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SENATE GOVERNMENTAL AFFAIRS COMMITTEE

REGARDING
THE FEDERAL WORKFORCE: LEGISLATIVE PROPOSALS FOR CHANGE

ON
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Mr. Chairman and Members of the Committee: My name is Bobby L. Harnage, and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the roughly 600,000 federal employees throughout the government that our union represents, I thank you for the opportunity to testify on the draft proposals addressing various personnel issues.

In your invitation to testify you requested that I address five broad questions regarding the draft proposals. Before addressing your questions in detail, I want to commend the Chairman, as well as Senator Voinovich and Senator Thompson for removing several of the provisions of the Federal Human Capital Act of 2001 and the Managerial Flexibility Act which we found most objectionable. We were particularly concerned with numerous provisions of S. 1612 and are gratified to see that the draft proposal excludes such items as extending to the Office of Personnel Management the authority to make alternative personnel systems permanent without the approval of Congress, and shifting federal employees' earned retirement benefits from mandatory to discretionary accounts.

In addition, we were glad to see that the controversial idea of allowing executives of private firms to have temporary sojourns in federal agencies has been removed. We believe that such an exchange program raised grave conflict of interest and ethics questions, and would have done absolutely nothing positive for the government with regard to improving agencies' in-house staffing needs.

Instead, the program would have given contractors a tremendous opportunity to come in and evaluate their opportunities for future contracting, only worsening both the ethics crisis and the human capital crisis.

Finally, the draft proposals adopt the approach taken in Senator Voinovich's legislation with regard to the government-wide voluntary early retirement authority and voluntary separation incentive payments. While AFGE considers the buyout authority somewhat contradictory in the context of legislation that includes provisions designed to prolong the careers of highly experienced employees with phased "retreat into retirement," we were pleased to see that draft eschews the concept of a one-to-one ratio for buyouts and full time equivalent (FTE) eliminations. Tying buyouts to FTE elimination does a disservice to taxpayers since the implicit policy is a replacement of an apolitical, reliable, flexible, and cost-effective civil servant with contractors whose costs, loyalties, and willingness to perform are, in the best of circumstances, unknowns.

The questions Chairman Akaka has asked me with regard to the proposals indicate the Committee's clear understanding of the complexities involved in responding to the government's human capital crisis. You asked whether the draft proposals would help recruitment and retention of the workers agencies need to carry out their missions, and how S. 1612 and S. 1603 and the draft proposals contribute to improving management in government and the effect of better management on attrition. You asked how S. 1612, S.1603 and the draft proposals might contribute to the establishment of an employee friendly environment in federal agencies, making the government an attractive employer to both current and future federal employees.

In addition, you asked two extraordinarily important questions that are often excluded from the debate over how to address the "human capital" crisis. You asked how recruitment and retention "concerns" could be balanced with the Administration's privatization quotas, and how the gap between the compensation offered to private sector employees and that offered to federal employees can be addressed.

These latter questions hold the solution to the federal government's human capital crisis. The draft proposals offer little of substance that will affect the rank and file federal employees AFGE represents. If the privatization quotas are not repudiated and the Administration succeeds in handing over 425,000 federal jobs to the contractors, civil service reforms such as those in either the draft proposals or S. 1612 or S.1603 will become even more irrelevant. There will be no civil service, just a corps of political appointees and acquisition officers churning through the revolving door between contracting agency and contractor.

Likewise, the large and growing gaps between the pay and benefits provided to employees of large private sector firms and unionized state and local government employees on the one hand, and federal employees on the other, is not a mere detail. The federal government pays competitive salaries and provides comprehensive health insurance benefits – to some of its contractor employees. But the government's in-house workforce gets the shaft. A decade after a bipartisan federal pay law was signed by the elder President Bush, federal salaries still lag the private sector by 22%. Thirteen years after the Congressional Research Service wrote the definitive report showing the Federal Employees Health Benefits Program was inferior to that offered by our nation's most successful private firms and its largest states by substantial margins, the benefits gap has also worsened. There is no excuse – no fiscal excuse, no excuse that data describing the dimensions of the gaps were not available, no excuse that unions were intransigent and unwilling to negotiate even partial solutions. We have pleaded with every Congress and two Administrations to address the compensation gaps. And we hear a deafening silence.

