THE STATUS OF FEDERAL PERSONNEL REFORM

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

MARCH 8, 2007

Serial No. 110–12

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

36–547 PDF WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON OVERSISGHT AND GOVERNMENT REFORM

HENRY A. WAXMAN, California, *Chairman*

TOM LANTOS, California
EDOLPHUS TOWNS, New York
PAUL E. KANJORSKI, Pennsylvania
CAROLYN B. MALONEY, New York
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio
DANNY K. DAVIS, Illinois
JOHN F. TIERNEY, Massachusetts
WM. LACY CLAY, Missouri
DIANE E. WATSON, California
STEPHEN F. LYNCH, Massachusetts
BRIAN HIGGINS, New York
JOHN A. YARMUTH, Kentucky
BRUCE L. BRALEY, Iowa
ELEANOR HOLMES NORTON, District of Columbia
BETTY MCCOLLUM, Minnesota
JIM COOPER, Tennessee
CHRIS VAN HOLLEN, Maryland
PAUL W. HODES, New Hampshire
CHRISTOPHER S. MURPHY, Connecticut
JOHN P. SARBANES, Maryland
PETER WELCH, Vermont

TOM DAVIS, Virginia
DAN BURTON, Indiana
CHRISTOPHER SHAYS, Connecticut
JOHN M. MCHUGH, New York
JOHN L. MICA, Florida
MARK E. SOUDER, Indiana
TODD RUSSELL PLATTS, Pennsylvania
CHRIS CANNON, Utah
JOHN J. DUNCAN, JR., Tennessee
MICHAEL R. TURNER, Ohio
DARRELL E. ISSA, California
KENNY MARCHANT, Texas
LYNN A. WESTMORELAND, Georgia
PATRICK T. MCHENRY, North Carolina
VIRGINIA FOXX, North Carolina
BRIAN P. BILBRAY, California
BILL SALI, Idaho

PHIL SCHILIRO, *Chief of Staff*
PHIL BARNETT, *Staff Director*
EARLEY GREEN, *Chief Clerk*
DAVID MARIN, *Minority Staff Director*

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

DANNY K. DAVIS, Illinois

ELEANOR HOLMES NORTON, District of Columbia
JOHN P. SARBANES, Maryland
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio, *Chairman*
WM. LACY CLAY, Missouri
STEPHEN F. LYNCH, Massachusetts

KENNY MARCHANT, Texas
JOHN M. MCHUGH, NEW YORK
JOHN L. MICA, Florida
DARRELL E. ISSA, California

TANIA SHAND, *Staff Director*

CONTENTS

THE STATUS OF FEDERAL PERSONNEL REFORM

THURSDAY, MARCH 8, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 3:05 p.m. in room 2154, Rayburn House Office Building, Hon. Danny K. Davis (chairman of the subcommittee) presiding.

Present: Representatives Davis of Illinois, Norton, Sarbanes, Lynch, and Marchant.

Staff present: Tania Shand, staff director; Caleb Gilchrist, professional staff member; Cecelia Morton, clerk; LaKeshia Myers, editor/staff assistant; Mason Alinger and Alex Cooper, minority professional staff members.

Mr. DAVIS OF ILLINOIS. The subcommittee will come to order.

Let me apologize to all of you for having to wait. This has been one of those days where we have transacted a tremendous amount of business and everybody has had some pretty heavy schedules, and ours got caught in the midst of a legislative schedule that wouldn't wait. But we just finished votes, and that means that we certainly won't be disturbed between now and the time that we end. Let me thank you for your patience and thank you for participating.

The hearing will come to order. Welcome Ranking Member Marchant, members of the subcommittee, hearing witnesses, and all of those in attendance. I welcome you to the first Federal Workforce, Postal Service, and District of Columbia Subcommittee hearing of the 110th Congress.

Hearing no objection, the Chair, ranking member, and subcommittee members will each have 5 minutes to make opening statements if they so desire, and all Members will have 3 days to submit statements for the record.

I look forward to working with all of the members of the subcommittee in a bipartisan fashion to move forward with the subcommittee's agenda. That agenda includes addressing bread and butter Civil Service issues such as benefits, compensation, public/private competitions, and labor/management relations. The subcommittee is going to conduct aggressive postal oversight and monitor the implementation of the Postal Accountability and Enhancement Act of 2006, and it is going to protect and advance home rule for the District of Columbia.

This hearing is the first in a series of hearings that will be held on Federal personnel reform. Today, we will hear from human resource stakeholders whose testimony will lay the foundation for agency-specific personnel reform hearings.

At this point, I would like to ask unanimous consent that the testimony of Jeffrey Pferrer, a Stanford University professor, and Colleen Kelley, national president of NTEU's statement will be submitted for the record.

Hearing none, so it will be.

