large number of VCCP consults that VA medical personnel must now issue and manage as patients and their medical records move in and out of this chaotic contract care arrangement.

### **Congressional Requests**

- Oppose legislation that would codify current VCCP access standards.
- End the current double standard and apply the same wait times and driving times to both in-house care and VCCP care.
- Urge the VA Secretary to revise the current access standards to increase the drive time limit and count VA in-house telehealth when determining whether the VA has met the standards.
- Ensure that standards are realistic given differences in factors such as population

density, provider capacity, and traffic patterns.

- Ensure that each facility receives additional staff at appropriate levels to ensure that veterans' needs for in-house care are not compromised by workloads associated with VCCP referrals.

### **Preserving VA's Authority to Authorize Referral to Private Care**

Several bills were introduced in 2023 that would undermine VA's ability to authorize and thus reasonably limit referral to private care. S. 1315, the "Veterans HEALTH Act" (Sens. Moran (R-KS) and Sinema (I-AZ)) and H.R. 3520, the "Veteran Care Improvement Act" (Miller Meeks, IA) would have allowed veterans to seek private care when veterans indicate their "preference" to their provider for "where, when, and how to obtain private sector health care." The preference provision superficially offers the veteran the choice between VA and community care services, but over time it would further erode the VA by accelerating the already alarming trend toward privatization. More than forty percent of care is now provided by community care. According to the Congressional Budget Office, the percent of VA spending on community care nearly doubled from 2014 to 2021, a trend Secretary McDonough has publicly admitted is unsustainable. S. 2649, the "Making Community Care Work for Veterans Act" (Sen. Tester, D-MT) would allow a veteran to self-refer to private care for vision, hearing and vaccinations.

S. 1315, H.R. 3520, and S. 2649 would further erode the ability of VA to supervise use of community care by prohibiting the VA from overriding inappropriate referrals to community care by physicians in consultation with a patient.

### **Congressional Requests**

- Oppose efforts to allow veterans to self-refer for private care services.
- Oppose efforts to prohibit the VA from overriding inappropriate decisions to refer to private care.
- Require the VA to be more transparent about the costs of private care.
- Require private providers to meet the same quality and training requirements as VA providers.

## **FIGHTING THE VA ACCOUNTABILITY ACT**

### **Background**

On June 23, 2017, the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (the Accountability Act) was signed into law (P.L 115-182). This law, pitched as a remedy to hold bad managers accountable and give employees the chance to report wrongdoing, has failed to achieve its goal. Instead, the VA wielded its powers under the Accountability Act to fire employees, many of whom were veterans themselves and dutifully

served their fellow veterans at the VA, for relatively minor infractions that did not merit termination, resulting in thousands of employees either being terminated or preemptively resigning from the VA since the law's enactment.

### **Critical Problems with the Law**

While several provisions of the statute have worked against VA employees and in turn interfered with their ability to best serve veterans, there are two critical provisions of the law that are the most glaring and used by the VA to unnecessarily discipline and terminate employees. These two provisions are the change in the standard of evidence used to sustain discipline that is appealed to a neutral, third party and the elimination of the ability of the Merit Systems Protection Board (MSPB) and arbitrators to mitigate (or lessen) a punishment.

### **Standard of Evidence**

Prior to the enactment of the Accountability Act, the VA's burden of proof at both internal proceedings and at the appellate level was that the employee's misconduct met the "preponderance of evidence" standard, meaning that the majority, or at least 50 percent of the evidence is on the VA's side. When the Accountability Act was enacted, the law implemented a "substantial evidence" standard, meaning "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (*Richardson v. Perales*, 402 U.S. 389 (1971).) The "substantial evidence" standard is a considerably lower bar to meet than the "preponderance of evidence" standard and can allow a case where the balance of evidence is on the employee's side to still result in termination. Court cases were filed challenging the use of this standard, with the decision in *Rodriguez v. Dept. of Veterans Affairs*, 8 F.4th 1290 (Fed. Cir. 2021), resulting in the court striking down the VA's use of this standard at the internal discipline stage, as the law as drafted only allowed for the lower standard to be used on the appellate level. Although the current VA administration has ceased trying to use the legally infirm Section 714 authority, including the "substantial evidence" standard, the provision remains on the books and could be used to harm VA employees in the future.

### **Ability to Mitigate**

Prior to the passage of the Accountability Act, the MSPB had the power to mitigate a sentence when an employee is disciplined for misconduct, allowing the MSPB to agree with the VA's determination that the employee had committed misconduct under the preponderance of the evidence standard, but that the discipline chosen by the VA was too severe given the nature of the infraction. The Accountability Act removed the MSPB's and arbitrators' ability to mitigate in these misconduct cases, making the MSPB either accept the totality of the VA's determination, or rule that it was too severe, and allow the employee to receive no punishment. This paradigm led the VA to charge more aggressively and punitively than when the MSPB had the ability to mitigate, knowing that the MSPB is more likely to uphold a harsher sentence than overturn a punishment entirely. This has been a severe detriment to employees and unnecessarily resulted in an uptick in terminations. However, in the case *Connor v. Dept. of Veterans Affairs*, 8 F.4th 1319 (Fed. Cir. 2021), this practice was found to be a violation of precedent, concluding that the VA had to continue to use the "Douglas Factors" when determining the appropriateness of a punishment.

## **Renewed Push for Accountability Legislation**

As a result of the rulings in *Ariel Rodriguez v. Department of Veterans Affairs*; *Stephen Connor v. Department of Veterans Affairs*; *Richardson v. Department of Veterans Affairs*, and several other opinions, legal rulings and determinations, the VA announced on March 5, 2023, that the VA will prospectively “cease using the provisions of 38 U.S.C. § 714 to propose new adverse actions against employees of the Department of Veterans Affairs (VA), effective April 3, 2023.”

In response to the VA’s decision to suspend the use of the Accountability Act towards bargaining unit employees, Republicans on the House and Senate Veterans’ Affairs Committee held hearings and introduced the H.R. 4278/S. 2158, the “Restore Department of Veterans Affairs Accountability Act.” This bill, if enacted, would effectively reverse the court decisions that weakened the original 2017 Accountability Act, and go further than the original law in making it easier to fire employees. Specifically, the bill would allow for the abrogation of collective bargaining agreements, reinforce the use of the “Substantial Evidence Standard,” restate the prohibition on the Merit Systems Protection Board to mitigate penalties, limit the use of the “Douglas Factors,” and allow the bill to apply retroactively to the time when the original 2017 Accountability Act was enacted.

AFGE led a coalition of other unions that represent VA employees in opposition to the bill, including the American Federation of State, County, and Municipal Employees (AFSCME), American Federation of Teachers (AFT), International Brotherhood of Teamsters (IBT), International Association of Firefighters (IAFF), Laborers’ International Union of North America (LIUNA), National Association of Government Employees, SEIU (NAGE), National Federation of Federal Employees (NFFE), National Nurses United (NNU), and Service Employees International Union (SEIU). AFGE also worked closely with the Fraternal Order of Police (FOP) as they specifically opposed the proposed abrogation of collective bargaining agreements. Separately, AFGE advocated for certain amendments to the bill to highlight its many problems. Because of this advocacy, AFGE was successful in holding all Democratic members of the House VA Committee in opposition to the bill, making it more difficult for Republicans to bring the bill to the floor with their current narrow majority.

## **Remedy**

On August 24, 2024, Rep. Brian Fitzpatrick (R-PA) and Rep. Chris Deluzio (D-PA) re-introduced H.R. 4906, the “Protecting VA Employees Act.” If enacted this bill would make two critical changes to the Accountability Act. First, it would restore the “preponderance of the evidence” standard for internal VA discipline, making the VA prove with at least 50 percent of the evidence that an employee committed the misconduct he or she is being accused of. This will help eliminate overzealous punishment and prevent disciplining employees who have likely not committed misconduct. Second, the bill would restore the ability of the MSPB to mitigate a punishment imposed by the VA. Restoring this power to the MSPB and arbitrators will prevent the VA from charging either unnecessary or extra punishment, with the knowledge that unfair punishments will be overturned, and will result in unnecessary, costly, and time-consuming appeals. This bill also serves as a way for members of Congress to signal their opposition to H.R. 4278, the “Restore Department of Veterans Affairs Accountability Act,” as the two bills run directly counter to each other.

Furthermore, AFGE supported portions of Senator Tester’s bill, S. 2679, the “Leadership, Engagement, Accountability, and Development (LEAD) Act of 2023.” This bi-partisan bill creates a number of opportunities for the Senate Committee on Veterans’ Affairs to pursue oversight of the VA on the way it manages and disciplines its employees. AFGE supports of Section 101 of the bill which will improve training on how to process adverse actions against employees at VA. If managers are appropriately trained on how to correctly implement discipline at the VA, including on how to correctly address issues related to due process, civil service protections, and collective bargaining agreements, the VA will make fewer mistakes in future, and lessen the number of appeals and ensuing litigation. This thoughtful approach will better serve the VA, employees, and the veterans they serve.

### **Congressional Requests**

- Oppose H.R. 4278/S. 2158, the “Restore Department of Veterans Affairs Accountability Act” if it is considered on the House or Senate floor.
- Co-Sponsor the “Protecting VA Employees Act” and ensure that disciplinary proceedings against VA employees are handled in a similar manner to other federal workers, with adequate due process protections.
- Encourage support for S. 2679, the “Leadership, Engagement, Accountability, and Development (LEAD) Act of 2023.”

## **IMPROVING RIGHTS AND BENEFITS FOR VA WORKERS**

### **Title 38 Collective Bargaining Rights**

VA Employees appointed under 38 U.S.C. 7401(1), (exclusive to “physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries”) are subject to different collective bargaining laws than other VA employees. Specifically, this group is subject to the Title 38 collective bargaining rights law, 38 U.S.C. 7422 (“7422”). This law, enacted in 1991, excludes “compensation,” “professional conduct or competence” or “peer review” from the scope of collective bargaining and grievance procedures for covered VA employees. For over 30 years, the VA has interpreted and applied this section in an arbitrary and expansive manner. As a result, the employees covered by 7422 have not been able to bargain or grieve over a wide range of routine workplace issues that are subject to bargaining by other VA employees and health care professionals at other agencies, including the Defense Department. All too often, the VA weaponizes its use of its 7422 power to nullify valid and binding arbitration decisions or other administrative judicial decisions, and to challenge contractually bargained provisions that have survived Agency Head Review. These 7422 determinations are often unreasonably late and follow extensive litigation before arbitrators, administrative agencies, and federal courts. Finally, the 7422 determinations unreasonably expand the scope of statutory exclusions well into peripheral matters.

In both 2003 and 2017, the White House voided a commonsense VA policy based off of a Memorandum of Understanding (MOU) that had expanded Title 38 collective bargaining rights and improved labor management relations. The Biden Administration has not negotiated a new



MOU or instituted a new policy.

### **The “VA Employee Fairness Act”**

In the 117<sup>th</sup> Congress H.R. 1948 and S. 771, the “VA Employee Fairness Act,” was re-introduced respectively by Rep. Mark Takano (D-Calif.) and Sen. Sherrod Brown (D-Ohio) to eliminate the three exceptions in current law that VA has applied to deny every labor request to grieve, arbitrate or negotiate over workplace matters, including schedules, fixing incorrect paychecks, overtime pay, professional education and many other matters.

At the end of 2022, H.R. 1948 had 218 co-sponsors, including two Republicans, more than the bill had ever received in any prior Congress. On December 15, 2022, the bill passed the House of Representatives by a vote of 219-201, including four Republican votes in support. Additionally, the White House issued a Statement of Administration Policy in favor of the bill, which stated “[t]he Administration supports House passage of H.R. 1948, the VA Employee Fairness Act of 2022, to expand collective bargaining opportunities for covered Federal employees.” The statement went further by explaining that “[t]he Biden-Harris Administration supports worker organizing and empowerment as critical tools to grow the middle class and build an inclusive economy. The Federal government, consistent with its obligations to serve the public, can be a model employer in this regard.”

In the Senate, S. 771 had 11 cosponsors at the end of the 117<sup>th</sup> Congress but did not receive a vote.

### **The “VA Correct Compensation Act”**

In the 2022 congressional debate over the “VA Employee Fairness Act” it became clear that there was strong disagreement over changes to certain parts of 7422. However, the debate also demonstrated that there was bi-partisan agreement on reform for part of the statute, including compensation as it relates to paycheck accuracy.

After extensive collaboration with Democrats and Republicans on the House Veterans Affairs Committee, Ranking Member Mark Takano (D-CA) and Chairman Mike Bost (R-IL) together introduced H.R. 6538, the “VA Correct Compensation Act of 2023.” This bi-partisan bill would define what compensation is under 7422, and specifically state that “does not include a grievance challenging whether an employee described in section 7421(b) of this title has received the correct compensation as required by law, rule, regulation, or binding agreement.” This bi-partisan and commonsense bill would rectify one of the most common problems for Title 38 employees and help the VA with recruitment and retention.

### **Congressional Requests**

- Co-sponsor and pass H.R. 6538, the “VA Correct Compensation Act of 2023.”
- Enact legislation to provide full collective bargaining rights to Title 38 employees.
- Enact legislation to allow Title 38 employees, like Hybrid Title 38 and Title 5

employees, to successfully file a grievance against the VA when their paychecks are incorrect.

- Reform and strengthen pay-setting processes for VA physicians, dentists and podiatrists including restoration of an independent, transparent market pay panel, and a fair process for setting performance pay criteria and determining performance pay awards.
- Conduct oversight into the workload and work hours of VA providers (physicians, nurse practitioners, dentists, physician assistants, therapists) and the leave policies affecting them.
- Enact legislation to ensure that VA physicians and dentists on alternative work schedules are covered by fair leave accrual policies that recognize all their hours of work.

### **Increasing Continuing Professional Education Benefits for VA Clinicians**

Many VA clinicians are required to have a professional license as a condition of employment within the VHA. In order to maintain these licenses, many of these employees are required to complete what is known as “Continuing Professional Education” (CPE), depending on their profession and the state in which they are licensed. In the private sector, many employers reimburse employees for the costs associated with CPE to maintain their licenses. However, opportunities in the VA are significantly more limited.

In 1991, Congress enacted a law that allowed “Board Certified Physicians” and “Board Certified Dentists” to be reimbursed up to \$1,000 annually for CPE. This law has not been updated in over 30 years and is extremely limited. The current statute also ignores a large swath of practicing physicians and dentists who work at the VA but are not “Board Certified” and ignores the entirety of other professions that have CPE requirements. Additionally, \$1,000 a year in CPE may have been adequate 30 years ago, but costs for CPE have only gone up, and the VA has failed to keep pace with escalating costs and inflation. Beyond this narrow and small benefit, Medical Center Directors have the authority on an ad hoc basis to reimburse their clinicians for CPE costs, but this practice is haphazard and not evenly distributed within a medical center, and even less so at the VISN or national level.

To address this issue, Congresswoman Julia Brownley (D-CA), Ranking Member of the House Veterans’ Affairs Committee Subcommittee on Health introduced H.R. 543, an amended version of the original the “VA CPE Modernization Act.” If enacted this bill would significantly expand the CPE benefit throughout the VA. Specifically, the bill would reimburse certain clinicians up to \$2,000 annually. The bill also creates a mechanism that gives the Secretary discretion to increase the amounts for clinicians based on inflation.

The bill was considered at a legislative hearing of the Health Subcommittee in July 2021 and received endorsements from Democrats and Republicans on the panel, a variety of veteran service organizations, as well as the VA itself. In July of 2022, the bill was marked up and amended to address technical concerns raised by the VA and narrow the scope of the bill in order to make it more likely to pass the House. The bill was reported favorably by the House Veterans’

Affairs Committee but was not considered by the full House of Representatives. Furthermore, Senator Jon Tester (D-MT) has included this amended version of the “CPE Modernization Act” in his legislation, S. 10, the “VA Clinician Appreciation, Recruitment, Education, Expansion, and Retention Support (VA CAREERS) Act 2023.”

AFGE is working to have both the “CPE Modernization Act” introduced as standalone legislation in the senate, and advocates for it to advance through the legislative process.

### **Congressional Requests**

- Co-sponsor and pass H.R. 543, the “VA CPE Modernization Act.”
- Enact legislation to expand eligibility and amounts for Continuing Professional Education Reimbursement for the Title 38 and Hybrid Title 38 Workforce.

## **VETERANS BENEFITS ADMINISTRATION**

### **National Work Queue**

The National Work Queue (NWQ) was created with the intention of relieving the claims backlog and improving the pace of claims processing. However, its implementation has had a negative impact on veterans and front-line VA workers. AFGE agrees with the Inspector General’s (IG) position that eliminating specialization has had a detrimental impact on veterans with claims, particularly claims that are more complex and sensitive in nature. As the IG report explains, prior to the implementation of the NWQ:

*The Segmented Lanes model required Veteran Service Representatives (VSRs) and Rating Veteran Service Representatives (RVSRs) on Special Operations teams to process all claims VBA designated as requiring special handling, which included [Military Sexual Trauma (MST)]-related claims. By implementing the NWQ, VBA no longer required Special Operations teams to review MST-related claims. Under the NWQ, VSRs, and RVSRs are responsible for processing a wide variety of claims, including MST-related claims. However, many VSRs and RVSRs do not have the experience or expertise to process MST-related claims. (VA OIG 17-05248-241).*

Because of the level of difficulty in processing MST claims, AFGE was and remains supportive of the VBA’s changes that now send MST claims to a specialized team of claims processors, though problems remain. At a recent House Veterans Affairs Committee Subcommittee on Disability Assistance and Memorial Affairs hearing entitled “Supporting Survivors: Assessing VA’s Military Sexual Trauma Programs” AFGE submitted a Statement for the Record that highlighted the need for claims processors who develop and rate MST claims to get additional credit considering the complexity and time intensiveness of these claims.

