

**American Federation of Government Employees,
AFL-CIO
80 F Street, NW
Washington, D.C. 20001**

STATEMENT OF

**BRYAN LOWRY
PRESIDENT**

AND

**PHIL GLOVER
LEGISLATIVE COORDINATOR**

OF THE

**COUNCIL OF PRISON LOCALS
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO**

BEFORE THE

SUBCOMMITTEE ON COMMERCE, JUSTICE, and SCIENCE

HOUSE COMMITTEE ON APPROPRIATIONS

ON

FEDERAL BUREAU OF PRISONS

MARCH 10, 2009

Mr. Chairman and Members of the Subcommittee -

My name is Bryan Lowry. I am the President of the Council of Prison Locals, American Federation of Government Employees (AFGE). Here with me today is Phil Glover, who is the Legislative Coordinator for the Council of Prison Locals, AFGE. On behalf of the more than 34,000 federal correctional officers and staff who work at Bureau of Prisons (BOP) correctional institutions, we want to thank you for the opportunity to testify today on various BOP issues that are critically important to the safety and security of federal correctional officers and staff, federal prison inmates, and the local communities surrounding federal prisons.

Summary

BOP prisons have become increasingly dangerous places to work primarily because of serious correctional officer understaffing and prison inmate overcrowding problems. The brutal stabbing murder of Correctional Officer Jose Rivera on June 20, 2008, by two prison inmates at the United States Penitentiary in Atwater, CA, as well as the increasing inmate-on-staff and inmate-on-inmate assault rates, illustrate that painful reality.

In addition, BOP correctional officers and staff have become increasingly demoralized because of: (1) the failure of the Bush administration and previous Congresses to provide the necessary financial and programmatic tools to improve the safety and security of BOP prisons, and (2) the adoption by BOP management of unsound operational policies and practices.

AFGE strongly urges the House Appropriations Subcommittee on Commerce-Justice-Science (CJS) to:

1. Increase federal funding of BOP to remedy the serious correctional officer understaffing and prison inmate overcrowding problems that are plaguing BOP prisons.
2. Direct BOP to adopt needed management policy changes for improving the safety and security of BOP correctional institutions.
3. Support the Federal Prison Industries (FPI) prison inmate work program.
4. Recognize the need for additional BOP staffing and staff training when considering new ways to foster the fair treatment of prison inmates and to improve the outcomes for inmates reentering our communities.
5. Continue the existing prohibition against the use of federal funding for public-private competition under OMB Circular A-76 for work performed by federal employees of BOP and FPI.

6. Prevent BOP from meeting additional bed space needs by incarcerating prison inmates in private prisons.
7. Oppose any effort to statutorily redefine the term “law enforcement officer” for pay and retirement purposes to exclude BOP prison staff.
8. Exempt federal law enforcement officers, including BOP correctional officers and staff, who separate from federal government service after age 50 from the present law’s 10% additional tax penalty for early withdrawals from the Thrift Savings Plan (the third component of the Federal Employees Retirement System or FERS).

Discussion

1. Increase federal funding of BOP to remedy the serious correctional officer understaffing and prison inmate overcrowding problems that are plaguing BOP prisons.

More than 202,900 prison inmates are confined in the 114 BOP correctional institutions today, up from 25,000 in 1980, 58,000 in 1990, and 145,000 in 2000. By 2010, it is expected there will be 215,000 inmates incarcerated in BOP institutions nationwide.

This explosion in the federal prison inmate population is the direct result of Congress approving stricter anti-drug enforcement laws involving mandatory minimum sentences in the 1980s, as documented in the *History of Mandatory Minimums*, a study produced by the Families Against Mandatory Minimums Foundation (FAMM).

- The Comprehensive Crime Control Act of 1984 created a mandatory 5-year sentence for using or carrying a gun during a crime of violence or a drug crime (on top of the sentence for the violence itself), and a mandatory 15-year sentence for simple possession of a firearm by a person with three previous state or federal convictions for burglary or robbery.
- The 1986 Anti-Drug Abuse Act established the bulk of drug-related mandatory minimums, including the five- and 10-year mandatory minimums for drug distribution or importation, tied to the quantity of any “mixture or substance” containing a “detectable amount” of the prohibited drugs most frequently used today.
- The Omnibus Anti-Drug Abuse Act of 1988 created more mandatory minimums that were targeted at different drug offences. At one end of the drug distribution chain, Congress created a mandatory minimum of five years for simple possession of more than five grams of “crack” cocaine. (Simple possession of any amount of other drugs – including powder cocaine and heroin – remained a misdemeanor with a

mandatory 15-day sentence required only for a second offense.) At the other end, Congress doubled the existing 10-year mandatory minimum for anyone who engages in a continuing criminal enterprise, requiring a minimum 20-year sentence in such cases.