Question #1: How would the draft proposal help recruit and retain the people agencies need to carry out their missions?

Despite the best intentions of the authors, unfortunately I do not believe that the provisions of the draft proposals would produce a noticeable improvement in the government's ability to recruit and retain the next generation of government workers. Absent a lifting of the Administration's privatization quotas, agencies will pretend to "carry out their missions" using contractors, but they will not succeed. By that I mean that they will not succeed in carrying out their missions, if

"mission" is taken to mean providing to the American taxpayer a high-quality public service at the lowest cost, free from political corruption.

AFGE views the human capital crisis a result of three specific policies: The downsizing of the Clinton era, the privatization-at-any-cost frenzy of both the Clinton and Bush Administrations, and the refusal to adhere to the Federal Employees Pay Comparability Act (FEPCA) first by the Clinton Administration and now by the Bush Administration. Taken together, these three policies have left agencies without adequate staff, without direct control over far too many of their core functions, and without the ability to pay the existing or prospective federal workforce adequate salaries.

Section 207 of the draft proposals would increase the size of the recruitment, retention, and relocation bonuses agencies would be authorized to pay. This proposal dates from the 1990's when employers exploited the hype surrounding dot-coms to declare that employees – professionals in particular – were no longer looking for career employment, no longer valued or desired a stable and secure job that they could hope to hold over the course of an entire career. This mythical professional preferred to hop around from job to job, from company to company, from sector to sector, unconcerned about health insurance, a traditional pension, Social Security, or the long-term goals of an organization.

Real federal employees never resembled these mythical creatures. Real federal employees have real families, real mortgages, real concerns about the affordability of health care, and real reliance on Social Security and the federal retirement systems. They have real dedication to public service, to our nation's defense, to the safety of our food supply, workplaces, air, water, and highways. They have real devotion and experience in operating federal corrections institutions, in housing the homeless, in making sure veterans receive the health care and other benefits to which they are entitled, in getting Social Security checks out every month. These are not duties taken lightly, and they are not concerns that are assuaged with one-time payment of bonuses.

The idea of authorizing bonuses of up to 100% of salary over four years may help recruit an information technology specialist to spend four years in a federal agency, but it will not solve the problem of building in-house federal agency IT infrastructure, institutional knowledge, and dedication to the public interest. Federal agencies need to recruit the next generation of career civil servants, and they need to retain those who might impart to this next generation the institutional knowledge they have accumulated. Bonus payments cannot achieve such a task.

Bonuses of any size are not a replacement for competitive salaries and benefits. Federal salaries remain 22% behind private sector salaries despite the fact that under FEPCA federal salaries were supposed to have achieved comparability this year. Health insurance under the Federal Employees Health Benefits Program (FEHBP) is subsidized at an average of between 70% and 72%, while large private employers and state governments pay anywhere from 80% to 100% for their employees. Recruitment and retention bonuses cannot make up for these facts.

Beyond the fact that AFGE does not consider this expanded bonus-payment authority a promising component of the answer to the human capital crisis, there are further problems with the proposal that must be addressed. Although the draft proposal is not altogether clear, it appears that the bonuses would be used only for "difficult to fill" positions. In S. 1612, OPM would be given authority to supercede the 100% -of-salary-over-four-years limit, both in terms of deciding eligibility and altering the service requirements.

So-called "retention" bonuses could be paid to employees considering leaving federal employment or leaving one federal job for another. Only white collar federal employees paid under the General Schedule (GS) would be eligible for the bonuses, even though the human capital crisis is equally acute for those in the skilled trades who are paid under the Federal Wage System (FWS).

AFGE has no opposition to the uses of bonuses and other financial incentives to reward federal employees, but they should never be viewed or used as a substitute for a fully-funded and fully-implemented pay comparability plan. It is clear that the Administration considers this expanded authority to pay large recruitment, retention, and relocation bonuses as a way to mitigate the effects of a continued refusal to abide by FEPCA.

Indeed, FEPCA already includes broad authority for the payment of recruitment and retention bonuses, and the use of this

authority by agencies is not at all contingent on implementation of FEPCA's other provisions. According to a comprehensive study published by OPM in 1999, less than 1% of eligible federal employees had ever received bonuses under FEPCA's authority. The main reason for the failure to use existing authority, as reported by agency mangers, was lack of funding.