Based on these changes with MST claims, AFGE is calling on VBA to send other former “Special Operations” cases including Traumatic Brain Injury, catastrophic injury, “Blue Water Navy” claims, as well as new and future “Burn Pit” or “Gulf War Illness” claims to specialized

Claims Processors, with a corresponding increase in performance credits for more difficult work. Additionally, AFGE urges VBA to modify the NWQ so that cases remain within the same regional office while they are being processed, and that VSRs and RVSRs are more clearly identified on each case file. This will allow for better collaboration between VSRs and RVSRs (as was done prior to the implementation of the NWQ).

To address and highlight this issue, AFGE secured in H.R. 2617 (117<sup>th</sup> Congress), the Consolidated Appropriations Act, 2023, an oversight report that requires a VA study on the National Work Queue to “address specifically (1) how it plans to restore procedures to provide specialized assistance to and coordination with veterans’ accredited representatives; and (2) how it plans to evaluate VA employees fairly for their own work product.” This report has not yet been released, but AFGE legislative staff will use this report to highlight the need for additional oversight and lobby Congress to have the VA implement changes that will assist the VBA workforce.

Furthermore, On June 6, 2023, House Veterans Affairs Committee Joint Disability Assistance and Memorial Affairs and Technology Modernization Subcommittee hearing titled “From Months to Hours: The Future of VA Benefits Claim Processing.” David Bump, a National Representative for the NVAC, and Second Vice President for VBA for AFGE Local 2157, in Portland, Oregon testified on AFGE’s behalf. During the hearing, Dave submitted written and oral testimony and answered questions on a number of issues facing frontline VBA employees, highlighting problems with the NWQ and providing suggestions on how to improve it to enable employees to better serve veterans. AFGE hopes this testimony leads to legislation to reform the NWQ to better enable VBA employees to serve veterans.

### **Congressional Requests**

- Conduct oversight of the National Work Queue and the challenges it creates for veterans and the VBA workforce including a study of the impact of transferring cases between Regional Offices while they are being processed.
- Lobby for vigorous oversight and possible legislation to implement the recommendations made by the reports that study if VBA claims processors are getting fair credit for the work they perform.

### **Information Technology**

Information Technology issues continue to plague VBA, negatively affecting VA’s mission of serving veterans and AFGE members striving to fulfill that mission every day. The Government Accountability Office (GAO) has analyzed these problems, such as the processing of legacy appeals under the Appeals Modernization Act. In late 2018, the House Veterans’ Affairs Committee conducted a hearing criticizing the VA for IT problems that were causing delays in the processing of veteran education benefits and housing stipends under the 2017 Forever GI Bill. Since then, the committee has examined how technology issues are delaying both disability and pension claims. AFGE is working with the committee to show how these delays negatively affect the ability of AFGE members to do their jobs. AFGE members face unfair negative performance appraisals and potential disciplinary action due to delays and malfunctions caused

by IT problems beyond their control, adding to the problems created by the VA Accountability Act and ever-changing performance standards.

To address and highlight this issue, AFGE secured in H.R. 2617, the Consolidated Appropriations Act, 2023 an oversight report that requires VBA to “to complete an assessment of the Veterans Benefits Management System and develop a plan to modernize the system as appropriate.” AFGE will continue to use this report to lobby Congress to ensure the needs and success of VBA employees are considered when updating IT systems.

Furthermore, in a larger debate of IT systems in the 117<sup>th</sup> Congress, the House and Senate Veterans’ Affairs Committees have considered several ways to partially or fully automate certain claims within VBA. The full automation of certain claims would be a gross disservice to veterans who require experienced and trained claims processors to ensure that claims are processed correctly and fairly and have personnel able to hand any unique intricacies a claim may present that are beyond the capabilities of artificial intelligence.

As part of this debate, AFGE has successfully argued that technology should supplement and not supplant the VBA workforce, and successfully obtained an amendment to-then Ranking Member Bost’s bill, H.R. 7152, “Department of Veterans Affairs Principles of Benefits Automation Act,” to state “[a]utomation of claims processing should not eliminate or reduce the Veterans Benefits Administration workforce.” Furthermore, through AFGE’s lobbying efforts, we have framed the debate within Congress to use new technology to better assist claims processors to handle increased demand to process claims and allow personnel to focus on the problems that cannot be handled by machines, instead of using technology as an excuse to shrink the VBA workforce while failing the needs of veterans.

Furthermore, On June 6, 2023, House Veterans Affairs Committee Joint Disability Assistance and Memorial Affairs and Technology Modernization Subcommittee held a hearing titled “From Months to Hours: The Future of VA Benefits Claim Processing.” David Bump, a National Representative for the NVAC, and Second Vice President for VBA for AFGE Local 2157, in Portland, Oregon testified on AFGE’s behalf. During the hearing, Dave submitted written and oral testimony and answered questions on a number of issues facing frontline VBA employees, highlighting problems with VBA IT. Specifically, the testimony highlighted problems with not just the NWQ (see above), but also the Veterans Benefits Management System (VBMS), and the reliability, basic functionality, and interoperability, of different VBA systems. Dave’s testimony and answers to the committee members’ questions have helped shape the committee’s focus and evaluation of VBA IT as it relates to frontline employees.

### **Congressional Requests**

- Conduct oversight on the impact of IT shortcomings on both the performance ratings of VBA employees and the number of employees removed or disciplined under the VA Accountability Act.
- Encourage the VA to provide adequate training time for employees on new IT systems and ensure VA employees are not penalized for IT problems beyond their control.

- Maintain continued oversight over the use of automation in claims processing.

### **Performance Standards**

Performance standards exist to measure employee performance against a specific set of written criteria, so that managers and employees have a consistent understanding of what is expected on the job. These standards should be fair and attainable for all employees while retaining the flexibility to adjust for changing circumstances in an employee's workload. While this should be the case, VBA management has over the years altered or mishandled performance standards in ways that negatively impact employees and veterans. Some of examples include:

- VBA has instituted counterproductive restrictions on excluded time. Excluded time is the time removed from an employee's production quota to account for situations that would make it more difficult to reach production goals. The most basic example of this would be if an employee is expected to process 50 transactions a week (10 per day), and they are on work travel for a day, the travel day would be granted excluded time and reduce the weekly quota to 40 transactions. Reducing the excluded time for training claims processors in new procedures and technology also sets up employees to fail and hurts veterans by sacrificing quality for quantity.
- VBA has created standards that do not fairly award claims processors credit for work completed. One critical example is that Rating Veteran Service Representatives (RVSRs) who defer a case for further review (because it is not ready to rate) do not receive production credit for that work. For many VBA employees, production credit is not allocated fairly based on the complexity and specialization of a claim or the amount of work involved. Employees should not be penalized for being assigned work that requires more information or analysis. Some of the VBA's performance measures have created a system that serves neither the worker nor the veteran.
- In the name of efficiency, VBA has reduced the amount of time that Legal Administrative Specialists, who assist veterans with questions about their claims, can speak to a veteran on the phone and still meet the criteria for an "outstanding" or "satisfactory" rating on a call. This system makes no allowance for calls with veterans who have highly complex questions or are disabled and need additional assistance to communicate. VA should not set standards that reward rushing veterans.
- VBA management has failed to consistently conduct five quality reviews each month with claims processors. Failing to do so sets up the employee to repeat the same mistakes, harming employees as well as veterans.

To address and highlight this issue, AFGE secured in H.R. 2617, the Consolidated Appropriations Act, 2023 an oversight report that requires a VA study on the National Work Queue to "address specifically (1) how it plans to restore procedures to provide specialized assistance to and coordination with veterans' accredited representatives; and (2) how it plans to evaluate VA employees fairly for their own work product." AFGE has also continues to highlight the need to improve performance standards to the House and Senate Veterans Affairs Committee. This includes NVAC National Representative David Bump's testimony On June 6,

2023, House Veterans Affairs Committee Joint Disability Assistance and Memorial Affairs and Technology Modernization Subcommittee Hearing titled “From Months to Hours: The Future of VA Benefits Claim Processing.” AFGE also highlighted these concerns at a July 23, 2023, Senate Veterans Affairs Hearing titled “Implementing the PACT Act: One Year Later.”

AFGE legislative staff will continue to lobby Congress to have the VA implement changes that will assist the VBA workforce.

### **Congressional Requests**

- Increase oversight on the status of VBA performance standards and if they are fair to employees and are serving veterans’ best interests.

### **Compensation and Pension Exams**

Disability exams are required for many veterans applying to receive VA benefits related to their military service, and Compensation and Pension (C&P) exams are the most common type of exam. The VA started to contract out these examinations in the late 1990’s and has been increasing the number of contracted exams ever since. Currently, approximately 90 percent of all VA disability exams are contracted out by VBA instead of being processed by VA’s own clinicians. AFGE is proud to represent clinicians who perform C&P exams for VA, as well as VA clinicians who perform similar Integrated Disability Examination System (IDES) exams for service members prior to their separation from service.

AFGE has long argued that VA clinicians are far better prepared and more likely to diagnose veterans correctly compared to private contractors without expertise in the unique and complex problems that veterans present. This is particularly true of medical issues that are more common or exclusive to the veteran community, including military sexual trauma, traumatic brain injury, and toxic exposure. To underscore this point, AFGE has submitted several statements to the House and Senate Committees on Veterans’ Affairs as they considered issues related to disability exams.

Additionally, AFGE’s continued advocacy resulted in a letter by then-Senate Veterans’ Affairs Committee Ranking Member Jon Tester (D-MT) and signed by nine other Democratic Senators to then-VA Secretary Wilkie questioning the outsourcing of these exams in the wake of an exam backlog exacerbated by the COVID-19 pandemic. The letter led to a significant victory in the 116<sup>th</sup> Congress by helping to enact legislation that required the VA to maintain the same number of C&P positions that it had in March 2020. This requirement will remain in place at least until the backlog of C&P Exams is reduced the March 2020 level. Vigorous advocacy by AFGE led to this victory and heightened interest in the issue from the Congress.

On July 27, 2023, AFGE also submitted a statement for the record for a House Veterans Affairs Committee Subcommittee on Disability Assistance and Memorial Affairs Subcommittee hearing titled, “VA Disability Exams: Are Veterans Receiving Quality Services?” In the statement, AFGE continued to highlight the benefits of the VA performing disability exams and the benefits the VA and veterans would receive from this change.

As a result of advocacy on this issue, AFGE was proud to endorse S. 2718, the “Medical Disability Exams Improvement Act” introduced by Senate Veterans Affairs Committee Chairman Jon Tester (D-MT) and Senator Thom Tillis (R-NC). If enacted, part of this bill would change the funding mechanism for disability exams, by moving the funding for VHA examiners from a discretionary VHA account to the same mandatory VBA account that funds contract exams. By keeping these exams in one account, it would incentivize VA to hire more internal VHA examiners and rely less on expensive and inferior contract exams.

AFGE will continue to lobby on this issue, demand strong oversight, and fight for the VA to bring C&P exams, particularly specialty exams, back within the VA.

### **Congressional Requests**

- Co-Sponsor 2718, the “Medical Disability Exams Improvement Act,” which would bring C&P exams back in-house where they are performed with a higher degree of accuracy and at a lower cost.
- Fight for continued oversight on the status of contract C&P exams including a comparison between the quality, timeliness, and cost of internal VHA and outsourced exams.
- Conduct oversight to make sure limitations on contract exams are being enforced.

### **BOARD OF VETERANS’ APPEALS**

On November 29, 2023, the House VA Subcommittee on Disability Assistance and Memorial Affairs held a hearing titled “Examining the VA Appeals Process: Ensuring High-Quality Decision-Making for Veterans’ Claims on Appeal.” This wide-ranging hearing examined a number of issues facing the Board of Veterans’ Appeals, and what changes should be made to improve the Board. During the hearing, AFGE Local 17 President Douglas Massey testified on AFGE’s behalf, raising the issues below and highlighting the need to improve conditions for frontline Board Attorneys and listen to their concerns. This testimony has become critical to Congress’s oversight of the Board and will continue to reverberate into the future.

### **Workload and Performance**

The workload and performance metrics for attorneys in the Board of Veterans Appeals are a major factor harming the Board’s recruitment and retention efforts. Several factors contribute to this problem, including:

- **Workload:** The Board has made significant changes over the past several years regarding the number of cases and issues a Board attorney must complete annually. Prior to the implementation of the Appeals Modernization Act (AMA), Board attorneys were expected to complete 125 cases a year, a pace that averaged 2.4 cases per week. Each case, regardless of the number of issues decided, carried the same weight towards an attorney’s production quota. In FY 2018, the Board increased its production



standards from 125 to 169 cases per annum, (or 3.25 cases per week), a 35% increase in production requirements which was overwhelming for Board attorneys. In FY 2019, the Board created an alternative measure of production for Board attorneys which evaluated the total number of issues decided by an attorney, regardless of the number of cases completed, setting that number at 510 issues decided. AFGE supports the creation of this alternative metric as it better accounts for the work required to complete each case. However, we caution that measuring the number of issues can also be manipulated to create unfair metrics. Unfortunately, this manipulation appeared in FY 2020, the first year the AMA was fully implemented, because while the case quota remained at 169, the issue quota was raised to 566. Finally in FY 2021, the quota was changed to a more manageable but still difficult 156 cases or 491 issues. This remains the quota in 2024.

- **Judicial Sign Off:** A Board attorney may only receive credit for a case once a judge signs off on the work. While this requirement may appear reasonable, delays caused by overburdened judges can cause attorneys to miss their quotas through no fault of their own. When attorneys are adjudged to be performing poorly based on such missed quotas, it violates Article 27, Section 8, Subsection E of AFGE’s collective bargaining agreement with the VA, which states “When evaluating performance, the Department shall not hold employees accountable for factors which affect performance that are beyond the control of the employee.” The VA should adhere to the terms of the collective bargaining agreement.

**Training:** BVA has provided inadequate training for Board Attorneys, including only two hours of mandatory training required by the PACT Act. In response to a plethora of complaints and inaction by management, Local 17 initiated a union led program aimed at providing tools, support, and efficiency strategies to ensure the success of decision-writing attorneys. While upper management has taken notice of this successful initiative, there has been no effort to institute an analogous program on their part. Unfortunately, and predictably, the impacts of minimal training include decreased quality of decisions. Insufficiently trained attorneys are more likely to require additional time to research and understand the new law, leading to delays in claims processing and a backlog of cases. This inefficiency further delays veterans’ access to benefits. Faced with the challenge of applying complex legal changes with minimal training, attorneys may experience moral and professional dilemmas, contributing to low morale, burnout, and high attrition at the Board. It is imperative that the Board revises its training protocols either on its own or through a statutory mandate, ensuring that our attorneys are not only well-versed in the intricacies of new legislation but are also fully prepared to uphold the rights and entitlements of our veteran population.

### **Congressional Requests**

- Increase oversight on the current status of Board attorney performance standards and assess if they are best serving veterans.
- Increase funding for the Board to hire more attorneys.
- Encourage the VA to eliminate the judicial sign off requirement for Board attorneys’

- performance measures.
- Require the Board to improve training for attorneys.

## **Recruitment and Retention**

The Board of Veterans' Appeals is a place where attorneys should have a path to work for their entire careers. To accomplish this goal, the Board needs to re-establish a standard career ladder for GS-14 Board Attorney positions which had until recently existed for new hires. Eliminating this level of growth and compensation for attorneys is a direct way of dissuading qualified applicants from joining the Board of Veterans Appeals or choosing to stay long term. The VA should reverse this shortsighted policy and attract the best candidates to the Board's ranks.

Additionally, AFGE strongly supports the creation of a journeyman non-supervisory GS-15 Board Attorney position. Currently, Board attorney grades range from GS-11 to GS-14. Of the 871 attorneys currently at the Board, 439 attorneys are at the GS-14 level. While not all attorneys would qualify or choose to advance to a GS-15 position, creating the possibility for 100 to 200 GS-15 attorneys would help with long-term recruitment and retention. It is also important to note that there are non-supervisory journeyman GS-15 attorneys within the VA Office of General Counsel, thus setting a precedent. As Board attorneys are in the Excepted Service, it is within the Secretary's discretion to create and fill these new positions. AFGE has encouraged the Secretary to create this advancement opportunity and has asked Congress to voice its support for this change or pass legislation establishing its creation.

Another tool that would help with recruitment and retention is for the VA to utilize its existing authority under 5 U.S.C. § 5757 to reimburse Board attorneys for the costs associated with maintaining their memberships in one state bar, as is done at many agencies, including for attorneys at the VA Office of General Counsel. As all Board attorneys are required to be admitted to a bar, this would be a simple, equitable, and affordable way to retain employees at the Board and help maintain parity with the private sector, where many law firms pay for such fees. The Board has reimbursed these funds discretionally the past few years, but making it permanent would help with long-term retention. Additionally, reimbursement for Continuing Legal Education (CLE), similar to what exists for VA clinicians under 38 U.S.C. § 7411, would also be beneficial for attorneys licensed in states that require CLE, and would further help with recruitment and retention.

