



CONGRESSIONAL TESTIMONY

STATEMENT BY

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**BEFORE THE
SUBCOMMITTEE ON GOVERNMENT OPERATIONS OF THE UNITED
STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND REFORM**

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Chairman Connolly, Ranking Member Hice and Members of the Subcommittee:

My name is Jacqueline Simon, and I am the Policy Director of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the 700,000 federal and District of Columbia employees represented by our union, I thank you for the opportunity to testify today on the subject of what's needed as the government moves to phased reopening.

I want to emphasize that government agencies have been open and have remained open throughout the COVID-19 pandemic. For example, at the Department of Homeland Security, the Bureau of Prisons, the Department of Veterans Affairs, and various other departments, agencies and components our members have worked bravely and courageously throughout the pandemic, most on the front lines at their regular duty stations, with many others working remotely to carry out the missions of their agencies.

We estimate that just 20 percent of the employees we represent at the Department of Homeland Security have been working remotely or have been on some kind of leave during this pandemic. At the Bureau of Prisons, corrections officers continue to work their regular tours of duty under difficult and even dangerous circumstances, made more so by the presence of the COVID virus in extremely confined spaces. At the Department of Veterans Affairs, the clinicians we represent have continued to provide hands-on patient care to our nation's veterans as have the support staff that keeps the hospitals clean, patients fed, and buildings and equipment maintained. They have done so despite a lack of adequate personal protective equipment (PPE), and the need to serve an often elderly and vulnerable population. I tell you these stories because despite improvements in information technology and telework capabilities throughout government, AFGE represents many federal employees for whom such capabilities are not a substitute for their physical presence at the worksite and their day-to-day duties and responsibilities.

Three months of data have produced a good amount of knowledge regarding what it takes to beat the pandemic and provide protection until there is either an effective vaccine or an effective treatment. First, there must be consistent and strict facilitation and enforcement of social distancing to the extent practicable, and that social distancing be in place for a period of sufficient length so that the number of infected people is reduced to a small fraction of the population. In addition to social distancing, we need testing, tracing and the ability to isolate so new outbreaks can be identified and everyone who has been exposed can be quarantined. A premature end of mandatory face coverings, social distancing, a failure to follow through with testing, contact tracing, and isolation is a guarantee of resurgence and a guarantee that thousands more will suffer and die. Every effort should be made to avoid this outcome, not only for federal employees but throughout the United States and the world.

We do not have firm data on the number of federal employees who have contracted the virus and we do not know how many employees have died from COVID-19. However, the latest data we do have, which at this point is about a month old, indicates that at least thirty

Department of Veterans Affairs employees have died from COVID. At the Department of Defense, the number is at least five civilian workers. The Transportation Security Administration has reported six deaths, and the Food Safety and Inspection Service, where inspectors work in a some very “hot spots” has reported four deaths and over 200 infections.

Obviously, we do not have adequate data on federal employee infections or deaths from COVID-19, but it is reasonable to believe that there are large numbers of infections, and more deaths will be reported. And of course, one infected individual is likely to have transmitted the virus to others so the number of actual infections will be larger than the number reported by agencies.

As such, “Resuming Operations Safely” as the Office of Management and Budget calls it, must be considered broadly, both in terms of what is safe for the public we serve and what is safe for the federal workforce. In each case, it would be wrong to rush into reopening closed offices because no matter how scrupulously safety protocols might be followed, if agencies and their components resume operations that have been closed in order to mitigate the spread of COVID-19 when the virus is still spreading, when new cases and death rates are still increasing, it will have been too soon.

OMB Guidance and AFGE Response

On April 20, the Office of Management and Budget (OMB) released the only governmentwide guidance to date on reopening. Importantly, even OMB said that its phased reopening guidance should not proceed until three important criteria were met: 14 days of declining numbers of reports of flu and COVID-19 symptoms, 14 days of declining confirmed cases of COVID-19 or 14 days of a declining percentage of positive tests, assuming a steady or rising number of tests; and third, the existence of adequate capacity at local hospitals to treat all cases of COVID-19 without having to resort to crisis triage and the availability of robust testing of healthcare workers.

