



STATEMENT BY

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BEFORE

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HOUSE COMMITTEE ON APPROPRIATIONS**

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Mr. Chairman 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 more than 700,000 federal and District of Columbia employees represented by AFGE, I thank you for the opportunity to testify today on our union's top priorities in the appropriations process.

Federal Pay

Our first priority is pay. In accordance with the Federal Employees Pay Comparability Act (FEPCA), enacted in 1990, federal employees who are paid under the General Schedule are supposed to receive salaries that are 95 percent of local "market comparability" as measured using data from the Bureau of Labor Statistics (BLS). FEPCA established the local market comparability principle for federal salaries; prior to the enactment of this law, all federal employees received one nationwide annual salary adjustment.

The language of FEPCA reads: "It is the policy of Congress that federal pay fixing for employees under the General Schedule be based on the principles that—

1. there be equal pay for substantially equal work within each local pay area;
2. within each local pay area, pay distinctions be maintained in keeping with work and performance distinctions;
3. federal pay rates be comparable with non-federal pay rates for the same levels of work within the same local pay area; and
4. any existing pay disparities between federal and non-federal employees should be completely eliminated."¹

The Federal Salary Council, an advisory body created under FEPCA that includes representatives of federal employee unions and outside experts but is chaired by a political appointee, makes recommendations to the President's "Pay Agent" (a group made up of the Directors of the Office of Management and Budget and Office of Personnel Management plus the Secretary of Labor), regarding the rules for the operation of this local market comparability system. Among the issues addressed by the Federal Salary Council are the proper measurement of local pay gaps, the boundaries for local labor markets called "localities," and the allocation of the annual adjustment among localities.

FEPCA set forth a gradual schedule for closure of the pay gaps to within 95 percent of market comparability. The formula is supposed to be an annual nationwide adjustment that is one half a percentage below the BLS's Employment Cost Index (ECI) plus ten percent of the remaining pay gap each year for ten years. The ECI adjustment, which tracks changes in private sector and state and local government wages and salaries, is meant to ensure that the pay gap did not grow nationally; the locality adjustment is meant to close gaps that vary by metropolitan area. Had the schedule for closing the pay gaps put forth in law been followed, comparability would have been realized more than a decade ago in 2002. However, remaining pay gaps still average 32.71 percent taking into 2017 payments, which was the last time locality payments were adjusted.

The administration has attempted to use the Federal Salary Council advisory report to muddy the waters with regard to the measurement of the pay gap. This year's Pay Agent Report includes a description and critique of the methods used by BLS to measure locality gaps. However, try as they might, the administration was not able to find fault with the work of BLS. Indeed, BLS's detailed and rigorous regression model and its scrupulous adherence to scientific methods of calculation proved impervious. The Pay Agent's Report includes a full description of the methods employed to arrive at the average 32.71 pay gap measurement.² All that was left for the administration was a recommendation for further study.

¹ <https://www.law.cornell.edu/uscode/text/5/5301>

² <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/pay-agent-reports/2017report.pdf>

The law has loopholes which have been utilized almost every year since FEPCA was implemented. When Congress was considering FEPCA, the initial plan was to remove the President's discretion to deviate from the law's provisions for closing the pay gaps. However, the final version of the law did give the President the authority to ignore FEPCA's gap closing schedule in the face of "national emergency or serious economic conditions." That authority has been utilized continuously since 1994. There is always a budget deficit and someone can always describe a deficit as a "serious economic condition" regardless of the actual economic conditions.

The four principles underlying FEPCA that I listed above have been under attack for several years by various politicians and contractors who advocate a different kind of pay system, usually one that gives managers broad authority to give or withhold pay adjustments on an individual-by-individual or sometimes an occupational basis.

In the course of trying to promote the false notion that BLS's measurement of the pay gap is faulty, the administration's Federal Salary Council representatives asked the BLS to recalculate the pay gap to include the cost to the federal government of providing non-salary benefits as compared to average costs for employer-provided benefits in the private sector, despite the fact that non-salary compensation has no place in a salary comparison. Further, the Federal Employees Health Benefits Program (FEHBP) and the Federal Employees Retirement System (FERS) both cost the government more than identical programs would cost a private employer or a state or local government. The reasons for this include the fact that FEHBP's private health insurance plans have used their political clout to exempt themselves from numerous cost-accounting and other cost-saving practices upon which non-federal purchasers would insist. These exemptions cost FEHBP dearly. The assets in the trust fund used to finance the FERS defined benefit are invested solely in US Treasury bonds, which have a lower rate of return than the private equities that private, state, and local pensions routinely invest in. Thus, not only is it dishonest to pretend that non-salary benefits can offset part of the gap between federal and non-federal salaries, it is dishonest to do so in a way that does not account for the dramatic structural differences between federal and non-federal employee benefit programs.