The number of federal correctional officers who work in BOP prisons, however, is failing to keep pace with this tremendous growth in the prison inmate population. The BOP system is currently staffed at an 86.6% level, as contrasted with the 95% staffing levels in the mid-1990s. This 86.6% staffing level is *below* the 90% staffing level that BOP believes to be the minimum staffing level for maintaining the safety and security of BOP prisons. In addition, the current BOP inmate-to-staff ratio is 4.9 inmates to 1 staff member, as contrasted with the 1997 inmate-to-staff ratio of 3.7 to 1.

At the same time, prison inmate overcrowding is an increasing problem at BOP institutions despite the activation of new prisons over the past few years. The BOP prison system today is overcrowded today by about 37%, up from 31.7% as of January 1, 2000.

These serious correctional officer understaffing and prison inmate overcrowding problems are resulting in significant increases in prison inmate assaults against correctional officers and staff, and against other prison inmates. In December 2006, the BOP Intelligence Section of the U.S. Department of Justice issued a report documenting that: (1) inmate-on-inmate assaults (armed and unarmed) in FY 2006 had increased 15.5% over the previous fiscal year, and (2) inmate-on-staff assaults (armed and unarmed) in FY 2006 had increased 6.0% over the previous fiscal year.

AFGE has long been concerned about the safety and security of the correctional officers and staff who work at BOP institutions. But the brutal stabbing murder of Correctional Officer Jose Rivera on June 20, 2008 by two prison inmates in a housing unit at the United States Penitentiary (USP) in Atwater, CA, has greatly intensified our concern about – and desire to solve – the correctional officer understaffing and prison inmate overcrowding problems.

Therefore, AFGE strongly urges the CJS appropriations subcommittee to:

- Increase federal funding of the BOP Salaries and Expenses account so BOP can hire additional correctional staff to return to the 95% staffing levels of the mid-1990s.
- Increase federal funding of BOP Buildings and Facilities account so BOP can build new correctional institutions and renovate existing ones to reduce inmate overcrowding to at least the 31.7% level of the late-1990s.

2. Direct BOP to adopt needed management policy changes for improving the safety and security of BOP prisons.

A few days after the June 20, 2008 stabbing murder of Correctional Officer Jose Rivera at USP Atwater, John Gage, AFGE National President, and Bryan Lowry, President of the AFGE National Council of Prison Locals, met with BOP Director Harley Lappin to strongly urge that BOP adopt various policy changes for improving the safety and security of BOP institutions. Among other changes, they urged that:

(a) High security penitentiaries place two correctional officers in each housing unit, particularly during the evening watch shift (3:00 p.m. to 11:00 p.m.), and medium and low security institutions place at least one correctional officer in each housing unit on all shifts.

High security penitentiaries currently assign only one correctional officer to each housing unit. This unsound correctional practice is particularly dangerous during the evening watch shift when only one officer is available to secure the cells for the 4:00 p.m. inmate count and the 11:00 p.m. inmate lockup. (Correctional Officer Jose Rivera was murdered while locking inmates into the cells for the 4:00 p.m. inmate count alone.)

Medium and low security institutions since 2005 are no longer required to assign one correctional officer in each housing unit. This policy change has resulted in an unsound correctional practice being implemented in which only one officer is assigned to supervise two – and in some cases three – housing units during the various shifts. This practice leaves housing units unsupervised for long periods of time, thereby providing violent inmates the time to make homemade weapons, to organize and plan gang activity, to carry out assaults on other inmates, and to move contraband undetected throughout the institution.