To address and highlight this issue, AFGE secured in H.R. 2617, the Consolidated Appropriations Act, 2023, language encouraging the Board to use "available tools to improve the recruitment and retention of attorneys, including the reimbursement of Bar Dues, and encourages the Board to use its discretion to lift the cap to reimburse attorneys for their Bar Dues." AFGE also worked with Rep. Morgan McGarvey (D-KY) on H.R. 1530, the "Veterans Benefits Improvement Act of 2023" that would have granted reimbursement for both bar dues and a bar preparation course for attorneys recruited a proposed Board of Veterans' Appeals honors program.

The Board has also recently hired Veteran Law Judges ("Board Members") who have little to no experience in veterans law. In the past, Board Members were required to have seven years' experience in veterans law, but now are chosen for "leadership skills." This is a disservice to

veterans who now have claims before judges who are learning on the job, and whose inexperience is causing delays that veterans cannot afford. A request for information from the Board confirmed that the least productive Board Member who was appointed from within the Board was more efficient at moving cases than the most productive Board Members chosen from outside the board. This inefficiency, specifically new Board Members being slow in signing off on decisions, has negative impacts on the performance metrics for Board attorneys, and is another driver for Board attorneys' fleeing. Additionally, by eliminating the experience requirement for Board Members and not promoting knowledgeable Board attorneys to these positions, the Board is eliminating a natural path for promotion and harming recruitment and retention. AFGE urges the Congress to amend Title 38 to require that Board Members have substantial experience in veterans law.

### **Congressional Requests**

- Encourage the VA to re-establish GS-14 attorney positions at the Board of Veterans' Appeals.
- Introduce legislation requiring VA to create a journeyman GS-15 position at the Board of Veterans' Appeals.
- Introduce legislation to amend 38 U.S.C. § 7101A to require that Board Members have substantial experience in veterans law.

## **DEPARTMENT OF DEFENSE: POSITIONING THE COMPETITIVE SERVICE TO ADAPT TO ORGANIZATIONAL AND TECHNOLOGICAL CHANGES**

### **Issue**

The skills, talents, and experiences of federal employees are routinely undervalued as agency workforce needs change, a situation that is likely to become more serious with the rise of artificial intelligence applications. Managers who are responsible for human capital planning in practice often look for ways to bypass Title 5 hiring requirements to fill individual jobs.

Examples of how managers do this include expanding the excepted service using the Cyber Excepted Service as a model; limiting competition through direct hire by exclusively focusing on time to hire rather than expanding the pool of candidates under consideration and improving the tools for inventorying the skills of job candidates; and expanding the use of term and temporary hires—all of which are incompatible with effective talent management and upskilling the workforce through human capital planning.

If the merit-based federal hiring system as embodied in Title 5 is to remain the principal way to recruit civilian employees throughout the federal government, including the Defense Department, there must be an insistence that fair, objective, and nonpartisan tools be used for evaluating the skills of job applicants.

### **Background/Analysis**

- 1) Section 1109 of the FY 2020 NDAA consolidates various direct hire authorities established on a piecemeal basis over the course of several NDAAAs into a single provision, which sunsets on September 30, 2025.
- 2) The National Security Commission on Artificial Intelligence, the Government Accountability Office, Congress, and DoD have all recognized that the Department has significant skills gaps in various Scientific, Technological, Engineering, Mathematical, and Manufacturing (STEMM) fields as well as acquisition, financial management, cyber, artificial intelligence, and foreign language skills. Recruiting in these fields is critical to meeting 21st century threats to national security.
- 3) These skills gaps have persisted despite the increasing discretion Congress has steadily granted to the Department of Defense in recent years to deviate from Title 5 hiring requirements and instead use so-called “pay for performance” demonstration projects for the acquisition workforce. Similarly, Section 9905 of Title 10 provides the Department various direct hire authorities for depot maintenance and repair; the acquisition workforce; cyber, science, technology and engineering or math positions, medical or health positions, childcare positions, financial management, accounting, auditing, actuarial, cost estimation, operational research, and business administration.
- 4) For the past several years, DoD leadership has consistently sought, and often obtained, exemptions from the government-wide processes administered by OPM that are intended to ensure an apolitical civil service. The Department has sought these authorities purportedly for greater management flexibility, often to the detriment of retaining highly skilled employees recruited by the Department.
- 5) There are less expensive alternatives to fill skills gaps, if only the Department, with the assistance of a reinvigorated OPM, were to revive the objective assessment tools that had been successfully used before to generate larger lists of qualified and diverse candidates.
- 6) AFGE’s position has generally been to oppose direct hiring because exceptions to full and fair open competition for jobs have been used to circumvent consideration of internal candidates for jobs, weaken diversity, and exclude otherwise qualified candidates from consideration. Sometimes in the past AFGE has supported, purely on an exception basis, direct hire for depots but has seen these authorities later illegitimately expanded to cover areas such as installation support services in public works offices.
- 7) Direct hire authorities work serve the narrow interests of hiring managers who know specifically whom they want to hire by cutting off competition and shortening the length of the hiring process. But these authorities completely undermine recruiting the best qualified candidates from a diverse pool and largely perpetuate a closed system of hiring in the federal government, where getting hired means knowing someone on the inside.
- 8) The Merit Systems Protection Board suggested in November 2019 that agencies can hire better, not just faster and cheaper, by bringing subject matter experts into the hiring process and “ensuring that the advertised qualifications of a job posting more accurately

line up to the competencies needed to be successful.” Direct hire authorities are typically justified as a means of streamlining a “lengthy” hiring process to fill positions that would otherwise be filled with other labor sources (contractors or military). However, direct hire is a band-aid that fails to deal with the root causes of hiring delays and largely circumvents other Congressional objectives such as veterans’ preference and open competition for jobs.

### **Congressional/Agency Action**

- Oppose adding additional direct hire authorities or expansions of the excepted service.
- Remind Members of Congress that current law already authorizes the Defense Department to bypass the Title 5 hiring process when circumstances warrant it.
- Prohibit the use appropriated funds that misuse term or temporary hiring for “enduring functions,” a business practice encouraged by the introduction of personnel caps and sequestration. During the McCain reductions of the civilian workforce, term or temporary hiring was statutorily exempted from those reductions.

### **Preventing Conversion of Defense Department Positions to Private Contractors or Military Performance**

#### **Issue:**

DoD civilian employee jobs are being replaced with contractors, primarily by not filling vacant DoD civilian positions and reapplying the funds programmed or budgeted for those positions to services contracts to perform the same requirements; or by assigning DoD federal employee functions to active or reserve military, to the detriment of readiness, lethality, overall efficiency, and effective human capital planning, talent management for recruiting and retaining a skilled civilian workforce.

#### **Background/Analysis:**

- 1) Section 2461 of title 10 prohibits converting DoD civilian employee job requirements to private sector performance without first going through a public-private competition.
- 2) Section 325 of the FY 2010 NDAA identified flaws of public-private competitions as devised by OMB Circular A-76 and implemented within DoD, imposing a “temporary” moratorium until these conditions are addressed.
- 3) Even though the compliance with the public-private competition moratorium in the FY2010 NDAA section 325 and FSGG Appropriation section 742 would preclude the Department from privatizing work performed by federal government employees, the USD (P&R) stopped issuing annual policy reminders to DoD components about this moratorium after 2018. Additionally, statutory and joint conferee language from the FY2022 NDAA Section 815 directing the Comptroller, CAPE, USD (A&S) and USD (P&R) to establish compliance mechanisms and certifications for every services contract

that they were not replacing civilian employees has not yet been implemented by the Department.

- 4) The Department appears to be ignoring not only the public-private competition moratorium but also recent title 10 and Defense Appropriation clarifications that prohibit arbitrary personnel caps on the DoD civilian workforce, and in the case of section 8012 of the Defense Appropriation, stipulate that “[n]one of the funds appropriated by this Act may be used to reduce the civilian workforce programmed full time equivalent levels absent the appropriate analyses of the impact of those reductions on workload, military force structure, lethality, readiness, operational effectiveness, stress on the military force, and fully burdened costs.”

### **Congressional Action**

- Strengthen Congressional oversight by requiring statutory requirements that services contracts be transparent in the Department’s planning, programming, budgeting, and execution system in response to GAO findings.
- Retain and enforce compliance with current language in section 129 of title 10 prohibiting personnel caps on the civilian workforce absent an appropriate analysis of the impact on workload, stress on the force, military force structure, operational effectiveness, readiness, lethality and the fully burdened costs of the total force of military, civilian employees and contracted services.
- Provide examples to Congress of civilian positions not being filled by federal hires after vacancies occur but rather replaced with contractors in defiance of the public-private competition moratorium.
- Continue the public-private competition moratorium until such time as the flaws in A-76 are corrected and contractor inventories complete.

### **Protecting Quality Health Care for Military Members and Their Families**

#### **Issue**

The Department is downsizing military medical treatment facilities by shifting beneficiaries to private healthcare (TRICARE) for any functions performed by military structure that does not deploy into combat zones.

#### **Background/Analysis**

- 1) In the 2017 NDAA, Congress directed DoD to reorganize the Defense Health Program and provided authority to convert military medical structures to civilian performance. To that end, Congress repealed requirements that military department surgeons general report to Congress on the impact on readiness and quality of care before privatizing any military medical structure.

- 2) The effects of this action has been detrimental, degrading the quality and level of health care provided to military beneficiaries and their families because the local markets simply lack the capacity to provide necessary care.

### **Congressional Action**

- Take stronger action to ensure compliance with existing statutory prohibitions against converting DoD civilian jobs to contract by clarifying to the Pentagon that the USD (P&R) needs to issue an updated policy and start complying with the public-private competition moratorium and existing statutory prohibitions against arbitrary personnel caps and reductions that do not consider workload, cost and readiness impacts. The USD (P&R) and Department following their lead, including in the DHA reorganization, seem to be assuming that so long as there are no civilian RIFs, that they can convert the work to contract performance. That is a departure from their prior Departmental guidance since the Obama Administration and flouts the recent HASC “Total Force Management” directive report language.
- Revamp the “Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act of 2019,” into something that addresses the objections of rural hospitals and provides better incentives such as scholarship programs for attracting and retaining talent. Consider the Cyber Scholarship program established in as a model for addressing medical skills gaps.

### **Expansion of “Commercial Item” Definitions have Weakened Organic Industrial Base Support and Government Command and Control of Weapon Systems**

#### **Issue**

In the FY 2018 and 2019 NDAAAs, Congress expanded the definitions of “commercial items” in ways that could easily mischaracterize many weapon systems and components as “commercial” and thereby inappropriately shift the sustainment workload from the organic industrial base to the private sector. Military leaders could lose command and control, and depots could lose the ability to perform maintenance efficiently and effectively on new weapon systems. Government access to technical data rights and cost or pricing data could be diminished and the ability of the government to insource contract logistics support could also be affected.

#### **Background/Analysis**

The following definitional changes are of concern:

- 1) Changing the standard for designating the level of modifications to an item that would be required to deem an item as military unique. Many weapons and components that are only suited for military purposes could be modified to no longer be compatible with their civilian origins and yet would no longer be considered military unique.
- 2) Changing the standard from multiple state “and” local governments to multiple state “or”

local governments “or” foreign governments. This greatly expands the list of military unique items that could be considered commercial even though they have never been sold in the commercial marketplace.

- 3) A single determination made by any contracting officer anywhere in the world designating an item as commercial stands as the final determination for that item for all purposes throughout the lifetime of that item for all acquisition actions unless the Secretary of Defense determines otherwise in writing.

### **Congressional Action**

- Our members should work through their uniformed leadership through the JROC to ensure the issues of cybersecurity risks, access to technical data rights, interoperability concerns and Doctrine, Organization, Training, Materiel, Leadership and Education, Personnel and Facilities (DOTMLEPF) issues are properly considered; as well as work through the DUSD(A&S) community which should be particularly concerned about the effects of the preference for commercial products and services on escalating sustainment costs.
- Ask for additional GAO, DoD IG and FFRDC studies of the impact of recent acquisition reforms on sustainment and readiness costs, focusing on “right to repair” issues in depot and operational environments for the military departments.

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### **Commissaries, Exchanges and Transient Lodging**

#### **Issue:**

During floor consideration of both the FY23 NDAA and FY24 NDAA, the House of Representatives adopted a provision that would prohibit military commissaries and exchanges from selling products manufactured in China. AFGE strongly opposed this provision and was pleased that conferees dropped the provision in the final FY24 NDAA that was signed into law in December.

#### **Background/Analysis**

- Members of Congress who supported the provision to prohibit the sale of any goods manufactured, assembled, or imported from China at commissary stores and military exchanges did so believing that it would punish China for its increasingly provocative behavior. In fact, the provision, if it had been included in the FY24 NDAA, would have harmed members of the armed forces and their families while failing to meaningfully punish China for its geopolitical provocations.
- As the pandemic vividly demonstrated, America’s manufacturing base is not, at this point, capable of replacing the Chinese-made goods. If military families are no longer able to purchase certain products they want at their base exchanges and commissaries,



they will simply buy them online or at off-base retailers. China will be no worse off. However, the impact on military families would be substantial, resulting in a loss of their tax-free shopping privileges and exchange and commissary discounts – effectively reducing their benefits and net income. Moreover, the exchanges and commissaries will have to eliminate thousands of well-paying jobs that are often filled by military spouses and veterans, imposing additional economic burdens on military families and the communities in which military bases are located.

- A prohibition on the sale of Chinese-made goods in military commissaries and exchanges is no substitute for a sober and comprehensive reassessment of America’s economic and trade policies toward China. Any effort to reduce America’s dependence on Chinese-made products should start with the adoption of policies that encourage the return of manufacturing from China and elsewhere to the United States. Rather than do that, this provision would only symbolically punish China at a substantial cost to the economic well-being, quality-of-life, and convenience of members of the armed forces and their families.
- A prohibition would have a *devastating impact on exchanges and likely result in closures of exchanges and other on-base community support programs.*

### **Congressional Action**

As Congress turns to consideration of the FY25 National Defense Authorization Act in the next few weeks, it is virtually certain that the provision to prohibit the sale of Chinese-made goods in exchanges and commissaries will be proposed for inclusion in the measure. AFGE members should explain to their Senators and Representatives that this provision would not impose any costs whatsoever on China, only impair the ability of the exchanges and commissaries to meet the purchasing needs of military families, threaten the viability of exchanges and commissaries, and hurt the women and men who are employed by them.

### **Issue**

The Biden administration and the Congress have recognized DeCA’s central role in combatting food insecurity and have provided DeCA resources to blunt the effects of food inflation on many military families, retirees, and veterans. The DoD and the Congress have provided additional funding to allow the commissary agency to largely discontinue the practice of raising prices to offset commissary operating costs. This non-pay benefit is vital to ensuring retention (at a time when military recruitment is falling short) of military personnel, thereby contributing force readiness. The administration and Congress should continue this support.

### **Background/Analysis**

- 1) The commissary benefit is a crucial non-pay benefit for the military and their family members, particularly in remote and overseas locations. Congress and the DoD have recognized the vital role that commissaries have in addressing chronic problems with financial distress and food insecurity. Commissaries demonstrated their worth during the COVID-19 pandemic and continued to ensure that food flowed to military families

especially in remote and overseas areas. There is broad support for preserving the commissary benefit among the military family advocacy groups.

- 2) In recent years Congress has increased commissary funding in order to address food insecurity in the military, including authorizing \$1.48 billion for commissaries in the FY24 NDAA.
- 3) Congress continues to press for privatization Navy and Air Force transient lodging based on the Army's privatization of transient lodging. A provision calling for outright privatization of the Air Force, Navy and Marine Corps lodging was rejected but there are continued calls to review of this program aimed at privatizing the lodges. The House version of the FY2023 NDAA was rejected by the Joint Conferees based on GAO reviews and a Congressional Budget Office finding that privatizing the Navy and Air Force lodging would add \$5B to the deficit. Lodging is a vital part of the Defense mission, providing needed accommodations during emergencies such as the Afghan refugee resettlement and COVID-19. Moreover, the DoD has conducted a thorough review of the lodging programs and has concluded that in-house operations are more economical and are more responsive to the Defense mission. The Army privatization model has failed to deliver on its promise of modernizing facilities and has resulted in major increase in temporary lodging expenses for military personnel.

### **Congressional Action**

- Establish pilot programs for providing free produce to military families affected by food insecurity through the Commissaries.
- Support efforts to discontinue price hikes to offset commissary operating costs.
- Resist proposals to cut DeCA appropriations or require that DeCA earn profits from sales to military families afflicted with food insecurity problems.
- Discontinue any efforts to outsource DoD lodging. Mandate insourcing Army transient lodging.
- Ensure the effects of inflation are adequately addressed for Department's MWR programs.

### **Department of Defense Childcare**

#### **Issue:**

AFGE represents Non-Appropriated Fund (NAF) workforce providing childcare services to military families (and civilian employees on a space-available basis) in Child Development Centers located on military installations. There is a nationwide shortage of childcare workers in these centers primarily because of the low levels of compensation. The availability of quality childcare is important to recruitment and retention of both military and civilian.