In addition to these criteria for entering the first phase of reopening, OMB emphasized that federal agencies would have broad discretion to reopen on their own terms, and that reopening should occur on a local and regional basis.

No reopening was to occur until the OMB criteria had been met, and reopening was to occur when the criteria had been met on a regional basis.

There were to be three phases of reopening. During the first phase, maximum telework would continue, return to worksites would be staggered by hours and/or by days, managers were “encouraged” to continue to approve weather and safety leave for those are not telework eligible or are in Centers for Disease Control and Prevention (CDC) identified categories of “most vulnerable.” This last includes people over the age 65 and “people of all ages with underlying medical conditions, particularly if not well controlled, including:

- People with chronic lung disease or moderate to severe asthma
- People who have serious heart conditions
- People who are immunocompromised
- Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications
- People with severe obesity (body mass index [BMI] of 40 or higher)
- People with diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease”

During phase one, employees “may” wear face coverings at work; they are not required, and they would not be supplied by the employer. “Customer facing” operations are to put in place entry protocols like visual and temperature checks, and agencies are supposed to have adequate supplies of disinfectant, hand sanitizer, paper towels, soap and hot water. Buildings are supposed to be cleaned more frequently than usual and efforts are to be made to facilitate social distancing at work. Case-by-case accommodations for employees are supposed to be made.

The second phase would be entered when all the criteria for entry into phase one continue to be met, but agencies are supposed to take steps to alter office and worksites to prevent the spread of the virus such as building higher walls on cubicles and changing the configuration of “public use” areas of worksites such as locations where copiers and supplies are stored and utilized. Maximum telework should be continued. Again, accommodations for particular employees are supposed to be made on a case-by-case basis

Phase three as discussed in the OMB memorandum is supposed to be entered when all the phase one criteria continue to be met. Phase three includes a return to pre-pandemic rules for telework, with face coverings and social distancing optional. Accommodations for individuals would be permitted, again on a case-by-case basis.

AFGE responded to the OMB guidance with a letter to Acting Director Vought on April 22. I have received no response to this letter. Our response set forth six preconditions for reopening that AFGE members believe should be met prior to reopening. We emphasized the view that the administration’s efforts to promote reopening were premature and imprudent. It is now almost nine weeks later and in states that reopened too early such as Texas and Florida, the data are showing a resurgence of the pandemic. We are not seeing, however, a reversion to “stay at home” directives that are supposed to precede any reopening; indeed last week Governor DeSantis of Florida announced that in spite of data showing the highest ever number of positive cases in the state, there would be no reversion to stay-at-home orders.

In our letter on behalf of AFGE members, we called for the following:

1. *Universal testing for COVID-19* because we cannot assess correctly the risk of transmission until we know the extent of infection. We argued that only with universal testing will it be possible to implement prudent policies for the use of public transportation, for social distancing inside federal offices and other worksites, and other appropriate precautions, especially those that involve direct interaction with the general public.
2. *Science-based standards for the safe return to work* because the administration has politicized its response to the pandemic from the earliest days, at first denying its existence, later minimizing its severity, and then rushing to reopen even while cases are increasing, when effective treatment does not exist, and a vaccine is still months or even more than a year away. Based on our own research, we follow the recommendations of epidemiologists and other public health experts who cite 14 days of exponential decline in new cases within a region before easing quarantine and shelter-at-home restrictions. With regard to the definition of a local area, we urged federal employers to use the areas defined in the General Schedule locality pay system. For areas within the “Rest of US” locality, regions should be defined by Census data on commuting used to describe Combined Statistical Areas or Metropolitan Statistical Areas.
3. *Treat all workers equally*, because no one is low-risk, tens of thousands have died who were young and healthy before contracting the virus. We also urged full accommodation be provided to anyone who needs measures to ensure that individual’s safety and health.
4. *Federal workplaces must be safe workplaces*, because we want to be certain not only that no one contracts the virus at work; we want federal employees to know that they will not be bringing the virus home with them after work. We asked that all federal worksites be supplied with items that help minimize the spread of infection such as employer-supplied FDA-approved masks and other PPE, hand sanitizer, facilities for hand washing including soap and hot water, tissues, interior infrastructure that meets safety and health standards to allow proper distancing, dividers, regular disinfecting of workspaces, and areas for isolation, and filtering systems for air circulation. We asked that federal worksites be fully OSHA-compliant and operated within CDC guidelines, even as OSHA has failed to issue any emergency standards to protect workers from COVID-19.
5. *Symptomatic employees be sent home on leave* because in order to protect workers at the worksite, employees or on-site contractors who develop a COVID-19 infection, or who display any symptom known to be related to COVID-19 must be removed from the workplace immediately and all remaining employees must be notified immediately. We further urged that contact tracing be employed and all those who