On July 15, 2008 BOP issued a directive that authorized two additional officers per high security penitentiary for evening watch (daily) and for day watch on the weekends and federal holidays. The officers working these posts are intended to function as “rovers” to provide assistance to housing unit staff. (The decision will be made locally, at each facility, regarding how best to staff these positions, that is, whether the sick and annual roster can be used, overtime authorized, or whether new staff must be hired.) The July 15, 2008 directive was silent with regard to medium and low security institutions.

AFGE believes the July 15, 2008 BOP directive is totally inadequate. The safety of correctional officers and prison inmates, at the very least, requires two correctional officers in each housing unit on the evening watch shift in high security penitentiaries, and at least one officer per housing unit on all shifts in medium and low security institutions.

Indeed, AFGE strongly urges the CJS appropriations subcommittee to direct BOP to reinstitute the staffing practice of the 1990s and early 2000s: authorizing two correctional officers per housing unit *plus* three or four additional officers to function as “rovers” that provide assistance to the housing unit staff.

This staffing practice was standard until 2005 when BOP management instituted the Mission Critical Post policy, a cost reduction strategy under which certain correctional staff posts were deemed critical for the safe and secure operations of BOP institutions and were to be vacated only in rare circumstances. The Mission Critical Post initiative was intended (a) to eliminate the necessity for filling “non-mission critical” BOP posts, and (b) to reduce BOP institutions’ reliance on overtime and non-correctional staff, who had typically been used for temporary correctional post assignments.

Interestingly, a recent U.S. Government Accountability Office (GAO) report has found that BOP has never conducted a systematic evaluation of the Mission Critical Post initiative, despite an internal directive from the Assistant Director of Correctional Programs and the requirements of the *Standards for Internal Control in the Federal Government*. As a result, GAO has concluded that:

“Without assessing its mission critical post initiative and data on temporary assignments, BOP does not know whether it is efficiently and effectively using staff for temporary assignments or achieving the desired cost savings. Also, without reviewing the effect of leaving mission critical posts unassigned, BOP cannot assess the effect, if any, of unassigned posts on the safety and security of its facilities.” (*Bureau of Prisons: Written Policies on Lateral Transfers and Assessment of Temporary Assignments Needed*, GAO-09-141, February 2009.)

The GAO report recommends that BOP “systematically assess temporary assignments to ensure that BOP is meeting the objectives of the mission critical post initiative and effectively and efficiently using resources.” BOP, in response, has agreed with and plans to take action on this recommendation. But given the fact BOP officials could not explain to GAO why the original systematic evaluation was not conducted, AFGE strongly urges the CJS appropriations subcommittee to exert its oversight powers to ensure that BOP actually conducts this necessary evaluation.

(b) *All correctional officers be issued protective vests that are stab-resistant and light-weight, and can be worn comfortably under a uniform.*

In its July 15, 2008 directive, BOP announced that it will begin making protective vests available to staff – first at high-security penitentiaries, and then at all institutions. However, BOP has been markedly slow in providing these protective vests. Disputes also have arisen over the quality of these protective vests, with

BOP correctional officers contending they should have vests that offer better protection.

In addition, BOP has adopted a somewhat overbroad implementation policy with regard to these protective vests. If a staff member orders a protective vest, he/she must wear that vest in *all* locations of the federal prison property – even those where it is obviously unnecessary. We even have some wardens ordering correctional staff to wear a stab resistant vest to annual refresher training at facilities that are sometimes a half mile away from the secure prison institution. This unreasonable policy is having the unfortunate effect of correctional staff returning their vests and not wearing them while in a housing unit, special housing unit, or compound officer post.

AFGE strongly urges the CJS appropriations subcommittee to direct BOP to continue making protective vests available to correctional staff, and to adopt a more reasonable implementation policy.

(c) Correctional officers working in housing units, compound posts, and high security areas of BOP prisons be equipped with and trained in the use of non-lethal weaponry, such as batons, pepper spray, and/or TASER guns. Training should include the appropriate use of such non-lethal weaponry so they are not used as a “first strike” response before other protective tactics are considered or attempted.

Unfortunately, BOP opposed – and continues to oppose - providing correctional officers with batons, pepper spray, and/or TASER guns. BOP argues that it would send the wrong message to prison inmates, namely that such non-lethal weaponry is necessary because conditions at BOP institutions have significantly worsened.