## **Background/Analysis:**

- 1) Since at least 1989 (beginning with the Military Child Care Act) Congress has recognized that reliance on non-appropriated funds would limit Child Development Centers' ability to attract and retain quality personnel and to make necessary repairs and upgrades to facilities and equipment. To improve affordability Congress authorized the use of appropriated funds to supplement non-appropriated funds.
- 2) DoD currently has a mix of Child Development Centers located on government-owned facilities on installations and subsidized and regulated private care in Family Care Facilities. Family Care Facilities afford military spouses the opportunity to own and operate a business while caring for their own children, and free up space at the Child Development Centers. Family Care Facilities present continuity of care problems if an FCC operator becomes ill or is moves in a permanent change of station. There are also oversight concerns regarding quality of care and safety issues in FCC facilities. While Child Development centers are more expensive for DoD to operate, they are typically preferable to service members in terms of stability, convenience, continuity of care, and oversight.
- 3) Child Development Center wait list management is a major concern on large bases and high-demand areas. DoD's current target for how long a family is on a wait list is 90 days. Some family advocacy groups have advocated for higher wait list priority for certain active service members over DoD civilian employees. Since February 1, 2020, wait list management prioritizes access for military families over DoD civilians.
- 4) Recent NDAAs have required studies on various childcare issues but have not included significant provisions to address the current capacity shortfalls that impede military and civilian workforce recruitment and retention.

## **Congressional Action**

- In 2024, Congress needs to address the deficiencies in the Child Development Centers by (1) increasing CDC capacity to serve more military and civilian families through increased MILCON funding, (2) improving the compensation and job security of the workforce, (3) converting the NAF workforce to AF, and (4) insourcing this "critical function."

## **DEPARTMENT OF HOMELAND SECURITY**

### **TRANSPORTATION SECURITY ADMINISTRATION**

### **TITLE 5 FOR TRANSPORTATION SECURITY OFFICERS**

#### **What is Title 5?**

Title 5 is the section of the U.S. Code that establishes labor rights and protections for almost all federal workers, including:

- Collective bargaining rights, including exclusive representative elections, subject to oversight by the Federal Labor Relations Authority.
- Establishing a list of prohibited personnel practices (discrimination based on age, race, national origin, religion, marital status, enforcement of legal recourse, political affiliation or retaliation for filing a discrimination, work safety complaint or whistleblower disclosure) as well as mechanisms to correct violations.
- Pay under the General Schedule (GS) system, including overtime and night differential pay.
- The consistent grading and classification of positions based on job duties.
- Worker protections under the Family and Medical Leave Act and the Fair Labor Standards Act.
- The right to appeal adverse personnel actions to the Merit Systems Protection Board (MSPB).

### **Why Are TSOs Denied These Rights and Protections?**

The Aviation and Transportation Security Act (ATSA) was passed by Congress to correct inadequacies in aviation security identified after 9/11. The law created the federal Transportation Security Administration (TSA) and a force of federal uniformed security screeners, the Transportation Security Officers (TSOs). The law included a statutory footnote that granted the TSA administrator unusually broad authority to set the terms and conditions of employment for TSOs, including pay.

### **What Does the TSO Workforce Lose Without Title 5 Rights?**

- Until June of 2021 when Homeland Security Secretary Alejandro Mayorkas, at the direction of President Biden, ordered TSA Administrator David Pekoske to align TSA's pay with the General Schedule and bargain a new contract providing many of the protections of Title 5, TSOs have been working under a system with no guaranteed collective bargaining rights and a lower and less progressive pay system.
- TSO pay is still determined by the administrator, not federal law. As a result, until 2023, pay has been below that of comparable federal jobs and TSOs did not receive longevity pay or step increases. Bonuses provided by TSA were arbitrary and unfairly dispersed.
- TSA does not follow the Fair Labor Standards Act that regulates overtime and work hours.

- TSA dictates the timeline for collective bargaining and what matters are subject to bargaining. The Biden/Mayorkas directive is providing for the bargaining of a new contract to reflect title 5 protections at this time, but it is not in law.
- Throughout its 20-year history, until 2023, TSA refused to negotiate an objective grievance procedure like those at almost every federal agency with a union, including other components of the Department of Homeland Security, which are already under Title 5.
- Under executive orders of the previous president, TSA forced employees into a contract that undermined the union's ability to represent its members and maintain membership. Without changes in the law, the TSO workforce is still subject to the whims of the White House.
- TSA has a long history of firing TSOs based on medical symptoms and diagnoses that do not affect their work performance.

**Congress Should Pass Legislation Providing Statutory Title 5 Rights Including the GS Pay Scale to the Entire TSA Workforce for the Following Reasons:**

- In the 116th Congress, the House passed H.R. 1140, Rep. Bennie Thompson's "Rights for Transportation Security Officers Act" by a bipartisan vote of 230-171. The bill was also added to H.R. 2, the "INVEST Act" which also passed the House but failed to be considered by the Senate. Sen. Brian Schatz (D-HI) introduced identical language in the Senate, S. 944. The bill garnered 34 cosponsors, many more than in the previous Congress, but the Senate did not take up the bill. AFGE will be encouraging co-sponsorship and an active push to gain Title 5 rights and better pay for TSOs.
- In the 117<sup>th</sup> Congress, Rep. Thompson introduced the "Rights for the TSA Workforce Act" (H.R. 903), which gained 227 cosponsors including 13 Republicans. The bill passed the House on May 20, 2022, by a vote of 220-201. All Democrats and four Republicans voted for its passage. Some Republicans withheld their support, pointing to a Covid bonus in the bill for frontline personnel, including TSOs. The corresponding Senate bill S. 1856 by Sen. Brian Schatz (D-HI) garnered 45 cosponsors, but no Republican support. The House included the House-passed language of H.R. 903 in the National Defense Authorization Act (H.R. 7900) but the Senate refused to include these provisions in the final bill.
- In the 118<sup>th</sup> Congress, new standalone legislation has not been introduced to provide full title 5 rights. We have been working to include those provisions in the Federal Aviation Administration reauthorization or the National Defense Authorization Act. These efforts have not yet been successful, largely due to the composition of the key committee in the Senate – Commerce, Justice, Science – and the Republican majority the House, which is composed of members who mostly do not support federal employee collective bargaining rights.

- It is a matter of fundamental fairness that the entire TSA workforce be treated the same as other federal workers. TSA has become a revolving door for TSOs; between 2007 and 2018, roughly the entire agency was replaced due to attrition. During this time, 45,576 TSOs resigned from the agency. In 2017, one in five new hires quit within the first six months. These high attrition rates do not occur in other DHS components where the rank- and-file workforce have workplace rights and protections and a transparent pay system under Title 5.
- The TSO workforce has long been underpaid. TSA Administrator Pekoske testified that the difference is about 30 percent and advocated for increased pay before the Congress and in national television interviews. When the new pay system was launched in July 2023, Administrator Pekoske joined TSOs at National Airport for a celebration of the average 30 percent increase.
- The FAA Reauthorization Act of 2018 required the formation of a TSA-AFGE Working Group to recommend reforms to TSA's personnel management system, including providing for appeals to the Merit Systems Protection Board (MSPB) and grievance procedures. TSA did not utilize this Working Group as an opportunity to make many of the sensible changes to pay, discipline, grievance, and fitness-for-duty determinations proposed by AFGE Council 100 representatives. The agency only agreed to some nominal changes that went into effect in 2020.
- It was wrong for Congress to deny TSA employees commonsense statutory workplace rights and protections in 2001, and it is wrong to continue this unfair system more than 20 years later.

### **What has changed under the Biden Administration?**

- On June 3, 2021, Homeland Security Secretary Alejandro Mayorkas issued a directive to TSA Administrator David Pekoske ordering the agency to expand collective bargaining rights for the screening workforce, provide access to the Merit System Protection Board (MSPB) for appeals of adverse actions, and to place TSOs on the GS pay scale. The agency acted on the MSPB provisions quickly, but said they needed more funds for the pay and bargaining.
- With the passage of the FY 2023 Omnibus Appropriations Act in late December 2022, we experienced our first **major breakthrough**. The bill included \$398 million to migrate TSA to a General Schedule equivalent pay scale, starting July 2, 2023, and funds for collective bargaining. Shortly after passage, TSA Administrator David Pekoske issued a letter to TSA employees informing them their pay would go up in July and he issued a new determination to begin bargaining on terms that include the expanded bargaining directed by Secretary Mayorkas. For most TSOs, pay went up by about 30 percent. The agency is currently bargaining a new contract with AFGE Council 100.
- Before this breakthrough, TSA has been operating its own pay band system lacking the

stability and transparency of the General Schedule pay system used by most federal agencies. TSOs have not automatically been covered by federal employee pay increases, but the TSA administrator agreed, solely at his discretion, to comply with increases, including the most recent increase of 5.2 percent. There is still nothing in statute that guarantees this new pay.

**In March 2019, the Department of Homeland Security’s Office of Inspector General issued a report, *TSA Needs to Improve Efforts to Retain, Hire and Train Its Transportation Security Officers*, which said TSA should develop better recruitment and retention strategies, pay TSOs better, and provide better training and advancement opportunities. The FY 2023 funds changed that trajectory so long as funds continue to be appropriated for the increased pay. We still face an uphill battle with right-wing groups and many members of Congress who accept the notion that the GS pay scaled is “flawed” or “antiquated.” Pushing to make this pay permanent is a high priority. CONGRESS SHOULD APPROPRIATE FUNDING TO CONTINUE NEW TSO PAY SCALES IN FUTURE SPENDING BILLS.**

The American public learned during the December 2018 – January 2019 government shutdown that TSOs were among the lowest paid federal workers as they were required to work without a paycheck for over one month. The average starting salary for a TSO was only about \$32,600 (\$15.62/hour), and the average pay for a full-time TSO ranged between \$35,000 and \$40,000 a year. Depending on schedules, the lowest end of the current scale was lower than the mandatory \$15 per hour minimum wage in some jurisdictions.

- The new pay scale took effect on July 2, 2023, for current and new TSA employees. It is imperative we advocate persistently for that pay level to be a regular part of appropriations bills.
- Congress must pass legislation that would apply title 5 to the TSO workforce, including statutory inclusion of the GS system of compensation.

## **HONORING OUR FALLEN TSA HEROES**

Rep. Julia Brownley (D-CA) reintroduced the “Honoring Our Fallen TSA Heroes Act,” H.R. 871 in 2023, originally resulting from the death of a TSO while on duty in 2013. The bill has only 15 cosponsors and should be brought up in legislative meetings. H.R. 871 would grant 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.

Ask lawmakers to cosponsor H.R. 871.

## **FUNDING FOR TSA**

To fund aviation security, including the work of TSA, Congress passed an Aviation Passenger Security Fee. Since 2014, that fee is \$5.60 one-way and \$11.20 roundtrip. However, the increase that took effect in 2014 included a diversion of one third of the security fee funds to deficit reduction, costing \$19 billion over 10 years and starving TSA of essential resources.

In June 2023, House Homeland Security Committee Ranking Member Bennie Thompson (D-MS) introduced H.R. 3394, the “Fund the TSA Act.” The bill will end the diversion of the passenger security fee, raise the fee by two dollars and designate the funds collected for the frontlines to be used for staffing, checkpoint security technologies, airport law enforcement and explosive detection. Similar legislation ending the diversion of the passenger security fee has attracted bipartisan support in past congresses.

Since the inception of TSA more than 20 years ago, the agency has been chronically underfunded and its TSO workforce has been paid an average of 30 percent below their counterparts at other agencies. The FY 2023 omnibus appropriations bill provided the means to bring TSO pay up to equivalency with the General Schedule, as employees in other agencies are paid. H.R. 3394 would ensure the new pay scale would have a reliable funding source so TSA will be able to continue to pay TSOs at a rate that will support hiring and retention needs. Ask lawmakers to cosponsor H.R. 3394.

### **CONGRESS MUST REFORM THE SCREENING PARTNERSHIP PROGRAM**

Following the terrible events of Sept. 11, 2001, the nation demanded that Congress improve the U.S. aviation security by federalizing the duties of screening passengers and baggage at airports. Most airport operators continue to depend on the experience, training, and commitment of federal TSOs and are uninterested in the opportunity to convert to private contractors under the Screening Partnership Program (SPP). Unlike other efforts to convert federal jobs to contractors, the SPP does not require the contractor to demonstrate taxpayer savings or allow the federal workforce to compete in the bid. Current law shortens the period TSA can consider an SPP application, requires collusion with the airport operator on contractor choice and limits the administrator’s discretion to determine the appropriateness of privatizing screening at an airport. Jobs with an SPP contractor include salary stagnation and fewer and more expensive benefits.

Unlike the constant scrutiny of the TSO workforce, there is almost no transparency regarding attrition rates or security breaches at SPP airports.

In 2018, AFGE prevented attempts to privatize screening under the SPP at Orlando International Airport and San Luis Munoz Marin (San Juan) Airport. In 2019, AFGE also fought efforts by the St. Louis Board of Aldermen to expand screening privatization under the FAA airport privatization program at St. Louis Lambert International Airport and an effort by the former governor of Georgia for a state takeover of the nation’s busiest airport, Atlanta Hartsfield Airport. Atlanta Hartsfield currently uses private contractors to monitor exit lanes in direct violation of federal law.

AFGE strongly supports reintroduction of legislation similar to the Contract Screener Reform Act, introduced by Rep. Bennie Thompson (D-MS) during the 114<sup>th</sup> Congress. The Contract Screener Reform Act would apply transparency and accountability to the SPP. AFGE also calls on Congress to examine if the FAA’s airport privatization program can open the door to private screening without consideration of national security risks.

### **FEHB COVERAGE FOR PART-TIME TSOS; WORKERS’ COMPENSATION;**



## **HAZARDOUS DUTY PAY**

In response to the coronavirus pandemic, members of the House Homeland Security Committee introduced legislation to restore the full federal share of health benefits to part-time TSOs, provide the presumption of workplace illness for those who contract the virus, and provide hazardous duty pay for TSOs who are on the job and risking their lives. Since that time, the TSA administrator has restored the part-time health benefit and directed the agency to presume workplace illness for Federal Employees' Compensation Act coverage. Because these actions supporting the workforce remain at the discretion of the administrator, AFGE supports enacting legislative solutions to ensure TSOs have access to these crucial benefits.

## **Conclusion**

The TSO workforce is essential for preventing future terrorist attacks against the U.S. Continued second-class treatment of this workforce is not only detrimental to the agency and its employees, but also harmful to aviation security. Congress must not only appropriate funds to continue the new pay scale; it must pass legislation to ensure the TSO workforce has the same civil service protections as other federal workers to recognize TSOs for the important service they provide in protecting the country.

## **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)**

AFGE continues to lobby in support of full FEMA funding and advocating for member pay and fair hiring practices. AFGE represents employees at FEMA whose mission is to make victims whole again after natural disasters. AFGE continues to urge Congress to amend language that allows CORE employees to become full time employees without the standard hiring practices and advocate for raising the Pay Cap Waivers for FEMA employees so that FEMA employees can be compensated for hours worked in disaster zones.

AFGE continues to work with Congress to ensure adequate funding for the safety and protection of FEMA workers. Additionally, AFGE is working to address language included in the FAA Reauthorization bill that would promote CORE employees to full time employees without going through the routine hiring process.

AFGE urged Congress to amend legislation in draft legislation on FEMA to include workforce language to make sure that bargaining unit employees retain their rights during the transition.

## **FEDERAL WORKPLACE AGENCIES – FLRA/MSPB**

### **Federal Labor Relations Authority**

Several little-known federal agencies play an outsize role in the daily lives of federal employees. The Federal Labor Relations Authority (FLRA) is an independent agency that administers the Federal Service Labor-Management Relations Statute which governs federal workplace collective bargaining. The Authority investigates and adjudicates disputes involving unfair labor practices and also decides matters of representation and negotiability. A functioning FLRA is thus essential to maintaining the collective bargaining rights of federal employees. The FLRA

also has responsibility for alternative dispute resolution, training programs, and overseeing the Federal Service Impasses Panel as well as related boards for the Foreign Service. The Authority was authorized in 1978 and is governed by a three-member Senate-confirmed panel; unfair labor practices are investigated by a Senate-confirmed general counsel.

While the Authority is a neutral body designed to function as an honest broker between labor and management, in recent decades its role has become increasingly and needlessly politicized. To the extent that a well-functioning FLRA facilitates the role of unions in the federal sector and promotes stability in labor-management relations, some Republicans have viewed the agency with skepticism or hostility. It has become unnecessarily difficult to confirm FLRA members and the general counsel. Most recently, a group of Senate Republicans, assisted by a former Trump official working for a conservative advocacy group, thwarted the renomination and confirmation of Ernest DuBester, the distinguished former FLRA chairman, based on discredited allegations of undue union influence at the FLRA. The prolonged delay for a Senate vote on DuBester and the Biden nominee for general counsel eventually led both candidates to withdraw, leaving the FLRA in a mostly paralyzed state.

For the past year, the FLRA has had no confirmed general counsel and a 1-1 split at the Authority, with one Biden and one Trump appointee at potential loggerheads on many decisions. A new Biden nominee for the FLRA also withdrew during the course of 2023, facing a fraught and uncertain process in the Senate. President Biden has now nominated a third candidate for FLRA member, as well as a new general counsel, and it is vital that the Senate promptly confirm these qualified individuals to restore the functioning of the agency.