The expanded authority for the payment of recruitment and retention bonuses in the Administration's Flexibility Initiative likewise fails to provide any funding for the bonuses. The draft proposal does not indicate that separate, dedicated funding for the bonuses is a part of the plan. Implicitly, the assumption appears to be that bonus payments to select individuals would be paid from existing salary accounts. That is, agencies would only be able to use the broadened authority in the draft proposal to provide bonuses if they paid for them through the elimination of jobs or the denial of other salary adjustments for those not selected for a bonus.

We cannot pretend that bonuses, especially bonuses that come at the expense of adequate staffing or adequate salaries and salary adjustments, will improve the government's ability to recruit and/or retain federal employees. Bonus payments do not count as basic pay for purposes of retirement or annual salary adjustments. If in fact they are designed to recruit for temporary positions or to recruit those with an intention to remain only a short time with an agency, it must also be said that they are not a solution to the "human capital crisis", as we understand it. The government's crisis is that it is on the verge of losing its workforce to retirement, privatization, and more lucrative offers in state and local government and the private sector. When the workforce leaves, it takes with it institutional knowledge, skill, experience, and the public sector ethos of devotion to the common good. Bonuses will not solve such a problem.

Question #2: How do these bills contribute to better management in government and its effect on attrition?

There are numerous provisions in the draft proposal that appear to be aimed at some improvement in agency management. Section 202 addresses the notorious delays in hiring decisions in the government that many point to as a serious problem in efforts to respond to the human capital crisis.

Although there are scandalous delays in filling vacancies throughout the government, it is our experience that the major problems occur at the workplace and the local personnel office levels. The supervisor takes too much time to even ask that the vacancy be filled; unnecessary time is taken to determine what changes, if any, will be made in the duties of the vacated position; the supervisor is too busy to quickly interview the most attractive applicants; and approval to fill vacancies is often delayed because of personnel ceilings and funding shortfalls.

One provision of Section 202 of the draft proposal, as described, would tinker with parts of the process, which do not contribute heavily to the delays in filling vacancies. Instead of applicants being given numerical ratings and ranked accordingly, they would be placed in various groups and within each group people with veterans' preference would be placed above other applicants. It is doubtful that this new system would save a single day in the overall hiring process.

A different provision of Section 202 apparently would allow agencies to examine, rate, and rank candidates themselves (in contrast to obtaining certificates of rated candidates from OPM) where there is a need for expedited hiring or certain other conditions obtain. This is a tacit admission that the other proposed provision of Section 202 will not noticeably expedite hiring in general. In addition, there is no reason to believe that turning over the examining and rating responsibility to an agency would itself save any time. To a supervisor in the field, getting a list of candidates from agency headquarters is no faster than getting a list of candidates from OPM. In most cases, it will be slower, because OPM will already have a large number of applicants who have been examined and rated, while the agency may not even begin soliciting applications until the position has become vacant.

The draft proposal also retained a troubling proposal that was part of S.1603 regarding the number of days a federal employee would have after a notice of termination. The proposed reduction from a 30-day notice period to a 15-day notice period is not a management improvement. It does not make managers more accountable for the responsibility of removing poor performers, but it does impose a hardship on employees who may have been unfairly terminated.

From the perspective of the employee who has received the termination notice, however, the reduction in the notice period

is quite significant. In cases where the termination will be challenged, and in fact is unjustified, the proposed reduction to 15 days would pose a serious hardship. A wrongly terminated employee needs adequate time to collect information and documentation to protest the termination, and that is virtually impossible to do once he or she has been barred from the workplace. Having up to 30 days is also necessary to allow the worker the opportunity to plan for impending unemployment and the hardships that will impose upon him or herself and his or her family.

The proposed reduction thus has no management-improvement justification. It provides no more incentive than currently exists for managers to meet their responsibilities to address poor performance. Further, it deprives employees of a reasonable period of time to respond to possible unjustified management actions and to plan for a period of unemployment. AFGE urges the deletion of Section 211 from the draft proposal.

Question #3: How do these bills contribute to an employee friendly environment? How do the proposals make the federal government more attractive to current and future government employees?