But AFGE believes Officer Rivera’s brutal murder and the increasing number of inmate assaults on officers are sending a strong message to BOP management: conditions at penitentiaries and other institutions *have* worsened. They are more violent than a few years ago because of serious correctional officer understaffing and prison inmate overcrowding – and because correctional officers are being forced to control more aggressively dangerous offenders, including more gang-affiliated inmates.

AFGE strongly urges the CJS appropriations subcommittee to direct BOP to institute a new non-lethal weaponry policy under which correctional officers in potentially dangerous situations are provided batons, pepper spray and/or TASER guns. Such non-lethal weapons are vitally necessary to help prevent further serious inmate-on-officer assaults.

3. Support the Federal Prison Industries (FPI) prison inmate work program.

The increasingly violent and dangerous environment in which BOP correctional officers and staff work is the primary reason why AFGE strongly supports the FPI prison inmate work program.

The FPI prison inmate work program is an important management tool that federal correctional officers and staff use to deal with the huge increase in the BOP prison inmate population. It helps keep 23,152 prison inmates – or about 18% of the eligible inmate population – productively occupied in labor-intensive activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides strong incentives to encourage good inmate behavior, as those who want to work in FPI factories must maintain a record of good behavior and must have completed high school or be making steady progress toward a General Education Degree (GED).

In addition, the FPI prison inmate work program is an important rehabilitation tool that provides federal inmates an opportunity to develop job skills and values that will allow them to reenter – and remain in – our communities as productive, law-abiding citizens. The Post-Release Employment Project (PREP), a multi-year study of the FPI prison inmate work program carried out and reported upon in 1996 by William Saylor and Gerald Gaes, found that the FPI prison inmate work program had a strongly positive effect on post-release employment and recidivism. Specifically, the study results demonstrated that:

- In the short run (i.e., one year after release from a BOP institution), federal prison inmates who had participated in the FPI work program (and related vocational training programs) were: (1) 35% *less likely* to recidivate than those who had not participated, and (2) 14% *more likely* to be employed than those who had not participated.
- In the long run (i.e., up to 12 years after release from a BOP institution), federal prison inmates who participated in the FPI work program were 24% *less likely* to recidivate than those who had not participated in the FPI work program. (*PREP: Training Inmates Through Industrial Work Participation, and Vocational and Apprenticeship Instruction*, by William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 24, 1996.)

Later in 1999, Saylor and Gaes published a follow-up paper to report further analyses of the PREP data which focused on the differential effect of the FPI prison inmate work program on the post-release recidivism of four groups: (1) non-Hispanic whites, (2) non-Hispanic blacks, (3) Hispanic whites, and (4) Hispanic blacks. Their analyses revealed that the FPI prison inmate work program provides even greater benefit to the three minority groups that are at the

greatest risk for recidivism (non-Hispanic blacks, Hispanic whites, and Hispanic blacks) than it does for the non-Hispanic white group. In general, the recidivism improvement rates for minority inmates who participated in the FPI work program compared to those minority inmates who did not participate were between 37% and 147% higher than the recidivism improvement rates for non-Hispanic white inmates who participated in the FPI work program compared to those non-Hispanic white inmates who did not participate. As Saylor and Gaes concluded:

“Regardless of whether a minority was defined on the basis of race or ethnicity, and despite their being at a higher risk of recidivism, minority groups benefited more from [FPI work program] participation than their lower risk non-minority counterparts. While the absolute differences may not appear that large, the relative improvements [in recidivism rates] indicate a much larger program effect for minority program participants who are otherwise more likely to be recommitted to prison.” (*The Differential Effect of Industries Vocational Training on Post-Release Outcome for Ethnic and Racial Groups*, William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 6, 1999.)

Unfortunately, over the past eight years the FPI prison inmate work program has experienced a significant decline in the percentage of eligible BOP inmates employed as a result of limitations imposed by Congress and the FPI Board of Directors on FPI’s mandatory source authority relating to Department of Defense and federal civilian agencies’ purchases from FPI. While the FPI program employed 25% of the eligible BOP inmate population in FY 2000, it is currently employing only 18% of that population. Indeed, 32,155 prison inmates would be employed now – not 23,152 – if the FPI program were currently employing 25% of the eligible BOP inmate population.