As an example of the partisan atmospherics that have now come to surround the FLRA, the House considered and – after intensive lobbying by AFGE – narrowly defeated a proposed amendment to the 2024 Financial Services and General Government appropriations bill that would have blocked implementation of an FLRA rule to set a regular schedule for when federal union members could cancel their union dues. The final vote was 223-196, with 19 Republicans crossing over to reject this misguided amendment. However, the mere fact that the amendment was put forward on the floor is symptomatic of the right’s hostility toward the agency.

Congress’ failure to adequately fund the FLRA poses an equally dire threat to its future. The FLRA is a small agency of 116 full-time equivalent (FTE) employees whose work directly affects some 2.1 federal civilian employees. Few agency budgets have been as neglected as FLRA; its FY 2023 enacted budget of \$29.4 million is less in absolute dollars than its \$29.6 million budget in FY 2004. Accounting for inflation, the FLRA would need a budget in excess of \$48 million today simply to break even with its funding two decades ago. Budget shortfalls have already forced the closure of regional offices in Texas and Massachusetts. The agency is mired in a backlog of hundreds of unfinished cases; its alternative-dispute-resolution office has only two FTEs covering the entire government.

The FLRA requested a budget of \$33.7 million for FY 2024, as it seeks to rebuild its infrastructure and stop losing staff. This amount would fund 125 FTEs, short of the 135 FTEs the agency says it needs and vastly below the 213 FTEs the agency had during the Bush administration. Regrettably, the Senate’s bipartisan 2024 appropriations bill – which was constrained by the 2023 Fiscal Responsibility Act – provides only \$29.4 million in funding for the FLRA, the same as in 2023, while the partisan House bill would unacceptably cut \$1.4

million from the Authority. Since most of the FLRA's costs are for personnel, even a flat budget would result in serious cuts to programs, after funding pay adjustments for employees.

### **Congressional Requests:**

- Promptly confirm Anne Wagner as a member of the FLRA and Suzanne Summerlin as FLRA general counsel.
- Fully fund the FLRA's annual budget request of \$33.7 million and provide future increases until the agency is fully staffed and functioning.
- Reject future efforts to meddle in FLRA rulemaking that brings stability and fairness to federal labor-management relations.

### **Merit Systems Protection Board**

The Merit Systems Protection Board (MSPB) is another little known federal quasi-judicial agency with an important mission. Established by the Civil Service Reform Act of 1978, the MSPB took over certain responsibilities of the former Civil Service Commission for hearing employee appeals of adverse actions as well as performing studies of the merit system. The MSPB employs administrative judges who hear cases and issue decisions, subject to review by a three presidentially appointed, Senate-confirmed members.

In most cases, personnel appeals from bargaining unit employees are handled under the terms of collective bargaining agreements that provide for arbitration rather than hearings before the MSPB. However, it remains important for all federal workers that the MSPB is fully staffed and functioning as a neutral decision maker.

The MSPB is responsible for detailed decisions interpreting civil service laws, including "precedential decisions" that are binding on future boards, MSPB administrative judges, and the arbitrators who adjudicate disputes involving union-represented employees. Thus a corrupt, inefficient, or incompetent MSPB is a direct threat to federal employees, including managers and rank-and-file employees alike. In addition, in some limited cases, decisions by arbitrators in union appeals may be subject to MSPB review, if an arbitrator has incorrectly applied civil service laws or regulations.

Although the MSPB has been viewed as a challenging forum for employees to successfully appeal an agency decision, some Republicans have nonetheless treated the agency to neglect or hostility, simply because it plays any role in protecting employee rights from agency abuse. Nominations to the Board, which were once routine and uncontroversial, now result in party-line confirmation votes. In fact, the "Public Service Reform Act" introduced in March 2023 by Rep. Chip Roy (R-TX), Sen. Rick Scott (R-FL) and others would make all federal employees at-will and abolish the MSPB entirely. During the Trump administration, the Board was virtually eviscerated. From 2017 to 2022, the Board lacked a quorum and was thus unable to decide appeals, leading to a backlog of thousands of unresolved personnel cases. From early 2019 onward, the Board had no members at all. Although the Board again has a quorum of members, and President Biden has nominated a full slate, the backlog of old cases continues to haunt the

agency, leaving thousands of federal employees in limbo.

**Congressional Requests:**

- Congress should confirm a full roster of three board members, including a Senate-confirmed chairman, to the MSPB and ensure, together with the president, that it always maintains a quorum to decide cases.
- Congress should refrain from unfounded attacks on the agency, which is important for issuing decisions and policies affecting the entire civil service, including bargaining unit members.

**DEPARTMENT OF LABOR**

**Background**

AFGE represents employees at the Department of Labor including at the Bureau of Labor Statistics (BLS) and the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA).

AFGE Local 12 opposed H.R. 5913, the “Consolidating Veteran Employment Services for Improved Performance Act of 2023” a bill to move several programs from the Department of Labor to the Department of Veterans Affairs. AFGE Local 12 opposed this bill because it would significantly hinder employees’ ability to ensure veterans, service members, and military spouses can reach their full potential in the workplace. Employees at DOL VETS perform essential services such as preparing America's veterans, service members, and military spouses for meaningful careers, providing them with employment resources and expertise, protecting their employment rights, and promoting their employment opportunities. They can best do this under the parent agency of the Department of Labor.

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**To Carry Out its Civil Rights Mission, EEOC Should Hire Frontline Staff to Handle Rising Charge Filings and Increase Retention by Taking Actions to Improve the Morale of its Own Workforce**

**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 enforce civil rights laws, which protect against discrimination on the job based on race, religion, color, national origin, sex, pregnancy, age, disability and genetics. EEOC needs adequate staff to effectively enforce civil rights.

EEOC ended FY23 with only 2,173 Full Time Equivalent (FTEs) nationwide. This is 174 FTEs below the staff ceiling. Short-staffing results in the public experiencing delays in getting help,

such as the months it can take to get an appointment. While staffing remains low, discrimination charges, e-mails, and calls all increased significantly. Also, on June 27, 2023, the Pregnant Workers Fairness Act, went into effect, which is an additional law that EEOC has now been charged by Congress to enforce. Emerging issues, such as a rise in antisemitism and Islamophobia, and Artificial Intelligence (AI) technologies used in hiring, lead to new charge filings.

Meanwhile, EEOC, which should be the model employer, has a history of failing to comply with bargaining obligations, not addressing concerns raised in surveys of its workforce, denying reasonable accommodations and FMLA requests, allowing fear of reprisal to fester, and resisting the expansion of efficient workplace flexibilities. EEOC should support Union and employee rights, consistent with the priorities of this administration.

### **Summary of Priorities**

For FY25, AFGE Council 216 will urge Congress to increase EEOC's budget and hire up to the staff ceiling of 2,347 FTEs, focusing on frontline staff, especially positions that can help with the appointment logjam. The Union will advocate for the continuation of workplace innovations learned during COVID, such as virtual mediations, and workplace flexibilities that promote retention. The Union will continue to press EEOC to focus on promoting civil rights in the private and federal sector workplaces rather than internal closure metrics. Finally, the Union will fight for EEOC to comply with its contractual and statutory obligations and address concerns raised by climate and FEVS surveys, so that the Agency's own employees are treated with dignity and respect.

### **Discussion**

#### **1) Congress should support robust funding for EEOC for FY25**

- *AFGE Council 216 will urge Congress to boost EEOC's budget.*

EEOC's needs resources to accomplish the mission. For FY23, EEOC received a budget increase, but it was \$9M below the administration request. During continuing resolutions EEOC remains at level funding. Any potential cuts to EEOC for FY24 or FY25 would have a devastating impact on civil rights enforcement. EEOC is still recovering from the last administration's "do more with less" strategies, which centered on staff attrition and perfunctory case closures rather than providing substantive help to the public. With a significant budget boost EEOC could finally do "more with more." EEOC must not only rebuild but expand to handle a convergence of emerging issues: the recently enacted Pregnant Workers Fairness Act; pervasive antisemitism and Islamophobia; racial injustice; AI's potential to cause discrimination in hiring; Asian hate; LGBT Title VII coverage, as confirmed in the Supreme Court's 2020 Bostock decision; #MeToo; and long COVID. For FY25, a robust increase would allow EEOC to build up frontline staff to provide more effective help when workers face discrimination on the job.

#### **2) EEOC Must Rebuild from Record Low Staffing to Meet Demand**

- *AFGE Council 216 will urge Congress for resources for EEOC to rebuild staffing*

Historically, EEOC is small understaffed and underfunded agency. Already low staffing further declined almost 10% through attrition during the previous administration. It has taken three years of hiring by new Agency leadership to finally see a modest net gain of staff. EEOC ended FY23 with 2,173 FTE's nationwide. Compare this to EEOC's workforce of 2,505 FTE's in FY11. EEOC's work is too important, especially in light of current events, to have fewer hands on deck now than it did then.

Increasing frontline staff is warranted based on the rising workload. In FY 2022, the EEOC received more than 218,000 inquiries in field offices, an almost 10 percent increase from the prior fiscal year. According to EEOC's FY23 Financial Report, "During fiscal year 2023, the agency experienced a surge in the public's outreach to the EEOC, with a 10% increase in calls to the agency's contact center compared to fiscal year 2022 and a 25% increase in emails." The report explains to meet demand, "[t]he addition of new employees in mission critical positions was essential and must be followed by additional investments to ensure that the EEOC has resources commensurate with its task."

For FY25, AFGE Council 216 will urge Congress to direct EEOC to hire up to the staff ceiling of 2,347 FTEs.

### 3) **Congress Should Direct EEOC to Hire Key Frontline Positions**

- *AFGE Council 216 will urge Congress to direct EEOC to hire staff who serve the public.*

Available hiring should be target frontline staff, who directly serve the public. Staffing shortages have a direct impact on the public's ability to get real help. Adequate frontline staff is needed to receive inquiries, conduct intake interview appointments, and process charges from workers asserting employment discrimination.

There continues to not be enough investigative staff to cover appointment demand. Members of the public primarily begin the process by completing an online inquiry, but then are directed to schedule an appointment for an intake interview. However, the appointment calendars are booked up for months. The public is advised to keep checking back for an appointment. During this wait, jobs are lost, and retaliation cases surge.

AFGE Council 216 has long promoted the efficiency of hiring dedicated intake staff. Utilizing trained paraprofessionals for intake would help resolve the appointment calendar logjam. These Senior Investigator Support Assistants (SISA) can advance the intake process from pre-charge counseling through charge filing. Investigators, who now must stop investigating their cases to regularly rotate into intake, would be able to focus on processing their caseload. Yet EEOC has only eleven of these SISAs nationwide. Efforts to have these SISAs cover multiple offices have encountered problems, due to technical issues with the appointment system, time zones, and cross-district priorities. Instead, EEOC should hire 100 SISAs, at least one for each of the 53 offices and more for larger offices with higher intake.

Likewise, EEOC's in-house call center is typically staffed by approximately 38 intake information representatives (IIRs), when it was intended for 65. The IIR shortage means the public can wait up to 30 minutes or more to speak to a live person, with many giving up and leaving rather than waiting on hold. A small increase in the number of IIRs would reduce longer

wait times. Additionally, it would be more efficient if these IIRs could be trained up to ISAs and SISAs, so they could not only answer or forward inquiries, but also be able to advance the intake process.

Hiring more investigators would alleviate the unfortunate practice of transferring cases, which is bad for workers, employers, and EEOC staff. Starting in January 2023, EEOC began transferring thousands of charges from short-staffed offices to those with a few more personnel. This drove up the caseloads and overwhelmed the investigators in receiving offices. For the public, this meant new staff learning their cases and managing them away from the geographic location of the workers and employers. To meet arbitrary performance requirements, office “stand-downs” occurred for staff to focus on producing closures. Rather than using a band aid, the cure is for all EEOC offices to be fully staffed, so they can manage their own caseloads.

Additional support staff such as Investigative Support Assistants (ISA) and Office Automation Assistants (OAA) would allow EEOC to handle calls, mail, data input, and email more efficiently and relieve professional staff of clerical work that detracts from their primary duties.

EEOC’s mediation program has a 20-year history of success. Mediators reduce office caseloads and processing times. After a multi-year freeze, EEOC finally began hiring mediators in FY21, but more are still needed.

This past year there was also some limited hiring of Administrative Judges. But to account for the thinning ranks of AJs over the last decade, EEOC has focused on pilots and metrics that harm Federal complainants. Instead, EEOC should hire AJs, paralegals, and support staff to support Federal agency compliance with EEO regulations.

EEOC's litigation program needs more trial attorneys to bring forth important cases that demonstrate discrimination laws will be enforced. Paralegals and clerical support are also necessary to assist in managing the litigation workload, especially systemic cases. For FY25, AFGE Council 216 will urge Congress for EEOC to prioritize hiring frontline positions that directly serve the public.

#### **4) EEOC Should be the Model Employer for its own Workforce**

- *AFGE Council 216 will fight for EEOC to address morale, improve retention with workplace flexibilities, and comply with employee and union rights.*

Sadly, EEOC is a long way from realizing its goal to be the “model employer.” Despite the Administration’s support for unions and collective bargaining, EEOC still often fails to comply with its labor-management obligations. Fear of reprisal for protected activity remains above the government average. EEOC employees whose job it is to enforce laws against discrimination find themselves having to file their own complaints. EEOC employees are “agency hopping” to other agencies with better workplace flexibilities. EEOC needs to address these issues and concerns raised in surveys to improve recruitment and retention. EEOC

### **Labor Management Relations**

After the Union filed successful unfair labor practices (ULPs), the EEOC has improved this past

year in complying with bargaining obligations on the national level. However, the Agency continues to resist local (field office) bargaining, though the labor management obligations are the same. This has required the continuing need to file ULPs at the local level.

It should not take ULP charges and the intervention of the FLRA for EEOC to follow the rules. EEOC should respect that Union rights are worker rights.

### **EEOC Should Embrace Innovations and Workplace Flexibilities for Retention**

EEOC should act consistently with the Administration's goal of capturing innovations learned during COVID, including workplace flexibilities.

EEOC can serve the public even better by incorporating these new work practices into how we worked in the office in the past. For instance, during the pandemic EEOC pivoted to virtual mediations. Two recent evaluations reported overwhelming satisfaction with this new option. The popularity of virtual mediations alleviates the need for EEOC to supplement the mediation program with contract mediators, who are paid \$800 per case, to cover distant cases. These mediations should be brought back in-house.

EEOC has also expanded training opportunities by offering virtual options. EEOC will soon be adding video interview appointments.

Maxiflex is another program that started as an emergency pilot during COVID. Employees on a maxiflex schedule can work extended hours. This flexibility is good for employees and also helps the public, because it allows staff earlier or later times they can interface with the public. This is good for workers, who may not be able to speak during regular business hours.

Remote work can offer the Agency a greater pool of qualified candidates. Remote work can also enhance opportunities for disabled applicants. Most obviously, remote work can save on brick and mortar costs.

The EEOC's staff demonstrated during COVID that they could carry out their functions effectively while on maximum telework. Telework improves employee performance and engagement and supports mission productivity and efficiency. Telework flexibilities help staff balance work and personal responsibilities, thereby enhancing employee satisfaction and wellbeing.

According to OPM, federal employees are "agency hopping" to seek greater workplace flexibilities. This is true at EEOC, where many employees have left for other agencies that learned what worked during COVID and continue to offer more expanded workplace flexibilities.

To recruit and retain talent: EEOC should expand proven workplace flexibilities to capture efficiencies and reduce turnover. Otherwise, EEOC, which is already short-staffed, risks an employee exodus to other agencies and private sector employers who embrace greater workplace flexibilities.



## **Take Action to Address Concerns Raised on Office Climate Assessments**

EEOC should reduce costly turnover by addressing poor morale. EEOC hired an outside contractor to conduct nationwide assessments of office climates. The focus includes diversity, morale, fear of reprisal for protected activities including Union participation. EEOC has a history of not taking action to address problems raised in surveys and exit interviews of its workforce. EEOC has several offices that are “hot spots,” with ongoing EEO complaints, grievances, RESOLVE mediations, poor FEVS scores, unfair labor practices and excessive employee turnover. EEOC should take note and train or reassign managers who are negatively impacting employee working conditions, undermining morale, and disrupting positive work environments.

## **Treat Employees with Dignity and Respect by Complying with Worker Rights**

EEOC should ensure the rights of its own workforce. This includes improving the internal EEO process that rarely makes discrimination findings. EEOC should not block reasonable accommodations or deny appropriate FMLA requests. EEOC must stem the fear of retaliation. When EEOC employees do not feel safe bringing forth complaints, problems are left to fester. EEOC field offices historically have scored below the government average on this FEVS inquiry: “I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.” It is a sad irony that retaliation for protected activity is a legal basis that EEOC enforces. This may be addressed in part by EEOC adopting an anti-bullying policy. Also, EEOC’s harassment policy should have an independent harassment coordinator.