[The prepared statements of Mr. Pferrer and Ms. Kelley follow:]

TESTIMONY

Submitted for the Record

For

United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on
Federal Workforce, Postal Service, and the
District of Columbia

By

Jeffrey Pfeffer, Ph.D.
Thomas D. Dee II Professor of Organizational Behavior
Graduate School of Business
Stanford University
Stanford, CA 94305

Hearing on the Status of Federal Personnel Reform

Washington, D. C.
March 8, 2007

My name is Jeffrey Pfeffer, Ph.D. I am a professor of organizational behavior and human resource management in the Graduate School of Business at Stanford University, and have served on the faculties of the University of Illinois and the University of California, Berkeley, as well as being a visiting professor at Harvard Business School, Singapore Management University, London Business School, and IESE in Spain. I have written 12 books and more than 100 articles and book chapters, and write a monthly management column for *Business 2.0*.

I am pleased to be able to offer my thoughts and evidence as the Federal Government thinks about how to manage its substantial civilian workforce to ensure even higher levels of performance and service. There is no doubt that people and how they are managed matter tremendously for organizational success—as literally scores of studies show.[1] However, much of the conventional wisdom about and current practices in managing people are inconsistent with both theory and evidence about how to attain the best from a workforce.[2]

In this short statement, I want to make five points as succinctly as possible, providing references for background and documentation for my arguments. First, organizations in both the public and private sector ought to base policies not on casual benchmarking, on ideology or belief, on what they have done in the past or what they are comfortable with doing, but instead should implement evidence-based management. Second, the mere prevalence or persistence of some management practice is *not* evidence that it works—there are numerous examples of widely diffused and quite persistent management

---

[1] There are a number of summaries of the research linking people management practices to performance. Examples include Brian E. Becker and Mark A. Huselid, "High Performance Work Systems and Firm Performance: A Synthesis of Research and Managerial Implications," in G. R. Ferris (ed.), *Research in Personnel and Human Resources Management, Vol. 16*, Greenwich, CT: JAI Press, 1998, 53-101; Eileen Appelbaum, Thomas Bailey, Peter Berg, and Arne L. Kalleberg, *Manufacturing Advantage: Why High Performance Work Systems Pay Off*, Ithaca, NY: Cornell University Press, 2000; Brian E. Becker, Mark A. Huselid, and David Ulrich, *The HR Scorecard: Linking People, Strategy, and Performance*, Boston: Harvard Business School Press, 2001.

[2] See, for instance, Jeffrey Pfeffer, *What Were They Thinking? Unconventional Wisdom About Management*, Boston: Harvard Business School Press, 2007 (July).

practices, strongly advocated by practicing executives and consultants, where the systematic empirical evidence for their ineffectiveness is just overwhelming. Third, the idea that individual pay for performance will enhance organizational operations rests on a set of assumptions. Once those assumptions are spelled out and confronted with the evidence, it is clear that many—maybe all—do not hold in most organizations. Fourth, the evidence for the effectiveness of individual pay for performance is mixed, at best—not because pay systems don't motivate behavior, but more frequently, because such systems effectively motivate the *wrong* behavior. And finally, the best way to encourage performance is to build a high performance culture. We know the components of such a system, and we ought to pay attention to this research and implement its findings

Evidence-Based Management Practice

There is a small, but growing, movement to transition management practice from being premised on some mixture of ideology, casual benchmarking—mindlessly copying what other, apparently successful organizations seem to be doing, what people have done in the past and think has worked, what people are skilled and comfortable at doing, and what they hope will work—to management practice based on evidence, including qualitative and quantitative evidence, and evidence that is based on the best, most current, social science theories.[3] Such a movement follows from and is inspired by the evidence-based medicine movement, something that has been demonstrated to lead to better practice, keeping up to date with the relevant advances in medical science, and to better patient outcomes.[4] There are also evidence-based movements in the policy sciences, particularly in the United Kingdom where there has been a substantial commitment to basing policy on facts, as well as elsewhere. For instance, we recently learned of work in the New Zealand

[3] For a description of evidence-based management, see Jeffrey Pfeffer and Robert I. Sutton, *Hard Facts, Dangerous Half-Truths, and Total Nonsense: Profiting from Evidence-Based Management*, Boston: Harvard Business School Press, 2006.
[4] E.g., David Sackett et al., *Evidence-Based Medicine: How to Teach and Practice EBM*, London: Wolfe, 2002.

Ministry of Education on an Outcomes Evidence and Monitoring Project. And, there are important evidence-based movements in criminology and education, among other fields of practice. With the help of two Stanford business school librarians, Daphne Chang and Paul Reist, we have developed a website, **www.evidence-basedmanagement.com**, that collects a number of these resources as well as commentaries and case studies from individuals from a variety of fields trying to push evidence-based practice forward. The Academy of Management, the leading association of management professors, is embarking on creating a collaborative of scholars and practitioners interested in developing and diffusing evidence-based management and the association and its leadership appears committed to stimulating evidence-based practice in management. In short, there are many nascent movements to get evidence into practice. Much as in the case of evidence-based medicine, such efforts will undoubtedly take some time to bear fruit.

