ENVIRONMENTAL PROTECTION AGENCY
AFGE COUNCIL 238

In the current legislative session, Congress should:

- Avert a government shutdown in FY 2024.
- Fully fund EPA's appropriations in FY 2024-25 at the President's requested level of $11.2 billion.
- Address the continuing staffing shortfall in core programs at the Environmental Protection Agency.
- Create a specific appropriation for promotion and retention of experienced EPA staff.
- Support more remote work and telework opportunities, as these work flexibilities save money, aid recruiting efforts and, importantly, reduce greenhouse gas emissions.
- Preserve merit-based hiring and protect government employees from political pressure.
- Continue to prioritize drastic reductions in fossil fuel emissions to protect the American people from the climate emergency.
- Decarbonize the Thrift Savings Plan by removing company stocks linked to global warming.

Background

The members of AFGE Council 238, the Environmental Protection Agency's largest union at over 8,000 strong, commend our lawmakers' determination to protect federal workers, limit harmful greenhouse gas emissions and avert the worst effects of climate change. By passing the Inflation Reduction Act (IRA), the Bipartisan Infrastructure Law (BIL) and the Environmental Protection Agency's Fiscal Year 2023 Appropriation (and keeping EPA's funding constant through recent continuing resolutions), EPA is more effective at protecting the nation against environmental pollution. EPA employees stand ready to address the most pressing environmental problems of our generation, as we have demonstrated over our 50-year track record at the Agency. For Fiscal Year 2024, we highlight the following requests.

Congress should take steps to avert a government shutdown in FY 2024, and pass S. 135, the Prevent Government Shutdowns Act of 2023.

A shutdown occurs when there is neither a full-year spending bill nor a continuing resolution (CR) in effect for a department or agency whose budget has an expiration date. For many parts of government, that expiration date occurs at least once annually at the end of the fiscal year, which runs from October 1 to September 30. If a CR or a full-year deal is not in place, EPA will lack approved annual funding from Congress, requiring EPA to "shut down."

When there is a shutdown, EPA must:

1) Stop all projects and activities as quickly as possible;

2) Furlough employees whose work activities have not been exempted or excepted from the shutdown;

3) Halt pay for all government employees and contractors, except if they exempt; and

4) Sign no further contracts for goods and services.

Because many federal workers are off the job during a government shutdown, many services are stopped or slowed, disturbing the day-to-day life for many Americans. Shutdowns are a horrible waste of the taxpayers' money. It takes weeks of planning to cease operations and more wasted time and effort to get projects moving again once a shutdown ends. In the case of EPA, all but about 2,000 of the agency's more than 15,000 employees would be furloughed.

Congress should fully fund EPA in FY 2024-25

Congress should maintain a level of appropriation which supports full protection for the American people and preserve the gains made by EPA under the BIL, IRA and the first increase in appropriations in many years. EPA's 2023 funding of $10.4 billion finally began to address years of declining EPA resources, after the 2022 budget that was half the size, in real dollars, of EPA's budget 40 years ago.

The 2023 EPA appropriation, which has been maintained by Congress through continuing resolutions into 2024, took a tiny step forward, helping to rebuild the Agency and restoring its ability to implement and enforce the laws protecting our nation's environment. While the 2023 funding increase was only a modest 6 percent of the EPA budget -- less than the current inflation rate and one-quarter of what EPA requested -- it is a significant improvement over funding provided by the previous administration and has continued over to 2024. But this 6 percent increase was not enough to fully fund the Agency. Much necessary work in protecting the environment remains unfunded, and to tackle the challenges the nation faces, Congress must fully fund EPA at $11.2 billion.

Congress should take steps to address the continuing staffing shortfall in core programs at the EPA, including retaining technical employees.

Even with a 6% increase in funding, EPA suffers from a staffing shortfall that continues to thwart action by the Agency. Our mission has grown enormously, and climate challenges continue to escalate, but EPA's ability to hire and retain staff has not rebounded to pre-2014 levels.

EPA workers are implementing key provisions of groundbreaking regulatory efforts to protect the American people and our planet. The country is depending on them to help avert the worst effects of the climate crisis. But EPA career employees report they are under the greatest pressure they've ever encountered because of the increased responsibilities assigned to EPA in averting global warming. EPA's 15,115 full-time employees (FTEs) are not enough to meet the demands posed by the climate crisis *and* continue to accomplish its core mission. To meet the current needs, EPA must expand its ranks to 20,000 workers.

