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Privatization:
Turning Public Services Over to Private Interests

Introduction

The Administration is determined to privatize hundreds of thousands of federal employee jobs over the next several years by subjecting them to a new public-private competition process that has been rewritten to favor contractors at the expense of taxpayers as well as federal employees.

The Administration's radical privatization scheme fails to take into account the actual cost of contractors, uses public-private competition only on work performed by federal employees (instead of also on new work and work performed by contractors), and undercuts workers on their pay and benefits.

The agency coordinating the Administration's privatization effort, the Office of Management and Budget (OMB), has officially moved away from the imposition of overt numerical privatization quotas on all federal agencies. However, OMB uses its enormous power behind-the-scenes to reduce agencies' budgets to force agencies to review for privatization jobs that even those agencies' senior managers believe should continue to be performed by reliable and experienced federal employees.

Moreover, agencies are graded by OMB on whether they perform arbitrary numbers of privatization reviews within arbitrary periods of time—how often and how fast they privatize, rather than whether their privatization decisions are in the best interests of taxpayers and customers.

At the least, OMB is determined that agencies review more than 430,000 federal employee jobs for privatization over the next several years. And because OMB, entirely on its own, rewrote the law that defines which work is "inherently governmental" (i.e., those activities which are so important or sensitive that they must always be performed by federal employees) in order to allow more work to be privatized, the number of jobs agencies will ultimately be forced to review for privatization will likely increase significantly.

OMB's Claims of Savings From Privatization Fail to Withstand Scrutiny

OMB has claimed savings from public-private competitions of as much as 40%. However, the Comptroller General has been forced to correct the record, as recently as July 24, 2003, pointing out that OMB's claims are based on "unaudited numbers" and that the General Accounting Office "can't express an

opinion" about OMB's claims "because the cost accounting systems are just not of a state that we can form an opinion on it."

In an important 2003 report prepared by the Economic Policy Institute (EPI), "*Show Me the Money: Evidence that the Bush Administration's Proposed A-76 Rules for Contracting Will Bring Budget Savings Is Sorely Lacking*," the reliability has been called into question of privatization reports from the Center for Naval Analysis (CNA) and RAND, the pro-contractor think tanks that OMB has relied upon in making its grandiose savings claims.

Among the more important findings in the EPI report:

- There is no evidence that the examples cited in the CNA and RAND studies are representative of the functions that OMB is forcing agencies to review for privatization. The CNA report reviewed just 16 privatization studies and the RAND report reviewed only 6 privatization studies. During the period between FY1997 and FY2001, the Department of Defense (DoD) conducted a whopping 364 privatization studies.

- Selection of the cases made available for review was acknowledged by the researchers to be explicitly biased. For example, even though DoD employees won 65% of the privatization studies during the period cited above, less than one-quarter of all of the studies reviewed by RAND and CNA involved cases where the work stayed in-house. CNA, for example, reports that originally it had selected 49 competitions to review but that the study of 33 proved to be infeasible because of insufficient documentation. Moreover, there was a systematic pattern in rejected competitions—most of the cases where DoD employees won the work were rejected for inclusion in the final 16 cases.

- The data employed in the studies were in significant part provided by parties with a significant professional investment in portraying the contracts in the best possible light. A competition that is well designed and managed is obviously likely to be better documented. Conversely, a badly managed function need not encourage its sponsors to record a detailed chronicle of their sub-par performance. The bulk of the interviewees are either federal managers or contractors. For example, the data for RAND's analysis were from site visits and interviews. Their site visit protocol stipulated meetings with management and contractors for six hours, and with civil service or union organizations for a mere 30 minutes. Finally, it must be noted that both studies were prepared by contractors that rely significantly on DoD for revenues.

- Neither study provides any evidence to suggest that only the threat of contracting out generates efficiencies. Indeed, labor-management partnerships have historically generated proven savings without the significant costs associated with contracting out and the significant dangers intrinsic to contract administration.

- The CNA report actually documents AFGE's contention that contractors regularly charge the taxpayers for cost overruns in excess of their winning bids. In every single study CNA reviewed in which work had been contracted out, contractors' costs exceeded their bids. Even in such cases when CNA adjusted costs to take into account alleged and unproven productivity enhancements, contractors' costs still exceeded their bids almost 65% of the time.

- The RAND report attributed savings from contracting out to personnel changes (perhaps because researchers excluded from consideration all capital and material costs). However, the RAND report also acknowledged that such personnel changes actually consisted of "reducing the average skill level and wage of the (contractor) workforce" and hiring and "fir(ing) with minimum due process."

The Administration's Pro-Contractor Rewrite of the OMB Circular A-76 Privatization Process

Concerned that contractors weren't winning privatization reviews often enough or fast enough, OMB rewrote in May 2003 the rules of the OMB Circular A-76 privatization process in order to make them even more pro-contractor. Contractor experts, smacking their lips, predicted that federal employees, who had won 60% of the privatization reviews under the previous version of A-76, could win as little as 10% of privatization reviews under the new, even more pro-contractor A-76.

Among the flaws in the new A-76 that clearly tilt the process against federal employees:

1. The "quick-and-dirty" streamlined privatization process doesn't allow federal employees to submit their best bids or require contractors to at least promise savings that offset the significant costs associated with conducting privatization reviews, estimated to be as much as $8,000 per federal employee.

2. OMB has authority to allow agencies to give work performed by federal employees to contractors without any public-private competition.

3. It significantly inflates overhead costs for in-house bids, according to the Department of Defense (DoD) Inspector General and RAND.

4. It perpetuates the unfair advantage given to contractors in the contracting out process who provide their employees with inferior health care benefits.

5. It fails to mitigate against the disproportionate impact of privatization on women and minorities.

6. It does not require that a controversial and subjective new competition process known as "best value" first be tested and evaluated.

7. It requires federal employees, but not contractors, to always be subject to public-private competition in order to acquire new work and in order to retain existing work.

8. It automatically requires federal employees to be recompeted when they default, but not contractors.

9. It does not allow federal employees to have the same legal standing as that already enjoyed by contractors to take their contracting out complaints to GAO and the Court of Federal Claims.

10. It actually narrows the definition of "inherently governmental," literally rewriting the law.

11. It discourages agencies from considering alternatives to privatization that could generate superior efficiencies.

12. It fails to ensure that federal employees finally have opportunities to compete for new work and work currently performed by contractors.

13. It does not require agencies to implement new procedures to track the cost and quality of work performed by contractors, or provide agencies with additional resources to implement the OMB privatization agenda.

How AFGE Activists Fought Back in 2003

Across the Federal Government

AFGE Activists fought back hard against the Administration's privatization scheme. In 2003, the House of Representatives voted in favor, 220-198, of an amendment to the FY2004 Transportation-Treasury Appropriations Bill offered by Representative Chris Van Hollen (D-MD) to defund the new pro-contractor version of OMB Circular A-76 for all federal agencies. (Another amendment offered by Representative Alcee Hastings (D-FL) that would have rendered the

new A-76 significantly less pro-contractor for all federal agencies failed by just a handful of votes, 211-205.) An amendment that was identical to the Van Hollen Amendment was offered by Senators Barbara Mikulski (D-MD) and Mary Landrieu (D-LA), but failed by just a single vote, 48-47, when three supporters of the amendment failed to vote.

House Government Reform Committee Chair Tom Davis (R-VA), working closely with the Administration and contractors, led the opposition to the Van Hollen and Hastings Amendments. In the Senate, it was George Voinovich (R-OH) who led the fight to defend the pro-contractor privatization process. Significantly, Mr. Davis and Mr. Voinovich both spent little time defending the new A-76. Instead, both insisted, wrongly, that the Van Hollen and the Mikulski-Landrieu Amendments would force a permanent reversion to the previous version of A-76.

In the conference over the Transportation-Treasury Appropriations Bill, which was to be included in the massive Omnibus Appropriations Bill, House Subcommittee Chair Ernest Istook (R-OK) and Senate Subcommittee Chair Richard Shelby (R-AL) agreed on a bipartisan compromise that would revise the new A-76 in three significant ways:

1. ensure that in-house workforces performing functions involving ten or more employees in all federal agencies would be able to submit their best bids pursuant to most efficient organization (MEO) plans;

2. require contractors to at least promise savings sufficient to offset the significant costs of privatization reviews before taking work away from in-house workforces performing functions involving ten or more employees; and

3. provide affected federal employees with the same legal standing before the General Accounting Office (GAO) that contractors have long enjoyed to hold agency officials accountable for their decisions.

Pro-contractor politicians urged Chairmen Istook and Shelby to oppose efforts to make the privatization process less anti-federal employee. Mr. Davis, for example, insisted that allowing the federal employees actually threatened by privatization to possess the same legal standing as contractors to hold agencies accountable would constitute a “dangerous precedent.” He also lobbied against a provision that would prevent federal employee jobs from being contracted out for performance in foreign lands. And although he had spoken out in public against a controversial provision in the new A-76 that required federal employees (but not contractors) to be automatically recompeted, Mr. Davis instructed conferees not to correct the problematic provision.

Mr. Voinovich worked hard to convince the two chairmen, ultimately unsuccessfully, to sign off on a provision to specifically benefit architecture and

engineering contractors that had been quietly included in a floor amendment he had offered with Senator Craig Thomas (R-WY). This provision was one that OMB had rejected for inclusion in the new A-76 because it was just too pro-contractor.

Contractors also fought frantically against the bipartisan compromise, particularly the provision that would provide federal employees with legal standing before GAO. Contractors insisted that if federal employees had the same legal standing they had long enjoyed then it would be the "death knell" of the Administration's privatization scheme. GAO officials dismissed such claims with extreme prejudice. "GAO's associate general counsel Daniel Gordon," told GovExec.com, that "he is not too worried about the practical implications if in-house teams and unions receive appeal rights at GAO. The bid protest office receives a relatively small volume of A-76-related cases currently, and the number would probably not increase significantly even if unions gained standing, he said. Should the volume of appeals rise drastically, GAO would request a higher budget and more staff members to handle the increase, he added. GAO is also able to dispose of frivolous cases fairly quickly, Gordon said. The watchdog agency finishes roughly a third of all bid protests, including non-A-76 protests, within 30 days, he said." Clearly, contractors opposed equitable legal standing only because they wanted to retain an unfair advantage over federal employees.

After initialing signing off on the deal, the Administration threatened to veto the entire Omnibus Appropriations Bill if the compromise were not stricken. An editorial in *The Washington Post* lamented the needless controversy as "(a)nother egregious example…of (the Administration) threatening a veto that would bring nearly the entire government to a halt—even when a majority of lawmakers disagree…"

In response to the last-minute Administration bullying, Chairmen Istook and Shelby were forced to gut the bipartisan compromise:

1. the MEO requirement was limited to only those agencies funded by the Transportation-Treasury Appropriations Bill;

2. the requirement that contractors at least promise to save money for taxpayers was, effectively, eliminated; and

3. the right of federal employees to hold agencies accountable for their privatization decisions before GAO was eliminated entirely.

Department of Defense

Working with Senator Edward Kennedy (D-MA) and Representative Norm Dicks (D-WA), AFGE Activists were able to include in the defense appropriations bill a provision that ensures that in-house workforces performing functions involving

ten or more employees cannot be contracted out without allowing federal employees to submit their most competitive bids and requiring contractors to at least promise savings sufficient to offset the significant costs of conducting privatization reviews.

Department of Army
Thanks to the leadership of Representative Silvestre Reyes (D-TX), Senator Richard Durbin (D-IL), and Senator Arlen Specter (R-PA), AFGE Activists were able to force the Department of the Army to indefinitely suspend its infamous "Third Wave" privatization scheme, which could be used to turn the work performed by more than 210,000 federal and military personnel over to big defense contractors, almost entirely without public-private competition.

Department of Interior
Under the leadership of House Interior Appropriations Subcommittee Chair Charles Taylor (R-NC), the Interior Appropriations Conference Report included a provision encouraging agencies to allow in-house workforces to submit more competitive bids, requiring contractors to at least promise savings sufficient to offset the significant costs of conducting privatization reviews, and limiting the amount of funding that could be spent on conducting privatization reviews. Chairman Taylor's own Interior Appropriations Bill actually included a prohibition on new privatization studies in FY2004, a position ultimately endorsed by the House of Representatives when Mr. Davis decided against offering an amendment to strike the anti-privatization provision. Senator Harry Reid (D-VA) offered a floor amendment to include Chairman Taylor's language in the Senate's version of the legislation. Despite strong support from an unprecedented coalition of labor and environmental groups, Senator Reid's amendment failed by a vote of 51-44. Had the five missing Senators been available to vote, the margin of defeat would have been just 51-49.

Department of Agriculture
Thanks to the hard work of AFGE Local 3354, Senators Christopher Bond (R-MO) and Tom Harkin (D-IA), as well as Senate Agriculture Appropriations Subcommittee Chair Robert Bennett (R-UT), included a provision in the FY2004 Omnibus Appropriations Bill that was still in play as this went to press that would exempt from privatization services related to rural development and farm loan programs. AFGE Local 3354 also worked very closely on this anti-privatization effort with American Federation of State, County and Municipal Employees Council 26, Rural Coalition / Coalicion Rural, National Rural Housing Coalition, and National Family Farm Coalition.

Department of Veterans Affairs
Thanks to the leadership of Senate VA-HUD-Independent Agencies Chairman Bond and Ranking Member Mikulski, as well as House VA-HUD-Independent Agencies Chairman James Walsh (R-NY) and Ranking Member Alan Mollohan

(D-WV), the Administration was prevented from diverting $75 million from patient care for our nation's veterans to pay for politically-driven privatization studies in the Veterans Health Administration.

Department of Commerce
Thanks to letters of concern organized by Senator Ernest Hollings (D-SC) and Representative Barney Frank (D-MA), the Department of Commerce took seafood inspectors off the privatization hit list, recategorizing their important work as inherently governmental. AFGE worked closely with the seafood industry in opposing this privatization effort.

Department of Homeland Security
Thanks to the leadership of Senator Joseph Lieberman (D-CT), Senator Patrick Leahy (D-VT), Representative Joe Baca (D-CA), and Representative Luis Gutierrez (D-IL), three strong letters of opposition have been sent to the leadership of the Department of Homeland Security in opposition to plans to subject to a privatization review the jobs of 1,100 Immigration Information Officers (IIO's), who are responsible for investigating and even adjudicating applications for citizenship. AFGE's IIO Activists are also working closely with progressive and religious organizations that represent immigrants to defeat this ill-conceived privatization scheme.

Federal Aviation Administration
Working closely with Senator Mikulski and Representative Van Hollen, AFGE Activists at the Federal Aviation Administration's (FAA) National Aeronautical Charting Office have organized strong letters of opposition to the FAA's decision to categorize the work performed by highly-skilled cartographers as eligible for privatization. This potential privatization effort is also opposed by the Aircraft Owners and Pilots Association.

Dismantling the Civil Service

Since September 11, 2001, the Bush Administration has taken every opportunity available to advocate for, and ultimately insist upon, a profound erosion of civil service protections and collective bargaining rights for federal employees. First, the Bush Administration reluctantly agreed that the terrorist attacks necessitated federalizing airport security functions, but they also insisted that the legislation not allow security screeners the protections normally provided to federal employees. Specifically, although the legislation on its face says that Transportation Security Administration (TSA) employees are covered by Title 5, United States Code, the statutory framework for every right and benefit of federal employees, the Bush Administration has taken the position that these protections do not apply to screeners. Consistent with this position, then Under Secretary of TSA Admiral James Loy issued a decision on January 8, 2003 which denied the right to collective bargaining to all airport security screeners. AFGE subsequently filed suit in federal district court to protest this action, but the courts have to date upheld the Bush Administration.

In 2002, the Bush Administration reluctantly agreed with Senator Joseph Lieberman (D-CT) that the creation of a Department of Homeland Security (DHS) was necessary. However, the Administration insisted on a quid pro quo for that acquiescence; specifically, that federal employees who were transferred into the new department would not be guaranteed the collective bargaining rights they had enjoyed since President Kennedy was in office. In addition, the Bush Administration insisted that the legislation which was eventually signed into law exempt the DHS from compliance with major chapters of Title 5 of the U.S. Code, including pay, classification, performance management, disciplinary actions and appeal rights, as well as collective bargaining rights.

Last year the Bush Administration insisted that the Defense Authorization bill include similar provisions which attacked the civil service protections and collective bargaining rights of 700,000 Department of Defense civilian employees. Despite months of debate over serious objections raised by Representatives and Senators from both parties to the Administration's demands, the Congress finally gave in to the Pentagon's and the White House's demands, and granted the Department the ability to eliminate civil service protections and many collective bargaining rights from DoD civilians.

Department of Homeland Security

On November 25, 2002, President Bush signed into law H.R. 5005, the bill creating the Department of Homeland Security (DHS). This law has combined 22 federal agencies and over 170,000 employees, over 30,000 of whom are represented by AFGE. Most of these employees have been working for the

Immigration and Naturalization Service (INS) as Border Patrol Agents, Immigration Inspectors, Special Agents, Detention Officers and Detention and Deportation Officers. In addition, a smaller number of employees in other agencies who are represented by AFGE have also become part of the new Department. These agencies are the Coast Guard, the Federal Emergency Management Agency, the Animal and Plant Health Inspection Service (currently under the Department of Agriculture), the Federal Protective Service, the Chemical, Biological, Radiological and Nuclear Response Assets division of the Department of Health and Human Services, and the Plum Island Animal Disease Center.

Collective Bargaining Rights

One of the most contentious issues in the Congressional debate on the creation of the DHS related to the authority of the President to deny collective bargaining rights to employees, subdivisions and agencies engaged in national security work. President Bush used this authority early in 2002 to prevent employees of the U.S. Attorneys' offices from organizing. Both because of this action and fears that the President would abuse this power by excluding all unions from the DHS, AFGE and its affected bargaining councils and local (the National Border Patrol Council, the National INS Council and Local 511) spearheaded an effort in Congress to limit this authority. Despite achieving success in making collective bargaining rights a central issue in the debate, the Republican take-over of the Senate in the 2002 election effectively eliminated hopes of any significant change in the President's authority in this area. Whether President Bush chooses to exercise the power to exclude unions from all or part of the new Department is still unknown.

Personnel Flexibility Provisions

An equally contentious issue during the debate on homeland security in 2002 concerned the supposed need for additional personnel flexibilities in connection with managing employees of the DHS. Section 841 of the Act authorizes the establishment of a new Human Resource Management System and provides the Administration with the unfettered ability to modify Chapter 5 of the United States Code in each of the following areas: pay, classification, performance, disciplinary actions, appeals, and labor-management relations.

The new law creates a process to allow employee collaboration in the development of the new system, but leaves the Secretary of DHS with the final authority to impose changes over objections from unions or other employee representatives. In 2003, AFGE and representatives from the Office of Personnel Management and the Department of Homeland Security spent nine months exploring options and debating proposals to address pay, classification, performance, disciplinary actions, appeals and labor-management relations. At

presstime AFGE was expecting DHS to promulgate regulations by the end of January 2004. In setting up the new system, the Department is required to provide employees' representatives with advance notice of the new rules and the reasons that they are being proposed, and to allow them 30 days to respond to those changes. The Department is then required to engage in a 30-day mediation process with five employee representatives that it selects, but is free to unilaterally impose its personnel system at the end of that time. In other words, the Department can unilaterally implement a new personnel system with no meaningful input from the employees or their union.

Department of Defense

In April 2003, the Department of Defense sent to Capitol Hill legislation which Secretary of Defense Donald Rumsfeld insisted be attached to the annual defense authorization bill. Unless this occurred, Secretary Rumsfeld argued that the Department would find it far more difficult to meet America's national security needs. It is important to note that the Administration's legislation was even more draconian than the Homeland Security Act. Numerous Representatives and Senators from both parties argued that legislation affecting such a large number of civilian employees should be dealt with in a separate, stand-alone bill, but the Pentagon and the White House insisted on its inclusion in the larger bill.

After months of debate, the final conference report was passed into law and signed by President Bush on November 24, 2003. AFGE opposed the bill for the following reasons:

Collective Bargaining

The bill included language stating that employees will be able to organize and bargain collectively, subject to the provisions of the new legislation. However, the current statutory authority (chapter 71 of Title 5) will be overridden by a section in the legislation which allows DoD to create an entirely different labor relations system.

The bill established a provision allowing employee representatives to have "meaningful discussions" about the development of the new labor relations system. With regard to union-recommended changes not accepted by DoD, there will be a 30-day meet and confer period, with the possibility of mediation services. The impact of this is extremely damaging. If DoD and unions do not agree to any parts of the proposal, the Secretary can implement any part after giving Congress 30 days notice.

Although the bill purported to allow the new labor relations system to provide for independent third party review, the provisions that can be established include "defining what decisions are reviewable by the third party, what third party would

conduct the review, and the standard or standards for that review." These are issues that were previously determined by statute (chapter 71). The impact of this is extremely damaging. It is no longer a statutory right to independent third party review. DoD can craft something phony, force the unions to accept it, yet claim that it is "independent."