It is neither necessary nor useful to reprise all of the reasons why so little management practice is based on the evidence.[5] Here I want to comment mostly on two substantial barriers that need to be acknowledged and surmounted. The first is the idea that somehow acting on the facts is more time-consuming and costly than relying on experience, intuition, and other non-evidence based approaches. Although I hear this argument all the time from my business colleagues, I find it completely unpersuasive. Many of the people who tell me that collecting data and running experiments take too long are the same people who spend millions of dollars on studies by consulting firms that are at least as expensive and time-consuming. Moreover, as we should have learned from the quality movement and from medical practice, preventing errors and difficulties, to the extent that is possible by acting on the best theory and evidence, is the most cost- and time-effective way of going about our business. It is almost always easier and less expensive to prevent problems than to fix them once they have occurred.

---

[5] This material is reviewed in Chapters 1 and 2 of *Hard Facts*, op. cit.

Second, because ideology and belief loom large, and because self-fulfilling prophecies are potent, care must be taken in gathering and analyzing data to ensure the integrity of the process. In medicine, the double-blind, placebo-controlled study is the gold standard for a good reason—even in the case of physical symptoms and disease processes, we know all too well that we see what we expect, or hope, to see. Therefore, in medicine and other domains as well, to the extent possible, data gathering must be done in a way to ensure against simply confirming our biases, recognizing that in the world of the policy sciences, blinded studies are seldom possible.

One of my observations from years of experience is that consulting firms know the answers that their clients want, and will almost invariably give it to them. In that regard, care should be taken in doing evaluation studies to ensure the greatest level of objectivity and rigor or else such activities become simply exercises to provide the expected answers that sponsors have paid to hear.

Diffusion and Persistence Don't Provide Proof of Effectiveness

Many people will correctly note that individual pay for performance has increased in popularity, at least as measured by the extent of its implementation, not only in the United States but also in other countries as well. The adoption and persistence of some management practice, particularly by profit-seeking entities such as business firms, is often taken as prima facie proof that the practice must be effective. The argument is that if some management approach weren't effective, it would not be adopted in the first place or would be abandoned if it proved not to be effective.

However, this line of reasoning is completely fallacious. The study of management fads and fashion repeatedly illustrate the widespread adoption of techniques that have little or no value as well as the abandonment of management approaches such as total quality management that demonstrate effectiveness when interest wanes.[6] The difficulty in learning from experience,

---

[6] David Strang and Michael Macy, "In Search of Excellence: Fads, Success Stories, and Adaptive Emulation," *American Journal of Sociology, 107* (2001), 147-182; Eric Abrahamson,

when that experience has a systematic sampling bias—for instance, oversampling on success and undersampling on failure—has been explored in depth by my colleague Jerker Denrell in a series of insightful papers.[7]

Two concrete examples briefly illustrate the argument that diffusion and persistence say nothing about the effectiveness of some managerial intervention. Stock option plans and other schemes that encourage equity ownership on the part of top management have been widely adopted. Many companies have, as part of "good corporate governance," implemented required stock ownership guidelines for their senior managers. As this Congress certainly knows, any attempt to make such plans less financially attractive—for instance, by requiring that stock options be expensed—has been met with fierce, passionate opposition by executives who plead that such ownership incentives are crucial for creating a culture that encourages enhanced retention of key employees and improved organizational performance. Nonetheless, a meta-analysis of more than *200* studies of the effects of senior management equity ownership on company financial performance finds *no* effect.[8] Thus, this is one example of a widely-adopted and vigorously defended management practice that has no evidence to support it.

Almost as near and dear to the hearts of senior private sector leaders is the idea of downsizing and the belief that U.S. companies are comparatively more competitive because they enjoy much greater flexibility than their counterparts in other countries in being able to adjust their workforce levels in response to changing economic and competitive conditions. As documented by Peter Cappelli[9] and others, the rate of corporate restructurings has increased over the past several decades. However, once again, systematic reviews of the

---

"Management Fashion," *Academy of Management Review, 21* (1996), 254-285; Eric Abrahamson and Gregory Fairchild, "Management Fashion: Life Cycle, Triggers, and Collective Learning Processes," *Administrative Science Quarterly, 44* (1999), 708-740.

[7] See, for example, Jerker Denrell, "Vicarious Learning, Undersampling of Failure, and the Myths of Management," *Organization Science, 14* (2003), 227-243.

[8] Dan R. Dalton, et al., "Meta-analyses of Financial Performance and Equity: Fusion and Confusion?" *Academy of Management Journal, 46* (2003), 13-27.

[9] Peter Cappelli, *The New Deal at Work: Managing the Market-Driven Workforce*, Boston: Harvard Business School Press, 1999.

evidence find little positive effect from downsizings and, instead, much evidence of problems and various adverse consequences.[10] There is, as reviewed by Wayne Cascio, no evidence that corporate downsizings increase productivity or stock price, reduce costs, stimulate innovation, or make organizations more successful. Nonetheless, such activities persist, providing yet another example of a widespread management practice that is apparently growing in prominence in spite of, not because of, the evidence for its effectiveness.

