

**STATEMENT FOR THE RECORD**  
**SUBMITTED BY THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**  
**HOUSE COMMITTEE ON VETERANS' AFFAIRS**  
**SUBCOMMITTEES ON HEALTH AND ECONOMIC OPPORTUNITY**  
**WITH RESPECT TO**  
**DRAFT LEGISLATION TO IMPROVE HIRING AND RETENTION OF PHYSICIANS AND OTHER EMPLOYEES**  
**MARCH 16, 2016**

**Overview:** AFGE strongly objects to Section 6 of this draft bill. It would destroy the critical market pay process established through strong bipartisan support twelve years ago when Congress enacted P.L. 108-445 to ensure that VA provider pay would be competitive with other health care systems. More specifically, this bill would devastate the Department's ability to recruit and retain physicians and dentists through:

- Elimination of the requirement that the Secretary consult two pay surveys;
- Elimination of the requirement that the Secretary consider the recommendations of a panel of peers; and,
- Return of all market pay determinations to full Secretary discretion.

The VA desperately needs *stronger* market pay requirements, not a market pay process completely subject to Secretary discretion. Currently, the VA is losing large numbers of physicians and dentists because of broken pay policies, including: managers who pay new hires \$20,000 or more than incumbents; managers who make pay promises to new hires that they break once the provider is on board; management's refusal to convene market pay panels every two years; and improper pay panel composition.

This provision would vastly increase the use of arbitrary pay policies against front-line providers in order to further management cronyism, discrimination against older physicians and other targeted groups and retaliation against vocal providers. The mean-spirited and arbitrary nature of this provision makes even less sense given that it appears to eliminate an important right for one group of providers while giving that identical right to VA directors!

**Analysis of other sections:**

Section 2(a): This subsection would expand eligibility for medical center director (MC) and Veterans Integrated Service Networks (VISN) director appointments to all qualified medical professionals. AFGE supports.

Section 2(b):

- This subsection would extend part of the existing market pay process to MC and VISN directors. AFGE supports consideration of recruitment and retention needs for setting market pay for these positions and the requirement to adjust pay every two years. However, AFGE strongly

recommends greater transparency in all market pay-setting processes (directors, and management and non-management physicians and dentists). More specifically, all employees and their representatives should have the same rights to request copies of survey data as was afforded to registered nurses by Section 601(j) of the Caregiver Act.

- Similarly, all employees whose market pay is set by pay panels (which does not apply to directors under this bill) should have the right to request information about the composition of their panels.
- Frequency of market pay adjustments: Noncompliance with the current requirement to make market pay adjustments at least every two years is rampant. Directors are far more likely to get timely adjustments under this bill than front-line healthcare providers. Therefore, AFGE strongly urges the Committee to ensure that managers be held accountable for delays in convening market pay panels and implementing pay adjustments through performance measures and new requirements to report market pay adjustments to Congress. In addition, physicians and dentists deserve equal bargaining rights so they can challenge unfair and illegal pay practices. Therefore, AFGE urges the Committee to approve H.R. 2193, introduced by Representative Mark Takano (D-CA). H.R. 2193 is a valuable recruitment and retention bill because it also equalizes rights to bargain over indirect patient care matters such as scheduling and assignments.
- Pay decreases: This provision would deny directors all rights to appeal pay decreases. AFGE strongly opposes this provision. Such broad Secretary discretion will encourage abuse of discretion by officials seeking to harass, discriminate and conduct de facto terminations. Under current law, management and non-management physicians and dentists are protected to some extent against arbitrary market pay decreases as long as they stay in the same position. However, as already noted, non-management physicians and dentists have very little actual ability to challenge unfair and illegal pay actions because of unequal bargaining rights.

Section 3: This provision would provide flexible work schedules for most “pure Title 38” personnel. AFGE supports this provision. AFGE again urges passage of H.R. 2193 to ensure that every VA employee has an equal right to challenge unfair management practices related to schedules, assignment and other routine workplace matters.

Section 4: No comment.

Section 5: This provision would expand the annual staffing shortage determinations to include nonclinical occupations. AFGE supports.

Section 7: This provision would place Veterans Health Administration (VHA) and Veterans Benefits Administration (VBA) employees in private-sector executive management fellow programs. AFGE strongly opposes this provision. This is likely to be a costly program of little value. The skills required to be effective in the VBA and VHA workplace must be learned in-house using strong in-house mentors with sufficient time and skills, not private sector managers who have no experience with the VA’s unique population, or its unique health care system and benefits programs.

Section 8: This provision would establish an annual performance plan for political appointees. AFGE supports.

Section 9: This provision makes it easier for reservists to earn veterans’ preference by counting *cumulative* service. AFGE supports.

Section 10: This provision allows for noncompetitive appointments with significant pay increases for returning employees, subject to full Secretary discretion. AFGE strongly opposes this provision. Upper management is very likely to abuse this hiring authority to hire their own friends and pass over other qualified applicants using the competitive process. In addition, it will be very easy for managers and employees they favor to game the system by leaving the VA in order to return at a higher grade. VA managers already engage in far too much cronyism in both the hiring and pay processes.

Section 11: This provision would establish a single database of vacant positions. AFGE generally supports this concept but is concerned that veterans working in VHA will be harmed by any increase in Secretary hiring discretion. More specifically, Congress should more closely monitor the VA hiring process to ensure that all applicants have a fair chance to be considered under this single database. Congress should also enact legislation to close the harmful loophole in the Veterans Employment Opportunities Act that deprives Title 38 appointees of equal veterans' preference rights, allowing managers to pass them over for non-veterans in the hiring process. (Language to close this loophole was included in H.R. 2275 in the 113<sup>th</sup> Congress).

Section 12: This provision would establish a VHA training academy to improve human resources (HR) training. AFGE supports improved training for HR personnel who appear to lack critical skills in areas such as coding personnel actions, applying shift differential pay rules and determining the cope of Title 38 bargaining rights. However, as we have seen from the VBA academy training program, on-the-job training under strong mentors is also a critical component of any training process.

Section 13: This provision establishes a technical expert promotional track. AFGE supports.

Section 14: This provisions mandates a GAO study of succession planning. AFGE supports with the provision that researchers adequately consider the input of front line employees and their representatives who have unique insights into training, recruitment and hiring.

Section 15: This provision requires the Secretary to collect information on hiring effectiveness. AFGE generally supports more data collection but urges the Secretary to adequately consider the input of front line employees and their representatives who have unique insights into hiring. AFGE strongly opposes any increase in the use of special hiring authorities that adversely impact veterans' employment.

Section 16: This provision would increase the use of excepted service appointments for students and recent graduates. AFGE strongly opposes this as it is likely to adversely impact veterans' employment.

Section 17: This provision would improve and expand the Department's use of exit surveys. AFGE supports the use of exit surveys but will only support this provision if: (1) the Secretary adequately considers the input of front line employees and their representatives; and (2) the Secretary is required to share the survey results with employees and their representatives, veterans' groups and other stakeholders.