



# **CONGRESSIONAL TESTIMONY**

**STATEMENT BY**

**MRS. JOYCELYN WESTBROOKS  
SECRETARY-TREASURER AFGE LOCAL 1633  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

**BEFORE**

**HOUSE COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

**ON**

**“PENDING LEGISLATION”**

**MARCH 21, 2024**

Chairwoman Kiggans, Ranking Member Mrvan, and Members of the Subcommittee:

Thank you for inviting the American Federation of Government Employees (AFGE) to participate in today's Subcommittee Hearing on "Pending Legislation." My name is Joycelyn Westbrook, and I currently serve as the Secretary-Treasurer for AFGE Local 1633 at the Michael E. DeBakey VA Medical Center in Houston, Texas. Most importantly, for the past 40 years, I have had the honor of serving our nation's veterans as a Registered Nurse at the VA.

On behalf of AFGE, its National Veterans Affairs Council, representing over 750,000 Federal and District of Columbia Government workers, including 300,000 employees at the Department of Veterans Affairs, it is a privilege to offer insights to the Oversight and Investigations (O&I) Subcommittee on several of the bills it is considering today with a focus on H.R. 6538, the "VA Correct Compensation Act."

#### **H.R. 6538, the "VA Correct Compensation Act"**

The primary reason I come before the committee today is to express AFGE's strong endorsement of H.R. 6538, the "VA Correct Compensation Act" or "VACCA." This bi-partisan legislation is also endorsed by our sister unions the National Federation of Federal Employees (NFFE), the Service Employees International Union (SEIU), and the American Federation of State, County and Municipal Employees (AFSCME), as well as the American Association Of Nurse Anesthesiology, and our VSO partners the Disabled American Veterans (DAV), Paralyzed Veterans of America (PVA), and the American Legion. This legislation will help the VA with retention by limiting the agency's power to unfairly deny grievances challenging routine payroll errors affecting frontline Title 38 healthcare professionals. Across the VA, AFGE and NVAC represent more than 75,000 Title 38 employees.

Since the enactment of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (P.L. 102-40) over 30 years ago and the establishment of 38 U.S.C. 7422 (7422), the VA Secretary has used this authority to liberally deny collective bargaining and grievances related to

“(1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation.”

For years, this committee has examined various bills to amend 7422 and limit its use. Last Congress, this committee considered H.R. 1948, the “VA Employee Fairness Act” (117<sup>th</sup> Congress), which passed the House of Representatives, but was not considered in the Senate. During the spirited debate of that legislation in this committee, in the Rules Committee, and on the Floor of the House of Representatives, while there were substantive disagreements on policy, there was agreement that the VA had misused its authority under 7422 as it relates to routine payroll errors for Title 38 Employees.

At the beginning of the 118<sup>th</sup> Congress, Chairman Bost and Ranking Member Takano built on that common ground, rolled up their sleeves, and worked together to craft a bill that could be enacted in 2024. The fruit of that labor is H.R. 6538, the “VA Correct Compensation Act,” a technical correction to the 7422 statute that provides a definition for the compensation exception in 7422, and explicitly prevents the VA from denying grievances contesting that a covered employee has “received the correct compensation as required by law, rule, regulation, or binding agreement.” This is commonsense legislation that will give employees the opportunity file a grievance and have a fair process to make themselves whole and help with retaining clinicians at the agency.

Unfortunately, payroll errors are a common problem at the VA. All too often, the VA fails to accurately calculate if a covered employee worked overtime, the night shift, weekend shift, or on a holiday. If the affected employee is a Title 38 hybrid appointed under 38 U.S.C. 7401(3), that employee could easily file a grievance and receive the money they are owed under the law. However, if an employee is appointed as a pure Title 38 under 38 U.S.C. 7401(1), the VA can and does invoke its 7422 authorities to deny the grievance, with the employee losing the ability to receive the compensation they are rightfully owed. In practice, this means that a Registered Nurse does not have the same rights as a Licensed Practical Nurse, an optometrist does not have the same rights as an audiologist, and a psychiatrist does not have the same rights

as psychologist. Beyond this inherent inequity, over 30 years, the VA's use of this authority has discouraged employees from even filing grievances to correct their pay, which harms morale around the country.