In addition, the legislation allowed the Secretary of Defense to elevate an issue affecting only one bargaining unit to the national level, thereby effectively eliminating local unions' rights.

Pay and Classification System

The bill allowed DoD to completely change the pay and classification system for all civilian employees by allowing the Department to waive chapters 51 and 53 of title 5, United States Code. The conference report deletes Senate details about what the new pay and classification system must contain, including the establishment of pay bands, a performance rating system, and upper and lower salary levels. The impact of this is extremely damaging. DoD civilian employees will be vulnerable to their supervisors' whims, rather than Congressional action, to determine whether and how much of a pay raise they will receive. And although DoD will argue that their pay-for-performance systems have been successful in demonstration projects, virtually all of them provided much larger funding for salaries than the regular pay system amounts.

The conference report weakened language in the Senate bill that said that for the first four years, the total amount allocated for employee salaries cannot be less than what would have been allocated under the General Schedule system. It also weakened Senate language that after the initial four years, DoD will establish a formula for the amount that will be allocated for salaries. The impact is that DoD officials will be able to argue that other budget priorities necessitate cutting the funding for civilian salaries, particularly during wartime. Moreover, for the first time, DoD civilians will be second class federal employees: they will only be guaranteed an annual pay raise if Congress later passes one specifically for them.

The conference report also allowed waiver of premium pay, specifically overtime, weekend, holiday, and hazardous duty pay. The impact of this is extremely damaging. These provisions have been in the law for decades, and are designed to provide compensation for employees working under irregular, non-family-friendly schedules, as well as in dangerous situations.

Appeal Rights

The conference report retained the Senate version of the bill which allows DoD to set up an alternative appeals process. It retained the right of employees to

appeal to the Merit Systems Protection Board (MSPB) but only as an appellate body and allows the employees a limited option of judicial review. As a result, DoD civilians will have far fewer rights to appeal personnel actions to an independent body than other civilian employees have.

Additional Provisions Relating to Personnel Management

The conference report also included bad House language allowing flexibility in recruiting, assigning, reassigning, detailing, transferring, promoting, and reducing the numbers of employees. The Senate version only allowed flexibility in recruiting. With regard particularly to retention order during reductions-in-force, DoD will be able to significantly reduce or even eliminate the weight of years of service, including military service. Currently, both performance as well as years of service are calculated to determine retention order.

Where AFGE Stands On These Issues

AFGE's support of collective bargaining rights and civil service protections for federal employees has never wavered. Without these rights and protections, it will be impossible for the government to attract and retain quality employees, and our national security will suffer. AFGE is urging all elected representatives to reconsider the provisions of the Homeland Security Act and the National Security Personnel System of the FY 2004 Defense Authorization Act that facilitate the removal of these rights and protections. America will not be safer if the guardians of our liberty are treated like second-class workers; it will actually be less secure because the best and brightest will leave government service rather than be subjected to such substandard treatment.

Federal Pay

Introduction

Last year's passage of legislation authorizing the Secretary of Defense to design and implement an entirely new system for pay-setting, classification, and performance appraisal for the 700,000 civilians in the Department of Defense (DoD) reduced by almost one half the number of federal employees who will remain in the General Schedule pay system for federal white collar employees, or the Federal Wage System for federal blue collar employees. Coming on the heels of the establishment of the Department of Homeland Security's (DHS) similar authorities regarding pay, 2003 may represent a turning point in the way federal employees are compensated for their work.

The 15-grade with 10 steps per grade General Schedule (GS), and the pay-adjustment system described in the Federal Employees Pay Comparability Act of 1990 (FEPCA) will continue to apply to white collar employees in DoD and DHS until the new systems are revealed and phased in over the next two years. The information that has been revealed publicly from both agencies indicate that the GS and FEPCA systems will continue to be utilized as baselines for purposes of funding pay in the two agencies. But beyond that, the overall approach to pay embodied in the GS and FEPCA has been repudiated as a consequence of the passage of these two highly controversial and hotly contested pieces of legislation.

The governing concept of the GS system for setting base salaries and the pay adjustment process described in FEPCA is *objectivity*. The two basic principles which form the foundation of pay setting in the GS/FEPCA system are "external" and "internal" equity. External equity is achieved by attempting to provide federal employees with pay that is comparable to that provided to employees in the private sector. Internal equity is achieved by attempting to honor the principle of equal pay for substantially equal work.

The opponents of this approach, who at the moment have gained enormous power to exert their will on the roughly 920,000 federal employees in DHS and DoD, are promoting a pay system whose governing concept is *subjectivity*. Although the details of the new systems at DHS and DoD have not yet been revealed, it appears that classification and therefore base pay will be a function not only of objectively described duties of the job, but also of subjectively described individual characteristics of the employee. Likewise, annual pay adjustments will not be based on objective factors like experience gained over time or an index of changes in private sector wages and salaries, but a supervisor's view of the individual's contribution and performance relative to other workers and the supervisor's own expectations and preferences.

One of the most important factors that remains unknown is whether the agencies and the Congress will appropriate additional funding for federal salaries in these agencies, or whether the changes will only be in how salary money is distributed. If the same or a lower amount of money is provided than would have been provided under the GS/FEPCA system, then the only way that anyone will be better off under the new system is if someone else is worse off. Any employee who receives a larger salary or salary adjustment under the new system will have done so only because some else will receive a lower salary and/or no salary adjustment at all. In the meantime, federal workers outside of DoD and DHS will continue to receive their salaries and salary adjustments under the terms of the GS system and the portions of the FEPCA system that Congress chooses to fund.

The most recent information is that DoD and DHS do not expect to implement fully their new pay systems prior to 2005. In the meantime, employees of those agencies may remain eligible for the same pay raises that employees in other executive branch agencies receive as a result of Congressional action. In that context, AFGE will continue to push for maintenance of a third governing principle for federal pay: military-civilian pay parity. Under the FEPCA formula regarding nationwide across-the-board increases based on changes in the Employment Cost Index (ECI), one part of the 2005 pay adjustment should be 2.5 percent. FEPCA's formula regarding this nationwide component is the September to September ECI minus one half of one percentage point. The relevant ECI for 2005 was 3.0 percent. The military pay formula has been ECI plus one half of one percentage point, thus it is likely that President Bush will propose 2.5 percent for civilians for 2005, and 3.5 percent for the military for 2005.

In each of his budget proposals, President Bush has pushed for a deviation from the tradition of military-civilian pay parity at the same time that he has worked to undermine both the ECI and the locality components of FEPCA. In spite of Congressional action this year to maintain not only military-civilian parity, but also to explicitly include both blue collar federal workers, and all employees of DHS and DoD in the general increase for GS workers, President Bush issued an executive order in late December, 2003 that implemented 2 percent raises. Now that the omnibus appropriations legislation has passed the Senate, the 2004 raise will be 4.1 percent, and will be applied retroactively.

Federal Employees Pay Comparability Act (FEPCA) Adjustments

This year we should have been celebrating our second year of full comparability under FEPCA, since the year 2002 should have represented the milestone for a complete realization of the local comparability system for federal General Schedule (GS) employees. Under the carefully crafted bipartisan Federal Employees Pay Comparability Act of 1990, the 10-year phase-in of locality pay

adjustments should have been completed, with the end result of GS workers finally being paid salaries comparable to the private sector on a locality by locality basis. FEPCA was intended to represent a fair balance between the Government's fiscal needs to spread the cost of locality pay adjustments over a ten-year period, with the needs of federal workers to be paid comparable wages and to maintain an adequate standard of living.

Unfortunately, over that 10-year period each Administration and Congress has failed to provide federal employees with the statutory pay increase mandated under FEPCA. In 1994 the annual Employment Cost Index (ECI), across-the-board pay adjustment was cancelled and in 1995, 1996, and 1998 reduced amounts of the annual ECI adjustment were provided. For the years 1995 through 2004, reduced amounts of the locality pay adjustment were provided. Only in 1994 was locality pay implemented as required under FEPCA.

For 2005, the law again authorizes the full amount necessary to reduce the pay disparity in each locality to within 5% of non-federal pay. This 95% standard is FEPCA's definition of "comparability." To bring federal employees within a 95% range of their private sector counterparts would require an ECI-based, across-the-board adjustment of 2.7% and locality adjustments that would average 15.1% nationwide.

However, FEPCA and the pay principles of private sector comparability on which it was based are under intense and direct attack by the Bush Administration. In 2004, the DHS and DoD will begin to exercise authority gained in 2002 and 2003 to develop and implement alternatives to the General Schedule and FEPCA. Every indication is that although some of the methods and concepts associated with FEPCA will continue to determine the amount of money Congress appropriates each year for salaries in these agencies, the distribution of salaries will not be guided either by FEPCA's goal of private sector comparability or FEPCA's method of across-the-board annual adjustments.

Achievements Regarding Federal Pay in 2004

As a result of the strong efforts of AFGE activists, both white and blue collar federal employees will receive a pay increase of roughly 4.1% in 2004. This year's raise constitutes an important victory for AFGE in three ways: First, it constitutes the first-ever guaranteed minimum raise for federal employees who are paid under the Federal Wage System (FWS). Second, the 4.1% across-the-board raise will apply to employees of the DHS and DoD in spite of their agencies' recently obtained authority to design new pay-for-performance systems and ignore FEPCA's comparability adjustments. Third, the 4.1% continues the tradition of pay parity between civilian and military pay raises that President Bush has tried to undermine in each of his budget and salary proposals.

For the second year in a row, however, there has been a delay in implementation of the full 4.1% pay adjustment because authorization for the raise was included in omnibus appropriations legislation that did not achieve final passage prior to the December Congressional recess. The 4.1% pay adjustment was contained in the Transportation-Treasury appropriations bill, which was folded, along with other appropriations bills, into a large omnibus bill that was passed by the House in 2003 but did not pass the Senate until January 22, 2004. As a result, federal pay was adjusted by 2% rather than 4.1% in January because the lower amount was proposed by President Bush in late August. (In August, the president proposed 1.5% across-the-board and 0.5% for locality as an alternative to the full FEPCA adjustment of 2.7% ECI and 15.1% locality. In making this decision, President Bush repeated the insulting statement that first appeared in his budget proposal by saying "full statutory civilian pay increases…would interfere with our nation's ability to pursue the war on terrorism.")

This is a long way from where the pay increase battle began. In February 2003, President Bush demonstrated his utter disregard both for the hard work of federal civilian employees and the FEPCA system his father signed into law in 1990 by proposing in his FY 2004 budget only a 2% total civilian employee pay raise. If he had followed the previous administration's practice of proposing only the ECI-based, across-the-board raise, the proposal would have been 2.7%. At the same time, he proposed in his FY 2004 budget a 4.1% pay raise for military personnel.

The 2% raise President Bush wanted for federal employees this year is lower by a fourth than the 2.7% across-the-board raise for federal GS employees set under the ECI-based formula that is supposed to be used to determine annual civilian pay increases. ECI for the relevant period was 3.2 percent; the FEPCA formula of ECI minus a half of a percent would have yielded a 2.7% across-the-board raise as just one component of the 2004 federal pay raise.

AFGE objected strongly to President Bush's disregard of FEPCA's ECI-based formula for determining annual federal GS civilian pay increases. We also strongly oppose the proposed unequal pay increases for federal GS employees and military personnel, the continued failure to provide either guaranteed minimum raises for blue collar workers or the prevailing wages the FWS is supposed to provide, and the prospect of excluding the almost 900,000 federal employees in DHS and DoD from a Congressionally-passed pay increase.

President Bush's FY 2004 Budget also proposed a new $500 million Human Capital Performance Fund to be used for performance-based raises in 2004. Fortunately, Congress voted to reduce this amount to $1 million. Performance-based raises from this small fund will be distributed among political appointees, supervisors, and rank-and-file employees. The $500 million Bush originally proposed would have been sufficient to fund an additional 0.5% across-the-board raise and Congress wisely agreed to put almost all of the money into general

raises. Raises awarded from this fund will be considered part of permanent base pay and will increase employees' pensions and their agencies' Thrift Savings Plan contributions. Management will be free to distribute this money according to its own criteria.

AFGE has long supported allowing agencies to supplement the regular FEPCA pay adjustments in recognition of extraordinary performance. However, the Bush administration's plan is to refuse to recognize FEPCA, and reduce funding for regular ECI and eliminate locality FEPCA adjustments altogether. The administration acknowledges its deliberate plan to de-legitimize FEPCA and put a "downpayment" on a merit-pay replacement. AFGE strongly opposes the establishment of the merit pay fund as a substitute for funding of FEPCA.

Activities of the Federal Salary Council

As a result of the 2000 census, the Federal Salary Council voted to make several changes that will affect locality boundaries and locality rates. One change was initiated by OMB's decision to use "combined statistical areas" (CSAs) in place of "metropolitan statistical areas" (MSAs) to define urban cores and economically integrated surrounding counties, defined in part by commuting rates. The Federal Salary Council also voted to relax some of the criteria it had previously used to decide where to draw boundaries for pay localities. The old criteria for inclusion for counties that were in the Rest of US locality, but are adjacent to another locality were:

- A concentration of at least 2,000 federal employees
- A commuting rate of at least 5 percent
- A population density of at least 200 people per square mile OR,
- 80 percent of the population living in an urban area.

The new criteria for adjacent counties will be:

1. To be included in an adjacent locality pay area, a CSA currently in RUS must have at least 1,500 federal employees and an "employment interchange" with the locality area of at least 7.5 percent.
2. If the adjacent county trying to get into an established locality is not part of a CSA, it must have at least 400 federal employees and an employment interchange with the locality area of at least 7.5 percent.
3. In cases where the federal facility or federal employer itself crosses locality pay area boundaries, the portion of the federal facility outside the higher-paying locality must have at least 750 federal employees. The duty stations of the majority of those employees must be within 10 miles of the separate locality pay area, and a significant number of those employees must commute to work from the higher-paying pay locality.

In the above, “federal employee” is meant to include only those paid under the General Schedule. Whether the Federal Salary Council will subtract the number of DHS and DoD employees from federal employment totals in future locality boundary decisions remains to be seen.

For 2005, the Federal Salary Council recommended continuing the 32 existing locality pay areas, but revised the definitions as follows:

1. Atlanta-Sandy Springs-Gainsville, GA-AL Combined Statistical Area
2. Boston-Worcester-Manchester, MA-NH Combined Statistical Areas plus the Providence-New Bedford-Fall River, RI-MA Metropolitan Statistical Area and Barnstable County, MA
3. Chicago-Naperville-Michigan City, IL-IN-WI Combined Statistical Area
4. Cincinnati-Middletown-Wilmington, OH-KY-IN Combined Statistical Area
5. Cleveland-Akron-Elyria, OH Combined Statistical Area
6. Columbus-Marion-Chillicothe, OH Combined Statistical Area
7. Dallas-Fort Worth, TX Combined Statistical Area
8. Dayton-Springfield-Greenville, OH Combined Statistical Area
9. Denver-Aurora-Boulder, CO Combined Statistical Area plus the Ft. Collins-Loveland, CO Metropolitan Statistical Area and Weld County, CO
10. Detroit-Warren-Flint, MI Combined Statistical Area plus Lenawee County, MI
11. Hartford-West Hartford-Willimantic, CT Combined Statistical Area plus the Springfield, MA Metropolitan Statistical Area and New London County, CT
12. Houston-Baytown-Huntsville, TX Combined Statistical Area
13. Huntsville-Decatur, AL Combined Statistical Area
14. Indianapolis-Anderson-Columbus, IN Combined Statistical Area
15. Kansas City-Overland Park-Kansas City, MO-KS Combined Statistical Area
16. Los Angeles-Long Beach-Riverside, CA Combined Statistical Area plus the Santa Barbara-Santa Marina-Goleta, CA Metropolitan Statistical Area
17. Miami-Fort Lauderdale-Miami Beach, FL Metropolitan Statistical Area
18. Milwaukee-Racine-Waukesha, WI Combined Statistical Area
19. Minnesota-St. Paul-St. Cloud, MN-WI Combined Statistical Area
20. New York-Newark-Bridgeport, NY-NJ-CT-PA Combined Statistical Area plus Monroe County, PA, and Warren County, NJ
21. Orlando-The Villages, FL Combined Statistical Area
22. Philadelphia-Camden-Vineland, PA-NJ-DE-MD Combined Statistical Area plus Kent County, DE, Atlantic County, NJ, and Cape May County, NJ
23. Pittsburgh-New Castle, PA Combined Statistical Area
24. Portland-Vancouver-Beaverton, OR-WA Metropolitan Statistical Area plus Marion County, OR, and Polk County, OR
25. Richmond, VA Metropolitan Statistical Area
26. Sacramento-Arden-Arcade-Truckee, CA-NV Combined Statistical Area
27. St. Louis-St. Charles-Farmington, MO-IL Combined Statistical Area
28. San Diego-Carlsbad-San Marcos, CA Metropolitan Statistical Area

29. San Jose-San Francisco-Oakland, CA Combined Statistical Area plus the Salinas, CA Metropolitan Statistical Area and San Joaquin County, CA
30. Seattle-Tacoma-Olympia, WA Combined Statistical Area
31. Washington-Baltimore-Northern Virginia Combined Statistical Area plus the Hagerstown-Martinsburg, MD-WV Metropolitan Statistical Area, Culpepper County, VA, and King George County, VA; and
32. Rest of U.S. – consisting of those portions of the continental United States not located within another locality pay area.

The second change affecting locality pay that the Federal Salary Council adopted for 2005 has to do with the data and methodology for calculating pay gaps and assigning locality increases. The most important change was to increase the weight of data from the National Compensation Survey (NCS) collected in 2001 and 2002, relative to data from the Occupational Compensation Survey Program (OCSP) collected in 1994 through 1996. In the past several years, the pay gap was calculated using 50 percent from each data source. In 2005, the weighting will be 75 percent NCS data and 25 percent OCSP data. The OCSP data show substantially larger gaps between federal and non-federal pay than the NCS data do. Consequently, going forward the official pay gap as described by the Federal Salary Council will appear smaller – and not because it has been closed by pay raises, but because it has been narrowed by changing data.

Using the new calculation, the Federal Salary Council's official measurement of the overall average pay gap between GS salaries and non-federal salaries was 31.82 percent in March 2003. This number excludes all locality payments and special rates. If locality payments are included, the average gap falls to 17.57 percent.

The average locality payment is currently 12.12 percent. If FEPCA were fully implemented today, as it was supposed to have been by 2002, the average GS locality payment would need to be 25.54 percent. This amount would bring GS salaries up to within a 5 percent gap. Bowing to what appeared to be an inevitable passage by Congress of a 4.1 percent raise for 2004 in spite of the President's continued desire for a mere 2 percent, the Federal Salary Council recommended a breakdown of 2.7 percent nationwide across-the-board raises, and 1.4 percent for locality pay. The President has yet to act on these recommendations.

Bush Administration Pay Initiatives

The Bush Administration has signaled its intention to pursue legislation that would eliminate the GS and FEPCA systems altogether and give agency managements broad authority to design and implement pay-for-performance systems, including pay banding and other approaches to individualized pay. Under a pay banding structure, two or more pay grades are collapsed into a

wider pay range and the employees pay movement through the bands is based on performance elements evaluated by the supervisor. Within grade increases (WIGI's) disappear under a pay banding system, and are replaced by strict merit increases.

Kay Coles James, the Director of the Office of Personnel Management (OPM), has stated that she considers the concept of "comparability" to be "flawed" even if FEPCA were reformed. She noted that "FEPCA's Achilles heel is its inability to reflect systemic pay differences among occupations at the same level of work; the auxiliary mechanisms under the General Schedule such as special salary rates have proved inadequate to recognize occupational differences." This statement and others by officials from OMB suggest that the Bush Administration might propose legislation that would target different occupations or even individuals with varying base pay increases according to criteria developed and defined by managers.

This change would represent the most radically backward approach to pay setting in the history of the federal government. With over 400 occupational groupings, each of these occupations could receive varying pay increases based on the government's value of "in demand" or "hot" occupations. The rest of the 1.8 million GS workers would be left to pick up the crumbs. This approach of targeted pay increases does nothing to address the serious recruitment and retentions issues facing the federal government. AFGE is deeply concerned with the lack of competitive wages for all federal workers. By the end of 2005, one out of every three current federal workers will be eligible for optional retirement. The only solution to address the human capital needs of the government is to provide fair and equitable wages to all federal workers. AFGE believes that FEPCA is sound and should be funded to provide the locality raises needed to reach parity with the private sector.

Where AFGE Stands on Pay

AFGE believes that pay initiatives that focus on bonuses or merit awards should not be enacted until such time as FEPCA is fully implemented and fully funded. Prior Administrations and successive Congresses have failed to provide GS employees with the pay raises required under FEPCA. The law mandates were ignored almost from the start.