## **5) Federal Employees Must Also Maintain Rights to Discovery and Full and Fair Hearings.**

- *AFGE will fight for Federal workers to have access to the full EEO process.*

AFGE Council 216 will also continue to protect federal workers’ rights to discovery and a full hearing. These rights are threatened when EEOC interferes in the judicial independence of Administrative Judges adjudicating the cases. Administrative judge (AJ) performance plans contain arbitrary closure quotas, which can create a strong pressure to find more often in favor of agencies. Achieving the required performance requirements for closures, incentivizes quick closures, such as through summary judgment and bench decisions. Now the pendulum has swung the other way and other hearings metrics are being considered. Dismissals to meet the numbers may affect due process. The standards also do not consider case complexity, varying caseloads, aged inventory transferred from other short-staffed offices, and lack of support staff.

Administrative Judges should retain judicial independence to categorize cases, provide for and manage the discovery process and not be forced to meet arbitrary metrics. Subpoena authority will continue to be sought to improve the due process afforded to both federal sector claimants and federal agencies.

## **6) EEOC Should Improve Its Digital Charge Initiatives to Accomplish the Purported Goal of Efficiency.**

- *AFGE Council 216 will urge that EEOC improve ARC to support constituents.*

In January 2022, EEOC rolled out a new electronic charge data system called ARC. This system is also the platform used by state agencies and interfaces with the public portal. Generally, expanding technology enhances efficiency and access. However, since the EEOC went live with ARC with no pilot, it has been plagued with problems. ARC has added to the existing overwhelming workload of staff because basic tasks take longer. In 2023, data glitches have caused emergency changes to workload priorities to correct problems caused by ARC. Despite EEOC's bargaining unit being the primary end-user, the Agency did not seek Union input when designing ARC. The Union should have been included in the planning, to make sure that ARC was user-friendly for staff and the public. The Union should be included before expansion to the federal sector.

**AFGE will urge Congress:**

- For FY25, to enact a budget increase for EEOC from \$455M (FY23/CR levels) to at least \$481M, i.e., the level requested by the Administration for FY24.
- To direct EEOC to hire frontline staff up to the 2,347 FTE staffing ceiling to provide real and timely help to the public and federal sector.
- To ensure EEOC complies with union rights and worker rights.
- To improve recruitment and retention through workplace flexibilities.
- Take action on climate surveys.
- To reduce costly turnover by improving poor morale, including acting on EEO violations, and addressing fear of reprisal.
- To maintain federal employee rights to full and fair adjudication before Administrative Judges, who retain judicial independence, are not forced to meet arbitrary metrics, and have subpoena authority.
- To hire dedicated intake staff, including at least 100 Senior Investigator Support Assistants.

**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 (OWCP) and currently covers roughly three million civilian federal employees from more than 70 different agencies. When a death, injury, or illness occurs on the job, FECA provides payments for (1) loss of wages, (2) loss of a body part or its use, (3) vocational rehabilitation, (4) death benefits for survivors, (5) burial allowances, and (6) medical care for injured employees. The FECA program is particularly important for inherently dangerous occupations – Bureau of Prisons correctional workers, U.S. Customs and Border Protection officers, federal firefighters, and other federal law enforcement officers. Its importance has expanded as front-line workers in dozens of agencies have been

exposed to COVID-19 in the workplace. Among them are medical professionals at the Department of Veterans Affairs and the Department of Defense, food inspectors at the Department of Agriculture, and Transportation Security Officers at the Transportation Security Administration. Unfortunately, FECA has not been significantly reformed since 1974, and as a result, several challenges have emerged.

AFGE successfully lobbied for an automatic presumption of workplace illness for COVID-19 as part of the American Rescue Plan Act, which was signed into law on March 11, 2021. The act authorizes FECA benefits for federal workers who contract COVID-19 within 21 days of carrying out duties that required contact with patients, members of the public. This workplace presumption of illness allows eligible federal employees to make a FECA claim without facing a potentially lengthy denial and appeals process and help these workers receive much-needed benefits and health care services.

However, this provision expired in January 2023. AFGE continues to urge Congress to extend the deadline for COVID FECA benefits as federal and D.C. workers continue to serve the American public during the COVID-19 public health crisis and are exposed to health and safety risks.

AFGE is also urging OWCP to extend this benefit through a policy change. COVID-19 claims filed after January 27, 2023, will have to meet the OWCP basic elements and will have to be filed on a CA-2 instead of a CA-1 as was allowed under ARPA provisions, except in cases where the employee can prove the exposure occurred at a specific time and place during a single work shift. This will make it more difficult for members to have COVID-19 claims accepted. Most agencies are not informing employees when they are exposed on the job, and some are already telling employees that all CA-1's will be challenged.

## **VOTER RIGHTS, CIVIL RIGHTS, AND JUDICIAL NOMINATIONS**

### **Background**

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 and 2019 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 or 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. 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. 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. Since the beginning of 2019, bills to restrict voter access to the polls were introduced or extended in 14 states. The intent is clear: political control will be maintained by denying the ballot to those who may vote in opposition.

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.

### **Freedom to Vote Act and the John Lewis Voting Rights Advancement Act**

During the 118<sup>th</sup> Congress, S. 2344, the “Freedom to Vote Act” introduced by Sen. Amy Klobuchar (D-MN), would expand voting rights protections. Specifically, this bill expands voter registration and voting access. It limits removing voters from voter rolls and establishes Election Day as a federal holiday. H.R. 14, the “John R. Lewis Voting Rights Advancement Act” introduced by Representative Terri Sewell (D-AL) would restore the Voting Rights Act of 1965 by outlining a process to determine which states and localities with a recent history of voting rights violations must pre-clear election changes with the Department of Justice. AFGE continues to lobby for cosponsors for H.R. 14 and S. 2344 and promote voter access across the country.

### **Election Day a Federal Holiday**

AFGE supports legislative efforts to protect and extend the right to vote. Representative Brian Fitzpatrick (R-PA) and Representative Debbie Dingell (D-MI) introduced H.R. 6267, the “Election Day Act” a bill to establish Election Day a federal holiday, helping people gain access to the polls.

This bill would establish the Tuesday after the first Monday in November in the same manner as any legal public holiday for purposes of Federal employment. This bill would create “Democracy Day” a federal holiday to boost voter turnout on Election Day. According to the U.S. Census Bureau, in 2016, 14.3% of the 19 million citizens who did not vote said they were “too busy” on Election Day to cast a vote. Currently 20 states have varying laws allowing workers paid time off to vote. Voting is a constitutional right supported by federal law. Over 30% of federal workers are veterans, many of whom fought in Iraq, Afghanistan, and Syria to protect the voting rights of citizens in other countries.

## **Equal Pay**

H.R. 17 / S. 728, the “Paycheck Fairness Act,” was introduced by Representative Rosa DeLauro (D-CT) and Senator Patty Murray (D-WA). The bill closes loopholes that hinder the Equal Pay Act’s effectiveness, prohibits employer retaliation against employees who share salary information among colleagues, and ensures that women who prove their case in court receive awards of both back pay and punitive damages. A 2018 study by the American Association of University Women found that fulltime working women on average earn 80% of what men earn, and that the gap increases for working women of color. Working families can lose hundreds of thousands of dollars over the course of a woman’s lifetime due to the pay gap.

## **Discrimination Against Federal Workers with Targeted Disabilities**

Employees with targeted disabilities represented by the American Federation of Government Employees, AFL-CIO (AFGE) deserve to have their workplace rights respected. Reports have shown that Federal government agencies are removing employees with targeted disabilities right before the end of their probationary period. Targeted disabilities are a subset of the larger disability category. The federal government has recognized that qualified individuals with certain disabilities, particularly manifest disabilities, face significant barriers to employment, above and beyond the barriers faced by people with a broader range of disabilities. These include developmental disabilities, deafness or serious difficulty hearing, and blindness. The federal government should be a model employer of persons with targeted disabilities. Losing a job as a federal employee could plunge these disabled workers into financial peril: according to the 2017 Census Bureau Poverty and Income Report, the Official Poverty Rate for those with disabilities is 24.9%. The unemployment rate is 15.1% for persons with disabilities. Only about a third of persons with disabilities are working. There is no explanation of the disparity in retention between federal employees with targeted disabilities and other members of the federal workforce. It is important to ensure that workers with targeted disabilities are not victims of discrimination in the federal workplace. AFGE continues to work with Senator Tammy Duckworth (D-IL) and Representative Dingell to urge OPM to share data about the rates of persons with targeted disabilities who have been removed before or at the end of their probationary period. If problems are documented, AFGE will call upon Congress to strengthen protections for disabled federal workers.

### **AFGE urges Congress to:**

- Reintroduce and pass legislation to protect the voting rights of each American, including a law establishing the day of federal elections as a federal holiday.
- Conduct oversight about possible discrimination against federal workers with a targeted disability.

## **PAID PARENTAL LEAVE**

AFGE supports H.R. 856 / S. 274, the reintroduction of Federal Employee Paid Leave Act, by

Representative Don Beyer (D-VA) and Senator Brian Schatz (D-HI), to provide federal employees with twelve weeks of family leave for all instances covered under the Family and Medical Leave Act (FMLA).

This includes paid leave to care for a newborn, newly adopted, or newly placed foster child; to care for seriously ill or injured family members; to attend to an employee's own serious health condition; and to address the health, wellness, financial, and other issues that could arise when a loved one is serving overseas in the military or is a recently discharged veteran. No federal employee should have to choose between caring for a loved one and receiving a paycheck.

The COVID-19 pandemic highlighted the critical need for expanded dependent care flexibility for federal and D.C. government workers. This bill would be a step in the right direction to help provide support to working families.

Congressional opponents of paid family leave for federal employees have raised arguments largely based on cost. Unrealistic assertions about the ability of federal workers to accumulate and save other forms of paid leave continue. But the cost of failing to extend this benefit to families is clear. Productivity is lost when a federal employee returns to work too soon without securing proper care for a loved one or when federal employees come to work when they are ill because they used all their sick leave taking care of a loved one. A lack of paid family leave also negatively affects 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 family leave.

There is widespread agreement among employers that improving the quality of life for working families is a good policy. 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 family leave.

### **Congress Should Recognize the Benefits of Leave to Workers and Agencies**

Congress should recognize the difficulties federal workers face in accumulating annual leave. In most cases, federal employees are only able to accumulate a maximum of 30 days of annual leave, not an adequate amount of time for other potential instances covered under FMLA. 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 family 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 cover 12 weeks of family leave. The alternatives suggested by federal employee paid family leave opponents are far too simplistic and unrealistic to adequately address the problem. Federal workers who take unpaid FMLA leave too often fall behind on their bills and face financial ruin.

AFGE believes a paid family leave benefit 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 family leave. The federal government currently reimburses federal contractors and grantees for the cost of providing paid family leave to their workers. Surely if

such practice is affordable and reasonable for contractors and grantees, federal employees should be eligible for similar treatment.

### **THE EQUALITY ACT**

H.R. 15 / S. 5, the “Equality Act,” was introduced by Representative Mark Takano (D-CA) and Senator Jeff Merkley (D-OR). This bill would extend existing civil rights protections to LGBTQ Americans in the areas of employment, education, housing, credit, jury service, public accommodations, and federal funding. AFGE continues to lobby for cosponsors for this legislation.

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 or gender identification. Currently it is not violation of federal civil rights law to fire, deny housing, or educational opportunities to individuals simply because they are a member of the LGBT community – and that is wrong. Although this protection has 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 extends protections against discrimination based on sexual orientation in employment, housing, and access to public places, federal funding, credit, education, and jury service based on orientation or gender identification.

### **DEPARTMENT OF AGRICULTURE**

#### **FILL VACANCIES AMONG FOOD INSPECTION STAFF TO HELP PROTECT OUR NATION’S FOOD SUPPLY**

##### **Background/Analysis**

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

Unfortunately, FSIS is suffering a serious shortage of inspectors, a shortage that is threatening our nation’s food supply. This shortage is straining the inspection system to the point of breaking. There have been an increasing number of recalls of products under FSIS jurisdiction due to the lack of inspection.

For years, FSIS has acknowledged difficulties in recruiting and retaining personnel, resulting in double-digit inspector vacancy rates in many districts. Without a robust workforce of federal inspectors, important monitoring and reporting of foodborne pathogens will not occur, preventing timely interventions to preserve public health. In order to protect the public and

workers, FSIS needs a full contingent of inspectors in every plant. AFGE's National Joint Council of Food Inspection Locals (Council) , which represents over 6,000 FSIS inspectors, believes that hiring more meat and poultry inspectors by increasing salary and recruitment efforts, in addition to other priorities, would help those hardworking inspectors better accomplish the FSIS mission.

### **Congressional Requests**

- Congress should support efforts to overcome the longstanding problem of recruiting and retaining employees by increasing the starting wage for inspectors. Most inspectors start as a GS-5, which is below the starting wage for employees at packing plants. AFGE's FSIS Council recommends starting at GS-7 and offering the same retention bonuses that are offered to public health veterinarians (who are not bargaining unit employees).
- Congress should increase FSIS's budget for full-time employees, which would allow for all plants to have a full complement of government inspectors at all times.
- Congress should mandate that FSIS increase its outreach and recruiting efforts to fill all current vacancies of food inspectors and consumer safety inspectors.

## **SLOW DOWN SLAUGHTER LINE SPEEDS AND PUT THE SAFETY OF WORKERS AND THE AMERICAN PUBLIC FIRST**

### **Background/Analysis**

During the previous administration, the FSIS increasingly favored deregulation that allowed increased line speeds for all slaughtered species and in turn removed many federal inspectors from the lines. This has drastically increased profits for meatpacking companies and drastically decreased safety for inspectors, workers, consumers, and animals.

### **Congressional Requests**

- Congress should pass legislation to mandate slower line speeds in meatpacking plants and prohibit the inspection systems that have allowed these increased and unsafe line speeds including the New Poultry Inspection System, the New Swine Inspection System, the Egg Products Rule and Beef Slaughter line speed waivers. Last Congress, AFGE supported the Safe Line Speeds in COVID-19 Act, introduced by Rep. DeLauro (D-CT) and Sen. Booker (D-NJ).
- AFGE supports S. 272/H.R. 805, the Industrial Agriculture Accountability Act, which would prevent dangerous line speeds. This bill was introduced by Sen. Booker and Rep. McGovern with 14 cosponsors in the House.
- AFGE supports legislation introduced by Rep. Greg Casar that would improve our food safety system. H.R. 4978, the Agricultural Worker Justice Act, would prevent dangerous line speeds and H.R. 4979, the Fairness for Small-Scale Farmers and



- Ranchers Act, would increase recruitment and retention efforts at FSIS.
- AFGE also supports S. 270/H.R. 798, the Protecting America’s Meatpacking Workers Act, led by Senator Booker and Rep. Khanna, which would also increase funding for FSIS and prevent dangerous line speeds.

## **EXPANSION OF THE LAW ENFORCEMENT OFFICER STATUTORY DEFINITION**

### **Background**

Congress should 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) but are currently excluded and receive inferior benefits. Under present law, the definition of a LEO does not include officers of the Federal Protective Service (FPS), and police officers from the Department of Defense (DOD), Veterans Affairs (VA) the U.S. Mint, and other agencies. Despite having duties similar or identical to other LEOs, these law enforcement professionals do not receive equal pay and benefits compared to their occupational counterparts in other agencies. Specifically, they have lower rates of pay, lower pensions, 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 far lower 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 a mandatory retirement age of 57, the federal government makes special provision for unreduced retirement at a younger age than that applied to other federal employees. Under the Federal Employee Retirement System (FERS), an employee who qualifies for LEO retirement status is eligible to retire upon attaining the age of 50, after completing 20 years of eligible LEO service, or at any age with 25 years of LEO service. To be eligible for LEO retirement coverage, positions must meet both the statutory definition under 5 U.S.C. 8401 as well as LEO requirements under FERS.

Under 5 U.S.C. 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.”

To be eligible under 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.

Occupy a substantial portion of the individual's working time over a typical work cycle; and 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. 8336(c), a federal LEO with a minimum of 20 years of service at age 50, or 25 years of service at any age is eligible to retire with an unreduced 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 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 contribution formula than 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. Legislation was recently 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) accounts 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 continues to 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.

### **Expansion of LEO Statutory Definition**

In the 118<sup>th</sup> Congress, AFGE continues to support H.R. 1322, the bipartisan “Law Enforcement Officers Equity Act,” introduced by Representative Bill Pascrell, Jr. (D-NJ) and S. 1658, the

“Law Enforcement Officers Parity Act,” introduced by Senator Cory Booker (D-NJ). These bills 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.

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 against threats to personal safety. These professionals are trained to use and carry authorized firearms, yet in too many cases 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 will continue to fight for this bill’s re-introduction and passage in both chambers of Congress.

### **Congressional Action Needed**

- AFGE strongly urges the 118th Congress to enact the “Law Enforcement Officers Equity Act,” to amend 5 U.S.C. Section 8401 to include FPS officers, and police officers from the VA, DoD, the U.S. Mint, and other agencies in the definition of a law enforcement officer.

## **CENSUS BUREAU AFGE COUNCIL 241**

### **Census Bureau Funding**

The Biden Administration proposed funding the Census Bureau at \$1.606 billion for Fiscal Year 2024. Currently, all Federal agencies, including the Census Bureau, are being funded by a continuing resolution (CR) and the Census Bureau is funded at Fiscal Year 2023 levels . AFGE continues to advocate for full and robust funding for the Census Bureau to ensure employees can successfully ensure the integrity and security of surveys and data. AFGE urges Congress to ensure that the Census Bureau has adequate resources to produce fair and accurate censuses including the American Community Survey and the Economic Survey.