Adoption and persistence of some management practice should be taken as nothing other than evidence of what is currently in fashion or believed. Recall that at one time blood-letting was a widely adopted and advocated method of medical treatment, and a treatment that resulted in the death of George Washington.[11] In fact, the first examples of what has become evidence-based medicine were directed at evaluating this practice.

The Assumptions that Underlie Individual Pay for Performance

Every managerial intervention is premised on a set of assumptions about people and organizations. These assumptions are seldom specified or confronted with what we know, which is how so much bad management practice gets done. For individual pay for performance systems to produce the desired positive results, the following must be true:

Money is an important motivator. The reason why monetary incentives are recommended for solving almost every organizational problem is because we have come to believe that financial incentives are potent ways to drive behavior. There are two issues with this assumption. First, there are at least two effects of instituting some incentive program, be it based on financial rewards or some other type. The reward may increase or redirect motivation. But instituting a reward also provides *information* about what the organization's priorities are.

[10] Wayne F. Cascio, *Responsible Restructuring: Creative and Profitable Alternatives to Layoffs*, San Francisco: Berrett-Koehler, 2002.
[11] Kevin Patterson, "What Doctors Don't Know (Almost Everything)," *New York Times Magazine*, May 5, 2002, 77.

People may respond to this informational effect in a desire to please their bosses and to do good work, regardless of whether or not they are motivated by the reward.

Second, as nicely documented in a series of studies by Chip Heath, many individuals believe that *others* are primarily motivated by money, even as they know that *they themselves* are motivated by other factors. So, for instance, a survey conducted by Kaplan Educational Centers of almost 500 people preparing to take the Law School Admissions Test (LSAT) found that 64% reported that they were thinking of pursuing a legal education because it was intellectually appealing or because they were interested in the law, but only 12% thought their peers were similarly motivated. Instead, 62% thought that others were interested in a legal career primarily for the financial rewards.[12] Heath has referred to this as an extrinsic incentives bias. Numerous surveys report that financial rewards are seldom listed as the most important to respondents. One might particularly question the relevance of financial remuneration compared to a public service motive in a work force that has chosen to work for the government instead, for instance, of going into investment banking.

Motivation is the issue for enhancing performance. Incentives affect motivation. Incentives have only a delayed effect, if any, through differential attraction of job candidates on the *skills* of the people doing the work, and no effect at all on the systems through which work gets done. That's why Deming and other management writers in the quality movement eschewed the use of individual financial incentives.[13] Skill and training matter for performance, and increasing financial incentives can not substitute for providing development so people can do their work more effectively. Nor can financial incentives solve problems of how work is organized and led.

[12] Chip Heath, "On the Social Psychology of Agency Relationships: Lay Theories of Motivation Overemphasize Extrinsic Incentives," *Organizational Behavior and Human Decision Processes*, *78* (1999), 25-62.

[13] Demings fourteen points, which begin with driving fear out of the organization and go on to critique the use of individual financial incentives to solve performance problems, are described in numerous books. One of the best is Andrea Gabor, *The Man Who Discovered Quality*, New York: Times Books, 1990.

In his famous "red ball, white ball" demonstration, Deming would randomly select a participant from one of his lectures and have the person sit in front of a covered urn filled with red and white balls. Deming would tell the individual to pull only white balls out of the urn, since the reds were considered defects. When the person pulled a red ball, Deming would note that perhaps the incentives weren't sufficient, and would put money on the table and tell the person he or she could have it if they continued to draw white balls without drawing a red. When a red ball would invariably be drawn, Deming would then comment that perhaps punishment was necessary, and would smack the individual with a ruler the next time a red ball was drawn. The simple, but frequently, overlooked point is that systems produce performance, not individuals. The recent publicity about Toyota, which, by the way, has somehow succeeded in spite of not having individual pay for performance in its factories or large financial rewards for its executives, makes the point, yet again, about the wisdom of the quality movement with its emphasis on systems not people that is repeatedly forgotten in management practice, particularly in the U.S.

Individual performance can be reliably and unambiguously assessed. One of the reasons why pay for performance plans frequently fail is that they are seen as arbitrary and capricious. That's because few organizational work settings have the requirements argued my colleague, Edward Lazear, as being necessary to have individual financial rewards work effectively. In his classic study of piecework at Safelite Glass, Lazear noted that three conditions were present to make instituting a piecework incentive scheme so effective in the case of this installer of automobile windshields: 1) installing windshields was a job with almost no interdependence—there was little need to learn from colleagues because the task was relatively straightforward and unchanging, and it was a job done by one person so that performance could be unambiguously attributed to that single individual; 2) quality could be measured—did the windshield stay in or not?—and again could be attributed to an individual; and 3) the company had already installed a measurement system that reliably tracked individual productivity, the use of materials, and defects.[14]

In most work situations, there is substantial interdependence, making the assignment of relative contributions necessarily complex and subjective. In most work situations, there are multidimensional aspects to performance, again making quantitatively assessing performance a difficult task. In most work situations, pay for performance involves scoring high on subjective ratings of work performance. But the evidence is persuasive that such performance evaluation ratings are flawed and imperfect measures of what employees actually do.