To make matters worse, Section 827 in the National Defense Authorization Act for FY 2008 (P.L. 110-181) will create another substantial impediment to the FPI program’s ability to keep BOP inmates productively occupied in labor-intensive work activities. Specifically, Section 827 will reduce the applicability of the FPI mandatory source authority with regard to Department of Defense purchases of FPI-made products. While the FPI Board of Directors in 2003 administratively ended the application of mandatory source authority for those products where FPI’s share of the Federal market exceeded 20%, Section 827 will end the application of the mandatory source authority with regard to Department of Defense purchases of FPI-made products for those products where FPI’s share of the Department of Defense market is only 5%. Initial analyses of the effect of this significant reduction from 20% to 5% estimated that it will result in a potential loss of up to \$241 million in FPI sales revenues and 6,500 FPI prison inmate jobs.

AFGE has long opposed any legislative attempt to eliminate the mandatory source preference for FPI-produced goods because we believe it would result in the loss of countless numbers of FPI prison inmate jobs. This loss of inmate jobs, in turn, would seriously endanger the safety of our members – the correctional officers and staff who work inside BOP institutions.

However, in the past couple of years of negotiations with the Anti-FPI Coalition and with Rep. Pete Hoekstra's (R-MI) staff, we have come to accept the idea of eliminating the FPI mandatory source if – and only if – a strong work-based training program is developed to supplement the FPI program. This strong work-based training program must create a sufficient number of new federal prison inmate jobs to replace the prison inmate job positions that would be lost if the FPI mandatory source preference is eliminated.

A reform proposal that AFGE thinks has merit – and which we recommend the CJS appropriations subcommittee seriously consider - was included in the May 11, 2006 discussion draft of Rep. Hoekstra's H.R. 2965. This discussion draft established a strong work-based training program for federal inmates based on two authorities:

(1) The first authority would authorize a private business to train participating federal prison inmates by producing a product or performing a service, if such product or service is not produced or performed within the United States by non-inmate workers. However, this authority probably would not create enough new prison inmate jobs to replace those lost FPI inmate jobs, given the harsh restriction of "not produced or performed within the United State by non-inmate workers." Thus, the need for the second authority below.

(2) The second authority would authorize a private business to train participating federal prison inmates by producing a product or performing a service, if such product or service: (a) is being currently produced or performed outside the United States by or for the private business and (b) has been so produced or performed for a period of 36 months prior to the date such private business initially submits a proposal to FPI.

This second authority, which would probably create more federal prison inmate jobs than the first, would be intended to provide employment for the greatest number of federal prison inmates as long as (a) no single private industry is forced to bear an undue burden of competition from the products or services of federal prison factories or workshops; and (b) competition with private industry or private labor is reduced to a minimum.

4. Recognize the need for additional BOP staffing and staff training when considering new ways to foster the fair treatment of prison inmates and to improve the outcomes for inmates reentering our communities.

AFGE and its members who work at BOP institutions strongly believe in the fair treatment of prison inmates. We also believe that inmates should be better prepared to reenter – and remain in – our communities. Congress has passed laws in the past few years to help accomplish these tasks, such as the Prison Rape Elimination Act of 2003 (P.L. 108-79) and the Second Chance Act of 2008 (P.L. 110-199).

However, what continues to be left out of the picture are the additional staff positions and staff training that are necessary to accomplish these tasks. When one correctional officer (or non-correctional staff member) is required to supervise two or three housing areas at a time, it is virtually impossible to properly implement the Prison Rape Elimination Act of 2003. In addition, training is needed to fully explain to correctional employees how to implement this law – and currently this is not being done. While a cursory half hour to one hour per year is spent to highlight the Prison Rape Elimination Act of 2003 during annual refresher training, many of the procedural items in the law are not covered.

In the case of the Second Chance Act of 2008, Congress's intent is clear. But when teachers, vocational-technical instructors, mechanical services employees, case managers, and counselors are pulled repeatedly to work correctional officers posts because of funding shortfalls, then who will be responsible for the duties clearly outlined in the law? Correctional officers and staff take their jobs very seriously in federal prisons. But they simply can't accomplish two tasks at the same time.

AFGE, therefore, strongly urges the CJS appropriations subcommittee to recognize the need for additional BOP staffing and staff training when considering new ways to foster the fair treatment of prison inmates and to improve the outcomes for inmates reentering our communities. New laws would be additional workloads on BOP staff who are already handling more work with less staff than eight years ago.