AFGE represents over 1,500 members at the Census Bureau in Maryland, Kentucky, and Arizona. Our employees ensure accurate and comprehensive data collection and analysis which informs research and federal, state, and local funding initiatives. Census Bureau work ensures fair political representation from Congress down to local school boards—and the prudent distribution of federal aid to states and communities each year. Census Bureau data are central to sustaining democracy and facilitating informed decision-making. Census Bureau programs are irreplaceable sources of data for key economic indicators and socio-economic characteristics that

support government and private sector decision-making.

### **Congressional Action Needed**

Continue educating Members of Congress and staff about the important work Census Bureau employees do for the American public and to advance civil and human rights. Advocate for full funding and staffing for Census Bureau employees to perform the mission of the agency.

### **FEDERAL FIREFIGHTERS**

AFGE represents federal firefighters at DoD, VA, and other agencies across the country. Too many firefighters are living with and dying from cancer in the United States every year. Firefighters are frequently exposed to smoke, toxic chemicals, and debris which can cause cancer. These civil servants and American heroes deserve the highest quality data and best public health solutions to help prevent and treat work-related illnesses.

Federal firefighters put their lives on the line every day to protect and serve the American people. Most federal firefighters are located at military facilities. These federal firefighters have specialized training to respond to emergencies involving aircraft, ships, artillery, and ammunition. Federal firefighters at the Department of Veterans Affairs serve civilians and veterans including chronically ill and bedridden patients. Federal firefighters provide emergency medical services, crash rescue services, hazardous material containment, and fight fires. The National Institute of Occupational Safety and Health (NIOSH) has conducted studies about the prevalence of cancer among firefighters; however, these studies have had two critical flaws: 1) the sample sizes were too small; and 2) they do not include many minority populations. This limited NIOSH's ability to draw productive statistical conclusions from their data. More comprehensive public health data must be collected to develop solutions to preventing the high rates of cancer in firefighters.

The Centers for Disease Control and Prevention's (CDC) National Program of Cancer Registries (NPCR) provides support for states and territories to maintain registries that provide high-quality data. Data collection systems like cancer registries help identify and diagnose work related illnesses. For instance, registries help bring attention to the fact that professional groups like firefighters are not getting much needed cancer screening tests, and that more efforts are needed to decrease the likelihood of illness.

AFGE supports H.R. 1235, the "Firefighter Pay Equity Act," introduced by Representative Gerry Connolly (D-VA) to modify certain pay calculations that are used to determine retirement and annuity benefits for federal firefighters. Specifically, the bill adjusts the method of determining the average pay of a federal firefighter by adding one-half of a firefighter's basic hourly rate multiplied by the number of overtime hours included as part of such firefighter's regular tour of duty. It also requires the Office of Personnel Management to issue regulations that cap the number of hours in a regular workweek, which may not exceed 60 hours per week.

## **ISSUES FACING FEDERAL RETIREES**

### **COST-OF-LIVING ADJUSTMENT (COLA)**

In an unprecedented move, former President Trump's budget proposals would have eliminated the cost-of-living adjustment (COLA) for current and future Federal Employee Retirement System (FERS) retirees and cut the COLA for Civil Service Retirement System (CSRS) retirees by 0.5% per year. AFGE opposed these cuts that would have steadily eroded retirees' income. President Biden's budgets have removed the proposed benefit cuts.

The 2024 COLA is 3.2 percent for Social Security and CSRS benefits, but only 2.2 percent for FERS Retirees. This follows the 2023 COLA that was 8.7 percent for those under CSRS and 7.7 percent for those under FERS. The FERS COLA is the same if the CPI is 2% or less; if the CPI is 2.01-3.0%, the COLA is 2%, and if the CPI increase is more than 3%, the FERS COLA is 1% less than the CSRS COLA.

Rep. Gerry Connolly (D-VA) and Sen. Alex Padilla (D-CA) have introduced H.R. 866/S.3194, the bipartisan Equal COLA Act, to bring the FERS COLA up to the same amount as the CSRS COLA. AFGE supports this legislation, which has garnered 46 cosponsors in the House.

Under current law, the COLAs for Social Security, CSRS and FERS are all calculated based on the Consumer Price Index for Urban Wage Workers (CPI-W). Rep. John Garamendi (D-CA) introduced H.R. 716 the Fair COLA for Seniors Act, which would have based the COLA for federal retirees on the Consumer Price Index for the Elderly (CPI-E) and has 37 cosponsors. The CPI-E better accounts for the spending habits for seniors, notably for medical care, reflecting the rising costs retirees face. This change would result in an increased COLA for retirees of around a quarter-percent per year.

### **Legislative Action**

- Oppose any cuts to the federal retirement COLA for active and retired employees.
- Cosponsor and support The Equal COLA Act to eliminate the one percent penalty in the FERS COLA so that it is aligned with CSRS and Social Security.
- Cosponsor and support the Fair COLA for Seniors Act, to change the way the COLA is calculated to better reflect rising costs for retirees.

### **GOVERNMENT PENSION OFFSET (GPO) & WINDFALL ELIMINATION PROVISION (WEP)**

AFGE supports the elimination of the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP), which unfairly reduce Social Security benefits for federal government retirees and their survivors. These provisions apply to federal CSRS retirees as well as many state, county, school district and municipal employees. For 74% of surviving spouses affected by the Government Pension Offset, Social Security benefits are reduced to zero.

These provisions have had the effect of disproportionately reducing the Social Security benefits Americans have earned. Many CSRS retirees have enough earnings from other work to qualify for Social Security, but unless this issue is addressed, they will receive little or no benefit.

### **Legislative Action**

- AFGE supports legislation to eliminate the GPO and WEP. The Social Security Fairness Act was introduced by Rep. Garret (R-LA) in the House as H.R. 82 and has over 303 cosponsors. This allows for an expedited process to get a floor vote and we are working to schedule the Ways and Means Committee vote for later this spring. Sen. Sherrod Brown (D-Ohio) has introduced the Senate version with 50 cosponsors. AFGE is advocating for members to cosponsor these bills and for leadership to advance these bills through committee and bring to the floor for a vote.
- Rep. Larson and Sen. Blumenthal's bill, "Social Security 2100: A Sacred Trust," would also eliminate the GPO and WEP and is fully paid for. AFGE has endorsed and supports this legislation.

### **INCREASING SOCIAL SECURITY BENEFITS AND SOLVENCY**

FERS retirees and some CSRS retirees are also beneficiaries of Social Security. 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 using part of this additional revenue to expand benefits, including:

- Using the Consumer Price Index-Elderly (CPI-E) to provide for a fairer COLA that reflects seniors' expenditures.
- A 2% across-the-board benefit increase.
- Improving benefits for surviving spouses so that a household does not experience a devastating drop in income when one spouse dies.
- 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.

AFGE strongly opposes legislation that would:

- Cut or eliminate Social Security's annual cost-of-living adjustments, which would erode the value of Social Security benefits as people age into their most vulnerable years.
- Raise Social Security's full retirement age of 67 years, which would cut benefits across-the-board for all new retirees.

- Privatize Social Security, turning our guaranteed earned benefits over to Wall Street in the form of limited private accounts, subject to the whims of the stock market.
- Establish a so-called Fiscal Commission with the power to fast-track cuts to Social Security and other vital programs.

### **Legislative Action**

- Support legislation to expand Social Security benefits and extend solvency, including bills such as Rep. Larson and Sen. Richard Blumenthal’s (D-CT) “Social Security 2100 Act: A Sacred Trust.” We call on leadership to bring legislation expanding Social Security to the floor for a vote.

### **THRIFT SAVINGS PLAN**

The G Fund is offered to federal employees and retirees through the Thrift Savings Plan (TSP) and invests in U.S. Treasury Bonds. Federal workers and retirees have more than \$200 billion invested in the G Fund, making it one of the most heavily invested funds within TSP. Because it is a stable fund that protects against loss, the G Fund is particularly important to retirees.

The previous president proposed to lower the interest rate paid on the G Fund. The proposal would have changed the return on U.S. Treasury Bonds held in the G Fund to shorter term bond yields paying about a full percentage point less than current yields. If enacted, this change would have cost federal workers approximately \$2 billion annually in lower TSP returns.

President Biden’s budget proposal removed this provision, protecting the return federal workers receive from G Fund investments.

AFGE opposes proposals that would reduce the interest rate of the G fund and cut federal workers’ retirement savings.

### **MEDICARE & MEDICAID**

AFGE has opposed efforts under the previous president to repeal the Affordable Care Act, raise the Medicare eligibility age from 65 to 67, and increase hospital co-payments and deductibles.

AFGE supported several important healthcare provisions in the Inflation Reduction Act (IRA), which was signed into law in 2022. The IRA protects Medicare recipients from runaway drug costs, establishes a cap on insulin costs and allows Medicare to begin to negotiate prices for certain high-cost drugs. It also extends health insurance premium subsidies.

While around 45 percent of Medicare beneficiaries report difficulty hearing, Medicare currently does not cover hearing services. Hearing care is one of the most expensive services that Medicare does not currently cover. AFGE supports provisions that would require Medicare Part B and Medicare Advantage plans to cover hearing services, such as hearing aids for those with severe hearing loss. AFGE also supports the expansion of dental and vision coverage under

Medicare.

Medicaid provides health care for low-income children and families, but it is also the largest source of funding for long-term care and community-based support for the elderly and people with disabilities, providing about 62% of all such services. Right now, hundreds of thousands of older Americans are on waiting lists for home care services. We need to help deliver affordable, high-quality care for older Americans by reducing these waiting lists and investing in the direct care workforce.

### **Legislative Action**

- Oppose budget cuts and eligibility age increases in Medicare.
- Support efforts to enact hearing care and expand dental and vision coverage in Medicare.
- Oppose cuts to Medicaid and the ACA through budget proposals and standalone legislation and support efforts to strengthen and broaden access to quality affordable health care.

### **FIXING POSTAL RETIREMENT ISSUE FOR FORMERLY PART-TIME WORKERS**

There are more than five million active and retired federal and postal employees and management associations across the country. However, those in the federal and postal workforces who began their careers after January 1989 as temporary employees were unable to make contributions to their Federal Employee Retirement System (FERS) benefits until they became full-time, career employees. Many of these dedicated men and women find as they approach retirement, that because their time as a non-career employee did not apply toward their retirement, they are forced to choose between either working longer in their federal and postal careers than they anticipated or retiring early without their full, expected benefits. Prior to 1989, these employees were permitted to make additional contributions as participants within the Civil Service Retirement System (CSRS) to retire on time, with full benefits. Regrettably, this authority lapsed in 1989 and has not been reinstated.

### **Legislative Action**

- AFGE supports the bipartisan Federal Retirement Fairness Act, H.R. 5995, introduced by Representatives Derek Kilmer (D-WA) and Don Bacon (R-NE). This bill works allows FERS employees who began as temporary workers, to make additional monetary contributions to their retirement benefits, creating equity between employees under CSRS and FERS. AFGE is also pushing to expand those covered by this bill to explicitly cover federal judicial law clerks.

### **SOCIAL SECURITY ADMINISTRATION**

The General Committee represents the six AFGE councils at the Social Security Administration (SSA), including AFGE Council 224, AFGE Council (and Local) 1923, AFGE Council 109,



AFGE Council 215, AFGE Council 220, and AFGE Council (and Local) 2809. The General Committee (GC) advocates for the large majority of bargaining unit employees who serve the American public through the Social Security system.

## **FULLY FUND THE AGENCY**

The Social Security Administration (SSA) is critical for Americans to access benefits in times of need but has faced years of underfunding. SSA's administrative funding for basic operations fell by more than 14 percent from 2010 to 2022, after accounting for inflation. Morale for workers is low; SSA is ranked as the worst large federal agency to work for. Recent surveys show that SSA employees are very likely to leave the agency for better pay, benefits, telework, and working conditions. Meanwhile, the workload is set to increase as nearly twenty million Americans reach their retirement age over the next decade. AFGE requests SSA be funded at a level of \$16.5 billion in FY 24 to administer this critical program. The additional funding should be used towards staffing resources, the agency's Disability Determination Services, for IT modernization and towards increasing security in SSA field offices.

Because of the consistent failure to fund SSA through the regular appropriations process, AFGE encourages Congress to recognize the self-funding nature of SSA with its dedicated FICA revenue stream and create a \$20 billion supplemental fund from the trust fund for SSA to use over the next ten years to improve its ability to serve the public.

## **NEW AGENCY LEADERSHIP**

In July 2021 President Biden appointed Kilolo Kjakazi, who has served as Deputy Commissioner for Retirement and Disability Policy at SSA since January 2021, as Acting Commissioner. She had a history as a Social Security policy expert but little experience with workforce management and unfortunately, this led to continued enforcement of Trump policies and poor agency relations with its workforce.

In July 2023 President Biden announced former Maryland Governor Martin O'Malley as his nominee for Commissioner. Governor O'Malley pledged to work with the union to improve working conditions at the agency and was confirmed by Congress on December 18, 2023. AFGE applauds President Biden and Congress for nominating confirming Governor Martin O'Malley as a permanent Social Security Commissioner and we look forward to working with him to strengthen the agency. AFGE will continue to encourage the nomination and confirmation of a strong Deputy Commissioner.

## **Congressional Requests**

- Fund SSA at \$16.5 billion in the FY24 appropriations bill to ensure the agency can adequately serve the public. Recognize the self-funded nature of SSA and create a \$20 billion supplemental fund for SSA to use over the next ten years.
- Work with the Biden administration, Commissioner O'Malley and the Senate to nominate and confirm a new permanent Deputy Commissioner who is committed to a positive relationship with the agency workforce, including protecting health and safety,

expanding telework, and modernizing agency processes in cooperation with the union.

**ENVIRONMENTAL PROTECTION AGENCY**  
**AFGE COUNCIL 238**

In the current legislative session, Congress should:

- Avert a government shutdown in FY 2024.
- Fully fund EPA's appropriations in FY 2024-25 at the President's requested level of \$11.2 billion.
- Address the continuing staffing shortfall in core programs at the Environmental Protection Agency.
- Create a specific appropriation for promotion and retention of experienced EPA staff.
- Support more remote work and telework opportunities, as these work flexibilities save money, aid recruiting efforts and, importantly, reduce greenhouse gas emissions.
- Preserve merit-based hiring and protect government employees from political pressure.
- Continue to prioritize drastic reductions in fossil fuel emissions to protect the American people from the climate emergency.
- Decarbonize the Thrift Savings Plan by removing company stocks linked to global warming.

**Background**

The members of AFGE Council 238, the Environmental Protection Agency's largest union at over 8,000 strong, commend our lawmakers' determination to protect federal workers, limit harmful greenhouse gas emissions and avert the worst effects of climate change. By passing the Inflation Reduction Act (IRA), the Bipartisan Infrastructure Law (BIL) and the Environmental Protection Agency's Fiscal Year 2023 Appropriation (and keeping EPA's funding constant through recent continuing resolutions), EPA is more effective at protecting the nation against environmental pollution. EPA employees stand ready to address the most pressing environmental problems of our generation, as we have demonstrated over our 50-year track record at the Agency. For Fiscal Year 2024, we highlight the following requests.

**Congress should take steps to avert a government shutdown in FY 2024**

A shutdown occurs when there is neither a [full-year spending bill](#) nor a continuing resolution (CR) in effect for a department or agency whose budget has an expiration date. For many parts of government, that expiration date occurs at least once annually at the end of the fiscal year, which

runs from October 1 to September 30. If a CR or a full-year deal is not in place, EPA will lack approved annual funding from Congress, requiring EPA to “shut down.”

When there is a shutdown, EPA must:

- 1) Stop all projects and activities as quickly as possible;
- 2) Furlough employees whose work activities have not been [exempted](#) or excepted from the shutdown;
- 3) Halt pay for all government employees and contractors, except if [they exempt](#); and
- 4) Sign no further contracts for goods and services.

Because many federal workers are off the job during a government shutdown, many services are stopped or slowed, disturbing the day-to-day life for many Americans. Shutdowns are a horrible waste of the taxpayers’ money. It takes weeks of planning to cease operations and more wasted time and effort to get projects moving again once a shutdown ends. In the case of EPA, all but about 2,000 of the agency’s more than 15,000 employees would be furloughed.

### **Congress should fully fund EPA in FY 2024-25**

Congress should maintain a level of appropriation which supports full protection for the American people and preserve the gains made by EPA under the BIL, IRA and the first increase in appropriations in many years. [EPA’s 2023 funding](#) of \$10.4 billion finally began to address years of declining EPA resources, after the 2022 budget that was half the size, in real dollars, of EPA’s budget 40 years ago.

The 2023 EPA appropriation, which has been maintained by Congress through continuing resolutions into 2024, took a tiny step forward, helping to rebuild the Agency and restoring its ability to implement and enforce the laws protecting our nation’s environment. While the 2023 funding increase was only a modest 6 percent of the EPA budget -- less than the current inflation rate and one-quarter of what EPA requested -- it is a significant improvement over funding provided by the previous administration and has continued over to 2024. But this 6 percent increase was not enough to fully fund the Agency. Much necessary work in protecting the environment remains unfunded, and to tackle the challenges the nation faces, Congress must fully fund EPA at \$11.2 billion.