Consider the following simple illustration of the subjectivity of supervisory evaluations. Supervisors frequently provide evaluations for two types of employees: people who they have hired themselves since assuming their position as the head of some unit, and people who were already in that unit when the supervisor arrived or was promoted to the position of supervisor. In a study of a public sector workplace, research showed that, not surprisingly, supervisors gave higher performance ratings to people they had hired—because, of course, they were more psychologically committed and attached to those individuals, having actively participated in choosing them. That study found that whether or not the supervisor had hired the individual being rated actually had a larger effect than objective performance on the rating that was awarded.[15] Other forms of possible bias in subjective performance appraisals include the tendency to prefer people who are similar to us along dimensions of demography (race and gender) as well as attitudes, liking people who agree with us and don't challenge our decisions, and preferring people who provide "positive" news—even if such good news turns out not to be accurate.

Although there are obviously exceptions, such as the installation of automobile windshields, in most jobs performance measurement is fraught with

[14] Edward P. Lazear, "Performance Pay and Productivity," *American Economic Review, 90* (2000).
[15] F. D. Schoorman, "Escalation Bias in Performance Appraisals: An Unintended Consequence of Supervisor Participation in Hiring Decisions," *Journal of Applied Psychology, 73* (1988), 58-62.

error and subjectivity. That's why pay-for-performance systems often devolve into pay for ingratiation with the boss systems—and these are not the same thing.

Individual, rather than collective, rewards are important because of the need to overcome free-riding problems. Pay for performance, of course, need not be *individual* pay for performance. There are many group-based systems that provide more collective rewards when people work together to increase organizational capacity and outcomes. In the private sector, such systems include profit sharing and stock ownership. In the public sector and the private sector, there is gain-sharing, in which enhancements in efficiency get shared with those responsible for producing such gains. Because of the interdependence inherent in most complex organizations, where outcomes depend on the actions of many people acting in concert, collective rewards may be preferred because they don't encourage the internal competition of individual pay-for-performance and reinforce cooperative effort to make things better.

The common objection to such systems is that they are prone to free-riding problems—that individuals can benefit from the efforts of their colleagues even if they don't work hard or effectively. There are two responses to this objection. The first is that systems that organize people into self-managed teams activate peer pressure, and that peer pressure is much more potent than hierarchical supervision. People will, and do, let down their bosses, but will seldom disappoint their peers. Second, although free-riding is a big deal in the economics literature, empirically, there is much less free-riding than theory predicts, except, of course, among people who have studied economics.[16]

Differentiation in individual rewards, a necessary and frequently explicit consequence of individual pay-for-performance systems, leads to higher unit performance. Yet another assumption of individual pay-for-performance systems is that by differentiating rewards among individuals, affirming the best and ignoring the rest, to use the phrase from the McKinsey

[16] Gerald Marwell and Ruth E. Ames, "Economists Free Ride, Does Any Else? Experiments on the Provision of Public Goods," *Journal of Public Economics, 15* (1981), 295-310.

War for Talent book, system performance is encouraged. That's because presumably those with the most skill and motivation receive outsize rewards and therefore are encouraged to continue their efforts, while those who don't perform at the same level don't get rewarded and, as a consequence, either leave or are motivated to try harder and do better.

Once again, the existing evidence is largely inconsistent with this idea. In even individualistic setting such as baseball teams[17] and university faculties,[18] the evidence is that the greater the dispersion in individual pay, the lower the performance. In less individualistic settings with even higher levels of task-related interdependence, such as companies, the evidence is that greater pay dispersion is also associated with diminished quality and financial performance.[19]

There is evidence that in sports that involve almost no interdependence, such as golf[20] and automobile racing (where there is interdependence within the crew but not between crews), higher differentiation in the prizes awarded to winners compared to the others does spur greater levels of performance. However, in the automobile racing case, the evidence seems to suggest that speeds go up but so do accidents.[21]

In short, individual pay-for-performance is premised on a set of assumptions which rest on very shaky logical and empirical foundations. It is, as a consequence, not surprising that such systems are fraught with problems, an issue to which I next turn.