Until such time as federal wages reach comparability with the private sector, AFGE opposes any effort to reallocate payroll dollars to fund a pay-for-performance or broad banding system. In particular, we will vigorously oppose any performance pay plans that lack accountability mechanisms that allow meaningful appellate rights regarding performance evaluations, classification, and pay distributions. Further, AFGE will oppose "forced distribution" systems that require a set percentage of the workforce to be denied pay raises in order to

fund higher performance payments to another set percentage. In general, we will continue to argue that performance payments should be supplements to across-the-board pay adjustments aimed at bringing federal salaries into line with those in the private sector.

AFGE opposes fragmentation of the federal pay system that would allow agency managers to set the pay of individual workers. We believe that agency discretion to set pay would seriously undermine the integrity of the federal Civil Service system including the long-standing principle of equal pay for substantially equal work.

Conclusion

Pay for performance has a miserable record of failure in the private and public sectors. It does not motivate or produce higher productivity or higher quality performance. Instead, as Stanford University Business School professor Jeffrey Pfeffer has written, "it takes up enormous managerial resources and leaves everyone unhappy." Federal managers as a group, in the Department of Defense and elsewhere, lack the skill, the resources or the time to implement pay for performance fairly. Further, the question of how to ensure that pay for performance does not lead to racial or gender discrimination in pay has yet to be addressed. The current system, based upon objective factors, has gone a long way toward eliminating pay disparities based upon gender or race in the federal sector, and any pay for performance system that replaces objective criteria with managerial discretion will have an enormous challenge in proving itself non-discriminatory.

Any changes to federal pay must enhance the government's ability to recruit and retain a workforce adequate to its mission, and to restore the living standards and buying power of federal employees and their families. All Americans suffer when the federal government is unable to attract and retain the dedicated workers necessary to the delivery of services to all citizens. In light of the events of September 11, Americans became more keenly aware of the important services provided by federal government workers. They deserve to be paid a fair and decent wage for their valuable services.

Federal Blue Collar Pay

Introduction

The federal government employs approximately 200,000 skilled craft and trade employees. The majority are employed by the Department of Defense (DoD), which has roughly 140,000 blue collar employees. The next largest concentration is the Department of Veterans Affairs (VA) which employs roughly 28,000 blue collar workers. The blue collar workers at the VA are essential to providing veterans with care in safe, clean and well-maintained medical facilities. Federal blue collar workers as a group are also highly likely to have served in the armed forces: 58% of all VA blue collar federal employees and 45% of all DoD blue collar federal employees have veterans' preference status. Government wide only 24% of all federal employees (blue and white collar) have veterans' preference status.

Working alongside our nation's armed services, federal civilian blue collar workers maintain planes, ships, and tanks at constant states of readiness in military depots and arsenals. Thanks to the behind the scenes muscle and logistical support of our federal blue collar civilian employees, our nation is able to deploy our air and sea fleet safely and swiftly. Whether it is the Wage Grade-4 (WG) Munitions Operator who loads, renovates, modifies and maintains 280MM artillery, mortars, bombs and grenades, the WG-9 Artillery Repairer, the WG-10 Maintenance Mechanic or the WG-2 Material Handler who unloads and loads materials from freight cars, our nation depends on these unsung civilian blue collar heroes.

Federal blue collar employees paid under the Federal Wage System (FWS) are not provided with the minimum annual pay increase provided to white collar federal employees paid under the General Schedule (GS), even though both groups of federal employees often work alongside each other for the same employer.

Under the Federal Employees Pay Comparability Act (FEPCA), the law that covers white collar pay, GS federal workers receive both a nationwide and locality pay raise. With the exception of those paid under special rate authority, GS workers in the same city get the same annual salary adjustment. Congress sets the annual GS pay adjustment in the Transportation, Treasury, and General Government appropriations bill.

Congress Should Continue to Provide Federal Blue Collar Employees With a Minimum Annual Pay Raise under Pay Parity

Military personnel and federal civilian employees -- both white and blue collar -- work for the same employer, often side-by-side in defense of our nation's homeland security. In the FY 2003 Omnibus appropriations legislation, Congress made explicit that there is no reason for Congress to provide military and white collar civilian employees with a minimum annual pay increase and not to provide blue collar civilian employees with a minimum pay increase. Section 640 of P.L. 108-7 states:

> "It is the sense of Congress that there should be parity between the adjustment in the compensation of members of the uniformed services and the adjustments in the compensation of civilian employees of the United States, **including blue collar federal employees**, paid under the Federal Wage System." (Emphasis added.)

In the FY 2004 Transportation, Treasury and General Government appropriations bill, as incorporated into the FY 2004 Omnibus funding bill, Congress reaffirmed its bipartisan support for pay parity and a minimum annual pay raise for federal blue collar employees. In an important recommitment to the longstanding tradition of pay parity, Congress provided federal blue collar workers with the same average 4.1% increase received by GS employees. Congress made clear that pay parity between military and civilian employees should not exclude men and women who are pivotal to our nation's defense and the care of veterans simply because they are paid under FWS.

In FY 2005, AFGE urges Congress to continue its longstanding bipartisan support of the principle of pay parity and to provide parity between the adjustment in the compensation of members of the uniformed services (whether blue collar or white collar) and the adjustments in the compensation of civilian employees (whether blue collar or white collar).

In providing blue collar federal employees with the same average 4.1% pay increase as GS employees and military personnel, Congress did not disturb or change the current cap that limits the maximum pay increase for federal blue collar employees.

Without pay parity unjust disparities in pay increases occur. For example, in 2003, WG-2 (wage grade) blue collar federal employees in the Tampa-St. Petersburg area received an increase of 2.1% but their white collar co-workers received a 4.03% pay raise. Federal blue collar workers at the higher grade of WG-10 received a 1.9% pay increase, but federal white collar workers got a 4.03% increase. In 2002, WG-11 Instrument Mechanics at the Naval Sea Systems Commands at Indian Head, Maryland, received a 3.75% pay increase

but comparably paid GS-11 Electronics Technicians at the same facility received a 4.77% pay increase.

Some in the administration may claim that providing federal blue collar workers with the same average increase received by GS employees or blue collar members of the uniformed services is not consistent with the principle of prevailing rates under the FWS.

Congress and successive administrations have repeatedly put a cap on blue collar pay raises through an annual provision in the now Transportation, Treasury, and General Government funding bill. The cap limits the maximum blue collar pay increase to the average GS pay raise (not including the non-foreign COLA), even if prevailing pay rates would require a higher pay increase. Because of the cap, FWS has not provided blue collar employees with prevailing rates since 1979.

In previous years surveys indicated that many federal blue collar employees should have received 5%, 8% and 11% pay increases. Indeed, if federal civilian blue collar workers received true prevailing wages it would cost at least $245 million in FY 2004, according to administration estimates.

But under the appropriations imposed cap on FWS pay increases, these federal employees never saw 5-11% pay increases and will not see a pay increase above the average GS increase. Because of the pay cap many federal civilian blue collar employees are not receiving prevailing rates. Apparently, it has been acceptable to the administration to ignore prevailing wages when it serves to lower the pay increase for federal blue collar workers.

It is disingenuous to justify denying federal blue collar workers the same pay raise as their white collar GS co-workers by invoking the principle of prevailing rates, only to disregard those same prevailing rates when it comes to imposing a limit on blue collar pay raises. The administration wants to hold federal blue collar employees pay increase to the GS increase but not guarantee these workers at least the GS increase as a minimum annual pay raise. The administration cannot have it both ways while federal blue collar employees and their families lose ground.

Although the administration regards the GS pay increase as a relevant statistic for purposes of setting a limit on blue collar pay raises, the administration claims that the GS pay increase as applied to FWS employees would be an arbitrary minimum increase in pay which is not relevant to federal blue collar jobs.

The nationwide GS pay increase is based on the nationally calculated Employment Cost Index (or ECI). The ECI measures the change in the cost of labor in the private sector. The ECI is a nationally calculated measure of the

change in prevailing rates of many private sector jobs. Because the ECI is based upon a statistical sample of thousands and thousands of occupational observations in the private sector, including blue collar jobs, the GS nationwide pay increase is an appropriate and relevant pay increase statistic for both blue collar and white collar federal jobs.

As a matter of fairness and equity, it makes no sense to ignore that blue collar and white collar federal employees working in the same locality for the same employer are affected by similar labor market and other economic conditions. The GS percentage pay increase for each pay locality is relevant to federal blue collar employees.

The administration has contended that FWS employees do have what amounts to a floor for their annual adjustments. The administration has stated that the floor for FWS pay adjustments is the increase (if any) in local prevailing rates in each wage area.

Because of depressed wages in the private sector in many blue collar occupations, and the ongoing reluctance of businesses to disclose salary data, federal employees at the bottom of the FWS scale in many localities have received hourly raises of $.03 to $.01 per hour in recent years.

While the administration may claim that a 0% increase is prevailing, the absence of any guaranteed pay increase has left many federal blue collar workers in lower grade schedules without living wages and without the means to afford health care insurance. In past years, roughly 68 to 75% of the VA's blue collar employees have not signed up for federal employee health insurance. Federal employees in Virginia who work in food service (at DoD installations or at VA medical facilities) have an average salary of $31,289 (before taxes and deductions for health care premiums) after an average of 14.2 years of service. Federal food service workers in Maine have an average salary of $26,499 (before taxes and deductions for health care premiums) after an average of 13.9 years of service. Roughly 58% of these workers are veterans. It is unacceptable to say to veterans who now work in the VA, providing food for veterans, and cleaning the beds and soiled laundry of their fellow veterans, that our government is not willing to pay them a minimum annual raise like their GS co-workers.

The federal blue collar pay system is supposed to maintain parity with prevailing private sector rates in a specified wage area, as measured by an annual survey conducted jointly by federal employee union representatives and local management. However, in the past decade, the data produced by these surveys have been of particularly low quality. Yet they are still used to justify the denial of pay adjustments to federal blue collar workers.

The major reason why these data are so poor is that there is no mechanism to guarantee the participation of representative local employers. Indeed, employers are free to decline to share wage data with the FWS data collectors and today it is the exceptional employer who is willing to share. Thus, many of the largest and most relevant prevailing rate data are unavailable to the FWS wage survey teams. Antipathy to the government, and concerns about the impact on the competition for good blue collar workers have led many employers who once participated in wage surveys to refuse in the past decade. Thus, the FWS rates are often based upon data from small, low-wage firms without good job matches for those in the federal workforce. It is no wonder that a pay system based on data collected so haphazardly produces poor results.

When a FWS survey does show private sector rates having increased substantially, federal blue collar workers are still prevented from realizing the benefits of a nominally prevailing rate system. This is because for many years, Congress, at the request of successive administrations, has imposed an upper limit on the percentage of the pay increase possible for federal blue collar workers. This pay increase limit has nothing to do with how private sector companies pay their blue collar workers and is contrary to a so-called prevailing rate pay system.

When our government spends roughly $6 million each year to survey reluctant businesses on what they pay their blue collar workers and then to calculate "prevailing rates" for federal blue collar workers in 134 out-dated labor markets it serves only to tease and frustrate federal blue collar workers. If prevailing rates are higher than the average GS pay raise, then federal blue collar workers will be denied the higher increase because of the GS pay raise limit for FWS employees. Without pay parity, if prevailing rates appear to have fallen or become stagnant, then federal blue collar workers receive no increase at all or pennies.

Under this system, the so-called principle of prevailing rates has become a sham. The prevailing rate principle is only followed to disadvantage federal blue collar employees and to ignore the bipartisan tradition of pay parity.

In the FY 2004 Transportation, Treasury and General Government appropriations bill, as incorporated in the Omnibus funding bill, Congress rejected this sham of a pay system and followed the longstanding principle of pay parity by providing federal blue collar employees with an annual average 4.1% pay increase, similar to that received by federal white collar civilians and military personnel.

Conclusion

In FY 2005, AFGE urges Congress to continue its bipartisan commitment to the full implementation of the principle of pay parity by providing parity between the

adjustment in the compensation of members of the uniformed services and the adjustments in the compensation of civilian employees (whether blue collar or white collar). AFGE urges Congress to ensure that federal blue collar workers receive at least the average GS pay increase.

Because of the annual Congressionally imposed limit on possible federal blue collar pay increase, many federal blue collar employees receive near to or at the same percentage of the GS pay increase. For FY 2004, the cost to ensure that all federal blue collar employees would receive the annual GS pay increase was approximately $21 million.

If the administration is to oppose providing federal blue collar workers with a minimum annual pay raise because the principle of “prevailing rates” is sacred, then the administration should not request to limit the pay raises of federal blue collar workers in its FY 2005 budget.

President Bush's Economic Policies and the Budget

The consequences of President George W. Bush's economic policies have only begun to materialize. Until the fourth quarter of 2003 when economic growth started to accelerate, the economy had experienced a net loss of 2.8 million jobs since 2001, and the hard won budget surplus had been turned into a budget deficit that was half a trillion and growing fast. Just as important has been the growth of the trade deficit, almost another half a trillion ($486 billion) which constitutes nearly 5% of our nation's Gross Domestic Product tied up in foreign indebtedness.

Although most newspapers report on the economy as if the stock market were the most important measure of Americans' economic well-being, the fact is that the vast majority of Americans own little or no stock, and what they do own are small 401 (k) holdings that they do not rely upon for living expenses. Thus the economic measures that matter most to working families are employment figures, wage rates. But wages have barely risen since George W. Bush assumed the Presidency. Health care costs have continued to soar while at the same time an increasing share of those costs has been shifted to workers, including federal workers who participate in FEHBP. State and local governments are struggling with $80 billion in deficits, putting pressure on many of the public services that undergird workers' living standards, including both K-12 and higher education. Jobs, wages, health care, and public spending on transportation, education, housing and public safety – and the forces that allow those numbers to rise – are what counts, and on these criteria, the Bush Administration's policies have been disastrous, and the worst is yet to come.

The Bush economic policy has been to eliminate taxes on the incomes – both "earned" and "unearned," of millionaires and billionaires. These tax cuts will cost trillions in future revenue, making the challenge of paying for health care and other costs associated with the retirement of the baby boomers dramatically more difficult, and more problematic politically. Simultaneously, he has spent billions on military contracts, only some of which was justified by the war in Iraq and heightened domestic security concerns.

Virtually all of President Bush's tax cut and military spending policies were justified on the basis of false claims. In particular, the stimulatory effect of rewriting the tax code in order to favor the Administration's very richest contributors, was vastly overstated. While the fourth quarter of 2003 showed some growth, it has still been a "jobless" or "job loss" recovery over the term of his presidency. Perhaps the most potent stimulus of the Bush Presidency has been the impact of low interest rates on mortgage refinancing, which was responsible for putting $200 billion into the economy last year. However, when most households refinance, they use the occasion to increase the size of their

mortgages, and this has led to record levels of personal and household indebtedness. In addition, it has led to what many analysts consider to be a "bubble" in the housing market. If the housing market bubble analysis is true, when it bursts, the impact will be similar to the bursting of the stock market in 2000, i.e. the 2001 recession and the loss of millions of jobs.

How long can low interest rates forestall the negative impact of Bush's tax, trade, and health care policies? In the past, Congress and Presidents have always raised taxes and cut spending in order to keep debt, interest payments, interest rates, and credit-worthiness from spinning out of control. There is little indication that President Bush will pursue such policies. President Bush claims to have a "plan" to reduce the deficit by half, but this will not occur if his "plan" is merely to cut domestic discretionary spending, including veterans' health care. As New York Times columnist and Princeton University economics professor Paul Krugman has said, "proposed spending cuts, focused only on the powerless, are both cruel and trivial." That is, they will do nothing to avert the kind of economic and financial crisis that are the likely outcome of enormous budget and trade deficits and health care cost liabilities – but they do hurt those the government should be helping.

The "cruel and trivial" spending cut proposals that federal employees can expect include pay "reform" that includes reductions and freezes, retirement system "reform" that leads to benefit reductions, health insurance "reform" that shifts an ever greater portion of FEHBP costs onto federal workers, workers' compensation "reform" that cuts benefits for those injured on the job, job cuts, job furloughs, and more privatization.

The economic stakes are high in the coming Presidential election. Although the platform of the Democratic party's candidate is not yet known, the debate in the primary has focused on whether to repeal all or most of President Bush's tax cuts, and what version of health care reform will be most successful and expanding coverage and controlling costs. Many of the candidates have raised the possibility of policies designed to promote domestic job growth and stem the flow of manufacturing jobs to low-wage countries overseas. From President Bush, more tax cuts for wealthy individuals and corporations are promised, more enormous and costly contracts for political contributors, a solemn promise to do nothing to restrain the prices charged for prescription drugs, health insurance, or hospital stays; and more free trade agreements that send jobs and economic growth to the countries that promise the highest profits to corporations and the lowest wages for workers. Further, as the pressure increases to appear to be doing something to address the twin deficits, federal employees can expect to be the victims of more privatization, cost shifting, and cuts in domestic programs and agencies.

Minimum Wage

Introduction

AFGE strongly supports the Fair Minimum Wage Act of 2003 (H.R. 965 and S. 224) which would raise the minimum wage from $5.15 an hour to $5.90 an hour beginning 60 days after enactment, and to $6.65 an hour a year after enactment. Working full-time for 52 weeks a minimum wage worker earns an annual salary of $10,712. How can America expect families to live on the current minimum wage of $5.15 an hour?

The minimum wage has not been raised since 1997 and every day the minimum wage is not increased, it continues to lose value because of inflation. If the minimum wage is not increased, its real value will fall to $4.82 in 2004. Even with an increase to $6.65, full-time annual minimum wage earnings would come to only $13,832 a year—$1,279 (8 percent) less than the poverty level for a family of three in 2004. Unless Congress acts the minimum wage will become an increasingly irrelevant wage floor, failing to support the low-wage workers who depend on it.

It is simply a myth that minimum wage is an entry-level wage. Not all minimum wage workers move on to higher-wage jobs—many of them earn the minimum wage or near the minimum wage for quite some time. According to a study by economists William J. Carrington and Bruce C. Fallick, 19.2 percent of workers who were finished with school spent at least half of the first eight years into their careers in jobs that paid $1.50 above the minimum wage. Some 13.2 percent spent at least half of the first 10 years into their careers in jobs that paid $1.50 above the minimum wage.

Raising the minimum wage does not hinder efforts to move from welfare to work. In fact, raising the minimum wage actually helps, since a higher minimum wage provides a greater incentive to work and enhances the prospects of self-sufficiency among those leaving welfare.

Our nation's citizens and taxpayers understand that a refusal to raise the minimum wage devalues honest work in violation of the fundamental principle of a fair day's pay for a fair day's work. A Ms. Foundation 2002 poll found that 77% of likely voters support a $2.85 increase in the minimum wage to $8.00 an hour, a rough approximation of a "living wage," that is adequate to provide a full-time year-around worker with an income sufficient to lift a family of three above the poverty line. Roughly 79% of likely voters support regular increases to keep up with inflation.

It is time for Congress to raise the minimum wage by $1.50 and index an annual increase to inflation to preserve the purchasing power of the minimum wage.

Federal Employees Would Benefit From an Increase in the Minimum Wage

Low graded federal employees, who are food service employees, laborers, janitors, and stock clerks, may have hourly rates above the minimum wage, but these federal employees hover around the poverty level and many are unable to afford federal health care premiums.

Due to "spillover effects," the 10.5 million workers (8.7% of the workforce) earning up to a dollar above the minimum would also be likely to benefit from an increase in the minimum wage to $6.65 an hour. AFGE urges lawmakers to pass the Fair Minimum Wage Act of 2003 without delay.

Congress Should Not Allow States To "Opt-Out" Of A Minimum Wage

President Bush has said he would sign a federal minimum wage increase, but only if states could ignore the federal minimum wage. AFGE opposes this trap-door repeal of the federal minimum wage, which will let workers plummet further into poverty as state after state competes to opt out of a minimum wage increase.

Conclusion

A raise to $6.65 is fair and reasonable; it is years overdue. AFGE urges lawmakers to pass the Fair Minimum Wage Act of 2003 quickly. AFGE supports boosting the minimum wage but without any rollbacks in existing FLSA protections for workers. AFGE opposes all erosions to the FLSA.

Overtime Pay Regulations

Summary

Working longer hours for less pay is the change that American workers could face under the Bush administration's proposal to drastically rewrite federal overtime pay rules.

On March 31, 2003, the Bush administration proposed new overtime regulations that would make it easier for employers to reclassify workers making between $22,100 and $65,000 as executive, administrative, or professional employees – and thereby strip them of their right to overtime pay. For example, workers could be reclassified as "executives" if they managed a department, directed the work of two or more other workers, and had their recommendations about hiring, firing, or promoting "given particular weight." Thus, a $23,000-a-year supermarket produce manager could be refused overtime pay.

The impact of such a change on American workers will be harsh and widespread. Tens of thousands of federal employees and at least eight million public and private sector workers nationwide will lose their overtime rights, according to the nonpartisan Economic Policy Institute. Workers likely to lose their overtime rights include mid-level office workers, registered and licensed practical nurses, emergency medical technicians, supervisors, computer technicians, secretaries, paralegals, inspectors, cooks, dieticians, and dental hygienists.