report contact with the symptomatic employee must be removed from the workplace as well and permitted either to work remotely or receive weather and safety leave for a minimum of 14 days.

6. Last but certainly not least, we reminded Mr. Vought that all agencies must comply with their obligations with their union. There has been much variation among agencies regarding their willingness to engage with front line employees in order to gain their views, hear their concerns, or entertain their suggestions for how best to proceed in the context of the risks created by the pandemic.

Legislative Measures to Protect the Federal Workforce from the Impact of COVID-19

AFGE supports provisions included in the “Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act” to address certain essential worker issues. These provisions include premium pay, an automatic presumption of workplace illness for purposes of workers’ compensation, adequate PPE, telework, an Occupational Safety and Health Administration (OSHA) emergency temporary standard, and emergency paid sick leave. These measures have passed the House and await Senate action. They provide some important health and worker safety provisions that will ensure federal employees have the protections and resources needed during this public health emergency, as well as the ability to successfully carry out their duties and serve the American public.

Premium Pay

AFGE supports providing premium pay for employees whose duties, work setting and interaction with the public place them in danger of contracting COVID-19. We support the provision making that pay retroactive to January 27, 2020 when the national emergency went into effect.

Presumption of Workplace Illness

AFGE is supportive of an automatic presumption of workplace illness for federal employees who are required to report for duty and interact with the public, individuals who are quarantined, or who have been diagnosed with COVID-19 during the performance of their duties and contract the virus. This automatic presumption of workplace illness allows these federal employees to make a Federal Employees’ Compensation Act (FECA) claim without facing a potentially lengthy denial and appeals process and helps these workers receive much needed benefits and health care services.

Adequate Personal Protective Equipment (PPE)

AFGE supports a comprehensive strategy for ensuring adequate PPE, testing and other medical resources necessary to fight COVID-19 are available to all workers who need them. The “HEROES Act” addresses a broad range of medical needs, including many forms of PPE, testing, pharmaceuticals, vaccines, and other equipment and supplies that the Department of Health and Human Services (HHS) and the Department of Homeland Security (DHS) determine

to be scarce and critical. The “HEROES Act” enhances the authority of the Defense Production Act (DPA) to hold agencies accountable, through strong reporting requirements, oversight, transparency, and stakeholder engagement. To do so, the “HEROES Act” establishes thorough and regular reporting requirements that ensure that Congress and the public remain fully informed about medical resource needs. The “HEROES Act” also establishes a strong role for Comptroller General evaluation of executive branch activities under the DPA, including stakeholder engagement, and specifically recognizes the role of labor representatives of public sector workers, health care workers, service sector workers and manufacturers.

Telework

AFGE is supportive of provisions in the “HEROES Act” that require federal agency leaders to allow telework for all eligible federal employees during the coronavirus pandemic. Federal employees have successfully engaged in telework for many years and have demonstrated they are able to be effective and productive working remotely during the pandemic. AFGE urges the Committee’s oversight of agencies’ use of telework and continued telework capabilities during the course of the COVID-19 pandemic.

Occupational Safety and Health Administration (OSHA) Emergency Temporary Standard

AFGE was extremely disappointed by the recent U.S. Court of Appeals for the D.C. Circuit’s dismissal of the AFL-CIO petition for issuance of an emergency temporary Occupational Safety and Health Administration (OSHA) standard to deal with COVID-19. AFGE supports the creation of an emergency temporary standard. In light of the Court’s dismissal of the petition, we urge the Committee to use its offices to support H.R. 6559, the “COVID-19 Every Worker Protection Act of 2020” introduced by Chairman Scott of the Education and Labor Committee.