---

[17] Matt Bloom, "The Performance Effects of Pay Dispersion on Individuals and Organizations," *Academy of Management Journal, 42* (1999), 25-40.
[18] Jeffrey Pfeffer and Nancy Langton, "The Effect of Wage Dispersion on Satisfaction, Productivity, and Working Collaboratively: Evidence from College and University Faculty," *Administrative Science Quarterly, 38* (1993), 382-407.
[19] E.g., Phyllis A. Siegel and Donald C. Hambrick, "Pay Disparities within Top Management Groups: Evidence of Harmful Effects on Performance of High Technology Firms," *Organization Science, 16* (2005), 259-274. D. M. Cowherd and D. I. Levine, "Product Quality and Pay Equity Between Lower Level Employees and Top Management: An Investigation of Distributive Justice Theory," *Administrative Science Quarterly, 37* (1992), 302-320.
[20] R. G. Ehrenberg and M. L. Bognanno, "The Incentive Effects of Tournaments Revisited: Evidence from the European PGA Tour," *Industrial and Labor Relations Review, 43* (1990), 74S-88S.
[21] Brian E. Becker and Mark A. Huselid, "The Incentive Effects of Tournament Compensation Systems," *Administrative Science Quarterly, 17* (1992), 336-350.

The Evidence on the Effects of Individual Pay-for-Performance is Mixed, at Best

Numerous surveys, including surveys conducted by the same compensation consulting firms that frequently advise on and advocate pay-for-performance systems, provide evidence of widespread dissatisfaction. For instance, a 2004 Watson Wyatt study of employee attitudes and opinions found that only 30% of U.S. workers believed that their company's performance management program did what it was intended to do—improve performance. That's because fewer than 40% of people felt that the systems generated clear goals or provided honest feedback, while almost 40% believed their performance was inaccurately evaluated and about the same number said they did not understand the measures used to assess their performance.[22] A 2004 Hewitt survey of some 350 companies reported that more than 80 percent of the organizations believed their pay-for-performance programs were at best partly successful or were not successful at all at accomplishing their goals.[23]

Case examples provide detail behind these overall assessments. When TriQuint Semiconductor implemented pay-for-performance, the company confronted substantial pushback from managers and employees.[24] That's because people prefer less differentiated reward and recognition systems and understand the often arbitrary and capricious way in which pay-for-performance gets implemented. Moreover, the data suggests that few organizations—and this is almost going to certainly be true of the Federal government—adequately fund their plans to provide the resources necessary to award meaningful financial incentives. Thus, organizations first upset people through pay-for-performance programs and then don't fund the programs adequately to even sufficiently reward the people who have presumably been recognized as outstanding performers through this contentious process.

[22] "WorkUSA 2004: An Ongoing Study of Employee Attitudes and Opinions," www.watsonwyatt.com.
[23] "Many Companies Fail to Achieve Success with Pay-for-Performance Programs," *Hewitt & Associates News and Information*, June 9, 2004.
[24] "Communicating Beyond Ratings Can Be Difficult," *Workforce Management*, April 24, 2006, p. 35.

There is little evidence that things are getting better as more learning and experience with pay plans accumulates over time. I see nothing in the recent survey data to contradict the conclusion so aptly stated by the William Mercer company more than a decade ago: "most plans share two attributes: They absorb vast amounts of management time and resources, and they make everybody unhappy."[25]

And when various financial incentive plans do "work," they may affect behavior, but not in ways that would generally be perceived as desirable. Steve Levitt and Brian Jacob have done research showing that the implementation of merit pay for teachers—in which teachers in Chicago were rewarded when their students achieved higher test scores—led to more cheating on the part of teachers, by giving students the answers or the test questions in advance. Jacob and Levitt concluded that such cheating behavior was quite sensitive to the size of the rewards offered.[26] Implementation of an incentive plan in Albuquerque, New Mexico, that rewarded garbage truck drivers for finishing their routes faster found that they *did* finish their routes faster—by failing to pick up all the garbage, speeding (which caused accidents), and driving their trucks filled to over the legal weight limit.[27]

The idea that financial incentives are the way to solve organizational performance and service problems is one of the most dangerous "half-truths" of management. The evidence for widespread dissatisfaction with such pay plans is pervasive. Both employee and company survey data suggest that the likelihood of success is low and the odds of problems and dissatisfaction are high.

Building High Performance Cultures

---

[25] William Mercer, *Leader to Leader, 1* (Winter, 1997), 61.
[26] Brian Jacob and Steven D. Levitt, "Rotten Apples: An Investigation of the Prevalence and Predictors of Teaching Cheating," working Paper 9413, National Bureau of Economic Research, New York, 2002.
[27] "Garbage Truck Drivers Rushing to Finish Work Are Safety Risk," Associated Press, January 30, 2004.