Discussion

For 65 years American employees have been entitled to an hour-and-a-half's pay for every extra hour they have worked beyond the standard 40-hour work week. The Bush administration has proposed a sweeping rewrite of federal overtime rules that it says will give employers clearer guidance while better protecting the most vulnerable workers. By contrast, AFGE and other labor groups argue that millions of workers will lose their overtime rights and that the improved coverage of the most vulnerable workers is too limited.

1. **AFGE opposes the section of the Bush administration's overtime proposal that would make it easier for employers to reclassify workers making between $22,100 and $65,000 as executive, administrative, or professional employees – and thereby strip them of their right to overtime pay.**

While everyone agrees that this section of the Bush administration's proposal would take away overtime pay rights from workers in this middle-income range,

there is substantial disagreement about how many workers would be affected by this change.

A. Bush administration: The Bush administration's own regulatory analysis concludes that 644,000 workers *currently earning overtime* would lose overtime protection under this section.

B. AFL-CIO: The AFL-CIO believes that the Bush regulatory analysis minimizes the number of workers who would lose overtime protection under the proposal. The union believes the number is closer to 5.5 million.

   The AFL-CIO argues that the Bush regulatory analysis fails to mention that many millions more workers *not currently earning overtime but legally entitled to overtime under the Federal Labor Standards Act of 1938* would also lose overtime protection under the proposal. Research conducted by the General Accounting Office suggests that these millions of workers will be more than twice as likely to be asked by their employers to work overtime if they lose the FLLSA overtime protections. And according to the Bush data, for every one worker legally protected by the FLSA who is currently earning overtime, there are another 7.6 workers protected by the FLSA who are not working overtime. Thus, if 644,000 workers currently earning overtime lose FLSA overtime protection under the Bush proposal, the corresponding total number of workers who would lose overtime protection is about 5.5 million.

C. Economic Policy Institute: An EPI study "Eliminating the Right to Overtime Pay" concludes – after carefully analyzing 78 occupational groups – that more than 8 million workers (2.5 million salaried employees and 5.5 million hourly workers) would lose overtime pay protections.

2. AFGE supports the section of the Bush administration's overtime proposal that would make a long overdue increase to the $8,060 minimum entitlement to overtime pay – but suggests this improved coverage for vulnerable workers is too limited.

AFGE supports the Bush administration's overtime proposal that would make a long overdue increase that guarantees overtime protections for certain low-income workers. Under current law, employees who earn less than $8,060 per year (or $155 per week) are automatically entitled to overtime. The Bush administration proposes to raise that floor to $22,100 (or $425 per week), and says the increase would provide automatic coverage to 1.3 million workers.

This increase is indeed long overdue – the "floor" was last increased in 1975. But before we get all "warm and mushy" about this floor increase, two things must be pointed out.

A. First, this "floor" increase is too low. It is $5,000 less that would result simply from simply adjusting for inflation. In other words, the "floor" if adjusted for inflation should be about $27,000 (or $521 per week).

B. Second, the Bush administration is exaggerating the number of low-income workers who would benefit from its proposed adjustment to the "floor." The administration claims that 1.3 million low-income workers would benefit, but AFL-CIO researchers argue that this figure includes about 600,000 blue-collar workers who could not possible benefit because they work in occupations that are not currently subject to overtime pay rules. As for the remaining 733,000 workers, the Bush administration admits that it has made no effort to determine whether they are currently exempt and would therefore benefit from its overtime proposal.

   Why does the Bush administration continue to rely on the 1.3 million figure? Probably because the figure "1.3 million" who ostensibly gain overtime protection makes the Bush administration's figure of "644,000" employees who lose protection *look smaller*.

Conclusion

The Bush administration's proposal to strip overtime protections from up to 8 million workers galvanized most Democratic members – and a few Republicans members – of the Senate and House.

On September 10, 2003, the Senate approved an amendment offered by Senator Tom Harkin (D-IA) to the FY 2004 Labor-HHS-Education appropriations bill (H.R. 2660) that would prevent the Bush administration from issuing its overtime pay proposal. The vote was 54-45 for the Harkin amendment, with the voting largely along party lines. All Democrats – with the exception of Senator Zell Miller (D-GA) – voted for the amendment. Only six Republicans voted for the Harkin amendment: Ted Stevens (R-AK), Lisa Murkowski (R-AK), Ben Nighthorse Campbell (R-CO), Lincoln Chafee (R-RI), Olympia Snowe (R-ME), and Arlen Specter (R-PA).

On the House side, the Republican majority defeated by three votes, 210-213, an identical amendment offered by Rep. David Obey (D-WI) to the FY 2004 Labor-HHS-Education appropriations bill to prevent the implementation of the Bush overtime proposal. But later on October 2, 2003, the House reversed course and approved a Democratic motion to block the Bush proposal. By a vote of 221-203, the House voted to instruct its conferees to the House-Senate conference on the FY 2004 Labor-HHS-Education appropriations bill to accept the Harkin amendment.

However, the Harkin amendment never made it into the final conference agreement on the FY 2004 Labor-HHS-Education appropriations bill. The Bush administration threatened a veto if the Senate overtime pay provision was included in the final conference bill. On November 21, 2003, senior Senate appropriator Arlen Specter (R-PA) – after spending weeks fighting for the Harkin amendment – bowed to White House pressure and agreed to remove it from the final bill.

The Bush administration is expected to issue its overtime pay proposal in March 2004. AFGE activists are urged to contact both the Bush administration and Members of Congress to voice their strong opposition to this drastically unfair overtime proposal. While overtime regulations may need updating, the Bush administration proposal tilts too far in the direction of employers. It ought to be withdrawn immediately and redrawn in a more balanced way.

Federal Employees Health Benefits Program (FEHBP)

Introduction

The Federal Employees Health Benefits Program (FEHBP), which currently covers eight million active and retired federal employees and their dependents, is the nation's largest employer-sponsored health insurance plan. Despite its use as a model for Medicare privatization in the highly controversial legislation involving prescription drugs for Medicare that passed narrowly last year, those who must rely upon FEHBP consider it anything but a model. In the last five years, average premiums have risen by more than 64 percent, far faster than the average growth of health care costs generally during the same period. In addition to out- of-control premium increases, FEHBP participants have suffered unpredictable shifts in covered benefits from year to year, and the sudden disappearance of popular plans. Finally, in spite of being forced to pay anywhere from 30% to 65% of premiums, federal employees have no meaningful voice in the program on issues such as coverage, quality standards, or the mix of benefits and costs.

FEHBP has both structural and political flaws. Each makes the program more expensive than it should be for both the government, and federal employees. The changes in FEHBP sought by AFGE are aimed at lowering costs without reducing benefits, improving the accountability of both the plans and the Office of Personnel Management (OPM), and achieving parity with the benefits provided by large private and public sector employers.

The Cost of Coverage: FEHBP's Most Serious Flaw

The officially announced average premium increase for 2004 was 10.6%. This followed the pattern of 1999, 2000, 2001, 2002 and 2003 when the Office of Personnel Management approved average hikes of 9.5%, 9.3%, 10.5%, 13.3%, and 11.2% respectively. Over five years, premiums have risen by an average of 64.4 %! These increases occurred at the same time that the general rate of inflation hovered between 2 and 3 percent, and health care costs generally rose by 6% to 9% per year. A recently published report from the Health Statistics Group in the prestigious journal *Health Affairs* compared annual per enrollee costs among those covered by private sector employers' health insurance plans, Medicare, and the FEHBP. While FEHBP's rate of growth was lower than either private plans or Medicare from 1991 to 1997, today FEHBP's per enrollee costs are rising 15.1% a year, while private plans' spending is going up by 11.4% and Medicare is rising by 6.7%.

But average premium increases or total spending increases do not even tell the story. The fact is that for 2004, average *enrollee contributions* went up by 12.6%

for self-only coverage in HMO's and 9.3% for family HMO coverage for 2004. And for traditional plans (including those with provider networks), average enrollee contributions for self-only coverage has gone up by 10.7%. Family coverage in a traditional plan costs the enrollee an average of 12.3% more in 2004 than in 2003. If you put it all together – single coverage, family coverage, HMOs, and traditional plans, the average enrollee premium cost went up by 11.1% for 2004 – a full half percentage point more than the average increase in premiums.

A look at some of the individual plans also tells a different story than the announced average premium increases. Although overall premiums for Blue Cross/Blue Shield's national standard plan, FEHBP's most popular, went up by 10%, the percentage paid by the government for this plan fell from 72% to 71%. The Mailhandlers High Option premium went up by 25%, but the employee share for Mailhandlers went up by 49% for singles and 55% for families. HMO increases for enrollees went up by as much as 113% for WINhealth partners in West Virginia, 85% for HMO Blue in New York, 79% for HealthSpring in Tennessee, 62% for Fallon Community Health Plan in Massachusetts, and 60% for Sioux Valley Health Plan in Iowa to name a few of the most eye-popping numbers.

This is important to note not only because it shows the continued cost-shifting from the government to employees, but also because it shows that OPM is trying to mislead by using only the 10.6% number in its public statements of self-congratulation. OPM used the misleading numbers not only to pretend that FEHBP's costs had risen more slowly than other public and private sector plan, but also to pretend that FEHBP's flawed structure made it a good model for Medicare cost containment, even though that was demonstrably not true and even though average costs for enrollees rose by more than average costs for the system as a whole.

FEHBP does not succeed in producing universal coverage for its target population—federal employees, retirees, and their families. Because of OPM's collaboration in perpetuating the system's flaws, it collects little data that would reveal the extent of the program's failures. For example, it refuses to collect data on federal employees who are uninsured, the portion of the federal workforce that has no health insurance and is eligible to participate in FEHBP, but does not.

The most recent attempt to measure the size of this group, as well as its reasons for declining to participate in FEHBP, was 1992, when OPM contracted with Gallup to survey a small sample of nonparticipants. From that sample, it is estimated that approximately 250,000 federal employees who are eligible for the full employer subsidy under FEHBP not only do not use FEHBP, but they are entirely uninsured. The remainder of non-participants have health coverage from

another source, predominantly from a spouse or from previous military service. There are no data on the number of uninsured federal retirees who are or were eligible for FEHBP coverage.

The reason most commonly cited by uninsured federal employees to explain their lack of participation in FEHBP was its prohibitive cost. The terms offered to federal employees under FEHBP are substantially worse than those offered to the employees of other large, unionized employers, both in the private and public sector. While on average the government pays just 70% of premiums and not more than 75%, other large employers pay at least 80% and often 100%, according to recent data published by the Bureau of Labor Statistics (BLS), and the Kaiser Family Foundation.

The government knows it has a big problem on its hands with FEHBP. The big insurance and pharmaceutical companies dictate to OPM the terms of their annual contracts, not the other way around. OPM, for the most part, complies. In fact, OPM steadfastly refuses to allow federal unions a voice in negotiating over benefits or prices in spite of our status as "purchasers" rather than just "consumers." This state of affairs goes unremarked as long as there is a reasonable level of price stability and quality in the program. But when premiums spiral out of control, and claims are left unpaid as the large insurers slowly drive the smaller regional plans out of business, as has been the case in the past seven years and counting, OPM is left to defend the indefensible.

Health Savings Accounts

As a result of the passage of the legislation that begins privatization of Medicare and introduces a prescription drug benefit in Medicare, "health savings accounts" (HSAs) or "medical savings accounts" (MSAs) are soon likely to become an option within FEHBP. HSAs and MSAs are sometimes referred to as "capital accumulation plans," since they are more about sheltering income from taxation than providing health insurance. HSAs allow employers and individuals to avoid health insurance premiums and income tax liability by establishing individual accounts into which are deposited pre-tax income to be used for health care expenditures.

These accounts are backed up by "catastrophic" health insurance coverage, another name for very high deductible coverage (usually at least $1,000 per individual and $2,500 per family per year). All unspent funds in an HSA remain untaxed, and belong to the individual to use for medical or other expenses at the end of the year. They can be rolled over and withdrawn in later years, and become taxable only if the money is not used for qualified health care costs. The new law allows an employer to make non-taxable contributions each year up to the amount of the plan's annual deductible, but cannot exceed $2,600 for an individual or $5,150 for families.

Introducing HSAs into FEHBP is problematic because they undermine the very core of group insurance. The provide a financial incentive for young, healthy, and/or relatively affluent employees to opt out of the larger group plans, thereby raising average risk in the group that remains. As premiums are a reflection of average risk, HSAs cause further premium inflation into the FEHBP, which is the last thing the program needs.

Another problem with HSAs is that they encourage people to delay preventive care and early diagnosis, which have been shown to lower long-term health care costs. For example, in order to preserve the funds or the "capital accumulation" in an HSA, an individual with a medical problem might wait until the next open season to obtain needed care. At that point, he or she may enroll in a traditional FEHBP plan, by which time the small problem may have grown into a large, expensive one. The individual will receive treatment and reimbursement under the traditional plan, and the next year's premium will reflect this. Meanwhile, the individual will drop out again in order to "accumulate" his or her tax-free income in an HSA until the next time a medical need arises.

HSAs are a tax avoidance scheme for those with the affluence to bear the risk of having to pay thousands of dollars a year in health care costs. It is also an expensive way for the federal government to address the health insurance needs of its own workforce because unlike a private employer, the cost is not only the price of the cash contribution but also the lost tax revenue from income generated by leftover balances in the accounts. Nevertheless, from the employee's perspective, it is a gamble few federal employees or retirees can or should take.

The Bush Administration has indicated that it will introduce HSAs into FEHBP for the 2005 plan year. The result of the introduction of HSAs into FEHBP will be even higher costs for those enrolled in traditional plans. The savings enjoyed by those with HSAs would be paid for by the rest of the FEHBP population, and will effectively force those with traditional insurance to subsidize their healthier and wealthier coworkers.

In the last two years, OPM brought proto-HSAs into FEHBP without any prior notice or consultation to anyone representing the eight million federal employees, retirees, and dependants who pay about a third of FEHBP's costs. Aetna, Humana have joined one nominally sponsored by the American Postal Workers' Union (APWU). The APWU's so-called "consumer driven plan" is the product of insurance company partnerships made up of firms such as Merril Lynch, Kohlberg Kravis Roberts, Merck Medco, PriceWaterhouseCoopers, Active Health Management and other political and economic powerhouses.

Working in partnership with OPM to further segment the FEHBP market, the "consumer-driven" plans work as follows: A Personal Care Account (PCA) is set up for each participant and $1,000 is deposited for singles and $2,000 is deposited for families. The money is not subject to income taxes. The enrollee uses that money to pay for covered medical expenses. Any money left over at the end of a year is rolled over for use in subsequent years just like an HSA—it is not forfeited as would be the case in a Flexible Spending Account (FSA). If the employee's medical costs exceed the money available in his PCA, he must pay out of pocket ($600 for individuals; $1,200 for families). After spending both the funds in a PCA and the "deductible," the health plan begins to pay 85% of covered medical expenses.

Health Insurance Vouchers

One strategy for restructuring FEHBP that is supported by some of the insurance company contractors who participate in the FEHBP is the issuance of vouchers to replace health insurance coverage for federal employees. Vouchers are an alternative to insurance that involves shifting not only a greater share of known costs on to employees, but also shifts financial risk for unknown costs on to employees.

Although a voucher plan may have some appeal when it is first introduced, it will rapidly show its true colors in ensuing years. Upon introduction, the voucher may cover most of the cost of a modest plan, and be described as embodying an incentive for participants "to shop carefully." It will also be described as fiscally prudent for the government, because with a voucher the government's cost will be controllable by how much it is willing to adjust the voucher amount.

No longer would the government be at the mercy of the insurance and drug companies, forced to pay on average 70% of whatever premium is charged. Instead, the government would become master of its own destiny, choosing how much to raise or lower the voucher amount according to its own discretion. Federal employees and retirees, however, would be stuck having to pay the difference. Past proposals have included annual adjustments equal to the Consumer Price Index (CPI), which is used in the government's budget to adjust baseline agency budgets. For example, if such a plan had been in effect over the past five years, the voucher would only have been increased by **13.1%** (the change in the CPI), while premiums went up by 64.4%.

According to the Congressional Budget Office (CBO), if the government began a voucher program for FEHBP that began with today's average contribution of $2,100 per year for individuals and $4,800 per year for families; and tried to save money over the long term by adjusting its contribution by changes in the CPI, by 2005 enrollees would be paying as much as 40% of premiums. The additional cost to enrollees for this increasing share of premiums would amount to $700 per

year according to CBO. These projections were produced by comparing projected differences between the rise in the CPI, and the rise in FEHBP premiums.

Cafeteria Plans

Cafeteria Plans have much in common with voucher and HSA plans, with some crucial differences. The Bush Administration has shown a strong interest in replacing existing employer-subsidized or employer-financed benefits with cafeteria plans. In a cafeteria plan, the employer deposits a fixed dollar amount into a tax-free account that the employee then uses to help him or her pay for health insurance or other benefits that the Internal Revenue Service (IRS) qualifies for tax-deferred status. The employer may adjust the amount in the account, or it may not. It may be adjusted by the rate of inflation, or not. The Heritage Foundation report that recommends cafeteria plans for the federal government admits that employees would have to provide "after-tax funds to fashion a benefits package that suited his particular circumstance."

The types of benefits that may be included under the cafeteria plan umbrella include the cash value of accrued annual leave and sick leave. Thus employees would be given an incentive to trade off sick leave for health insurance, or vice versa. Cafeteria plans are deceptive. Under the slogan of freedom of choice, they force employees into either-or decisions between benefits that should be provided universally. Health insurance is not a choice that some people need and others do not. It is not a benefit that appeals to some but not others. Health insurance is a crucial component of economic security, and as such, it should remain the employers' financial responsibility to provide as part of a comprehensive compensation package.

Cafeteria plans have much the same impact on a given group's insurance risk as vouchers and Health Savings Accounts, as discussed above. The financial incentive for young, healthy workers to drop in and out of coverage only leads to higher than necessary costs for the program at large. Health insurance is most efficiently provided to large, diverse groups who pool their risk in order to pay less on average than any one would have to pay for him or herself. Cafeteria plans, along with HSAs and voucher programs, defy this basic logic of group insurance, and are thus a recipe for making a bad system worse.

Cost Accounting Standards

Last year, the House of Representatives approved by voice vote an amendment offered by Rep. Dennis Kucinich (D-OH) to strike an appropriation bill's section that exempted FEHBP carriers from the government's cost accounting standards (CAS). Then, in a move that was striking in its disdain for both taxpayers as well

as federal employees and retirees, OPM decided to overrule Congress and issued all FEHBP carriers a permanent waiver from CAS.

Considering the widespread and serious contracting and accounting scandals that have emerged in the past few years, and the criminal investigations that are ongoing and have cost American taxpayers, workers and retirees billions in both retirement savings and jobs, as well as the extraordinary FEHBP premium increases over the last several years, it is imperative that standards be in place to make sure that the government's insurance carriers are prevented from passing on illegitimate overhead costs to enrollees and taxpayers, as has repeatedly happened in the past. The use of CAS would simply ensure uniformity and consistency in the measurement, assignment, and allocation of the costs of the federal government's contracts with FEHBP carriers. Indeed, the corporate accounting scandals that have so shaken the American people's confidence in the nation's financial sector are the direct result of allowing firms to make up accounting rules as they go along. The CAS are already used successfully by the agencies responsible for the administration of TRICARE and Medicare. In fact, many of the same carriers who participate in those programs and comply with CAS are also FEHBP contractors.

The FEHBP carrier that is behind the opposition to the use of CAS is none other than The Mighty Blue Cross/Blue Shield. Other FEHBP carriers, federal employee unions, and the OMB all support using CAS to ensure that all carriers submit honest bills. Only Blue Cross/Blue Shield (and their friends at OPM) stands in the way.

Blue Cross/Blue Shield has trotted half-baked arguments in defense of its position. The carrier's spokesperson claims that FEHBP is not a large part of its business. But that is precisely why CAS are so necessary—especially in cases such as these. FEHBP carriers like Blue Cross/Blue Shield bill the government (and federal employees) for the costs they incur. However, absent the application of CAS, FEHBP administrators have no idea what methods the carriers use to calculate those costs and whether the carriers' bills are reliable. The CAS prevent carriers from passing on illegitimate costs—costs that should be billed to non-FEHBP contracts. The more non-FEHBP business a carrier has, the more incentive that carrier has to pass on costs from its other business.

Blue Cross/Blue Shield also claims that using CAS is too expensive. But the costs of applying CAS are an allowable cost that would be charged to the program. In other words, preventing the sort of contracting fraud practiced by Haliburton, and accounting fraud practiced so ruinously by Enron and WorldCom would not cost Blue Cross/Blue Shield a dime (except for improperly claimed profits). And as has been the case with defense contracting, university research contracting, TRICARE, and any cost-based reimbursement contract, the application of the CAS would be a modest investment that would yield significant dividends for the taxpayers and enrollees who pay for FEHBP in terms of increased accountability and reduced premiums.