In the past two years, Congress has added many new responsibilities to EPA's plate- the Bipartisan Infrastructure Law (BIL) and the Inflation Reduction Act (IRA). The BIL – a once-in-a-generation investment in our nation's infrastructure and competitiveness – enables us to rebuild America's roads, bridges and rails, expand access to clean drinking water, tackle the climate crisis and advance environmental justice. The IRA invests in clean energy and jobs, while lowering energy costs for families and slashing climate pollution in the U.S. by an estimated 40% by the end of the decade. $90 billion was provided by Congress under the BIL and the IRA for climate projects.

However, EPA's core programs continue to protect the American people from the effects of toxic pollution. New regulations must be enacted, reducing emissions from power plants, cars and trucks if the nation is to meet the goal of reducing greenhouse gas emissions in half by the end of the decade. Writing a half dozen highly complex rules that are expected to reduce the most devastating effects of climate change demands an expert, highly trained EPA staff that must act with maximum speed to avert global catastrophe. And EPA staff must shepherd the new rules through complex regulatory hurdles at a pace unheard of in the regulatory world. In addition, environmental justice communities still suffer from outsized toxic burdens that need to be addressed, so continuing EPA's expanded enforcement is critical to the future of people living in highly industrialized areas.

Federal environmental enforcement is also an important EPA "core" program and a case in point. EPA's enforcement office is now staffing up after years of funding declines. Nearly 300 enforcement positions were added in FY 2023 after EPA underwent a decade of budget cuts and lost about 950 enforcement jobs. Because EPA's appropriation has started to reflect the need to fully staff the Agency, the number of EPA's civil cases against polluters has rebounded. This year, EPA initiated 1,751 civil enforcement actions, nearly a hundred more than the year before and its most in a year since 2018. EPA brought in over $700 million in penalties, fines and restitution from environmental law violators in fiscal 2023, a 57 percent increase from the prior year. EPA also reached 1,791 civil settlements, with 55 percent of those cases centering on facilities in communities with "potential [environmental justice] concerns." Inspections climbed in 2023 to 7,742, a 30 percent increase from fiscal 2022. This extraordinary progress was due to the added staff hiring fostered by the higher appropriation for staffing enacted by Congress. However, EPA's enforcement is not nearly at the levels seen prior to 2018, when the industrial output and population stood below the nation's current expanded footprint. Since 2008, the nation's gross domestic product has grown from about $14 trillion to $23.32 trillion in 2021, an over 50 percent increase. If the EPA's staffing had grown commensurate with the economy over that period, it would leave the agency with about 25,000 permanent employees.

Investments in EPA staffing levels quickly generate significant progress in protecting the nation's air, land, and water. Congress should support the FTE level of at least 20,000 Agency employees to preserve EPA's path to continuing our nation's progress.

Congress should create a specific appropriation for promotion and retention of

experienced EPA staff.

Congress must provide a specific appropriation for staff promotions at EPA, higher pay and opportunities for career growth that are more comparable to the private sector. EPA is hiring new employees at an impressive clip- 1900+ employees in 2023 alone. However, it was not enough to reduce the significant staffing shortage. Total staff levels are still very low, remaining at numbers only marginally above when Ronald Reagan was president. This is because even though hiring continues, employees are leaving EPA, draining the Agency of staff and, importantly, hard-earned expertise.

Over 3,000 EPA employees are currently eligible to retire. Overworked staff are moving to retire rather than continue to shoulder a punishing workload, increasing the burden on remaining workers. Employees at the start of their careers are also leaving because of uncompetitive pay. As attrition accelerates, a net gain in staff is difficult to maintain. Congressional action is needed to prioritize staff retention at EPA and entice workers to stay at the Agency.

To retain the most talented environmental professionals and attract the next generation of the best and brightest technical workers, Congress should provide and specifically designate EPA funding that supports more career ladder General Schedule (GS)-13, GS-14, and GS-15 positions - higher pay that is commensurate with private sector competition for STEM workers. At present, EPA salaries are not competitive with private industry. Pay adjustments fail to offset the high cost of living in areas where EPA personnel are concentrated, such as Boston, New York, D.C., Chicago, Denver, San Francisco, and Seattle. Even with the federal pay bump of 2024, a starting GS-7 scientist or engineer who joins the Agency in Washington, D.C. would earn $55,924 per year; 30% lower than the average $96,000+ entry-level salary for an environmental engineer with a private firm in the D.C. area. Increasing pay for EPA staff by providing fair pay and promotion potential will help attract candidates and retain the best talent to take on science-based climate change work as well as rebuild our existing environmental laws and regulations.