A favored line of attack against FEPCA that the administration and its supporters among the conservative think tanks and contractors utilize is to complain about across-the-board pay adjustments. In some cases, they advocate "pay for performance" along the line of the notorious National Security Personnel System (NSPS), a George W. Bush era pay scheme Congress repealed because its outcomes were undeniably discriminatory against women and racial minorities.

Another line of attack that effectively produces the same objective is to reallocate the payroll by adjusting salaries by occupation. This approach would provide much higher salaries to those already at the top of the General Schedule (GS) by denying adjustments to those toward the bottom. In short, they find the GS system has not sufficiently matched the inequality and "race to the bottom" pursued by many private firms. They contend that the regular, rank and file working and middle-class federal employees who make up the bottom

two thirds of the GS scale make too much and their bosses make too little. Their answer is to reallocate payroll so that GS-13 and above receive large annual salary increases and salaries for the lower grades be effectively frozen until the GS system looks more like WalMart's.

The federal government's pay system has many virtues, but none is more important than its proven success in avoiding pay discrimination. It is a system that bases pay solely on objective factors. Salaries are assigned to jobs, not individuals. Everyone who holds a particular job classified under the General Schedule receives roughly the same salary, with some variation on the basis of locality and experience. Whether a federal worker is black or white, young or old, male or female, Democrat or Republican, a GS-9 job pays the same amount. So-called "pay for performance" schemes or occupationally-specific schemes that vary pay on the basis of favored individual traits or occupations allow the introduction of discrimination, whether intentional or not.

The Office of Personnel Management (OPM) has produced several reports that verify this lack of discrimination.³ The most recent report found the male-female pay gap had shrunk to 11 percent but most of that number was due to occupational differences. Indeed, the most striking fact is that *the average federal salary paid to women was 95.6 percent of the average federal salary paid to men; for those in the Senior Executive Service, the number was 99.2 percent*. This is testament to the strong anti-discrimination attributes of the General Schedule and in any system that introduced discretion and subjectivity, this simply would no longer hold. The failed NSPS system served as a natural experiment in allowing pay adjustments to vary by occupation and a supervisor's opinion (with political appointee approval). The discriminatory impact was stark and immediate and Congress rightly repealed authority for NSPS.

The administration has used its opposition to the structure of FEPCA as grounds for proposing to freeze federal salaries and wages for this year and next year. Congress rightly overruled the President and provided a 1.9 percent adjustment for 2019, although at this writing the administration has still not implemented the adjustment, complaining that the process of doing so was very difficult.

AFGE supports following the provisions of FEPCA. With regard to the nationwide increase based on the Employment Cost Index, the relevant nationwide measure for January 2020 is the 12-month period ending September 30, 2018, during which time the ECI rose by 3.1 percent. FEPCA provides an annual national increase of the ECI measure minus 0.5 percentage points. Thus, the January 2020 ECI adjustment should be 2.6 percent.

There are two long traditions in the modern history of federal pay adjustments. The first is for Congress to respond to a President's invocation of the "national emergency or serious economic conditions" loophole with an adjustment that adds to the ECI adjustment one percentage point of payroll for locality pay increases. The second is to provide "pay parity"

³ <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/Governmentwide-Strategy-on-Advancing-Pay-Equality-in-the-Federal-Government.pdf>

between military and civilian employees of the federal government. This latter has meant parity in the amount of the annual salary adjustment.

In accordance with the tradition of ECI plus an additional percent of payroll, AFGE urges the Subcommittee to adjust the rates of basic pay for employees under the statutory pay systems for FY 2020 by 3.6 percent. This amount is also consistent with the legislation introduced by Rep. Gerry Connolly, H. R. 1073, The Fair Act,⁴ which calls for a 3.6 percent pay adjustment for federal workers in FY 2020. At a minimum, the long-standing tradition of parity in the rate of adjustment for civilian employees and military members of the United States government should be followed for 2020.