AFGE's Legislative Solution

At the same time that the Bush administration prepares to cut health insurance benefits for federal employees, the General Accounting Office, the Department of Defense, and many other government-related organizations from AFGE to the Council for Excellence in Government to Senior Executives Association have shown that the federal government must take some bold steps to recruit a new generation of federal employees with the requisite skills and commitment to compensation in either the private sector or state and local government, and the privatization quotas for government work which has eliminated hundreds of thousands of what would have been career jobs in the federal sector. Contracting out has meant that a whole generation of federal workers has lost the opportunity to "work its way up" and maintain institutional knowledge in federal agency work.

The GAO's Comptroller General David Walker identifies the culprit as a two-decade insistence upon viewing federal employees as a cost to be cut rather than an asset to be cultivated. The government's approach to health insurance in FEHBP amply illustrates his point. Rather than try to set an example for the private sector, or even to meet prevailing standards in large firms and state governments, the federal government has tried to get by on the cheap. Not only is the government's 70% contribution to FEHBP premiums too low to produce universal coverage for the federal workforce, it amounts to more than $1,100 less per employee per year than other large employers pay in both the private and public sectors.

Employees of the U.S. Postal Service bargain collectively over both wages and their employers' share of FEHBP health insurance benefits. Postal workers pay 15% of FEHBP premiums while the Postal Service pays 85%. The Federal Deposit Insurance Corporation (FDIC), a federal agency that regulates the banking industry, also negotiates with its employee union over health insurance and pays 85% of premiums as well. In both cases, the employer does so not because of the overwhelming power of the union, but because it is a "best practices" business decision to do so. Simply put, employers who fail to pay an adequate or fair share of health insurance premiums are the ones facing human capital crises, and those who pay their fair share do not.

AFGE has long supported reforms that would allow the government to use the size of FEHBP, and its potential leverage over the insurance and pharmaceutical industries to produce savings which would render FEHBP more affordable for federal employees. For years, cost shifting onto federal employees has been the government's only response to out-of-control premium increases. Forcing employees to shoulder a higher share of FEHBP costs has been justified as producing an incentive to be more diligent in restricting utilization and lowering costs. What's good for the goose is good for the gander. With the government

shouldering a higher portion of FEHBP's costs, perhaps OPM and OMB will be motivated to do more than rubber-stamp the demands of these politically powerful industries.

On February 5, 2003, U.S. Representative Steny Hoyer (D-MD) and U.S. Senator Barbara Mikulski (D-MD) introduced legislation (H.R. 577, S. 319) that would change the financing formula for FEHBP so that agencies would pay 80% of the weighted average of premiums, with a maximum of 83% of any given plan. This legislation would improve the affordability of FEHBP immensely. The current average contribution is 72% with a maximum of 75%, and moving to an average of 80% with a maximum of 83% would open the door to health insurance to many of the 250,000 uninsured federal workers who cannot afford coverage at today's rates. This bill will be an important attempt to make FEHBP more affordable for federal workers and their families. It is also a smart response to the government's much-discussed "human capital crisis." Closing the gap between the federal government and other employers in both the private and public sectors in the area of health insurance benefits would go a long way toward improving prospects for recruiting and retaining the next generation of federal employees.

In addition, this year AFGE will pursue legislation that will require FEHBP's carriers to purchase prescription drugs at the discounted prices the government has negotiated for purchase off the General Services Administration's (GSA) Federal Supply Schedule (FSS). The negotiated drug prices available from the FSS are used by the Veterans Health System, the Department of Defense, the U.S. Bureau of Prisons, and other public health entities administered by the U.S government. It simply makes no sense for the federal government to pay one set of discounted prices for the prescription drugs it purchases for use in veterans hospitals and clinics, military hospitals and clinics, Indian Health Service facilities and federal prisons, and other drastically higher prices when it pays for prescription drugs for its eight million employees, retirees, and their dependents who work in those agencies and programs. Why should taxpayers finance this inequity?

In 1999, one FEHBP carrier petitioned the government for permission to purchase the prescription drugs it provided to its federal enrollees off the FSS. Both OPM and OMB agreed that OPM had the authority to allow its FEHBP carriers access to the FSS discounts. After all, since taxpayers were paying for the prescriptions, every opportunity to minimize expenditures should be utilized, and the laws and regulations were already in place to allow the plan to operate. Those enrolled in the FEHBP plan would have access to the FSS discounts for the drugs on the schedule, and have a different and separate reimbursement rate and mechanism for drugs that were not. For about half a second, it looked like the first real cost-containment mechanism ever adopted for FEHBP would go forward.

Unfortunately, the major health insurance carriers joined with their friends in the pharmaceutical industry and their own pharmaceutical benefit manager subsidiaries and threatened a "strike" i.e. they told OMB that if FEHBP plans were permitted to purchase drugs off the FSS at discounted prices, they would no longer sell to FEHBP plans at all. The message was clear: Give us the higher prices we demand for FEHBP, or do without the drugs. In the face of this "your money or your life" ultimatum, OMB decided to hand over the money. Thus, legislation is needed that requires FEHBP carriers to purchase off the FSS, so that OPM and OMB are not able to back down in the face of industry threats of retaliation.

Prescription drugs now account for 10.5 percent of all health care spending, and 23 percent of all out-of-pocket costs for insured Americans. For 2002, the most recent year that national health care spending data are available, prescription drugs accounted for 51 percent of the increase in out-of-pocket costs for health care. OPM repeatedly cites prescription drugs as a major source of FEHBP's own inflationary spiral; for 2004, they claim that almost a third of the average increase is directly attributable to drug prices, but four fifths is due to something called "utilization, technology, and medical inflation" which means a big part of that four fifths also includes both drug prices, and the increased use of expensive drugs. Thus, legislation to gain access to the real prescription drug discounts available to other federally-funded health programs would mark important cost-saving progress for both taxpayers and federal employees.

Conclusion

This Congress will be presented with stark choices regarding the direction the federal government should go with FEHBP. On the one side will be various voucher-style proposals, including Cafeteria Plans and Health Savings Accounts, which will exacerbate existing problems of coverage and affordability. On the other side will be H.R. 577 and S. 319, the legislation introduced by U.S. Representative Hoyer and U.S. Senator Mikulski which improves the financing formula to make group health insurance—the most efficient means of delivering health care coverage—more affordable and more accessible. In addition, AFGE will work with members of Congress to take aim at one of the major causes of premium inflation—prescription drug prices. AFGE urges Congress to take the high road, and pass the Hoyer-Mikulski legislation to improve FEHBP affordability with an 80-20 financing split, and require FEHBP plans to purchase some prescription drugs from the Federal Supply Schedule.

Department of Defense:
Keeping Our Nation Safe and Secure

Overview

AFGE is honored to represent more than 200,000 federal employees in the Department of Defense (DoD)—hard-working public servants whose skill and dedication were instrumental in winning the Cold War and making the military capabilities of the United States of America second to none. AFGE's DoD members perform an extraordinary variety of critical tasks for both warfighters and taxpayers—from maintaining planes, ships, and tanks at constant states of readiness in depots and arsenals to administering contracts for goods and services and trying to prevent big defense contractors from raiding the treasury.

Over the last ten years, Pentagon officials have systematically replaced federal employees with contractors, whether or not it makes any sense. According to the Office of Personnel Management, the DoD civilian workforce has fallen by almost 300,000 since 1993. DoD's service contracting, on the other hand, increased from $39.9 billion in 1992 to $73.2 billion in 2002, according to the Federal Procurement Data Center. With DoD committed to reviewing for privatization at least another 270,000 jobs, according to the Office of Management and Budget (OMB), the bill presented to taxpayers for service contracting expenses will continue to rise significantly.

The DoD workforce has never been more threatened than it is today.[*] Implementing one of the new authorities gained by Secretary Rumsfeld to design and impose an entirely new personnel system on DoD civilian workers, the Administration announced in January that up to 25,000 buyouts would be offered during each fiscal year going forward, separate and apart from any buyouts authorized as a result of future base closures or realignments. For 2004, the Pentagon has allowed 7,722 buyouts to the Army, 7,135 buyouts to the Navy, 5,873 to the Air Force, and 4,270 to other defense agencies. Although Secretary Rumsfeld persuaded lawmakers to support his demand for authorities to rewrite the personnel system by claiming that he would then expand the federal workforce by converting military positions into civilian jobs, the buyout plan indicates that a more likely scenario will be the conversion of military positions to contractor jobs as more and more federal positions are eliminated.

The Administration is feverishly attempting to privatize the jobs of hundreds of thousands of DoD employees,. Thankfully, AFGE's DoD Activists, many of them

[*] For information about DoD's changes to civil service protections and collective bargaining rights, see Dismantling the Civil Service.

working through the union's Defense Conference (or "DEFCON"), have fought back against the Pentagon's wholesale privatization effort.

Last year, under the leadership of Senator Edward Kennedy (D-MA) and Representative Norm Dicks (D-WA), and with the support of House Defense Appropriations Subcommittee Chair Jerry Lewis (R-CA) and Senate Defense Appropriations Subcommittee Chair Ted Stevens (R-AK), the Congress included a provision in the FY2004 Defense Appropriations Bill, despite strong Pentagon opposition, that would force DoD to ensure that, in most cases, federal employees are allowed to submit their most competitive bids, pursuant to Most Efficient Organization (MEO) plans, and require that contractors at least promise savings sufficient to outweigh the significant costs of conducting privatization reviews.

In response to opposition from AFGE's DoD Activists and a bipartisan group of lawmakers, particularly Representative Silvestre Reyes (D-TX), Senator Richard Durbin (D-IL), and Senator Arlen Specter (R-PA), the Department of the Army has indefinitely suspended plans to privatize, mostly without any public-private competition, more than 210,000 civilian and military positions, an infamous effort known as "The Third Wave." However, DoD officials have openly discussed their interest in applying across DoD some of the pro-contractor concepts from "The Third Wave."

AFGE's Objectives

1. Require Public-Private Competition Before Giving Work to Contractors

However, virtually none of this extraordinary transfer of work from the public sector to politically well-connected contractors in the private sector is accomplished through public-private competition. According to Pentagon officials, less than 1% of the service contracts undertaken by DoD in 1999, the last year for which DoD has made such information available, were undertaken after public-private competitions. This means the work that either is or could have been performed more efficiently by federal employees is instead given to contractors.

It's not just that contractors aren't required to compete against federal employees. They usually don't even have to compete against one another. According to the DoD Inspector General (IG), more than one-half of the 105 contracts that were surveyed suffered from inadequate competition.

The Army's much-criticized "Third Wave" was designed to privatize without competition the jobs performed by more than 210,000 civilian and military personnel. According to former Army Secretary Thomas E. White's October 4, 2002, memo, various alternatives to traditional public-private competition are

under consideration to privatize hundreds of thousands of Army jobs, including simply giving away work to contractors as well as employee stock ownership plans and transition benefit corporations (a.k.a. long-term, sole-source contracts). In his memo, Secretary White acknowledges that "Most of these alternatives to A-76 will require enabling legislation that does not exist yet." Some senior DoD officials have discussed applying some of the "Third Wave's" anti-federal employee proposals across DoD.

BOTTOM LINE: DoD should allow federal employees to compete before giving work to contractors, both for their own jobs as well as for new work, under a fair and balanced OMB Circular A-76 process.

2. Require Contracting In as Well as Contracting Out

If DoD officials believe that they can generate savings from competing the jobs of federal employees, then they can generate savings from competing contractors' jobs as well. However, DoD officials admit that less than 3% of the public-private competitions undertaken between 1995 and 1999 involved work performed by contractors. On each of the five occasions when work that had been performed by contractors was returned to reliable and experienced federal employees, even DoD officials admitted that taxpayer dollars were saved.

BOTTOM LINE: This manifestly inequitable use of public-private competition means that DoD is refusing to subject contractors to the same level of scrutiny to which they subject federal employees. If Pentagon officials are looking for savings, they need to look at the whole workforce, contractors as well as federal employees.

3. Require DoD to Track the Costs of Service Contracting

What is the result of all this service contracting? Three answers: a) waste, b) fraud, and c) abuse. According to the IG,

> "…DoD managers and contracting personnel were not putting sufficient priority during the 1990's on (the administration of service contracting), which likewise was virtually ignored for the first few years of recent acquisition reform efforts. Consequently, we think the risk of waste in this area is higher than commonly realized…We reviewed 105 Army, Navy, and Air Force contracting actions, valued at $6.7 billion, for a wide range of professional, administrative, and management support services amounting to about 104 million labor hours, or 50,230 staff years. We were startled by the audit results, because we found problems with every one of the 105 actions. In nearly 10 years of managing the audit

> office of the IG, DoD, I do not ever recall finding problems on every item…"

Even the contractor-friendly GAO has repeatedly called on DoD to improve its tracking of service contracting costs:

> "Efforts to improve the accuracy of data on savings from A-76 (public-private competition) studies at the time the studies are completed are warranted, as are efforts to assess savings over time. Both are key to establishing more reliable savings estimates and improving the credibility of the A-76 program amidst continuing questions in Congress and elsewhere."

Unfortunately, DoD is far more interested in giving work to contractors than in making sure the work is done right. According to GAO,

> DoD "spends tens of billions of dollars annually on contract services—ranging from services for repairing and maintaining equipment; to services for medical care; to advisory and assistance services such as providing management and technical support, performing studies, and providing technical assistance. In fiscal year 1999, DoD reportedly spent $96.5 billion for contract services—more than it spent on supplies and equipment. Nevertheless, there have been longstanding concerns regarding the accuracy and reliability of DoD's reporting on the costs related to contract services—particularly that expenditures were being improperly justified and classified and accounting systems used to track expenditures were inadequate."

DoD officials committed to the Congress in 1999 that it would come up with a proposal to improve its contract reporting system. However, according to GAO,

> "DoD has not developed a proposal to revise and improve the accuracy of the reporting of contract service costs. DoD officials told us that various internal options were under consideration. However, these officials did not provide any details on these options. DoD officials further stated that the momentum to develop a proposal to improve the reporting of contract service costs had subsided. Without improving this situation, DoD's report on the costs of contract services will still be inaccurate and likely understate what DoD is paying for certain types of services."

4. Eliminate Giveaways of Federal Jobs to Certain Contractors

Pentagon officials continue to show extraordinary ingenuity when it comes to contracting out jobs without public-private competitions. Using an obscure loophole in a general provision in the defense appropriations bill, the Air Force has contracted out more than 600 jobs without any public-private competitions, in at least two different locations (Kirtland Air Force Base (AFB), NM, and Eglin AFB, FL), to a Native Alaskan firm that has no experience at performing the work in question. The general provision allows such contracting out to any firm that claims to be "under 51 percent ownership by a" Native Alaskan or Native Hawaiian tribe. In both situations, the installations began public-private competitions—only to soon give away the work to the same Native Alaskan contractor.

Then, after starting and then aborting a public-private competition, the National Imagery and Mapping Agency directly converted more than 600 jobs in Bethesda, MD, and St. Louis, MO, to contractor performance merely because the contractor in question claims to be Native Alaskan-controlled. This latest outrage means that DoD is prepared to use this loophole to contract out any jobs in any part of the United States. In other words, no DoD jobs are safe from this raw pork-barrel politics.

AFGE's BOTTOM LINE: Not a single job should be contracted out without real public-private competition. Not a single dollar of in-house work should be given to any contractor, without first allowing federal employees to compete for the work.

5. Discourage the Use of the Anti-Taxpayer "Best Value" Process

Contractors are not happy about losing almost three-fifths of the public-private competitions conducted under OMB Circular A-76. Rather than cut their costs and provide taxpayers with a better deal, contractors want to emphasize a controversial process known as "Best Value."

Instead of making the best decision for taxpayers, i.e., what costs less, acquisition officers would be encouraged to use all manner of subjective criteria to determine the winner of a public-private competition process, including such whimsical notions as a contractor's ability to respond "flexibly" to changing circumstances or the contractor's use of "innovative" approaches." In other words, what the contractors can't win on costs, maybe they can win with "fudge" factors. It's as if the used car salesman admitted after persistent questioning that, "Okay, maybe I don't really offer the lower prices. But, hey, uh, look at, uh, my customer service!"

"Best value" would tilt the field of play even farther in contractors' direction by allowing acquisition officials to ignore the standards established in the solicitation by the managers who know best how to get the work done in favor of the "bells and whistles" included in the contractor's offer. "Best value" would also eliminate the current two-step competition process that ensures once an A-76 public-private competition is actually used that federal employees always get a chance to compete in defense of their jobs. Finally, "best value" would deny federal employees the opportunity to reformulate their offer in response to a contractor offer that is in excess of the solicitation.

Even the strongly pro-contractor Clinton Administration blew off the contractors on "best value." In a July 21, 1998, letter, a senior OMB official wrote that "The Administration fully supports the use of `best value' procurement techniques and is currently using them in private-private competitions and public-private competition, conducted in accordance with the requirements of OMB Circular A-76. It must be clear, however, that the Federal Acquisition Regulations at Part 15 were not developed with public-private competitions in mind…We are opposed to any language that could be interpreted to permit DoD or any other agency to rely simply on Part 15 in a public-private competition."

Lawmakers on the House and Senate Armed Services Committees, understanding the dangers of a subjective "best value" process, included a provision in the FY2004 defense authorization bill that limits the use of "best value" to a pilot project for information technology services.

AFGE's BOTTOM LINE: AFGE will stand side-by-side with taxpayers in the fight to defend against an anti-taxpayer "best value" process. Instead, agencies should establish the standards they want met by federal employees or a contractor, whether they are the same as before or more exacting, and then choose the provider that can meet those standards at the lower cost.

6. Preserve DoD's National Security-Critical Industrial Facilities (Depots, Arsenals, Ammunition Plants)

The Pentagon regularly demands that the Congress repeal the statutes ensuring that the nation retains a robust and reliable depot maintenance capability to repair and maintain tanks, planes, and ships.

Although chronically underfunded, the depots are the one part of DoD that has managed to escape the devastating consequences of DoD's self-inflicted "human capital crisis," precisely because of statutes to ensure a strong in-house capability. If not for statutes like 10 U.S.C. 2460, 10 U.S.C. 2464, and 10 U.S.C. 2466, the depots would have experienced the same indiscriminate downsizing and reckless privatization suffered by the rest of DoD and become just another part of DoD's "human capital crisis," with critical shortages of federal employees

in important occupational category after category. Clearly, that would serve the interests neither of warfighters or taxpayers.

Even with the necessary statutory safeguards, depot employees are still better service providers than their contractor counterparts. According to GAO, depot prices are lower for 62% of items repaired by both depots and contractors. Pentagon privatizers and their contractor cronies will attempt to portray their scheme to destroy the depots as a pro-competition effort.

That contention is easily refuted when one notes the three other laws that they often attempt to strike from the code. The first law (10 U.S.C. 2469) ensures that a contractor must prove that it can perform the work more efficiently before taking that work from reliable and experienced depot employees. The second (10 U.S.C. 2470) ensures that depots in one service can compete for work needed by another service. And the third (10 U.S.C. 2472) prevents DoD from managing the depot maintenance workforce by arbitrary personnel ceilings, which result in personnel shortages, which in turn force non-competitive privatization.

The Army in particular is determined to dismantle its in-house industrial capability. RAND, a think-tank, has been developing recommendations for giving to contractors the work currently performed in the Army's depots, arsenals, and ammunition plants. Congressional staff have been told that RAND's recommendations are not yet finished. However, according to an August 2, 2002, memo, the Army Materiel Command had been assigned to submit a plan by November 29, 2002, for the "potential sale, consolidation, Federal Government Corporation, or privatization of ammunition plants and arsenals."

The Army must secure from the Congress the necessary authority to dismantle the depots and ammunition plants. The arsenals are the exception. The Secretary of the Army could use authority under 10 U.S.C. 4532 to "abolish any United States arsenal that he considers unnecessary" without any Congressional input. AFGE continues to work with House and Senate lawmakers, on a bipartisan basis, to oppose such an effort.

AFGE's BOTTOM LINE: This union strongly opposes any attempt to undermine the current in-house industrial capabilities for depots, arsenals, and ammunition plants, and AFGE will work closely with interested House and Senate lawmakers to repel such efforts.

Caring For Our Nation's Veterans

Introduction

AFGE is proud to represent approximately 150,000 Department of Veterans Affairs (VA) employees who care for our nation's veterans and ensure that they and their families receive the benefits and services they have earned. Our members are the VA employees who help veterans receive compensation and pensions. Our members are the VA workers who heal, treat, care for, bathe and feed veterans and maintain the VA facilities. They tend to the emotional and physical wounds of war that still affect the men and women who served in World War II, Korea, Vietnam and the Gulf War. AFGE members at the VA stand ready to care for the brave men and women in our armed forces that will be tomorrow's veterans. It is the dedication, professionalism and compassion of VA employees that gives meaning to our nation's commitment to veterans everyday.