A clear example of this arises from the Asheville, North Carolina, VA Medical Center.

In the facts shared by the VA:

On February 1, 1999, the American Federation of Government Employees (AFGE) filed a grievance on behalf of the Operating Room Nurses of VAMC Asheville, North Carolina, claiming entitlement to premium pay. More specifically, the Union complained that the Medical Center failed to pay the Operating Room Registered Nurses night differential when called in to work overtime during the hours of 6 p.m. and 6 a.m., and weekend pay differential when called in to work overtime on Saturday or Sunday. The periods of work at issue in the grievance were outside the nurses' regular work schedule or tour of duty.

On December 29, 1999, an arbitrator ruled in favor of AFGE and "granted the union's request for payment of night differential and weekend pay for OR nurses for these instances." In response to the arbitrator's ruling, "[m]anagement refused to comply with the award stating that this is a matter to be decided by the Secretary and is not itself subject to collective bargaining (38 U.S.C. 7422)." In response to this, on March 5, 2001, the Undersecretary for Health decided that "Under the authority in 38 U.S.C. 7422(d), I find that the arbitrator's decision and subsequent ULP concerns the establishment, determination, or adjustment of employee compensation." He also wrote that "Under the authority in 38 U.S.C. 7422(d), I find that the payment of night differential and weekend premium pay to OR nurses for periods of overtime work concerns or arises out of a matter or question of the establishment, determination, or adjustment of employee compensation under title 38." This was the final step in the denial of the grievance for correctly paying these operating room nurses.

Similarly, in 2007, the VA failed to accurately pay for overtime in Buffalo, New York.

In Buffalo, "[i]n an attempt to reduce a backlog of work at the Olean Community Based

Outpatient Clinic (CBOC), the management of the VA Medical Center Buffalo, New York (VAMC) asked for volunteers to see patients at the CBOC on Saturdays.” The VA chose three Nurse Practitioners who proceeded to work on eight separate Saturdays. “The CBOC is generally open Monday through Friday and has no established Saturday tour of duty. All three of the employees who volunteered to work the Saturdays identified above were paid overtime for the extra work or given compensatory time in lieu of overtime.” However, this was not the totality of what was owed. “On March 9, 2007, the United American Nurses (UAN) [which has since merged with National Nurses United (NNU)] filed a grievance alleging that management violated 38 U.S.C. 7453(c) and VA Handbook 5007/6, Part V, chapter 6, paragraph 1.b. by failing to pay the three nurse practitioners Saturday premium pay in addition to the overtime pay they received for working on Saturdays.” Despite the Union filing a grievance that was escalated, the VA in its recommended decision stated “[t]hat the grievance over three nurse practitioners’ entitlement to Saturday premium pay for Saturday work at a CBOC having no established Saturday tour of duty is excluded from collective bargaining as a matter or question that concerns or arises out of the establishment, determination or adjustment of employee compensation within the meaning of 38 U.S.C. 7422(b).” In turn, the VA denied the grievance and the nurses were not correctly paid the weekend shift differential pay they were owed under law.

The VA is the nation’s best and largest health care system. VA must continue to recruit and retain the best employees to care for our nation’s heroes. Congress never intended for 38 U.S.C. 7422 to permit the VA to deny grievances over routine payroll errors, thereby unlawfully withholding the compensation due to its employees. By passing H.R. 6538, the “VA Correct Compensation Act,” this committee can prevent future examples of this occurring and force the

VA to give Title 38 clinicians the opportunity to ensure they are paid what they are owed under the law.