We are concerned that the draft proposals, depending on how they are implemented, may not offer any improvement in the "friendliness" or "attractiveness" of the federal work environment for the vast majority of current or future federal employees. The proposals regarding buyouts, critical pay authority, bonuses, termination notices, enhanced leave accrual, and raising SES pay caps and repealing SES recertification requirements appear to offer far more to upper management, than to rank and file federal workers. Although AFGE recognizes the legitimacy of many of these provisions, particularly with regard to critical pay authority (if fully-funded), and raising SES pay caps (if fully-funded), we are doubtful that they would have any significant positive impact on the federal employees we represent.

Section 402 would allow the head of an agency to extend to some new federal employees enhanced leave accrual. AFGE supports the concept of allowing newly hired federal employees with considerable non-federal work experience to accrue leave at eight hours per biweekly pay period, but we are concerned about the discretion given to management to decide what type of non-federal service will qualify for this benefit. We believe that this benefit should be extended to federal workers in both the white collar and blue collar workforces, and not be reserved for managers or occupations deemed "hard to fill."

Question #4: How can recruitment and retention concerns be balanced with the Administration's goals for competitive sourcing?

The short answer to this question is that unless the Administration rescinds its privatization quotas, the government's recruitment and retention problems will only worsen. The Department of Defense has recently acknowledged that its plan is to automatically replace retiring federal employees with contractor employees. As agencies are forced to privatize half of the so-called "commercial" jobs on their FAIR Act lists, they will increasingly follow DoD's example.

The Administration's privatization quotas should not be referred to as a *competitive* sourcing initiative. The Office of Management and Budget (OMB) has directed all Executive Branch agencies to "compete or convert" 15% of jobs on the FAIR Act lists by the end of 2002, and a total of 50% by the end of FY 2004. Agencies must submit their plans to carry out these quotas to OMB for approval. Thus far, while OMB continues its public insistence that the quotas are about competition and not about privatization, plans are being approved that meet the targets with direct conversion, i.e. contracting out without competition, of up to half of the quotas. Thus the Administration's quota policy may mean that up to 212,500 of the 425,000 jobs on the FAIR Act quota/hit list will be contracted out without competition.

AFGE does not oppose competitive sourcing. In fact, our position is that federal agencies should be permitted to contract out commercial work, but only if it can be shown through public-private competition to be less costly to taxpayers than continued in house performance. Only through public-private competitions can taxpayers learn whether it is in their interests to have the government's work that is commercial in nature performed in house by federal employees, or contracted out to the private sector.

The so-called competitive sourcing initiative and the human capital crisis are two sides of the same coin. The federal government's human capital crisis has been almost entirely self-inflicted. The acceleration in contracting out without

public private competition sends an unmistakable message to current and prospective federal employees: *The government does not want you, it does not think it should employ you, it is trying to find a contractor to take you off its employment rolls. The government does not care if you are more efficient, effective, and dedicated than any contractor would or could be, it does not care if you are less costly, if you have no conflicts of interest – it just wants to give your job to a contractor regardless of cost, regardless of conflicts of interest. The job is going out the door without giving you even the opportunity to compete.*

Question #5: How can the issue of compensation gaps between the public and private sector be addressed?

As I have mentioned above, there is no way to avoid the fact that federal salaries are inadequate and that the FEHBP is inferior. Solving the human capital crisis requires paying higher federal salaries and improving both the affordability and quality of FEHBP plans. If FEPCA had been fully implemented over the last decade, federal salaries would be, on average, 10% to 15% higher than they are today. Congress and the Administration must make a monetary commitment to improving compensation for all federal employees.

Conclusion

AFGE has its own recommendations for civil service reform that we believe are necessary for a true and lasting solution to the human capital crisis. The components of this “package” are S.1152, the Truthfulness, Responsibility, Accountability in Contracting Act, to make sure that contracting out only occurs when public-private competitions show that it is in the public interest; S.1982, Senator Barbara Mikulski’s bill to improve the funding formula for the FEHBP to 80% paid by the employer and 20% by the enrollee, to more closely resemble the financing provided by large private and public employers, full implementation of FEPCA so that the federal workforce receives pay comparability and economic stability, and finally, a restoration of the partnership so that labor and management can work together cooperatively in federal agencies to make federal agencies even more efficient, effective, and reliable.

We commend the Committee for taking the issue of the human capital crisis so seriously, and we look forward to continuing to work with you to fashion solutions to the government’s growing problems with recruitment and retention. I would be happy to answer any questions you may have.