Adequate Funding for Veterans is Key to Veterans Access to High Quality Care

Veterans' lack of access to health care is a dire symptom of a larger failure to commit adequate staff and financial resources to provide care for the men and women who have served our nation. While Congress has increased funding for veterans' health care in the past years, VA has suffered from chronic under funding. This under funding coupled with the legitimate increase in demand for veterans' health care has led VA to ration care, erode mental health services and place an increasing number of veterans on waiting lists for appointments.

VA's budget has not kept pace with medical inflation. VA currently does not have adequate funding to hire the staff needed to meet the increasing demand from more and more veterans. The delay in FY 2004 funding has meant hiring freezes and delays in access to care for veterans.

AFGE urges Congress to provide veterans health care with a dedicated obligatory funding stream that increases veterans access to VA-provided world-class medical care, keeps pace with medical inflation and retains safeguards against wasteful privatization.

H.R. 3094 would establish standards of access to care within the VA health system. Under the provisions of this legislation, the VA will be required to provide a primary care appointment to veterans seeking health care within 30 days of a request for an appointment. If a VA facility is unable to meet the 30-day standard for a veteran, then the VA must make an appointment for that veteran with a non-VA provider, thereby contracting out the health care service.

The legislation also requires the Secretary of the VA to report to Congress each quarter of a fiscal year on the efforts of the VA health system to meet this 30-day access standard.

Without sufficient funding or sufficient staffing levels, the access standards proposed in H.R. 3094 are standards in name only. The VA needs adequate obligatory funding that keeps pace with the escalating cost of medical care inflation and with increasing demand for services in order to achieve any access standards.

A significant and detrimental consequence to H.R. 3094's approach to ensuring access to care is to shift medical services and veteran patients from the VA to the private sector. Facilities which have the most disparate mismatch between funding and staffing levels and demand by veterans for health care will be the most vulnerable to being forced to fund privatized veterans' health care. In such facilities, veterans will have a 30-day wait for a voucher to go to the private sector. Such a shift in services to the private sector will consume that facility's already deficient funding and erode its ability to maintain specialized services programs. Without adequate funding and increased staffing levels, the enforcement mechanisms of H.R. 3094 will trigger the unraveling of the VA as a unique health care system and result in the promotion of a voucher-like system for privatized veterans' health care.

The VA is a national asset and providing veterans with health care is a responsibility that rests with the federal government – not the private sector. Efforts to shift patients to non-VA providers can set a dangerous precedent, encouraging those who would like to see the VA privatized and the federal government turn its back on its promises to the men and women who have served. Access standards are important, but they will only be achieved by first providing the VA with sufficient funding and safe staffing levels.

AFGE Opposes Wasteful Privatization of Veterans' Health Care and Services through Mandated Contracting Out

Congress rightly rebuffed the Office of Management and Budget's (OMB) request to siphon up to $75 million in veterans' health care funds to allow the VA to conduct labor-intensive privatization studies on 57,000 jobs at VA medical facilities during consideration of the FY 2004 bill for VA-HUD (which was included in the omnibus appropriations bill). AFGE urges Congress to continue to oppose any efforts to divert funding from meeting the needs of our nation's veterans to bankroll privatization schemes as the FY 2005 appropriations measures are considered.

Congress' action in the FY 2004 VA-HUD appropriations bill reaffirmed the bipartisan safeguard [38 U.S.C. 8110(a)(5)] to prevent wasteful privatization, one that is almost twenty-five years old, having been retained and respected by Republican Administrations, Democratic Administrations, Republican Congresses, and Democratic Congresses alike. This 1981 law forbids the use of veterans' health care funding to pay the salaries of Veterans Health Administration (VHA) employees to conduct labor-intensive privatization studies; such studies, overall, have been reliably estimated to cost between $3,000 and $8,000 for every federal employee reviewed for privatization.

It should be clearly understood that this safeguard in no way prevents VA from contracting to provide veterans with access to care in scarce medical specialties or with needed emergency care. Moreover, the safeguard does not prevent the VA from contracting with physicians or hospitals in rural areas to provide veterans with access to health care.

A December 20, 2002, VA memorandum makes clear that OMB officials are pressing the VA to put 15% of virtually all VA hospital jobs up for privatization and that OMB officials are telling VA managers which jobs to review for privatization and overrule the determination of VA managers that certain jobs are too important to be turned over to contractors. Jobs targeted by OMB include, but are not limited to, laundries, nutrition and food service, hospital support services, medical laboratories, medical information and records, and pharmacies.

Despite subsequent claims that it has abandoned numerical privatization quotas, OMB is still forcing the VA to implement its privatization agenda without regard as to whether the department can fairly conduct competitions and monitor any resulting contracts for quality and cost. For example, OMB has directed that VA make laundries the department's first privatization target. However, GAO report GAO-01-207R found that management and oversight of the contract for operating the laundry facility at the Albany, New York, VAMC was "inadequate," because it permitted the "contractor to deviate from the contract terms concerning the weighing of laundry" and the contractor "may have billed VA for services that the contractor did not perform." Congress' preservation of the safeguard to prevent wasteful privatization will ensure that VA will not divert funds from veterans' health care to line the pockets of such unscrupulous contractors.

Under the OMB privatization quota, agencies receive credit only for conducting privatization reviews, even if alternatives (reorganizations, consolidations, labor-management partnerships, etc.) might have generated greater efficiencies.

Let's look at the use of just one alternative at just one VA facility: the use of a labor-management partnership at the Bay Pines, FL, VAMC. Thanks to the bold leadership of AFGE Local 548 and the facility's enlightened management, according to a report signed by the Acting Director, "the consolidation of our Engineering and Building Management Services…eliminated 9 positions and produced an annual savings of over $180,000…The consolidation of our kitchens eliminated 19 positions and produced an annual costs savings of over $350,000…The "Contracting In Program" saved over $1.2 million…The "In-House Construction Program" eliminated minor construction contracts…and reduced costs by over $18,000…The "24/7 Program" improved customer service…and reduced costs by over $616,000…." And that summary omits many improvements in the quality of services made possible by this single labor-management partnership.

Now, however, no VA facility has any incentive to create such a partnership because none of the resulting efficiencies would be allowed to count towards compliance with the privatization quota, as a result of OMB's foolhardy insistence to emphasize privatization at the expense of all other methods to improve operations. Preserving the safeguard to prevent wasteful privatization will ensure that VA will have flexibility to improve operations through labor-management partnership created initiatives.

Elimination of the safeguard in FY 2005 would lead to the wholesale privatization of jobs that are essential to safe patient care and patient privacy.

For example, OMB has directed VA to particularly target hospital support activities for privatization. Ironically, private sector hospitals are significantly reducing their reliance on outside contractors for performance of support activities. According to a 2001 survey conducted by *Hospitals & Health Networks (H&HN)*, "in most instances, less than 3% of those hospitals who don't currently outsource a given function plan to do so within the next two years…This leveling off may show some discontent with the outsourcing experience. Outsourced functions where 10% or more of the executives report being `not very satisfied': plant operations and maintenance (28.6%) housekeeping/janitorial (23.3%), equipment maintenance (18.2%), safety/security (16.7%), food service (14.3%), parking management (14.3%)…"

OMB officials, not being familiar with VA's mission, don't understand that support activities have a direct bearing on the quality of patient care. For example, VA custodial staff are not just responsible for cleaning up and collecting biohazardous waste; they are also responsible for maintaining cleanliness levels in order to control infection. While OMB officials would contemptuously dismiss them as mere "janitors," VA custodial staff perform duties that are not only incidental to direct patient care services but also essential to safe patient care.

An April 2001 article in *Infection Control Today* reminded us that environmental surfaces can be contaminated with drug resistant bacteria and that for surface cleaning (e.g., bed rails), "the actual physical removal of microorganisms and soil by scrubbing is probably as important, if not more so, than any anti-microbial effect of the cleaning agent used." VA custodial staff must have special knowledge of the special protocols for cleaning and disposing medical waste which may be contaminated with Hepatitis C, Tuberculosis, HIV, and toxic substances used in the treatment of cancer. The effectiveness of dedicated and trained custodial staff is key to any VA hospital passing its accreditation inspections.

OMB specifically targeted medical information and records administration for privatization review. Citizens are still dealing with the aftermath of what was potentially the largest identity theft on record when more that 500,000 records with Social Security numbers, medical claim histories and other private information where stolen form a Department of Defense health care contractor. The data stolen were stored electronically as part of the process of building a large network to computerize all military health files. VA is in the process of computerizing its own patient records. OMB should place veterans' patient privacy before contractor profits; VA should not be allowed to contract out work that puts veterans' medical and personal information in jeopardy.

Finally it should be noted that OMB has insisted that VA review for privatization the work most likely to be performed by veterans, minorities and women. Of the jobs 57,000 jobs targeted for privatization, 36.5% are veterans, 43% are minorities and 45% are women.

AFGE opposes any efforts to change the bipartisan safeguards that prevent the diversion of funding for veterans' health care to bankroll the Bush Administration's privatization quotas.

AFGE urges Congress not to eliminate the safeguard as it begins work on FY 2005 appropriations. Congress should preserve the safeguard and reject any efforts to allow funds to be diverted from veterans' health care to be used to implement the infamous OMB privatization quotas.

VA's Capital Assets Realignment for Enhanced Services Plans

In June 2002, the VA initiated a nationwide planning process called CARES – Capital Asset Realignment for Enhanced Service. The VA's stated goal for CARES is to evaluate the health care services it provides, identify the best ways to meet veterans' future health care needs, and to realign its medical facilities and services to meet those needs more effectively and efficiently. Key to this planning effort is sound data forecasts on veterans' future demand for medical care. VA has submitted a draft CARES plan to the CARES Commission, which

was appointed by VA Secretary Prinicipi, for review. The CARES Commission is expect to issue its report the first week of February 2004.

The CARES plan is supposedly a data driven product; the VA, however, failed to make data-based projections for veterans' future needs for long-term care, mental health care, and domicillary programs. The absence of such data-based projections for veterans' demand of these key health care services for veterans is significant because it is likely that aging and future veterans will turn to the VA for these health care services in the coming decades.

Projections by the U.S. Census Bureau suggest that the population age 85 and older, the age group most likely to require long-term care, will grow from about 4 million in 2000 to 19 million by 2050. Some researchers predict that death rates at older ages will decline more rapidly than reflected in the Census Bureau's projections, which could result in faster growth of this population. The VA readily acknowledges that the number of veterans age 75 and older will increase from 4 million to 4.5 million by 2010. The VA and the General Accounting Office estimate that veterans age 85 years old or older is projected to triple to over 1.3 million by 2012 and remain at that level through 2023. Because the prevalence of Alzheimer's disease and other dementia rapidly increases with age, we can expect by 2012 nearly half a million veterans will be age 85 or older and need care for Alzheimer's disease or other dementia.

VA's failure to plan for the long-term care, mental health care, and domicillary programs needed by aging veterans is a significant flaw in the CARES plan. Despite this fundamental flaw, the VA's CARES plan proposes to close, relocate and privatize long-term care beds, mental health beds, and domicillary program beds. If the VA does not plan to have the in-house capacity to provide these services, veterans will suffer. States operating under tight Medicaid budgets will forced to take up the federal government's obligation to veterans.

AFGE is concerned that the CARES plan relies on enhanced use lease arrangements as a means of providing veterans with long-term care services. These arrangements do not guarantee veterans access to any services.

AFGE is concerned that the Draft National CARES plan fails to plan for additional space for Consolidated Mail Outpatient Pharmacies (CMOPs) to meet the growing demand from veterans for prescription drugs. The VA currently has seven regional CMOPs which process approximately 20 million prescriptions a year above their workload design. VA's CMOPs are highly efficient and more cost effective than commercial mail--service pharmacies.

AFGE is concerned that the CARES plan relies on privatization of veterans' health care to meet increased future demand for services rather than planning to rebuild the VA's capacity to treat veterans.

P.L. 108-170 prohibits the VA from implementing the CARES plan pending congressional review of the plan. AFGE urges Congress to prohibit the VA from implementing any facility or bed closures, transfers or privatization of services until the VA completes its data projections on future veterans' demand for long-term care, mental health services, including substance abuse treatment, and domicilliary programs and plans to have the in-house capacity to meet those services.

Inadequate Staffing of Health Care Workers at the VA is Threatening Veterans' Access to Safe and High Quality Patient Care

Veterans must wait for appointments for care because the VA lacks adequate medical, nursing, allied health, and hospital support staff. VA's failure to adequately staff VA medical facilities, outpatient clinics, and long term care facilities has also place at risk the quality of care veterans receive. Research indicates that the lack of adequate health care staff also has an adverse impact on the quality of patient care and patient outcomes.

Adequate staffing levels is also pivotal to keep and hire staff during the current nursing, physician, pharmacist and medical technologist shortages. Nurses, and other health care workers, in understaffed hospitals are more likely to experience burnout, job dissatisfaction and leave their jobs. Adequate staffing levels of health care support employees, such as housekeeping workers, are also vital to providing safe and high quality care for veterans.

AFGE urges Congress to take the following actions to improve VA's ability to set and maintain adequate staffing levels and to hire and keep needed staff.

1) VA health care workers and VA management should have the opportunity to negotiate safer staffing levels.

VA direct patient care providers and care givers have very little say over adequate staffing levels at the VA. VA management and representatives of frontline health care givers (VA nurses, physicians, physician assistants, and other health care workers) are prohibited from sitting down at the bargaining table to discuss the adequacy of staffing levels, staff-to-patient ratios, patient panel size for providers or how to improve direct patient care. Frontline care givers are first and foremost patient advocates, yet they are silenced by current law when it comes to advocating for their patients with VA administrators who decide staffing levels, staffing ratios and provider panel sizes.

AFGE urges Congress to pass legislation to allow VA health care workers' representatives the opportunity to sit down with VA management and come to agreements about ways to ensure safe and adequate staffing levels, and improve direct patient care.

2) All VA health care employees should receive Saturday premium pay.

VA staff are regularly called upon to sacrifice their weekends to provide care for veterans because veterans are sick and need care round-the-clock, seven-days-a-week. These dedicated staff should be compensated for their work on the weekends. Current law compensates all General Schedule federal employees who work on Sundays with a premium pay rate but the law on Saturday premium pay is unfair and arbitrary.

When a RN, LPN, pharmacist, or physical therapist works a Saturday or Sunday shift he or she is paid a premium rate of pay (25%) pursuant to 38 U.S.C. 7453 and 7454. The premium is not for overtime but for working a regular shift on the weekend. On December 6, 2003, President Bush signed into law P.L. 108-170, which expanded the types of VA employees who are guaranteed Saturday premium pay. However, it is our understanding that the VA is narrowly interpreting the law to exclude many employees who work on Saturdays and provide key services incident to direct patient care. For example, VA is excluding housekeeping staff but not housekeeping managers, food service workers but not dietitians. Individuals like police officers, food service workers, boiler room operators, and housekeeping staff routinely work on weekends and their jobs are key to providing patients with a safe, hospitable and infection-free care environment. These workers should receive Saturday premium pay on the same basis as VA intends to provide it to medical clerks, medical records technicians, recreation aids, nursing assistants, and others.

AFGE urges Congress to clarify the law to provide Saturday premium pay for <u>all</u> employees who are required to work a shift on Saturdays.

3) *Mandatory overtime as a means of staffing is contrary to patient safety*.

When hospitals resort to pressuring or mandating nurses to work a double shift, patients are placed at risk. That's the conclusion of a recent Institute of Medicine study*, Keeping Patients Safe: Transforming the Work Environment of Nurses*. Fatigued nurses lack the keen level of concentration and emotional stamina necessary to deliver high quality and compassionate care. Medications, basic care, and critical medical interventions will be delayed, forgotten or mixed up because nurses are too tired and spread too thinly.

Mandatory overtime usually occurs on already short-staffed units, which, in addition to jeopardizing patient care, exacerbates staff burnout and drives nurses away from hospitals. Mandatory overtime is a symptom of -- not a solution to -- inadequate staffing at VA hospitals. To keep skilled nurses in our hospitals we must improve the working and patient care environments that are driving them away from nursing.

The Institute of Medicine report recommends that to reduce medical errors from fatigue we must prohibit nurses from working more than 12 hours in any given 24 hour period and more than 60 hours per week. This recommendation is consistent with public laws and policies which limit working hours in other occupations where public safety is at risk.

The Safe Nursing and Patient Care Act of 2003 (H.R. 745/S. 373), introduced by Representative Pete Stark (D-CA) and Representative Steven LaTourette (R-OH) in the House and introduced by Senator Edward Kennedy (D-MA) in the Senate, would prohibit the dangerous practice of mandatory overtime for licensed nurses in hospitals. Under the legislation the overtime ban could only be lifted in cases of formally declared emergencies. Nurses could continue to volunteer for overtime when they feel it is safe to do so.

AFGE urges Congress to pass the Safe Nursing and Patient Care Act of 2003 to help prevent medical errors and to stop nurses from leaving hospitals**.**

4) Improved working conditions and pay will improve VA's ability to keep and hire top quality VA physicians and dentists.

Addressing VA's ability to retain and recruit needed primary care, dental and medical specialty providers is essential if the VA is to meet the current and future demand for veterans' medical care. In the summer of 2003, the VA submitted to Congress legislation to improve physician staffing by revising the current physician and dentist pay system. As of press time, VA's proposed physician and dentist pay legislation has not been introduced in either the House or Senate.

As Congress considers the VA's proposed new pay system for physicians and dentists it is important to assess what the current system offers in terms of establishing competitive salaries.

Positive components of the current system include:

- a guaranteed annual General Schedule (GS) nationwide pay adjustment;
- the recognition of the value of full-time dedication to caring for veterans through a guaranteed full-time status pay;
- encouraging a stable patient-physician relationship and long-term commitment to caring for veterans through guaranteed length of service pay;
- incentive pay for ongoing professional learning and advanced credentials through guaranteed compensation for board certification, which recent research has shown is linked to improved patient outcomes;
- flexibility to provide additional compensation for medical specialties;
- flexibility to increase compensation to meet specific geographic challenges in recruitment and retention; and
- the ability to reward exceptional qualifications within a specialty.

The current pay system is more transparent, fair, credible, and equitable because many of the key pay components are guaranteed and not discretionary. It also makes the system easier to administer and less subjective or vulnerable to bias or discrimination than a system which places all components of pay for each individual physician at the discretion of the VA facility administrator. As Congress considers moving forward on VA's proposed legislation we would urge Congress to preserve the guaranteed status of key objective pay components.

While the current discretion in setting geographic and specialty salary rates may give VA flexibility, it also makes the system vulnerable to arbitrary, inconsistent and biased compensation decisions. With this vulnerability comes inconsistency, favoritism and outright discrimination, which erode the core merit principle of equal pay for work of equal value. The inconsistent and biased exercise of discretion in pay hurts morale.

AFGE is concerned that VA's proposed legislation strips away any guarantees for objectively and fairly setting physician and dentist salaries. Under VA's proposal, senior front-line clinicians would no longer be guaranteed compensation for their full-time status, long-term commitment to caring for veterans or board certification. These factors might be considered in placing an individual physician or dentist along the base pay band and in appraising his salary for the market pay band but the facility administrator could also ignore or discount these objective factors. Under VA's proposal, two primary care doctors working at the same medical center who have the same years of service in the VA and are both board certified in the same specialty could have salaries that vary by $25,000 or more.

VA's proposed legislation would allow the VA absolute and unreviewable discretion to reduce the salaries of doctors and dentists. How can telling doctors that they could have their pay reduced and will have no recourse should such an adverse action occur help the VA retain and recruit highly qualified staff? VA physicians and dentists, like VA Registered Nurses, should not be at risk for negative pay adjustments. AFGE urges Congress to ensure that VA physicians and dentists shall not receive negative pay adjustments.

Competitive pay for VA physicians and dentists should be based upon the appropriate private sector comparable data. Competitive pay is separate from a bonus for outstanding performance. VA's proposed legislation is open-ended in specifying what data it will use to support its achieving competitive pay. It is expected that by regulation VA will set the target pay level for the total salary of physicians to approximate the 50th percentile of American Association of Medical Colleges (AAMC) pay surveys, plus or minus ten percent. Apart from concerns over the discretion in setting individual pay in this range, there are concerns as to whether the AAMC data is more relevant to full-time practitioners than other databases or a combination of salary surveys. Even if the AAMC data is relevant, it is clear that the 50^{th} percentile target is inadequate to achieve pay comparability for most of VA physicians because under VA's proposed legislative framework only 30% of VA's physicians will see an increase in their pay.

AFGE does not support VA's proposal for physician "pay for performance." Research and experience have shown these systems never yield their desired result but are cumbersome to operate. Instead, as Stanford University Business School professor Jeffrey Pfeffer has written, "it takes up enormous managerial resources and leaves everyone unhappy."

If no new resources are made available for salaries, which will likely be the case with VA, the pay for performance system will promote competition and political intrigue rather than teamwork and devotion to collaboration and high quality veterans' health care. Any one physician's gain has to be another's loss.