Tinkering with pay appears to be easier than fixing organizational cultures and leadership capabilities. It is apparently "fashionable" because it does not seem to require the systemic intervention along multiple dimensions implied in the idea of building high performance work arrangements. But there is no free lunch. Isolated, disconnected interventions often work at cross purposes with other aspects of management practice. And there is little evidence that isolated interventions can profoundly affect organizational performance. The large literature on high performance work systems tends to speak to the *systemic, complementary* nature of the various management practices required to provide an environment that produces innovation, discretionary effort, and high levels of performance and service. So, for instance, a prominent human resources text book has a chapter on consistency in management practices, noting that the whole can, and often is, more than the sum of its parts.[28]

Although the list of high commitment or high performance work practices differs slightly among authors and studies, most such lists include: a) sustained investment in training and development, including job rotation, both formal and on-the-job training, and a tendency to promote from within as a consequence of the successful internal development of skill and people; b) an egalitarian culture in which formal status distinctions are downplayed, salary differences across levels are less than in the general economy, and in which people feel as if their contributions are important and valued; c) delegation of decision making responsibility so that skilled and developed people can actually use their gifts and skills to make real decisions; d) high pay to reduce turnover and attract the best people, coupled with rewards that share organizational success with its members; and e) employment security and a policy of mutual commitment, so that the workforce does not fear for the outcomes of events over which it has no control and instead, feels reciprocally committed to the employer.

It is important to note, however, that these management practices are not "techniques" to be imported. As David Russo, the former head of human

[28] James N. Baron and David M. Kreps, *Strategic Human Resources: Frameworks for General Managers*. New York: Wiley, 1999, Ch. 3.

resources at SAS Institute once commented, what matters is not what the company does—its various programs and policies—but the philosophy that provides foundation for all of its choices. That philosophy is one of valuing the workforce, treating it with respect and dignity, and making people as if their jobs are meaningful and their contributions important.

In that regard, government employees at all levels face a paradox. Even as there is emphasis on reinventing government and doing things to enhance employee performance, the message, delivered in numerous ways, is that the government work force is a "bureaucracy" and that, the smaller the better. The often disdainful way in which various agencies and their employees are spoken about makes instilling a culture of pride in performance difficult. The continuing efforts to outsource, downsize, and cut governmental agencies send not-so-subtle messages that the work, and the workforce, are not valued.

It is difficult to believe that a pay-for-performance system is going to be able to overcome the message, delivered both explicitly in what is said and implicitly in what is done, that the government work force and, by extension, their activities, are not really valued. It is particularly difficult to believe that a high performance culture will be produced by an intervention that has such a questionable set of assumptions and difficult history as individual pay-for-performance has. There is a large research literature on what it takes to build a high performance workplace. We should implement what we know, rather than what we hope, or wish, might be true.

NTEU
The National Treasury Employees Union

Statement of

Colleen M. Kelley

National President

National Treasury Employees Union

Submitted for the Hearing Record

House Subcommittee on Federal Workforce, Postal Service and the District of Columbia
House Oversight and Government Reform Committee

On

Federal Personnel Issues

March 8, 2007

Chairman Davis, Ranking Member Marchant, and members of the Subcommittee; I commend the subcommittee for this hearing and am submitting this statement for the record on the important subject of federal personnel and workforce issues. As President of the National Treasury Employees Union, I have the honor of representing over 150,000 federal workers in 30 agencies and departments throughout the government.

Administration's Fiscal Year 2008 Budget

I would like to address some provisions in the President's Fiscal Year 2008 budget that directly affect federal workers. As the Subcommittee with jurisdiction over the federal workforce, I know you will examine the Administration's proposals, a number of which are harmful to federal employees and their families. Proposals surrounding the proposed federal pay raise, pay-for-performance, health insurance cutbacks, and IRS staffing are major problematic areas.

Pay Raise

The President's Fiscal Year 2008 budget includes a 3.0 percent pay raise for both civil servants and the military. While at first blush, this looks like a reasonable increase from the 2.2 percent afforded to federal employees and the military in FY 2007, it is important to remember that last year's average 2.2 percent increase for both groups amounts to the lowest pay increase in eighteen years and most federal employees received only a 1.8 percent pay raise at the end of the day. The 3 percent proposed raise, reflecting the Employment Cost Index (ECI), does nothing to close the 13 percent gap between private sector and public sector pay, the stated goal of the 1990 Federal Employees Pay Comparability Act (FEPCA) which created a system of locality pay still not yet implemented. Last year the House Appropriations Committee and full House passed a half percent increase to the recommended level and although the Senate reported an additional half percent for federal employees, the bills died before adjournment.

Now, the President is recommending another inadequate pay raise for FY 2008. If we are serious about addressing the federal workforce, fair and adequate pay is the first place to start. Our calculations are that federal civil servants and the military deserve another half percent above the recommended level to bring the pay raise to 3.5 percent to at least make a small dent in the pay gap. It is important to remember that ECI plus ½ percent has been the amount enacted in every year of the current Administration until 2007.

With the impending retirement tsunami soon to engulf the federal government it makes no sense to keep depressing the wages of federal employees. Soon there will be fewer and fewer people interested in applying for jobs with federal agencies or keeping them, and the capacity and the ability for these agencies to perform their missions will be severely diminished. Let's not forget that federal and military employees keep our government systems running, protect our homeland and health, and defend our borders. While I am aware the appropriations committee authors the legislative vehicle that includes the pay raise, I urge each of you as members of the key oversight subcommittee with jurisdiction over federal personnel, to lend your support for a 3.5 percent increase as well. This is a step toward restoring fairness to federal workers while taking a small step to close the pay gap.