### **H.R. 6531, the “TRAIN VA Employees Act”**

AFGE supports the intent of H.R. 6531, the “TRAIN VA Employees Act.” The underlying goal of this legislation is to improve the performance of supervisors at the Department of Veterans Affairs, both in helping employees excel and following existing law in how to correctly, when appropriate, discipline employees. This would further improve consistency throughout the agency when it comes to evaluating employee performance, and help employees throughout the VA. As the committee studies this bill and potentially considers it in a markup hearing, I would like to make two recommendations to improve the clear goals presented in the legislation.

The first is that in addition to supervisors, the agency allow AFGE officials to also receive this training, as if both employer and employee representatives are being trained together by the same trainers, all parties will be on the same page when it comes to their understanding and expectations of supervisors managing their employees and help avoid obstacles in any potential disciplinary processes.

Second, AFGE recommends that the bill add a new component to the training identified in subsection (e) of the bill requiring managers receive training on the “fundamentals of the collective bargaining agreement in the federal government and employee rights to union representation.” This new component would give supervisors a better understanding of the legal role unions have within the agency, including in disciplinary proceedings. Furthermore, this

improved understanding would lead to fewer supervisory errors, and hopefully, fewer union grievances needing to be filed.

### **Draft Legislation, the “VA Security Screening Pilot Program Act”**

AFGE supports the intent of the “VA Security Screening Pilot Program Act.” This bill, in the wake of violence occurring at VA facilities, is a strong proposal designed to prevent violence at Veterans Medical Centers and protect veterans and the employees who serve them. To improve the effectiveness of this pilot program and avoid any possible unintended consequences, AFGE has several suggestions to improve the scope and practice of this pilot program.

First, AFGE suggests the bill include a provision on the training of the VA personnel who will operate this technology to protect veterans. Additionally, as the bill alludes to VA Police Officers when discussing which facilities should be used for this pilot program, the only personnel who should be authorized to operate this technology are VA Police Officers, who have undergone crisis intervention training required by statute, and not third-party contractors.

Second, as the VA determines which facilities are being used for a pilot program, AFGE hopes that the VA casts a broad net and is not only limited to Medical Centers. As the VA utilizes larger Community Based Outpatient Clinics (CBOCs), it is worth including them within the pilot to gather a broad cross-section of data. Additionally, while most VBA facilities have security, not all are administered by VA. Including a VBA Regional Office or other VBA facilities that do not have weapons detection technology or whose technology is equal to or less

secure than this technology would also provide valuable data about the technology proposed in this pilot.

Third, AFGE strongly encourages that in sites where this technology is being piloted, there are either separate screening lines or reserved entrances for staff. AFGE is concerned that if separate lines or entrances are unavailable and staff must stand in line with patients at a busy time, this can delay employees to arriving at work at the beginning of their shifts, inadvertently delaying patient care.

### **H.R. 6947, the “Veterans Affairs Centennial and Heritage Act of 2024”**

AFGE supports the intent of H.R. 6947, the “Veterans Affairs Centennial and Heritage Act of 2024.” If enacted, this bill would create a VA History Office in Dayton, Ohio. This would recognize the critical work of the VA over the past 100 years, including the critical contribution of VA employees. The only additional comment AFGE wishes to make on this bill, is that as the staffing model is created to determine what permanent staff is required for this museum, is that these employees are part of the bargaining unit and receive the same protections as other VA employees throughout the nation.

### **A Draft Bill to require a notation in the personnel record file of certain employees of the Department of Veterans Affairs who resign from government employment under certain circumstances.**

AFGE opposes this draft legislation in its current form. Specifically, AFGE has significant due-process concerns with this draft bill, which would require the VA to permanently annotate the personnel records of employees who leave government during pending personnel



investigations, including a unilateral and unappealable determination by the Secretary whether any allegations “would have been substantiated.” Such speculative and potentially biased findings should not be included in the official personnel files without the investigative, disciplinary, and appellate processes running their course.