Further, AFGE asks the Committee to include language in the FY 2020 Financial Service and General Government Appropriations bill language that would equalize the local pay area boundaries for the government's hourly and salaried workforces. The local wage area boundaries for federal blue collar workers were mostly established more than 60 years ago and reflect the location of military installations rather than local commuting areas. The localities for federal white collar workers paid under FEPCA reflect local commuting areas. This discrepancy has created terrible inequities between salaried and hourly pay at certain locations such as Tobyhanna Army Depot in Northeast Pennsylvania and Tracy Army Depot in Central California. To correct this inequity, AFGE urges the Subcommittee to appropriate resources for no more than one wage area under the Federal Wage System.

Government-wide A-76 Moratorium

OMB Circular A-76 is the federal government's policy document that sets forth the rules for conducting formal cost comparisons between in-house and contractor performance of government work. Under the terms of A-76, agencies are prohibited from contracting out work performed by federal employees without first conducting a cost competition between a "most efficient organization" of federal employees and the bid of a private contractor to perform that same work. The most recent update of Circular A-76 occurred in 1999, during the administration of George W. Bush, whose administration held that all government work that could be contracted out should be contracted out.

The George W. Bush administration required agencies to conduct numerous public-private competitions and in the vast majority of cases, the in-house "most efficient organization" won. However, these wins were very expensive. Agencies often hired private contractors to analyze operations to decide what work should be subject to competition, to compile the "most efficient organization" in-house bid, and to conduct the competition and evaluate the bids.

The most notorious A-76 competition during this era took place at Walter Reed Army Medical Center. In the years leading up to the culmination of the competition, anticipating a

⁴ <https://www.congress.gov/bill/116th-congress/house-bill/1073/text>

“win” by a private contractor, in-house staffing declined precipitously and as a result, maintenance of buildings came almost to a halt and wounded warriors were forced to live in dilapidated housing. It was a terrible scandal and it was the direct result of the administration’s forcing DoD to pursue contracting out through the use of a deeply flawed OMB Circular A-76. In the wake of the Walter Reed scandal and with the support of damning analysis by the DoD Inspector General, Congress passed a moratorium on the use of A-76 until its flaws were addressed.

AFGE strongly urges the Committee to maintain the prohibition on the use of OMB Circular A-76 privatization process in the Financial Services and General Government Appropriations bill. Congress established the public-private competition moratorium originally in Public Law 110-81, the National Defense Authorization Act for Fiscal Year 2008, within DoD to stop the numerous flaws and the ruinous effects of staffing shortfalls caused by A-76 competitions in various agencies. The prohibition on the use of A-76 was extended across the entire federal government in Public Law 111-8, the Omnibus Appropriations Act for FY 2009. The language of the moratorium prohibits use of the Circular’s public-private competition processes unless and until the Office of Management and Budget (OMB) corrects A-76’s flaws and agencies comply with Congress’s requirement that they compile inventories of their service contracts.

The moratorium has since been renewed annually. Congress has identified numerous Government Accountability Office (GAO) and DoD IG findings that reported A-76 savings were not substantiated and that, in fact, A-76 competitions incurred substantial unprogrammed investment costs that completely negated any claimed savings, even including the inaccurate double-counting of in-house overhead.

The defects in the A-76 process are legion. They include: the lack of contractor inventories that would allow agencies to know how many service contracts they have, what work is supposed to be performed and on what schedule, the cost of the contracts, data to verify that no inherently governmental work is being performed by contractors, and ideally, information on the cost and quality of contractor performance. These data are a pre-requisite for proper integration of service contract costs into agency budget processes. It is imperative that agencies have comprehensive and accurate contract services budgets in the same way that they have comprehensive and accurate budgets for their in-house workforces. They must also have effective enforcement processes in place in order to prevent unlawful contracting. Finally, agencies need, but do not have insourcing procedures so that when and if they find out that 1) government work has been outsourced unlawfully or improperly, or 2) that the agency is being charged far more for outsourced work than originally promised, or that 3) outsourced work is being performed poorly, they have a policy and procedure in place to allow them to bring that work back in house.