Emergency Paid Sick Leave

Emergency paid sick leave should be provided to every federal employee who is not able to report to work due to a COVID-19 related illness or caring for a family member with a COVID-19 related illness. It is extremely important that employees who are reporting for duty have access to leave should they become ill or need to be medically quarantined. It is for these reasons that AFGE supports language in the “HEROES Act” that strikes the provision in the “Coronavirus Aid, Relief and Economic Security Act,” giving the Director of the Office of Management and Budget the authority to revoke the Emergency Paid Sick Leave benefit for certain federal employees.

Additionally, it is equally important that federal employees have access to testing if they are exposed to the virus or become symptomatic. To prevent the spread of the virus in the workplace employees must have access to adequate PPE, emergency paid sick leave, and testing.

Further essential worker priorities not included in “HEROES Act”

AFGE urges the Committee to take the next step to enact provisions that were not included in the “HEROES Act.” Specifically, we urge the Committee and the Congress to work to mandate federal agencies to provide universal testing and contact tracing for COVID-19, Federal Employee Health Benefits Program enrollment opportunities, protections for USDA food safety and inspection service (FSIS) workers, and restoration of labor management relations and collaboration with workers as agencies begin the reopening process.

Universal Testing and Contact Tracing for COVID-19

Our nation will not be able to assess the risk of transmission until we know the extent of infection. Epidemiologists are unanimous that nationwide universal testing is the best way to identify risk factors and take action to isolate those who have been in contact with infected individuals. Only with universal testing will it be possible to implement prudent policies for the reopening of federal offices and other worksites. We ask that the Committee in its oversight capacity ensure that ongoing testing is widely available at no cost to federal employees who are deemed essential and to those who are teleworking before and after they return to their duty station.

Equal Rights for the Federal Workforce

In March 2020, the House passed H.R. 1140, the “Rights for Transportation Security Officers Act,” with a strong bipartisan vote, and we urge the Committee to include this critical bill in future legislation. As the Committee works to equip the federal workforce and keep employees healthy to fight COVID-19, federal employees who do not fall under Title 5 of the U.S. Code have been inadvertently overlooked and as frontline workers, they have few rights at work. We must ensure parity for all federal employees instead of continuing separate and unequal personnel management systems. Further, the more than 650 TSOs confirmed to have contracted COVID-19, and six deaths among TSA screening staff, raises concerns about the efficacy of this dual management system. We urge the Committee to include H.R. 1140, the “Rights for Transportation Security Officers Act,” in the next COVID-19 legislative package.

Federal Employees Health Benefits Program (FEHBP) Enrollment Opportunity

AFGE urges the Committee to amend current law to allow federal employees who are not currently enrolled in a FEHBP health plan the opportunity to purchase health care coverage during this public health emergency. Many career part-time federal employees are not enrolled in FEHBP. The employee share of FEHBP premiums for career part-time federal employees is much higher than the premium share for full-time federal employees. Agencies such as TSA, DOD, and FEMA utilize their flexibilities to keep a large segment of their workforces on part-time schedules. Prior to COVID-19, many part-time employees opted out of FEHBP because they could not afford their share of premiums. Providing employees who do not have health care coverage the opportunity to enroll in FEHBP will eliminate barriers to medical treatment for federal employees.

Stop Transfer of Federal Prisoners During the Pandemic

We urge the Committee to work to prohibit the transfer of federal inmates into and within the BOP system during the COVID-19 pandemic. The BOP continues these transfers unabated. Most notably, they are moving inmates from facilities that have had outbreaks of COVID-19 to ones that have not had any confirmed cases, risking the health of correctional employees, inmates, their families, their communities and the federal prison population. We urge the Committee to include H.R. 6427, the “PANDEMIC Act of 2020” introduced by Representative Fred Keller (R-PA) in the next COVID-19 legislative package.