Apart from grave concerns about how performance pay depletes administrative resources and pits one physician against another, we also have questions about the specifics of the so-called "corporate goals" VA proposes to use to compensate physicians and dentists who treat veterans. We are concerned that the "corporate goals" upon which performance pay will be based will adversely impact professional autonomy to make necessary direct patient care decisions.

VA's proposed legislation gives the VA broad authority to set so-called "corporate goals" upon which physician and dentist performance pay will be based. VA's corporate goals will emphasize financial reward as the goal of public service - a VA doctor's primary goal will be to maximize his chances of getting a big raise

and minimize his coworker's chances - the veterans health care interest will be secondary at best.

The "corporate goals" may create perverse incentives for doctors to dampen or restrict access to effective -- but costly -- diagnostic tests, medical treatments and prescription drugs. Would the VA promote "corporate goals" that would encourage facility administrators and medical providers to erode VA's capacity to provide more costly inpatient psychiatric care, substance abuse treatment, or spinal cord injury care? Because performance pay could be based upon VA's ability to recoup money from third-party payers would the VA "corporate goals" in effect reward physicians who do not treat or who spend less time treating veterans who have no insurance?

Pay for performance is the wrong answer to the wrong question. It's not that VA's physicians and dentists don't perform well and will only do so if their annual raise depends on it. More money needs to be put into VA's budget to hire additional staff. More money is needed so that federal salaries are competitive with salaries paid in the private sector. Reallocating existing money so that you solve that problem for some and make things worse for others under the banner of "performance" is dishonest and will do lasting damage to the delivery of health care for veterans.

AFGE does support outstanding performance bonuses that are separate from and in addition to full competitive pay. The criteria for the bonuses for outstanding performance should be developed jointly by VA management and front-line care givers. The awarding of bonuses for outstanding performance should be through a fair, objective and transparent process, including an appeal process for the denial of a bonus when an individual meets the criteria.

Although pay and benefits are key to retaining and recruiting direct care providers, we believe that enhancing the culture of medical professionalism will also yield great gains in VA's ability to hire and keep physicians and dentists. Like other civil servants, physicians and dentists choose to work at the VA because it offers an opportunity to help veterans, hone and develop their professional practice, and perform meaningful and challenging work. In short, it is the nature of the work, not just the size of the paycheck, which matters.

Decisions on restructuring, staffing, administrative duties, and rationing of care affect how front-line medical providers are able to practice medicine. Ensuring that they have a voice in decisions that involve medical practice and quality of care issues is absolutely essential if the VA is to be the employer of choice for doctors and dentists and provide world-class health care. For example:

- Front-line medical providers need to be part of VA's dialogue on developing a staffing model for primary care, long-term care, and specialty care to ensure that the methodology accounts for time spent not only on direct patient care but administrative tasks, research, coordination of care and ongoing professional development and education.
- VA's ongoing efforts to implement a computerized medical record system would benefit from extensive feedback from the very doctors who must expend patient care time entering data.
- When VA administrators establish additional requirements for prescribing atypical antipsychotic drugs it is essential that the voice of front-line doctors be heard to ensure that cost-containment objectives do not undermine or restrict veterans' access to effective treatment.

As with RNs, current law unnecessarily limits front-line physicians and dentists' representatives from working with VA management to address the ongoing challenges the VA faces in the delivery of direct patient care. As Congress deliberates on how to improve VA's capacity to retain and recruit needed medical staff to care for veterans, AFGE urges Congress to expand and invigorate the opportunities for direct care physician representatives to be part of VA's decision making process on matters that impact on patient care. Ensuring that direct care providers have a seat at the decision making table will create a stronger culture of medical professionalism, improve morale, and make successful implementation of new policies and procedures more likely. Giving doctors and dentists a real say in shaping workplace decisions that impact on patient care will boost VA's ability to hire and keep medical providers.

5) VA's 24/7 leave policy for physicians is adversely affecting recruitment and retention.

Under VA's current policy full-time civilian physicians, dentists, podiatrists and optometrists are deemed to be "continuously subject to call unless officially excused." This requirement exists 24 hours a day, seven days a week, 52 weeks a year. The underlying assumption of this policy, referred to as 24/7, is that VA employees who are medical doctors and dentists are in a perpetual round-the-clock tour-of-duty. This is an unfair and excessive condition of civilian employment. Under the 24/7 policy full-time physicians, dentists, podiatrists and optometrists are permitted "some periods of free time from official duty to the extent that this does not impair provision of essential services in patient treatment and care." This policy has significant potential to adversely impact the retention and recruitment of top quality physicians, dentists, podiatrists and optometrists.

AFGE does not object to a policy that permits VA medical doctors to be ”on-call” and required to report to work to tend to those recently injured on the battlefield or to respond to medical emergencies caused by natural disasters or acts of terrorism. However, it is troubling that VA believes it must staff its medical facilities by requiring physicians to be on-duty perpetually.

As VA is stretched to respond to increasing demand for care with inadequate budgets, we are concerned that VA facility administrators may make use of the current 24/7 authority to press physicians to work longer and longer days and care for more and more patients. This would be detrimental to patient care and to medical staff. We believe that VA's ability to recruit and retain highly qualified physicians and to provide exceptional care for veterans is diminished as medical directors exercise their unlimited authority under the 24/7 requirements.

AFGE urges Congress to review the unlimited extent of VA's continuous call policy to ensure checks and balances are in place to guard against potential abuse of this policy that requires VA physicians, dentists, podiatrists and optometrists to be on duty 24/7.

AFGE is also concerned by the leave consequences of the 24/7 regulation. The current VA regulation governing annual, sick and military leave for physicians, dentists, podiatrists, and optometrists requires that these employees be charged for annual leave on weekends, even when their normal work schedule is Monday through Friday. This VA unilateral policy stands in contradiction to the current leave law for other federal employees, even those with uncommon tours of duty.

Although VA physicians and dentists accrue 30 days of annual leave a year, the consequence of this VA unilateral leave policy lessens the number of days available for extended leave significantly.

AFGE urges Congress to enact legislation to change VA's leave regulation for physicians, dentists, podiatrists and optometrists to reflect the weekly work schedule assignment. Eliminating the weekend charges of annual, sick and military leave in all circumstances would be a significant step to improving the VA's ability to retain and recruit dedicated physicians, dentists, podiatrists and optometrists to care for our nation's veterans.

Conclusion

- AFGE urges Congress to provide veterans health care with a dedicated obligatory funding stream that increases veterans' access to VA provided world-class medical care, keeps pace with medical inflation and retains safeguards against wasteful privatization.

- Without adequate funding and increased staffing levels, the enforcement mechanisms of H.R. 3094 will trigger the unraveling of the VA as a unique health care system and result in the promotion of a voucher-like system for privatized veterans' health care. Congress should not pass H.R. 3094.

- Congress rightly rebuffed the Office of Management and Budget's (OMB) request to siphon up to $75 million in veterans health care funds to allow the VA to conduct labor-intensive privatization studies on 57,000 jobs at VA medical facilities during consideration of the FY 2004 bill for VA-HUD (which was included in the Omnibus appropriations bill). AFGE urges Congress to continue to oppose any efforts to divert funding from meeting the needs of our nation's veterans to bankroll privatization schemes as it considers the FY 2005 appropriations.

- AFGE urges Congress to pass legislation to allow VA health care workers' representatives the opportunity to sit down with VA management and come to agreements about ways to ensure safe and adequate staffing levels and improve direct patient care.

- AFGE urges Congress to clarify the law to provide Saturday premium pay for <u>all</u> employees who are required to work a Saturday shift at VA medical facilities.

- AFGE urges Congress to pass the Safe Nursing and Patient Care Act of 2003 (H.R. 745/ S. 373).

- As Congress deliberates on how to improve VA's capacity to retain and recruit needed medical staff to care for veterans, AFGE urges Congress to expand and invigorate the opportunities for direct care physician representatives to be part of VA's decision making process on workplace decisions that impact on how they practice medicine.

- As Congress considers VA's proposed legislation for physicians and dentists Congress should preserve the current objective components of VA physician pay which recognize the value of full-time dedication to caring for veterans through a guaranteed full-time status pay, encourage a stable patient-physician relationship and long-term commitment to caring for veterans through guaranteed length of service pay, stimulate professional excellence through advanced credentials with guaranteed compensation for board certification, and ensure that pay keeps pace with the annual General Schedule nationwide pay adjustment.

- VA's proposed legislation would allow the VA absolute and unreviewable discretion to reduce the salaries of doctors and dentists. VA physicians and dentists, like VA Registered Nurses, should not be at risk for negative pay adjustments. AFGE urges Congress to ensure that VA physicians and dentists shall not receive negative pay adjustments.

- Congress should adopt outstanding performance bonuses, not pay-for-performance for VA physicians and dentists. Outstanding performance bonuses are distinct from and in addition to competitive pay based upon appropriate private sector comparable data.

Federal Prisons

Summary

More than 173,000 inmates are confined in the correctional institutions of the federal Bureau of Prisons (BOP) system today, an almost 275% increase in the number of persons incarcerated since 1990. As a result, the BOP system is operating at 34% over-capacity, up from 25% over-capacity in the mid-1990s. In addition, this massive growth in the BOP prison inmate population continues to outpace the growth in the number of federal corrections officers who staff BOP prisons. The BOP prison system is currently staffed at a 91% level, as compared to the 95% staffing levels of the mid-1990s.

This massive overcrowding and serious understaffing is creating hazardous conditions and security risks for BOP prison inmates, federal corrections officers and other staff employees, and the communities within which they work.

AFGE, which represents the federal corrections officers and other federal employees who work at the 103 prison facilities of the BOP system, is strongly committed to fight: (1) for substantially increasing the number of federal corrections officers who work at BOP prisons; (2) against any attempts to undermine the Federal Prison Industries (FPI) prison inmate work program; and (3) against the incarceration of federal inmates in private prisons.

Discussion

I. AFGE strongly supports any effort to substantially increase the number of federal corrections officers who work at BOP prisons.

While the federal prison inmate population has increased dramatically over the past two decades, federal prisons have become seriously understaffed. It is reported that the BOP system is being funded at 91% staffing levels, as compared to the 95% staffing levels of the mid-1990s.

To make matters worse, the radical changes to the FPI work program included in National Defense Authorization Acts of 2002 and 2003, respectively, and in last year's FY 2004 Transportation and Treasury appropriations bill will necessarily result in a decreasing number of inmates being productively occupied in labor-intensive work activities. <u>This is a formula for disaster</u>.

II. AFGE strongly opposes any effort to undermine the FPI work program by eliminating the program's mandatory source preference.

The FPI is a self-supporting government corporation that provides job skills opportunities to federal prison inmates by producing goods and services for federal agencies. By statute, FPI products must be purchased by federal agencies (a requirement referred to as "mandatory source preference") and are not available for sale in interstate commerce or to non-federal entities. Federal agencies can obtain products and services from the private sector through a FPI-issued waiver if FPI is unable to provide the needed good or service at a competitive price, with the necessary quality or in a timely manner.

AFGE strongly opposes any legislation that would undermine the FPI prison inmate work program. By eliminating the mandatory source preference for FPI products, it would endanger countless numbers of federal prison inmate jobs, thereby (1) creating substantial problems for the safe and secure operation of federal prisons, and (2) eliminating real opportunities for federal prison inmates to learn marketable job skills and values.

FPI is an essential prison management tool that contributes significantly to the safety and security of federal prisons. FPI helps keep thousands of federal prison inmates productively occupied in labor-intensive work activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides incentives to encourage good inmate behavior, as those who want to work in FPI must maintain clear conduct and participate in educational programs.

In addition, FPI is an important rehabilitation tool that provides federal prison inmates an opportunity to develop job skills and values that will allow them to reenter our communities as productive, law-abiding citizens. A multi-year study of FPI, completed in 1999 by the Federal Bureau of Prisons, demonstrated that FPI work programs contribute substantially to lower recidivism and increased job-related success for inmates after their release. Inmates employed by FPI were found to be 24 percent more likely to become employed after release and remain crime-free for as long as 12 years after release.

Unfortunately, in the past few years, some in Congress have been working to eliminate the FPI mandatory source preference.

- Section 811 and Section 819 of the National Defense Authorization Acts of 2002 and 2003, respectively, have eliminated the FPI mandatory source preference with respect to the Department of Defense. To date, 1,750 inmates have been laid off from their FPI jobs with another 1,000 inmate job losses projected by the end of the year, and 13 FPI factories have been closed.

- The final conference agreement regarding last year's FY 2004 Transportation bill includes a provision (Section 637) that will eliminate for one year the mandatory source preference of the FPI with respect to the entire federal government. It is expected that this provision will further constrain FPI's ability to operate within its own statutory obligations – i.e., to remain financially self-sustaining while providing "employment for the greatest number of inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible."

- On November 6, 2003, the House passed, 350-65, the Federal Prison Industries Restructuring Act (H.R. 1829), a bill that would eliminate permanently the FPI mandatory source preference. (S. 346, a similar anti-FPI bill, was introduced February 11, 2003, by Senator Carl Levin, D-MI.) H.R. 1829 now heads to the Senate, where its future is unclear.

III. AFGE strongly opposes any effort to incarcerate federal prison inmates in private prisons.

In recent years, the federal government and some state and local governments have experimented with prison privatization as a way to solve the overcrowding of our nation's prisons – a crisis precipitated by increased incarceration rates and the public's reluctance to provide more prison funding. But results of these experiments have demonstrated little evidence that prison privatization is a cost-effective, high-quality alternative to government-run prisons.

A. Private Prisons Are Not More Cost Effective

Proponents of prison privatization claim that private contractors can operate prisons less expensively than federal and state correctional agencies. Promises of 20 percent savings are commonly offered. However, existing research fails to make a conclusive case that private prisons are substantially more cost effective than public prisons.

For example, in 1996, the U.S. General Accounting Office reviewed five studies of prison privatization deemed to have the strongest designs and methods among those published between 1991 and mid-1996. The GAO concluded that "because these studies reported little cost differences and/or mixed results in comparing private and public facilities, we could not conclude whether privatization saved money."

Similarly, in 1997, the U.S. Department of Justice entered into a cooperative agreement with Abt Associates, Inc. to conduct a comparative analysis of the cost effectiveness of private and public sector operations of prisons. The report, which was released in July 1998, concluded that while proponents argue that evidence exists of substantial savings as a result of privatization, "our analysis of

the existing data does not support such an optimistic view." Instead, "our conclusion regarding costs and savings is that…..available data do not provide strong evidence of any general pattern. Drawing conclusions about the inherent [cost-effective] superiority of [private prisons] is premature."

Finally, in July 1999, Travis Pratt, Assistant Professor in the School of Criminal Justice at Rutgers University, published the results of his meta-analysis of 33 cost effectiveness evaluations of private and public prisons from 24 independent studies. The results revealed that private prisons were not more cost effective than public prisons, and that other institutional characteristics, such as the prison facility's number of inmates, age, and security level, were the strongest predictors of a prison's daily per diem cost.

B. Private Prisons Do Not Provide Higher Quality, Safer Services

Proponents of prison privatization contend that private market pressures will necessarily produce higher quality, safer correctional services. Their arguments typically posit private prison managers who develop and implement innovative correctional practices to enhance performance. However, emerging evidence suggests these managers are responding to market pressures not by innovating, but by slashing operating costs. In addition to cutting various prisoner programs, they are lowering employee wages, reducing employee benefits, and routinely operating with low, risky staff-to-prisoner ratios.

The impact of such reductions on the quality of prison operations is obvious. Inferior wages and benefits contribute to a "degraded" workforce, with higher levels of turnover producing a less experienced, less trained prison staff. The existence of such under-qualified employees, when coupled with insufficient staffing levels, adversely impacts correctional service quality and prison safety.

Numerous newspaper accounts have documented alleged abuses, escapes and riots at prisons run by the Correctional Corporation of America (CCA), the nation's largest private prison company. In the last several years, a significant number of public safety lapses involving CCA have been reported by the media. The record of Wackenhut Corporation, the nation's second largest private prison company, is no better, with numerous lapses reported since 1999.

And these private prison problems are not isolated events, confined to a handful of "under performing" prisons. Available evidence suggests the problems are structural and widespread. For example, an industry-wide survey conducted in 1997 by James Austin, a professor at George Washington University, found 49 percent more inmate-on-staff assaults and 65 percent more inmate-on-inmate assaults in medium- and minimum-security private prisons than in medium- and minimum-security government prisons.

Thus, prison privatization is not the panacea that its proponents would have us believe. Private prisons are not more cost effective than public prisons, nor do they provide higher quality, safer correctional services.

Conclusion

AFGE activists are asked to:

1. Strongly urge Members of Congress to support increasing FY 2005 funding by $500,000,000 to substantially increase the number of federal corrections officers who work at BOP prisons.

2. Strongly urge Senators to oppose any legislation – whether it is the House-passed H.R. 1829 or Senator Levin's S. 346 – that would eliminate the mandatory source preference of the FPI with respect to the entire federal government.

3. Strongly urge Members of Congress to support *The Public Safety Act (H.R. 1994)*, a bill introduced by Rep. Ted Strickland (D-OH), that would (a) prevent the federal government from housing, safeguarding, protecting, and disciplining federal prisoners in private prisons; and (b) prohibit state and local governments from using federal funds to contract with private companies for the provision of these core correctional services.

Social Security Privatization

President Bush's Social Security Agenda

In November 2003, the White House announced its intention to make Social Security a central tenet of President Bush's re-election campaign in 2004. The *Washington Post* reported that the President's political advisor's said that "Bush is intent on being able to say that reworking Social Security is "part of my mandate" if he wins." In 2001, President Bush's hand-picked pro-privatization Social Security Commission issued a report describing three versions of "reform" that could be used to dismantle Social Security in various ways. According to these advocates of privatization, each of these plans would cost a minimum of $2 trillion more than maintenance of the existing system, since they all promise to simultaneously pay promised benefits to most of the baby boomers *and* allow those whose payroll taxes should pay those benefits to deposit most or all of their Social Security contributions into individual accounts. When Bush campaigned in favor of Social Security privatization in 2000, he said he would use the budget surplus to pay the enormous costs. Today, he has depleted the surplus and run up new deficits of over half a trillion dollars, and one wonders whether the promise of continued benefits for those who have already paid into the system will be as groundless as other claims he has made on behalf of his policies.

As part of the ongoing campaign to undermine confidence and support for Social Security, the Bush Administration has instructed the Social Security Administration to conduct a series of "town hall" meetings to create the impression that Social Security faces a solvency crisis. AARP had signed on as a co-sponsor of these meetings, until the outrage of its members over the organization's support for Bush's legislation to begin privatizing Medicare while creating a highly controversial and costly-but-ungenerous prescription drug benefit made them reconsider. After seniors began to tear up their AARP membership cards by the tens of thousands, AARP decided that being part of President Bush's Social Security privatization traveling circus might not be in its immediate best interests. Nevertheless, these meetings will be staged with a pseudo-citizens group called Alliance for Worker Retirement Security which is an arm of the conservative business group the National Association of Manufacturers. The meetings will be partially funded by pharmaceutical companies and other conservative business groups. At press time, AFGE learned that a number of sessions had been cancelled due to the controversy surrounding AARP's support of the Medicare privatization legislation, however, it will be important to monitor the spread of disinformation about Social Security's viability and the cost of privatization and participate in any such forums scheduled in the future.

Dismantling Social Security and replacing its guaranteed, defined benefits with private, individual accounts would be the apotheosis of the privatization agenda. Social Security is the federal government's most popular and successful program. Convincing Americans that it has failed them or will fail them requires a constant stream of misinformation. The stakes in the Social Security privatization debate could not be higher. Not only would hundreds of millions of Americans lose the only retirement and disability income security they have, but the social contract that links citizenship to an entitlement to a certain minimum economic benefit when one can no longer work, will have been dealt a death blow. Without Social Security, the federal government's major role in the lives of most Americans would be protection by the military. With Social Security we all take care of one another; with a private system of individual accounts, we take care of only ourselves.

The Economics of Social Security

The most important fact to know about the Social Security system is that it is economically sound and more than 100 percent solvent for the next four decades. There is no reason to expect that the Social Security system we currently have, with its guaranteed, inflation-adjusted benefits for retirees, survivors, and the disabled, will ever become unaffordable to our nation. Indeed, in spite of the fact that we are in the midst of a jobless recovery from recession, our economy is larger and richer than it has ever been. What was affordable even one decade ago is even more affordable today, and will be increasingly affordable as long as there is either any economic growth at all.

Advocates of privatizing or dismantling Social Security have tried to make the case that Social Security is going broke, but they cannot succeed. The only way to make their case is to lie, or to make the ridiculous assumption that America's economic growth over the next 75 years will be just half that of the past 75 years. It is this unrealistically pessimistic assumption on which projections of insolvency 40 years from now are made.