Section 325 of the Fiscal Year 2010 NDAA included Congressional findings concerning the flaws of A-76. The NDAA cited the following:

1. The double-counting of in-house overhead costs as documented by the DoD IG;
2. Failure to develop policies that ensured that in-house workforces that had won A-76 competitions were not required to re-compete under A-76 competitions a second time;
3. The reporting of cost savings that were repeatedly found by the GAO and DoD IG to be unreliable and over-stated for a variety of reasons, including:
 - a. Cost growth after a competition was completed because the so-called Most Efficient Organization and Performance Work Statements that were competed often understated the real requirement;
 - b. Military buy-back costs documented by the Government Accountability Office because A-76 competitions required a Military Department either to reduce its end strength or reprogram the funds to Operations and Maintenance accounts in order to complete the competition.
4. As a result of these flaws, DoD was required to develop comprehensive contractor inventories, improve its services contract budgets, and develop enforcement tools to prevent the contracting-out of inherently governmental functions; to ensure that personal services contracts were not being inappropriately used; and to reduce reliance on, or improve the management over high risk "closely associated with inherently governmental" contracts.

Again, none of these flaws has been addressed and the conditions laid out in the FY 2010 NDAA remain as true today as when the prohibition was originally enacted. Accordingly, the governmentwide A-76 moratorium should continue because none of the aforementioned flaws has been addressed and almost no agency has complied with contractor inventory requirements in support of comprehensive contract services budget submissions.

Abolishing the Office of Personnel Management

The Trump administration has proposed that the General Services Administration (GSA) acquire almost all of the operations of the Office of Personnel Management (OPM). Two more dissimilar agencies could hardly be found. GSA's focus is on leasing space for government offices, supplying products and contracted services to federal agencies, and providing transportation for federal employees. OPM, established as a result of the Civil Service Reform Act of 1978 to replace the Civil Service Commission, is the government's personnel department. Its focus is on administering pay, health insurance, and retirement systems for federal employees, conducting background checks, making sure that federal job classification comports with the merit system principles, and helping agencies with policies designed to recruit and retain federal employees. The administration intends to move OPM's personnel policy functions to the Executive Office of the President and everything else to GSA.

The administration made the decision to merge these two agencies without any input or involvement from affected employees. The idea appeared first in the President's Management

Agenda and was fleshed out in a relatively obscure document of the President's 2020 Budget (GSA's Congressional Justification document). Indeed, the Administration has brazenly announced its intention to effect parts of the merger proposal administratively, thus bypassing Congress. We would urge this Subcommittee to consider prohibiting any use of appropriated funds, whether directly appropriated to OPM, or appropriated to any other agency which then reimburses OPM for "services," from being used by GSA to perform any functions currently performed by OPM.

We consider this proposal to be rash, ill-conceived, and potentially dangerous. None of us has seen any kind of analysis of the rationale, the cost, or the risk. None of us has seen any kind of analysis of the impact of this acquisition on the workforce or the substantive work of OPM. No one in the OPM workforce we represent has seen any analysis; and federal employees generally, who also are likely to be adversely affected have likewise seen nothing.

One bright caution light concerns the acquisition's likely impact on the ability to retain an apolitical civil service. Moving the policy function of OPM into the White House is a clear attempt to politicize the federal civil service. The administration has questioned the political loyalties of federal employees, a workforce whose political loyalties must be entirely and completely irrelevant to their hiring and firing and work. The administration has likewise proposed numerous actions to eliminate, degrade, restrict or otherwise undermine federal employees due process rights and collective bargaining rights. It is not unreasonable to consider the ill-effects on these rights of the abolishment of the agency that has primary responsibility for upholding the merit system – the apolitical merit system.

Conclusion

The three priorities highlighted in this testimony are interrelated. The administration's efforts with regard to pay, benefits, privatization through outsourcing and personnel management are all components of its ongoing war against the apolitical civil service. The agenda is clear: by degrading salaries, cutting benefits, reducing civil service protections and gutting collective bargaining rights, facilitating outsourcing, and all but eliminating the agency responsible for upholding the merit system, the civil service doesn't stand a chance.

An apolitical civil service is an often unappreciated but necessary pillar of democracy. An apolitical civil service only exists in so far as its pay system is completely protected from politicization and manipulation and the actual wages and salaries are adequate to recruit and retain a high quality workforce. An apolitical civil service must not be subject to constant threat of outsourcing and the public interest must be paramount in every decision to "make or buy" not only to protect against corruption, but also in the interest of fiscal prudence. Finally, an apolitical civil service requires an independent administrative body to uphold the merit system, and its function cannot be hidden away in an agency whose mission is leasing property, negotiating service contracts, and maintaining fleets of vehicles.

Thank you for the opportunity to testify today. I will be happy to answer any questions members of the Subcommittee may have.