5. Continue the existing prohibition against the use of federal funding for public-private competition under OMB Circular A-76 for work performed by federal employees of BOP and FPI.

The FY 2009 Omnibus Appropriations Act (H.R. 1105), which the House approved, 245-178, on February 25, 2009, includes a general provision (Section 212) to prohibit the use of FY 2009 funding for public-private competitions under OMB Circular A-76 for work performed by federal employees of the BOP and FPI. This Section 212 language is the same as Section 214 in the prior year's FY 2008 Consolidated Appropriations Act.

AFGE strongly urges the CJS appropriations subcommittee to include this Section 212 language in the FY 2010 CJS appropriations bill because:

(a) Competing these BOP and FPI employee positions would not promote the best interests or efficiency of the federal government with regard to ensuring the safety and security of federal BOP prisons. Federal correctional officers and other federal employees who work for BOP and FPI are performing at superior levels. It therefore would be ill-advised to compete their positions merely to meet the numerical quotas of the Bush administration's privatization plan.

(b) Various studies comparing the costs of federally operated BOP prisons with those of privately operated prisons have concluded – using OMB Circular A-76 cost methodology – that the federally operated BOP prisons are more cost effective than their private counterparts. For example, a study comparing the contract costs of services provided by Wackenhut Corrections Corporation (now The Geo Group) at the Taft Correctional Institution in California with the cost of services provided in-house by federal employees at three comparable BOP prisons (Forrest City, AR; Yazoo City, MS; and Elkton, OH) found that “the expected cost of the current Wackenhut contract *exceeds* the expected cost of operating a Federal facility comparable to Taft...” (*Taft Prison Facility: Cost Scenarios*, Julianne Nelson, Ph.D, National Institute of Corrections, U.S. Department of Justice.)

6. Prohibit BOP from meeting additional bed space needs by incarcerating federal prison inmates in private prisons.

In recent years, the federal government and some state and local governments have experimented with prison privatization as a way to solve the overcrowding of our nation's prisons – a crisis precipitated by increased incarceration rates and politicians' reluctance to provide more prison funding. But results of these experiments have demonstrated little evidence that prison privatization is a cost-effective or high-quality alternative to government-run prisons.

Private Prisons Are Not More Cost Effective

Proponents of prison privatization claim that private contractors can operate prisons less expensively than federal and state correctional agencies. Promises of 20 percent savings are commonly offered. However, existing research fails to make a conclusive case that private prisons are substantially more cost effective than public prisons.

For example, in 1996, the U.S. General Accounting Office reviewed five academic studies of prison privatization deemed to have the strongest designs and methods among those published between 1991 and mid-1996. The GAO concluded that “because these studies reported little cost differences and/or mixed results in comparing private and public facilities, we could not conclude

whether privatization saved money.” (*Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service*, GGD-96-158 August 16, 1996.)

Similarly, in 1998, the U.S. Department of Justice entered into a cooperative agreement with Abt Associates, Inc. to conduct a comparative analysis of the cost effectiveness of private and public sector operations of prisons. The report, which was released in July 1998, concluded that while proponents argue that evidence exists of substantial savings as a result of privatization, “our analysis of the existing data does not support such an optimistic view.” Instead, “our conclusion regarding costs and savings is that.....available data do not provide strong evidence of any general pattern. Drawing conclusions about the inherent [cost-effective] superiority of [private prisons] is premature.” (*Private Prisons in the United States: An Assessment of Current Practice*, Abt Associates, Inc., July 16, 1998.)

Finally, a 2001 study commissioned by the U.S. Department of Justice concluded that “rather than the projected 20 percent savings, the average saving from privatization was only about one percent, and most of that was achieved through lower labor costs.” (*Emerging Issues on Privatized Prisons*, by James Austin, Ph.D. and Garry Coventry, Ph.D., February 2001.)

Private Prisons Do Not Provide Higher Quality, Safer Services

Proponents of prison privatization contend that private market pressures will necessarily produce higher quality, safer correctional services. They argue that private prison managers will develop and implement innovative correctional practices to enhance performance. However, emerging evidence suggests these managers are responding to market pressures not by innovating, but by slashing operating costs. In addition to cutting various prisoner programs, they are lowering employee wages, reducing employee benefits, and routinely operating with low, risky staff-to-prisoner ratios.