This unfounded assumption is the "Achilles heel" of the privatizers' argument. Some privatizers claim that handing over Social Security's finances to Wall Street is the only way to accumulate sufficient funds to pay full benefits over the system's 75-year planning horizon. The idea is that the stock market will guarantee a higher rate of return to the Social Security Trust Fund's assets than its current portfolio of U.S. Treasury Bonds. But of course, in order for the stock market to exceed the return on Treasury Bonds, economic growth must grow at least as fast as it has over the past 75 years in the next 75 years. If their stock market "solution" is correct, then their insolvency projections have to be incorrect.

Other privatization plans, such as those proposed by Bush's Commission, call for diversion of Social Security revenues into private individual accounts. In order to

pay for this, these plans all require tax increases, benefit cuts, increases in the retirement age, or some combination of these. Yet the Bush Administration and its economists—who are either dishonest or incompetent—refuse to acknowledge this fact and insist that the trillions of additional dollars necessary to maintain benefits and privatize are a mere footnote. As Princeton University economics professor and New York Times columnist Paul Krugman wrote of the President's Commission recommendations: "During the 2000 election campaign, George W. Bush was able to get away with the nonsensical claim that private accounts would not only yield high, low-risk returns, but save Social Security at the same time. For whatever reason, few reporters pointed out that he was claiming that 2-1=4. But when it came time to produce concrete plans, the arithmetic could no longer be avoided." (NYT 6/21/02).

There is no economic justification for any cut in Social Security's guaranteed benefits, and no economic arguments in favor of privatization. If economic and wage growth over the next 40 to 50 years is inadequate to support Social Security benefits for a population with a longer-than-forecast life expectancy, then numerous options to increase funding for the program are available.

As questions about Social Security's solvency are raised, consider that according to both law and policy, Social Security is officially "off-budget," which means that its financing is to be considered separately from the rest of the federal budget. When the media report that the budget deficit is currently roughly $500 billion, the off-budget status of the Social Security Trust Fund is not acknowledged. Without the benefit of the Social Security Trust Fund's surplus, the overall budget deficit would be about $162 billion higher. This is important to remember when the affordability of paying promised Social Security benefits is questioned. Nevertheless, the size of the general deficit is not irrelevant to Social Security, at least not politically. When Social Security begins to redeem the bonds currently held by the Treasury in about 2018 in order to pay benefits, the government will have to replace its debt to the Trust Fund with debt to the public. That is, it will have to sell new bonds to the public. The overall debt of the government will *not* go up, but those who want to pretend that the government's financial crisis is Social Security's financial crisis will claim that it is Social Security's fault that "new" borrowing will occur. But the fact is that from a legal, economic, and even ethical perspective, the moment when the federal government incurred debt was when it borrowed from Social Security, not when it has to borrow from the public after Social Security asks for its money back.

Social Security Administration Funding

Wall Street firms that support Social Security Privatization would make billions in profits from the establishment of hundreds of millions of individual accounts. It is the administration of Social Security accounts that entices them, not the prospect of "higher rates of return" from stock market investments *per se*. It is in that

context that the continued excellence of the administration of the program by federal employees and the Social Security Administration is tied into the debate over privatization of the program itself. In fact, Social Security's success is a continuing rebuke to government-bashers because they cannot call Social Security either wasteful or inefficient.

One easy way to undermine the satisfaction and support of the American people for Social Security in its current form is to deprive the agency of needed administrative funds so that it begins to stumble. In just the past few years, numerous programmatic changes have added to the Social Security Administration's administrative costs and responsibilities. But no supplemental administrative funding has been provided to accommodate these programmatic and workload expansions.

The administrative funding for the Social Security Administration has been subject to the spending caps imposed on discretionary spending as part of the plan passed in 1991 to balance the federal budget by 2002. These caps were set arbitrarily by Congress as a means of balancing the budget solely through spending controls. While the federal budget came into balance, and eventually surplus in 1998, these caps were never lifted and the funding legacy of the caps was never rectified. Indeed, the past use continues to be felt in the form of inadequate agency budgets.

The Social Security Administration has its own dedicated funding mechanism: Administrative funding for Social Security is provided by the Social Security Trust Fund. This Fund is sufficient not only to pay all promised benefits through at least 2037, but is also sufficient to fund fully and adequately the administration of the program throughout the planning period.

AFGE is not suggesting that Social Security abandon its efficiency standard of administrative costs of less than one percent of benefits paid, which continues to compare quite favorably with the private sector insurance standard of 15 percent administrative overhead. AFGE does support off-budget administrative funding, in recognition of the fact that this program and agency need not be held hostage to arbitrary spending caps Congress may once again impose on areas of the budget without their own dedicated funding sources now that deficits have returned.

Conclusion

Advocates of Social Security privatization rely on falsehoods and misrepresentations to make their case. There is ample reason to expect that if President Bush does decide to make Social Security privatization a part of his 2004 campaign, many of the claims in favor of privatization will be made on the basis of assumptions that are not credible. Social Security's solvency will be

described as precarious, when it is not. The contents of the Social Security Trust Fund will be described as worthless IOUs, when it is not. The promise of Social Security benefits will be described as unreliable, when it is not. The continuation of Social Security as a guaranteed defined benefit will be declared unaffordable, when it is not. Private accounts will be described as more secure than social insurance; private accounts will also be described as more advantageous to women and minorities than social insurance. Neither claim is true.

The failure of President Bush's Social Security Privatization Commission does not mean that the threat of dismantling the crown jewel of the federal government's social insurance has passed. Plans to invest Trust Fund monies in private equities (stocks and corporate bonds) rather than public needs are alive and being considered as a first step toward eventual privatization through individual accounts. Privatization of Social Security will mean the privatization of the administration of the program. AFGE, the other labor unions of the AFL-CIO, and numerous Civil Rights, Women's, Religious, Senior, and Community groups have been successful in efforts to work together to refute the misinformation surrounding the privatization movement.

The truth is that privatization has no good arguments in its favor. It continues to be—after labor unions—the most successful anti-poverty program in America. Social Security provides economic security to millions of Americans who become disabled, survive the death of a breadwinner, or retire from a job. Privatization would undermine that economic security. Social Security is also our government's most popular and successful program. Every AFGE member has a stake in fighting to protect and defend Social Security from privatization.

Government Pension Offset and Windfall Elimination Provision

Introduction

The Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) are two amendments to the Social Security law, enacted in 1977 and 1983 respectively. Each lowers the retirement income of federal employees by altering the Social Security benefit formula for certain groups. The long-term cost of eliminating both the GPO and the WEP is negligible according to Social Security's actuaries. Nevertheless, the reduction in retirement income for those who are now affected by either GPO or WEP is anything but negligible, and AFGE has long supported the repeal of both these amendments.

Government Pension Offset

The GPO affects federal retirees who were covered solely by the Civil Service Retirement System (CSRS). The GPO causes a reduction or sometimes an outright elimination of Social Security survivors' and/or spouses' benefits. The reduction comes out of the Social Security benefit, not the CSRS annuity.

The GPO formula cuts a Social Security spousal benefit by two thirds for those whose benefit is tied to a CSRS worker who retired after July 1, 1983. For those whose benefit is tied to a CSRS worker who retired prior to July 1, 1983, the offset is calculated differently. The spouses and survivors of federal employees covered by the Federal Employees Retirement System (FERS) are not affected by GPO.

The Government Pension Offset, in effect, prohibits federal retirees from collecting both a full CSRS annuity based upon his or her own government employment, and full Social Security benefits based upon a spouse's employment.

The victims of GPO are largely elderly women who are both CSRS annuitants and widows of private sector employees. Had these women spent their careers anywhere but the federal government, they would be entitled to full, unreduced Social Security spousal or survivor benefits. But because they earned their pensions through federal service under CSRS, their Social Security benefit is "offset" by their own earned retirement benefits.

AFGE is supporting S.363 and H.R.887, the government pension offset bills introduced recently ended, respectively, by Senator Barbara Mikulski (D-MD) and Representative William Jefferson (D-LA). These bills would remove some of the

hardship caused by Social Security offset rules that reduce benefits for many federal retirees. Each bill would exempt from any offset the first $1,200 a month in combined Social Security spousal benefit and civil service annuity.

Windfall Elimination Provision

While the GPO affects Social Security benefits received by federal annuitants but earned by a spouse, the WEP affects Social Security benefits of the federal retiree him or herself.

The Social Security retiree benefit formula provides a greater percentage of pre-retirement earnings to low-wage workers than it does to higher-wage workers. When benefits are calculated, the "covered" earnings used to determine the appropriate level of Social Security benefits are indexed to broad changes in wages and salaries over time. The lower the wages, the higher the index number used to adjust for earnings.

Prior to enactment of the WEP, a federal worker who spent the early part of his or her working life at a low wage job covered by Social Security eventually received Social Security benefits which were based upon the assumption that those relatively low wages were what he or she earned throughout his or her career. Thus, this retiree received the relatively larger Social Security benefit because as far as Social Security was concerned, he was a lifetime low earner. Yet some federal retirees who earned low wages during the period of their careers they spent in Social Security-covered employment earned much higher salaries during their federal careers, salaries which, had they been covered by Social Security, would have produced lower benefits as a percentage of both those early and the later years.

In 1983, Congress decided that the Social Security benefits of individuals who fit the above-described profile should be lower because the assumption of low lifetime earnings was false. The WEP was the so-called solution. The WEP lowers the indexing factor depending on the number of years spent in Social Security-covered employment. For instance, those with 30 years or more of Social Security-covered employment are not affected by WEP. Those with between 21 and 29 covered years lose varying amounts of the "windfall." Those with 20 years or fewer are affected more dramatically.

The WEP is confusing and mislabeled. Many CSRS retirees do not consider their time spent in Social Security-covered employment insubstantial; in many cases of those affected by the WEP, the period in question made up half or more of the worker's career. Like the GPO, the WEP is not costly to reverse, and provides a much-needed supplement to post retirement income. AFGE supports repeal of the WEP.

AFGE supports H.R. 2011, a bipartisan bill introduced by Representative Barney Frank (D-MA), as well as S. 1011, introduced by Senator John Kerry (D-MA), which will restrict the application of the Windfall Elimination Provision (WEP) of the Social Security Act to individuals whose combined government pension and Social Security payments are greater than $3,000 per month (in the case of H.R. 2011) or $2,000 per month (in the case of S. 1011).

H.R. 2011 and S. 1011 will stop this unnecessary shrinking of income to our vulnerable and valuable government retirees who possess modest means. These retirees worked for decades believing that they would have their full government pension and Social Security benefits in their golden years. H.R. 2011 and S. 1011 will restore that belief for many.

Conclusion

The GPO and the WEP are inequities in the law that affect only federal employees and their families. The cost of rectifying these inequities is minimal to the government, but the benefit to federal retirees and their dependents would be enormous. AFGE urges Congress to support legislation which would eliminate the GPO and the WEP.

Employment Non-Discrimination Act

Background

The pursuit of justice has not always been easy or popular, but AFGE stands true to a basic tenet of worker fairness: an employee or job applicant should be judged by his or her ability to perform the job. Representative Chris Shays (R-CT) introduced the Employment Non-Discrimination Act (ENDA), H.R. 3285, in the House and Senator Edward M. Kennedy (D-MA) introduced the bill, S. 1705, in the Senate. AFGE strongly opposes employment discrimination on the basis of sexual orientation and supports passage of H.R. 3285 and S. 1705.

Right now, it is not a statutory civil rights violation to fire a hard-working, dedicated federal employee simply because that worker is not a heterosexual--and that's not fair.

Executive Order 13087 Is Important But It Is Inadequate

Executive Order 13087, issued by President Clinton on May 28, 1998, established a uniform policy for the federal government that prohibits discrimination on the basis of sexual orientation in the federal civilian workforce. This executive order built on earlier safeguards against discrimination on the basis of race, color, religion, sex, national origin, handicap, and age. The executive order, however, does not and cannot create any new enforcement rights under Title VII of the Civil Rights Act of 1964. Federal employees who have been discriminated against on the basis of their sexual orientation are barred from seeking direct judicial redress of agency discrimination. Executive Order 13087, although important, is inadequate. Federal employees need the Employment Non-Discrimination Act (ENDA).

What ENDA Does:

- Extends federal employment discrimination protections currently based on race, sex, religion, national origin, age and disability to sexual orientation. ENDA extends fair employment practices – not special rights.

- Prohibits public and private employers, employment agencies and labor unions from using an individual's sexual orientation as the basis for employment decisions.

- Provides for the same process as permitted under Title VII of the Civil Rights Act of 1964 and the Americans with Disability Act but has limited remedies. Neither affirmative action nor quotas apply to ENDA.

What ENDA Does Not Do:

- Does not cover religious organizations, with the exception of those employees whose duties pertain solely to activities that generate taxable profits.

- Does not apply to the uniformed members of the armed forces and does not affect current law on lesbians and gays in the military.

- Does not require an employer to provide benefits for the same-sex partner of an employee.

- Does not prohibit a neutral employment policy or practice that may have a statistically disparate impact on sexual orientation.

- Does not allow the Equal Employment Opportunity Commission (EEOC) to collect statistics on sexual orientation.

- Does not cover small business with fewer than 15 employees.

Conclusion

AFGE strongly urges the Congress to pass ENDA (H.R. 3285/ S. 1705).

Whistleblower Protection

Introduction

Senator Daniel Akaka (D-HI) has introduced S. 1358, the Whistleblower Protection Act Amendments to remedy well-intentioned legislation which has been badly interpreted. In the House, Representative Todd Platts (R-PA), has introduced a companion, H.R. 3281. AFGE strongly supports both bills.

In 1989, Congress unanimously passed the Whistleblower Protection Act (WPA) as the premier merit system law for accountability to taxpayers. Since 1994, when amendments strengthening the WPA were added, it has been functionally overturned by a series of increasingly hostile decisions from the U.S. Court of Appeals for the Federal Circuit. The most immediate obstacle is a series of precedents creating exceptions to coverage for "any" lawful disclosure evidencing specified, significant misconduct. Contrary to explicit statutory language, as well as the unequivocal, repeated definition in the 1989 and 1994 legislative history, precedents now exclude the most significant, common disclosures from the scope of "any" that Congress sought to protect by passing the WPA. Exceptions include disclosures to co-workers, supervisors or others in the chain of command, those suspected of wrongdoing, and those where an employee is doing his or her job by making a disclosure.

For the last 16 years a unanimously approved appropriations rider known as the "anti-gag statute" has protected the WPA and related good government statutes such as the Lloyd Lafollette Act for communications with Congress from nondisclosure rules or similar types of gag orders. As an appropriations clause, the annual amendment's impact has been hampered by not having an available remedy. Further, this merit system shield is so fundamental that it should be institutionalized, absolving the need for it to be reaffirmed annually.

The U.S. Office of Special Counsel (OSC), which since 1978 has had a mandate to defend the merit system, must obtain Justice Department approval to appeal cases in federal court, or even to file "friend of the court" briefs. Since Justice routinely is adverse counsel in the litigation, it consistently refuses. It is important to note that other independent agencies, such as the Merit Systems Protection Board and the Federal Labor Relations Authority, enjoy independent litigating authority.

What would the bills do?

- The bills would codify the legislative history of "any," restoring the scope of protection repeatedly approved by unanimous votes.

- Furthermore, the bills would institutionalize the anti-gag statute as a "personnel action" in 5 USC 2302(a)(ii), creating a prohibited personnel practice remedy.

- Finally, the bills would provide independent litigating authority in federal circuit court for the Office of Special Counsel.

Conclusion

AFGE strongly supports S. 1358 and H.R. 3281 and urges Senators and Representatives to cosponsor and support the bills.

Federal Police Officers

Law Enforcement Officer Status

The Law Enforcement Officers Equity Acts (H.R. 2442, S. 819), which have been introduced by Representative Bob Filner (D-CA) and Senator Barbara Mikulski (D-MD), respectively, are bipartisan bills that will grant Law Enforcement Officer status to most federal agency police officers.

These bills will bring parity to federal police officers and allow all to have the same retirement benefits. They expand the definition of "law enforcement officer" to Veterans' Affairs and Department of Defense police, Immigration and Naturalization inspectors, Federal Protective Service officers, Internal Revenue Service officers, postal police, Secret Service special officers, Drug Enforcement Administration diversion investigators, and others. At present, these honorable protectors of the public 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. They are not eligible for early retirement benefits as are their colleagues in similarly situated federal police positions.

Due to the inequities of pay and retirement benefits, the federal government experiences high turnover after we train these men and women because they are recruited by other law enforcement agencies that give them full respect, status and benefits. The Law Enforcement Officers Equity Act will bring equity to our federal police service and will help retain this well-trained and professional workforce.

AFGE strongly supports the legislation and urges Representatives to cosponsor H.R. 2442 and Senators to cosponsor S. 819.

DISTRICT OF COLUMBIA

Introduction

In 1998, the D.C. City Council passed legislation that changed the Comprehensive Merit Personal Act (CMPA) in ways that were ultimately detrimental to DC's workforce. In 2004, AFGE will urge lawmakers to revisit the CMPA in order to address these important workforce concerns.

Reform of the Comprehensive Merit Personnel Act

- The legislation limited the jurisdiction of the Office of Employee Appeals (OEA) to disciplinary actions and RIFs, and on performance ratings to cases when those ratings result in removal, and on disciplinary actions to removals for cause. OEA now no longer has jurisdiction over grievances, erroneous payments, position classification, privacy, and records management claims. It also took away the right to appeal "final" agency decisions on grievances. Again, these changes were adopted under the banner of "streamlining" but in fact it was a missed opportunity to improve CMPA by adding a statutory standard for upholding agency actions.

- The legislation undermines collective bargaining by deleting the "45 day rule" which requires agencies to initiate disciplinary actions within 45 days of an alleged offense. There is now no explicit time limit on management's right to initiate disciplinary actions. The elimination of the "45 day rule" allows management to hold charges and evidence without the worker's knowledge, thus disadvantaging the worker's ability to defend him or herself or produce exculpatory evidence once charges are brought.

- The legislation also deprived bargaining unit employees of opportunities for promotion by virtue of its authority to allow temporary non-competitive Career Service appointments to positions below DS-13. Formerly, this authority applied to DS-12 and above and the time-limited appointments were for up to 12 months. Temporary appointments under the new authority can last up to 18 months.

Civil Rights Tax Relief Act

Introduction

In the Small Business Job Protection Act of 1996, which increased the minimum wage, Congress made taxable all damage awards not based on "physical injuries or physical sickness." Discrimination awards (or settlements) involving either back wages or non-physical injuries (including emotional distress) are now taxable, regardless of how the injuries are designated in the settlement agreement. Conversely, personal injury awards for wages and emotional distress remain non-taxable. While damages received because of a bar room brawl or slip-and-fall, often caused simply by negligence, are tax free, damages to compensate for the very same types of psychological injury caused by intentional discrimination, are not. This discriminates against those involved in civil rights cases.

In addition, people who bring civil rights cases can also be taxed on the portion of the award paid to their attorney as attorneys' fees. The same award is taxed twice, since attorneys are taxed on it as well. Cases from the courts have held that attorneys' fees cannot be subtracted from an individual's gross income, but must instead be included in gross income, then deducted as a "miscellaneous itemized deduction," subtracted after gross income is calculated. Due to the limitations on such deductions, and the existence of the alternative minimum tax, individuals bringing civil rights cases are commonly taxed on their entire award, even the portion paid to their attorneys. Under current law, deductions for attorneys fees often trigger the alternative minimum tax, making more of the award, including the attorneys' fees, taxable to the individual whose rights were violated. There has even been several documented cases where the tax liability (on damages and attorneys' fees) to a successful civil rights plaintiff has exceeded the recovery itself.

Finally, back pay awards are considered taxable income, and IRS regulations require that they be taxed in the year received, though the award covers many years worth of wages. This can place workers in a higher tax bracket than would have applied if they had not been discriminated against and received their wages over the years they worked. No income averaging of the back pay award is allowed. This puts workers in a worse situation and defeats the purpose of the law.

These three tax penalties interfere not only with rightful recovery of civil rights damages, but often now impact and discourage settlement of civil rights cases, frustrating workers and employers alike.

What would the bills do?

- The Civil Rights Tax Relief Act ***eliminates taxation of emotional distress awards*** in discrimination cases, by excluding such damages completely from taxable gross income.

- The Civil Rights Tax Relief Act provides for ***income averaging of back pay awards***, which would permit those individuals recovering back wage awards to be taxed over the number of years for which the award was intended to compensate.

- The Civil Rights Tax Relief Act ***eliminates the taxation of attorneys' fee awards*** completely, by eliminating attorneys' fees from the individual's gross income, which keeps the problems with deduction limitations and the alternative minimum tax from arising.

Conclusion

The Civil Rights Tax Relief Act, H.R. 1155, introduced by Rep. Deborah Pryce (R-OH) and S. 557, introduced by Senator Susan Collins (R-ME), restores real remedies for discrimination cases. AFGE joins the civil rights community and the business community in support of the bills.