More pay through promotions should be a critical component of EPA's retention plan. When EPA workers must take on more and more work but receive no recognition or compensation for doing so, they leave the Agency. Senior EPA staff are retiring at record rates, and those remaining must pick up the slack with no commensurate raise in pay or a promotion to the retiree's grade level.

EPA workers are poised to tackle the steepest challenges of any workforce in history – averting climate change impacts that threaten most of our nation's communities. Solving the climate crisis is our generation's moonshot. There is too much at stake for EPA to maintain low pay and sustain failed retention policies. Tackling climate change will require dramatic change at EPA, and that starts with visionary, forward-looking hiring and retention policies for its workers. Congress must carve out some of EPA's appropriations for promoting and retaining current staff.

Congress should preserve current levels of remote work and telework

Congress should support more remote work and telework opportunities at EPA as a cost savings and recruiting measure and, importantly, to reduce greenhouse gas emissions. Expanding telework saves crucial Agency funds. Investing in telework and remote work will attract the best and the brightest while retaining the highly educated, highly trained workers at EPA. During the COVID-19 pandemic, many federal employees worked remotely to protect their health and the health of their families and communities. EPA employees were praised by EPA management, even under the Trump administration, for their effectiveness working remotely, processing more environmental permit applications during the first year of the pandemic compared to a standard year working in-person.

As federal agencies began to return to work in-person and considering how effective EPA was during the COVID-19 pandemic, AFGE bargained with the Agency to allow EPA employees to continue expand telework and initiate a remote work program that allows full time telework. After only one year under the agreements, the Agency tried to limit their scope by eroding employee telework and disapproving a large swath of applications for remote work. As acknowledged in the agreement itself, offering remote work is a selling point that helps recruit to EPA from the STEM applicant pool. However, the union has been forced to arbitrate, and win, cases for EPA workers that advance the full scope of remote work bargained by the union.

The Agency has reported that, after expanded telework and remote work was ruled out in job offers, applicants have been turning down EPA's offers of employment. As it stands, fully one quarter of job offers tendered by EPA are not being accepted. And within EPA, we see more experienced EPA employees transferring to offices where expanded telework and remote work is possible. Some 85 percent of federal employees say more telework had benefits for their quality of life. Federal employees believe the benefits go beyond simple convenience. Over three-quarters believe their productivity is better when they work at home. Most say they took the extra time they had without a commute to learn new skills. And when it comes to the bottom line of productivity, nearly 70 percent of federal employees say there was no difference between working remotely or being in-person.

Importantly, reducing EPA's office footprint is both an environmental and a cost savings measure. More employees teleworking created opportunities to reduce office space. Federal departments allowing expanded telework and remote work were able to shed a considerable part of the financial burden posed by transit costs. Office utility costs have also dropped. The Department of Education, for example, saved over $3 million on transit costs alone.

We applaud the Biden Administrations efforts to build a clean transportation future, by announcing, in December 2023, new public and private commitments to boost the use of electric vehicles for federal travel, save taxpayer dollars, and tackle the climate crisis. But more telework and remote work also reduces the amount of travel trips for federal employees overall and should be included in calculations that limit greenhouse gas emissions by federal employees in the Biden Administration.

AFGE opposes the "Return to Work Act," H.R. 101 and the "SHOW UP Act" H.R. 139, which require a return to pre-pandemic telework policies and a review of office usage and eligibility for locality pay. Both laws are contrary to widespread data supporting the benefits of telework for federal employees and will reduce the environmental gains and cost-savings that have already accrued.

Congress should take steps to thwart the implementation of the Trump-era proposal

Schedule F.

Congress should reject any legislation which erodes civil service procedures and leaves federal employees more susceptible to dismissal or hiring based on political preference.

In late October 2020, then-President Trump issued an Executive Order (EO) creating a new Schedule F in the excepted service. The EO creating Schedule F, which was never implemented, would have permitted the transfer of tens of thousands and potentially hundreds of thousands of positions from the competitive civil service into the excepted service. These newly transferred excepted service positions would have been "at will" positions, with no tenure protections, regardless of employees' prior years of service or quality of performance. Had Schedule F been implemented, it is likely that many long-time federal employees would have found themselves effectively serving as political appointees, subject to removal without cause or any due process rights.

Since the proposal of Schedule F, attempts to "politicize" the career civil service have continued unabated. To combat this threat, in September of 2023, the Office of Personnel Management (OPM) issued rules that would seek to insulate the federal workforce from future efforts to strip them of their removal protections. In response, H.R. 6558 was introduced, which would block the implementation of the OPM rules. Congress should:

- Oppose H.R. 6558, which would prevent the implementation of an OPM Rule outlawing Schedule F. Federal employees should remain free from undue political interference and politization.