The impact of such reductions on the quality of prison operations has been obvious. Inferior wages and benefits contribute to a “degraded” workforce, with higher levels of turnover producing a less experienced, less trained prison staff. The existence of such under-qualified employees, when coupled with insufficient staffing levels, adversely impacts correctional service quality and prison safety.

Numerous newspaper accounts have documented alleged abuses, escapes and riots at prisons run by the Correctional Corporation of America (CCA), the nation’s largest private prison company. In the last several years, a significant number of public safety lapses involving CCA have been reported by the media. The record of Wackenhut Corporation (now The Geo Group), the nation’s second largest private prison company, is no better, with numerous lapses reported since 1999.

And these private prison problems are not isolated events, confined to a handful of “under performing” prisons. Available evidence suggests the problems are structural and widespread. For example, an industry-wide survey conducted in 1997 by James Austin, a professor at George Washington University, found 49 percent more inmate-on-staff assaults and 65 percent more inmate-on-inmate assaults in medium- and minimum-security private prisons than in medium- and minimum-security government prisons. (referenced in “Bailing Out Private Jails,” by Judith Greene, in *The American Prospect*, September 10, 2001.)

Despite the academic studies’ negative results, BOP has continued to expand its efforts to meet additional bed space needs by incarcerating federal prison inmates in private prisons. Over a 10 year period, the costs to confine federal BOP inmates in non-BOP facilities nearly tripled from about \$250 million in FY 1996 to about \$700 million in FY 2006. To determine the cost-effectiveness of this expanded use of private prisons, Congress directed the U.S. Government Accountability Office (GAO) in the conference report accompanying the FY 2006 Science, State, Justice and Commerce Appropriations Act (P.L. 109-108) to compare the costs of confining federal prison inmates in the low and minimum security facilities of BOP and private contractors.

However, GAO determined in its October 2007 report that a methodologically sound cost comparison analysis of BOP and private low and medium security facilities was not feasible because BOP does not gather data from private facilities that are comparable to the data collected on BOP facilities. As a result, the GAO concluded that:

“Without comparable data, BOP is not able to evaluate and justify whether confining inmates in private facilities is more cost-effective than other confinement alternatives such as building new BOP facilities.” (*Cost of Prisons: Bureau of Prisons Needs Better Data to Assess Alternatives for Acquiring Low and Minimum Security Facilities*, GAO-08-6, October 2007)

BOP officials told GAO that there are two reasons why they do not require such data from private contractors. First, federal regulations do not require these data as means of selecting among competing contractors. Second, BOP believes collecting such data could increase the cost of the private contracts, but BOP officials did not provide support to substantiate this concern.

BOP Director Harley Lappin gave two somewhat similar reasons when disagreeing with GAO’s recommendation that the Attorney General direct the BOP Director to develop a cost-effective way to collect comparable data across BOP and private low and minimum security facilities:

- “The Bureau does not own or operate facilities to house solely criminal aliens and will not be receiving funding [from Congress] to construct

such low security facilities. Accordingly, there is no value in developing data collection methods in an attempt to determine the costs of housing this particular group of inmates in a Bureau facility.”

- “The Bureau has been able to determine what it actually costs to contract out this particular population to private contractors via open competition. [And so] we do not see the value of requiring existing private contractors to provide specific comparable data to aid in a cost comparison. This requirement would have the potential to increase current contract costs at a time when the Bureau is facing serious budget constraints.”

AFGE, therefore, strongly urges the CJS appropriations subcommittee to prohibit BOP from meeting additional bed space needs by incarcerating federal prison inmates in private prisons. Prison privatization is not the panacea that its proponents would have us believe. Private prisons are not more cost effective than public prisons, nor do they provide higher quality, safer correctional services. In addition, without comparable data, BOP is not able to evaluate or justify whether confining inmates in private facilities is more cost-effective than building new BOP facilities.

7. Oppose any effort to statutorily redefine the term “law enforcement officer” for pay and retirement purposes to exclude federal prison staff.