### **Congress should take steps to address the continuing staffing shortfall in core programs at the EPA, including retaining technical employees.**

Even with a 6% increase in funding, EPA suffers from a staffing shortfall that continues to thwart action by the Agency. Our mission has grown enormously, and climate challenges continue to escalate, but EPA’s ability to hire and retain staff has not rebounded to pre-2014 levels.

EPA workers are implementing key provisions of groundbreaking regulatory efforts to protect

the American people and our planet. The country is depending on them to help avert the worst effects of the climate crisis. But EPA career employees report they are under the greatest pressure they've ever encountered because of the increased responsibilities assigned to EPA in averting global warming. EPA's [15,115 full-time employees \(FTEs\)](#) are not enough to meet the demands posed by the climate crisis *and* continue to accomplish its core mission. To meet the current needs, EPA must expand its ranks to 20,000 workers.

In the past two years, Congress has added many new responsibilities to EPA's plate- the Bipartisan Infrastructure Law (BIL) and the Inflation Reduction Act (IRA). The BIL – a once-in-a-generation investment in our nation's infrastructure and competitiveness – enables us to rebuild America's roads, bridges and rails, expand access to clean drinking water, tackle the climate crisis and advance environmental justice. The IRA invests in clean energy and jobs, while lowering energy costs for families and slashing climate pollution in the U.S. by an estimated 40% by the end of the decade. [\\$90 billion](#) was provided by Congress under the BIL and the IRA for climate projects.

However, EPA's core programs continue to protect the American people from the effects of toxic pollution. New regulations must be enacted, reducing emissions from power plants, cars and trucks if the nation is to meet the goal of reducing greenhouse gas emissions in half by the end of the decade. Writing a half dozen highly complex rules that are expected to reduce the most devastating effects of climate change demands an expert, highly trained EPA staff that must act with maximum speed to avert global catastrophe. And EPA staff must shepherd the new rules through complex regulatory hurdles at a pace unheard of in the regulatory world. In addition, environmental justice communities still suffer from outsized toxic burdens that need to be [addressed](#), so continuing EPA's expanded enforcement is critical to the future of people living in highly industrialized areas.

Federal environmental enforcement is also an important EPA "core" program and a case in point. EPA's enforcement office is now staffing up after years of funding declines. Nearly 300 enforcement positions were added in FY 2023 after EPA underwent a decade of budget cuts and lost about 950 enforcement jobs. Because EPA's appropriation has started to reflect the need to fully staff the Agency, the number of EPA's civil cases against polluters has [rebounded](#). This year, EPA initiated 1,751 civil enforcement actions, nearly a hundred more than the year before and its most in a year since 2018. EPA brought in over \$700 million in penalties, fines and restitution from environmental law violators in fiscal 2023, a 57 percent increase from the prior year. EPA also reached 1,791 civil settlements, with 55 percent of those cases centering on facilities in communities with "potential [environmental justice] concerns." Inspections climbed in 2023 to 7,742, a 30 percent increase from fiscal 2022. This extraordinary progress was due to the added staff hiring fostered by the higher appropriation for staffing enacted by Congress. However, EPA's enforcement is not nearly at the levels seen [prior to 2018](#), when the industrial output and population stood below the nation's current expanded footprint. Since 2008, the nation's gross domestic product has grown from about \$14 trillion to \$23.32 trillion in 2021, an over 50 percent increase. If the EPA's staffing had grown commensurate with the economy over that period, it would leave the agency with about 25,000 permanent employees.

Investments in EPA staffing levels quickly generate significant progress in protecting the nation's air, land, and water. Congress should support the FTE level of at least 20,000 Agency

employees to preserve EPA's path to continuing our nation's progress.

### **Congress should create a specific appropriation for promotion and retention of experienced EPA staff.**

Congress must provide a specific appropriation for staff promotions at EPA, higher pay and opportunities for career growth that are more comparable to the private sector. EPA is hiring new employees at an impressive clip- [1900+ employees](#) in 2023 alone. However, it was not enough to reduce the significant staffing shortage. Total staff levels are still [very low](#), remaining at numbers only marginally above when Ronald Reagan was president. This is because even though hiring continues, employees are leaving EPA, draining the Agency of staff and, importantly, hard-earned expertise.

Over [3,000](#) EPA employees are currently eligible to retire. Overworked staff are moving to retire rather than continue to shoulder a punishing workload, increasing the burden on remaining workers. Employees at the start of their careers are also leaving because of uncompetitive pay. As attrition [accelerates](#), a net gain in staff is difficult to maintain. Congressional action is needed to prioritize staff retention at EPA and entice workers to stay at the Agency.

To retain the most talented environmental professionals and attract the next generation of the best and brightest technical workers, Congress should provide and specifically designate EPA funding that supports more career ladder General Schedule (GS)-13, GS-14, and GS-15 positions - higher pay that is commensurate with private sector competition for STEM workers. At present, EPA salaries are not competitive with private industry. Pay adjustments fail to offset the high cost of living in areas where EPA personnel are concentrated, such as Boston, New York, D.C., Chicago, Denver, San Francisco, and Seattle. Even with the federal pay bump of 2024, a starting GS-7 scientist or engineer who joins the Agency in Washington, D.C. would earn [\\$55,924](#) per year; 30% lower than the average [\\$96,000+](#) entry-level salary for an environmental engineer with a private firm in the D.C. area. Increasing pay for EPA staff by providing fair pay and promotion potential will help attract candidates and retain the best talent to take on science-based climate change work as well as rebuild our existing environmental laws and regulations.

More pay through promotions should be a critical component of EPA's retention plan. When EPA workers must take on more and more work but receive no recognition or compensation for doing so, they leave the Agency. Senior EPA staff are retiring at record rates, and those remaining must pick up the slack with no commensurate raise in pay or a promotion to the retiree's grade level.

EPA workers are poised to tackle the steepest challenges of any workforce in history – averting climate change impacts that threaten most of our nation's communities. Solving the climate crisis is our generation's moonshot. There is too much at stake for EPA to maintain low pay and sustain failed retention policies. Tackling climate change will require dramatic change at EPA, and that starts with visionary, forward-looking hiring and retention policies for its workers. Congress must carve out some of EPA's appropriations for promoting and retaining current staff.

### **Congress should preserve current levels of remote work and telework**

Congress should support more remote work and telework opportunities at EPA as a cost savings and recruiting measure and, importantly, to reduce greenhouse gas emissions. Expanding telework saves crucial Agency funds. Investing in telework and remote work will attract the best and the brightest while retaining the highly educated, highly trained workers at EPA. During the COVID-19 pandemic, many federal employees worked remotely to protect their health and the health of their families and communities. EPA employees were praised by EPA management, even under the Trump administration, for their effectiveness working remotely, processing more environmental permit applications during the first year of the pandemic compared to a standard year working in-person.

As federal agencies began to return to work in-person and considering how effective EPA was during the COVID-19 pandemic, AFGE [bargained](#) with the Agency to allow EPA employees to continue expand telework and initiate a remote work program that allows full time telework. After only one year under the agreements, the Agency tried to limit their scope by eroding employee telework and disapproving a large swath of applications for remote work. As acknowledged in the agreement itself, offering remote work is a selling point that helps recruit to EPA from the STEM applicant pool. However, the union has been forced to arbitrate, [and win](#), cases for EPA workers that advance the full scope of remote work bargained by the union.

The Agency has reported that, after expanded telework and remote work was ruled out in job offers, applicants have been turning down EPA's offers of employment. As it stands, fully one quarter of job offers tendered by EPA are not being accepted. And within EPA, we see more experienced EPA employees transferring to offices where expanded telework and remote work is possible. Some 85 percent of federal employees say more telework had benefits for their quality of life. Federal employees believe the benefits go beyond simple convenience. Over [three-quarters](#) believe their productivity is better when they work at home. Most say they took the extra time they had without a commute to learn new skills. And when it comes to the bottom line of productivity, nearly 70 percent of federal employees say there was no difference between working remotely or being in-person.

Importantly, reducing EPA's office footprint is both an environmental and a cost savings measure. More employees teleworking created opportunities to reduce office space. Federal departments allowing expanded telework and remote work were able to shed a considerable part of the financial burden posed by transit costs. Office utility costs have also dropped. The Department of Education, for example, saved over \$3 million on transit costs alone.

We applaud the Biden Administrations efforts to build a clean transportation future, by [announcing](#), in December 2023, new public and private commitments to boost the use of electric vehicles for federal travel, save taxpayer dollars, and tackle the climate crisis. But more telework and remote work also reduces the amount of travel trips for federal employees overall and should be included in calculations that limit greenhouse gas emissions by federal employees in the Biden Administration.

AFGE opposes the "Return to Work Act," H.R. 101 and the "SHOW UP Act" H.R. 139, which require a return to pre-pandemic telework policies and a review of office usage and eligibility for locality pay. Both laws are contrary to widespread data supporting the benefits of telework for federal employees and will reduce the environmental gains and cost-savings that have already

accrued.

### **Congress should take steps to thwart the implementation of the Trump-era proposal Schedule F.**

Congress should reject any legislation which erodes civil service procedures and leaves federal employees more susceptible to dismissal or hiring based on political preference.

In late October 2020, then-President Trump issued an Executive Order (EO) creating a new Schedule F in the excepted service. The EO creating Schedule F, which was never implemented, would have permitted the transfer of tens of thousands and potentially hundreds of thousands of positions from the competitive civil service into the excepted service. These newly transferred excepted service positions would have been “at will” positions, with no tenure protections, regardless of employees’ prior years of service or quality of performance. Had Schedule F been implemented, it is likely that many long-time federal employees would have found themselves effectively serving as political appointees, subject to removal without cause or any due process rights.

Since the proposal of Schedule F, attempts to “politicize” the career civil service have continued unabated. To combat this threat, in September of 2023, the Office of Personnel Management (OPM) issued rules that would seek to insulate the federal workforce from future efforts to strip them of their removal protections. In response, H.R. 6558 was introduced, which would block the implementation of the OPM rules. Congress should:

- Oppose H.R. 6558, which would prevent the implementation of an OPM Rule outlawing Schedule F. Federal employees should remain free from undue political interference and politicization.
- Pass the bipartisan bill H.R. 1002, which would prevent federal employee positions from being reclassified without Congressional consent. Congress should prioritize the reduced production of fossil fuels and protect the nation from the climate emergency.

This year brought some of the Agency’s biggest accomplishments combatting climate change. We call on Congress to continue the nation’s efforts to reduced greenhouse gases, and to address the climate emergency. The effects of climate change may be [accelerating](#), and addressing harmful emissions now is crucial to forestalling future catastrophic effects.

In FY 2023, EPA staff IRA and BIL output was unprecedented: over \$13 billion was distributed states, Tribes, and territories for water infrastructure improvements and \$1 billion was deployed to rebuild the nation’s infrastructure. This “huge lift” by EPA staff is a crucial contribution in the long campaign to reduce the emissions that cause global warming.

As EPA’s emergency response efforts on Maui, Hawaii show, climate change is causing large-scale environmental catastrophes which are unprecedented in scale and scope. Congress and the Biden Administration should reaffirm its commitment to the BIL and IRA, declare a climate emergency and urgently pursue additional solutions that will address emerging effects of our past uncontrolled greenhouse gas emissions, such as the Diesel Emissions Reduction Act, S. 2195 and

H.R. 5444.

Congress should ensure that the Thrift Savings Plan includes indexes that exclude fossil fuel investments and fully staff the Federal Retirement Thrift Investment Board (FRTIB) with members who understand climate risk.

The Thrift Savings Plan serves over 6 million federal employees and service members and has over \$800 billion in assets. EPA employees want to invest their retirement savings in funds that provide a long-term sound financial investment and do not contribute to climate change or deforestation. A new [study](#) shows that federal employees have \$33.5 billion invested in fossil fuel companies.

EPA workers have committed to protect the health of this nation and our environment. We want our investments to reflect our values and the mission we proudly serve. As the economy has shifted to clean energy sources, the TSP has not kept up, and the TSP Board has not met its fiduciary duty to provide investments in our best financial interests.

The TSP is invested in companies that are driving the climate crisis. We applaud the Biden Administration's [Executive Order](#) that requires the Federal Retirement Thrift Investment Board to evaluate the risk of continued investment in fossil fuel securities, but it has not gone far enough. The TSP continues to hold positions in the fossil fuel industry. Not only are these investments contrary to our Agency's mission, fossil fuel stocks have mostly [underperformed](#) the market for the past decade. The S&P 500 Fossil Fuel Free Total Return index has outperformed the S&P 500 Total Return index, the TSP C Fund, since 2012. Coal, oil, and gas companies will be poor investments in our transformation to fossil-free energy, while also presenting palpable financial risk to TSP members' earnings. As the nation accelerates the transition to a low-carbon economy, EPA workers want our retirement portfolios to benefit from clean energy investments and avoid the potential high risk and low returns of fossil fuels.

Investing in ESG (Environmental Social Governance) funds has only been offered in limited and unfavorable circumstances through a [mutual fund window](#). But the mutual fund window is not an attractive option for most investors, as it charges an annual \$55 administrative fee, an annual \$95 maintenance fee, and a per-trade fee of \$28.75. Moreover, it is only accessible to participants with balances over \$40,000, and those investors are limited to a contribution of 25% of their TSP balance. Publicity and training about the mutual fund window for federal employees has been minimal.

The FRTIB itself could recommend changing the existing index funds' strategies to make them ESG-friendly. According to the rules governing the TSP, the current funds in the plan must track indexes that are "commonly recognized" and a "reasonably complete representation" of the market. The FRTIB recently [changed](#) the index followed by the International "I" Fund to omit investments in China or Hong Kong. It has the power to also switch the Common Stock "C" Fund to omit lower performing fossil fuel investments.

The exposure of TSP's investment portfolio to risks from climate change is unfair to federal workers. The FRTIB has not addressed such risks. We ask that Congress require that the Thrift Savings Plan fund follow the [GAO report](#) recommending that the TSP Board investigate using indexes that exclude low-return companies whose primary business is oil, natural gas, and coal



exploration and production.

Further, Congress should oppose H.R. 3612 – “No ESG at TSP Act” and its companion [S. 2147](#), which would prohibit the Federal Retirement Thrift Investment Board from offering through the TSP’s brokerage window, any mutual fund, ETF or other investment vehicle that invests in bonds or equities and that makes investment decisions based on ESG criteria.

## **D.C. GOVERNMENT**

### **SUPPORT STATEHOOD FOR THE DISTRICT OF COLUMBIA**

#### **Background/Analysis**

The United States of America is a nation that was founded on the belief that all people are endowed with certain inalienable rights and that to secure these rights, governments are instituted, deriving their just powers from the consent of the governed. The rights of the residents of the District of Columbia are abridged when Congress imposes its will on local matters and denies D.C. residents voting representation on federal issues in both houses of Congress. The residents of D.C. are Americans who bear all the responsibilities of citizenship, but who do not enjoy all the rights of citizenship.

States are the fundamental basis for our system of government and to deny a population the ability to form a state denies them the ability to fully participate in self-governance. The voters of the District spoke loud and clear on this issue when 86% approved a referendum in support of D.C. statehood on Nov. 8, 2016.

The District has a larger population than two states (Wyoming and Vermont). Over 192,000 District residents have served in the armed forces and sacrificed for our country. One in five residents of the District of Columbia – more than 140,000 in total – work for the federal government and yet do not have equal representation in the government for which they work.

Statehood will ensure that residents of the District of Columbia enjoy full rights in state and local matters and representation in both houses of Congress and is a matter of simple justice. Any solution short of statehood would simply continue the two-tiered system of citizenship the residents of the District of Columbia have endured for 200 years.

In 2020 and again in 2021, the House has passed legislation, H.R. 51, to make D.C. a state and preserve a constitutionally required Federal District that enshrines the area that houses the three branches of our federal government, our iconic monuments, and the National Mall. The Senate companion bill had over 45 cosponsors last Congress but was blocked in the Senate. AFGE strongly supports this bill. This Congress, H.R. 51 has 201 cosponsors and S. 51 has 45 cosponsors.

#### **Congressional Requests**

- AFGE urges Congress to pass H.R. 51/ S. 51, the “Washington, D.C. Admissions Act.”

- House Republicans seeking to increase federal control of the District have proposed introducing legislation to remove DC's limited self-government. AFGE will oppose any plan that would further restrict the District's autonomy. AFGE opposes the use of Congressional Disapproval resolutions to overturn laws enacted by DC's government.

## **INCREASE LEAVE TIME AVAILABLE FOR DC WORKERS**

## **REPEAL THE ABOLISHMENT ACT**

### **Background/Analysis**

The first version of the Abolishment Act was passed in 1995 as a means of making it easier for the Control Board to quickly and easily cut the ranks of the District's workforce during the time of an unprecedented fiscal emergency. But D.C. is no longer in a fiscal emergency; in 2020 the district posted a \$552 million budget surplus. Prior to the Abolishment Act, the District's labor organizations routinely negotiated over and helped manage the procedures used in staff reductions. The Abolishment Act unfairly cuts unions out of the entire process and fosters distrust between workers and management.

### **Council of the District of Columbia Action**

When downsizing is necessary, workers deserve to have a voice in the process. The D.C. Council should amend the D.C. code to effectively repeal the Abolishment Act.