Protect USDA Food Safety and Inspection Service (FSIS) Workers

Meatpacking plants have become hotbeds for COVID-19 outbreaks, forcing the closure of numerous plants. FSIS inspectors lack adequate PPE and social distancing protocols. AFGE urges Congress to include language in the next COVID-19 legislative package mandating that meatpacking plants slow down their line-speeds to allow workers and inspectors to spread out and follow CDC guidelines.

Restoration of Labor-Management Relations

Every day, essential workers across the federal government feel the harsh effects of the Administration’s insistence on silencing the voices of the federal workforce and their labor representatives. From the outset of this pandemic, AFGE has been shut out of agency response teams at both the national and local level. The federal government’s unwillingness to listen to the frontline employees who deliver care and serve the American public is a stark departure from the labor-management partnerships that allowed federal government agencies to fulfill their missions during hurricanes, epidemics, and other past national crises. Sadly, rather than take the simple, cost-saving and productive step of increasing dialogue, federal agencies are undermining collective bargaining agreements that enhance workplace safety, staffing levels and recruitment and retention. To address the health and safety of federal workers, there must be a clear government-wide directive for agencies to consult and collaborate with employees and their unions to develop and implement policies to address the issues outlined in this statement. Federal employees will bear the consequences of policies being imposed without their valuable input, even when decisions threaten their lives. Workers will continue to be the ones most affected by the decisions that are made going forward.

AFGE urges the Committee to include language to restore labor-management relations and communication as agencies work to quickly implement new policies and workplace procedures during this health care crisis. The administration’s federal workforce personnel Executive Orders issued in May 2018 continue to serve as barriers to labor-management collaboration. Union representatives should have the opportunity to communicate regularly to discuss the needs and concerns of employees as they respond to the COVID-19 crisis. Union representatives provide important ideas and feedback as agencies work to adapt to this new environment and respond to the needs of the public.

Collective Bargaining and COVID-19

The eventual return to work for federal employees, regardless of which component of the agency they work for and regardless of the standards by which component management makes its decisions, will require collective bargaining with the affected employees. Notice to employees of impending changes in practices and procedures regarding numerous issues ranging from workplace health and safety to PPE to issues surrounding transportation to and from work, telework, scheduling of work, accommodations of pre-existing health conditions or new risks arising from COVID-19, issues arising out of work-related travel, performance, training, leave, and privacy concerns with regard to contact tracing are but a few of the issues that agencies will be asked to bargain over with AFGE.

Throughout the pandemic, at agencies throughout the government, AFGE has asked management to restore labor-management committees so that frontline workers can be made aware of new information affecting their work and their agency's operations, and management can benefit from the insight and experiences of those carrying out the agency's mission. In most if not all cases, the administration's formal hostility to recognizing the value of cooperative labor-management relations has won out over the commonsense notion of working together to promote the best interests of the agency and its workforce. We ask the Committee to use its authority to try to persuade the agencies to set aside the anti-union, anti-collective bargaining stance that the administration has advocated in order to make the return to normal operations, when it occurs, as safe as possible for both the federal workforce and the American public we serve.

Conclusion

One of the worst tragedies associated with this pandemic is that now that we have sufficient knowledge of what is necessary to stop the spread of the disease, it is likely that the federal government will move forward with reopening too soon. As a consequence, instead of stopping the spread of COVID-19, the government itself will contribute to the continuation and possible worsening of the pandemic. A large number of federal employees are frontline personnel who have been at their regular duty stations throughout the pandemic. Taking the necessary steps to protect them and employees return to their regular duty stations – universal testing, strict social distancing, provision of adequate PPE -- might at one point have been impossible due to insufficient supplies. But today there is no excuse.

There should be no re-opening unless and until it is genuinely safe to return. There should be no re-opening unless and until federal agencies have the full capacity to test, protect, trace, and inform their workforces, and unless and until genuine, objective data on the status of the pandemic shows it has subsided.

Inevitably, federal employees who have been teleworking successfully throughout the pandemic and are now being required to return to their regular duty stations ask, "why the rush?" It is clear that in many locations, the rush to return is motivated by political considerations, not

the health and safety of the workforce or the community. Politics should not be a factor in any agency's return to normal operations; only objective measures of safety should be considered.

Thank you for your consideration, and I will be happy to answer any questions that members of the subcommittee may have.