Under current law, the definition of “law enforcement officer” for pay and retirement purposes includes federal prison support staff, in addition to those individuals who fill federal correctional officer positions. However, in October 2005, the Republican staff of the House and Senate federal workforce subcommittees released a 25-page “Concept Paper for a Federal Law Enforcement Personnel System” that proposed to redefine “law enforcement officer” for pay and retirement purposes to exclude federal prison support staff.

AFGE strongly urges the CJS appropriations subcommittee to oppose any legislative effort to institute such a redefinition. The reason federal prison support staff receive law enforcement officer pay and retirement benefits is because their jobs include performing law enforcement security functions in federal prisons. These men and women, on a daily basis, help supervise and control prison inmates at all security levels inside the walls and fences of federal prisons. They are called upon, on a daily basis, to provide searches of inmates, to search housing areas of federal prisons for contraband, and to escort inmates to local hospitals or other outside facilities.

In addition, federal prison support staff – like federal correctional officers – are required to successfully undergo training to perform these law enforcement security operations in federal prisons. These men and women are required to go

to law enforcement training in Glynco, GA, and are required to pass firearms training every year.

Why do the jobs of federal prison support staff include performing law enforcement security operations at federal prisons? Unlike state or county correctional facilities, federal prisons do not have sufficiently large numbers of correctional officers to deal with security-related issues. Because of this shortage of correctional officers, the federal BOP must train and use prison support staff to help maintain safety and security at federal prisons.

8. Exempt federal law enforcement officers, including BOP correctional officers and staff, who separate from government service after age 50 from the present law's 10% additional tax for early distributions from the Thrift Savings Plan (the third component of the Federal Employees Retirement System or FERS).

Under present law, a federal employee who receives a distribution from a qualified retirement plan such as the Thrift Savings Plan (TSP) prior to age 59½ is subject to a 10% early withdrawal tax on that distribution, unless an exception to the tax applies. Among other exceptions, the early withdrawal tax does not apply to TSP distributions made to a federal employee who separates from government service after age 55.

Present law also provides that BOP correctional officers and staff, as well as other federal law enforcement officers, who complete 20 years of service in a "hazardous duty" law enforcement position are eligible to retire at age 50. This special treatment of BOP correctional officers and staff is intended to help the federal government recruit and retain a young, physically strong work force to work in BOP correctional institutions.

As a result, BOP correctional officers and staff who retire at 50 years of age/20 years of service cannot – under present law - withdraw their TSP funds without incurring the 10% early withdrawal tax penalty. These retirees must wait until age 55 to withdraw their TSP monies if they want to avoid incurring this penalty.

This is grossly unfair to the BOP correctional officers and staff who keep the most dangerous felons behind bars, as well as to the other federal law enforcement officers who patrol our nation's borders and secure our federal buildings' safety.

Until two years ago, police and firefighters who worked for State and local governments experienced a similar problem. Those who retired after age 50 but before age 55 were unable to withdraw money from their defined benefit plans with incurring the 10% additional tax penalty. However, section 828 of the Pension Protection Act of 2006 (P.L. 109-280) resolved the problem for these State and local public safety employees. This section amended section 72(t) of

the Internal Revenue Code of 1986 (which exempts certain individuals from the 10% early withdrawal penalty) by adding the following new paragraph:

“(10) Distributions to qualified public safety employees in governmental plans.

(A) In general

In the case of a distribution to a qualified public safety employee from a governmental plan (within the meaning of section 414 (d)) which is a defined benefit plan, paragraph (2)(A)(v) shall be applied by substituting “age 50” for “age 55”.

(B) Qualified public safety employee

For purposes of this paragraph, the term “qualified public safety employee” means any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.”

AFGE strongly urges the CJS appropriations subcommittee to support legislation that would modify the section 72(t)(10) language to benefit those federal law enforcement officers who want to retire at age 50 and withdraw their TSP monies without incurring the 10% additional tax penalty. This legislation would:

- Strike the language “which is a defined benefit plan” from subparagraph (A). Thus, federal law enforcement officers who participate in a defined contribution plan like the TSP would also be granted relief from the 10% early withdrawal penalty.
- Amend subparagraph (B) to include federal law enforcement officers. Subparagraph (B) as now written does not apply to the TSP because federal (not State and local) police, firefighters, and EMS personnel participate in the TSP.

This concludes our statement. We thank you for your attention and will be happy to answer any of your questions.