- Pass the bipartisan bill H.R. 1002, which would prevent federal employee positions from being reclassified without Congressional consent. Congress should prioritize the reduced production of fossil fuels and protect the nation from the climate emergency.

This year brought some of the Agency's biggest accomplishments combatting climate change. We call on Congress to continue the nation's efforts to reduced greenhouse gases, and to address the climate emergency. The effects of climate change may be accelerating, and addressing harmful emissions now is crucial to forestalling future catastrophic effects.

In FY 2023, EPA staff IRA and BIL output was unprecedented: over $13 billion was distributed states, Tribes, and territories for water infrastructure improvements and $1 billion was deployed to rebuild the nation's infrastructure. This "huge lift" by EPA staff is a crucial contribution in the long campaign to reduce the emissions that cause global warming.

As EPA's emergency response efforts on Maui, Hawaii show, climate change is causing large-scale environmental catastrophes which are unprecedented in scale and scope. Congress and the Biden Administration should reaffirm its commitment to the BIL and IRA, declare a climate emergency and urgently pursue additional solutions that will address emerging effects of our past uncontrolled greenhouse gas emissions, such as the Diesel Emissions Reduction Act, S. 2195 and H.R. 5444.

Congress should ensure that the Thrift Savings Plan includes indexes that exclude fossil fuel investments and fully staff the Federal Retirement Thrift Investment Board (FRTIB) with members who understand climate risk.

The Thrift Savings Plan serves over 6 million federal employees and service members and has over $800 billion in assets. EPA employees want to invest their retirement savings in funds that provide a long-term sound financial investment and do not contribute to climate change or deforestation. A new study shows that federal employees have $33.5 billion invested in fossil fuel companies.

EPA workers have committed to protect the health of this nation and our environment. We want our investments to reflect our values and the mission we proudly serve. As the economy has shifted to clean energy sources, the TSP has not kept up, and the TSP Board has not met its fiduciary duty to provide investments in our best financial interests.

The TSP is invested in companies that are driving the climate crisis. We applaud the Biden Administration's Executive Order that requires the Federal Retirement Thrift Investment Board to evaluate the risk of continued investment in fossil fuel securities, but it has not gone far enough. The TSP continues to hold positions in the fossil fuel industry. Not only are these investments contrary to our Agency's mission, fossil fuel stocks have mostly underperformed the market for the past decade. The S&P 500 Fossil Fuel Free Total Return index has outperformed the S&P 500 Total Return index, the TSP C Fund, since 2012. Coal, oil, and gas companies will be poor investments in our transformation to fossil-free energy, while also presenting palpable financial risk to TSP members' earnings. As the nation accelerates the transition to a low-carbon economy, EPA workers want our retirement portfolios to benefit from clean energy investments and avoid the potential high risk and low returns of fossil fuels.

Investing in ESG (Environmental Social Governance) funds has only been offered in limited and unfavorable circumstances through a mutual fund window. But the mutual fund window is not an attractive option for most investors, as it charges an annual $55 administrative fee, an annual $95 maintenance fee, and a per-trade fee of $28.75. Moreover, it is only accessible to participants with balances over $40,000, and those investors are limited to a contribution of 25% of their TSP balance. Publicity and training about the mutual fund window for federal employees has been minimal.

The FRTIB itself could recommend changing the existing index funds' strategies to make them ESG-friendly. According to the rules governing the TSP, the current funds in the plan must track indexes that are "commonly recognized" and a "reasonably complete representation" of the market. The FRTIB recently changed the index followed by the International "I" Fund to omit investments in China or Hong Kong. It has the power to also switch the Common Stock "C" Fund to omit lower performing fossil fuel investments.

The exposure of TSP's investment portfolio to risks from climate change is unfair to federal workers. The FRTIB has not addressed such risks. We ask that Congress require that the Thrift Savings Plan fund follow the GAO report recommending that the TSP Board investigate using indexes that exclude low-return companies whose primary business is oil, natural gas, and coal exploration and production.

Further, Congress should oppose H.R. 3612 – “No ESG at TSP Act” and its companion S. 2147**,** which would prohibit the Federal Retirement Thrift Investment Board from offering through the TSP’s brokerage window, any mutual fund, ETF or other investment vehicle that invests in bonds or equities and that makes investment decisions based on ESG criteria.