Another pay problem with the FY 2008 budget submission is the President's proposal to fund special rate pay out of the increase. Special rate pay is used for hard to fill positions by occupation or geographical area. It has traditionally been funded by agencies, not out of the funds appropriated for the annual pay raise. This is a back door approach to reducing federal pay and it should be rejected as it has been in the past.

Pay- for-Performance

Included in the Administration's FY 2008 budget submission is language to continue pay-for-performance projects with the ultimate goal of replacing the current General Schedule, the system by which most federal employees are currently paid. The idea of alternative pay and personnel systems using a new pay and performance management system has been one promoted by the Administration for several years. But there is no hard evidence that these alternative pay systems work.

I am glad to see that the subcommittee is seeking to hear all points of view on a change of such magnitude. To quote Robert Behn, author and lecturer at Harvard University's John F. Kennedy School of Government, "Systems don't improve performance; leaders do." In his book, *The Human Equation: Building Profits by Putting People First,* Jeffrey Pfeffer, of Harvard Business School says, "Although variable pay systems that attempt to differentially reward individuals are clearly currently on the increase, such systems are frequently fraught with problems. Incentives that reward groups of employees or even the entire organization...are customarily preferable." (p.203)

I believe that leadership that solicits, values and acts on the ideas of frontline employees in efforts to achieve agency missions is missing in many agencies today. Providing that kind of leadership would do more to improve the quality of applicants and performance of employees than alternative personnel systems and pay for performance projects as proposed by this Administration.

NTEU has been involved with a couple of alternative pay systems: The Department of Homeland Security (DHS) and the Internal Revenue Service (IRS). I would like to offer NTEU's comments from our experiences.

Despite being ranked at the bottom of the Partnership for Public Service's annual survey of "Best Government Places to Work," DHS is insistent on moving forward on its alternative personnel and pay system. While the pay for performance system at DHS has not yet been implemented, we are very concerned that it will push employees who are already demoralized out of the agency when the importance of keeping experienced, skilled employees is greater than ever. Let me be clear. The employee opposition to the proposed DHS system is not about "fear of change," as some have tried to portray it. I know firsthand that this group of employees, entrusted with protecting our country from terrorists and other criminals, is not a fearful group. What they most object to about the proposed DHS system is that it will make it harder, not easier, to accomplish the critical mission of the agency.

There are several reasons for this: 1) The system is not set by statute or subject to collective bargaining, so there is nothing to provide it credibility among employees; 2) The system will have employees competing against each other over small amounts of money, discouraging teamwork, which is critically important in law enforcement; 3) The system is subjective, which will lead to at least the appearance of favoritism; 4) The system is enormously complex, the administration of which will require huge amounts of money that is so much more desperately needed in frontline functions, not to mention siphoning off money that could go for more pay in a less administratively burdensome system; 5) the draft competencies for the new DHS system do not recognize or reward the real work that these employees do to keep our country safe.

With respect to the IRS and pay for performance, while bargaining unit employees represented by NTEU are not covered by a pay banding performance based system, managers are. As the subcommittee knows, The Hay Group did a Senior Manager Payband Evaluation on this system for the IRS in 2004. Here are some of the results: 1) 76% of covered employees felt the system had a negative or no impact on their motivation to perform their best; 2) 63% said it had a negative or no impact on the overall performance of senior managers; 3) "Only one in four senior managers agree that the SMPB is a fair system for rewarding job performance or that ratings are handled fairly under the system;" 4) "Increased organizational performance is not attributed to the SMPB."

The results of this system are dismal, yet it is pointed to as a model for moving the whole federal government to a similar system. In fact, there is a dearth of information to indicate that alternative pay systems have had any significant impact on recruitment, retention or performance. A GAO report on "Human Capital, Implementing Pay for Performance at Selected Personnel Demonstration Projects" from January 2004 included virtually no evidence that the systems improved any of those measures. In fact, the Civilian Acquisition Personnel Demonstration Project, reviewed in that report, had as one of its main purposes, to "attract, motivate, and retain a high-quality acquisition workforce." Yet, attrition rates increased across the board under the pilot.

NTEU is not averse to change. We have welcomed, including at the FDIC where we have bargaining unit employees, and elsewhere, the opportunity to try new ways of doing things. Based on my experience, these are the things I believe will have the most impact on the quality of applicants and the motivation, performance, loyalty and success of federal workers.

1) Leadership. Rules and systems don't motivate people. Leaders do.

2) Opportunities for employees to have input into decisions that affect them and the functioning of their agencies. They have good ideas that management is currently ignoring.

3) A fair compensation system that has credibility among employees, promotes teamwork and is not administratively burdensome.

Unfortunately, I do not believe the systems currently being pursued by this Administration follow these standards.

Health Insurance Reductions

I regret to report the FY 2008 budget contains language that allegedly makes a "technical change" to federal workers' health benefits by reducing the amount of the government contribution for new annuitants with fewer than ten years of service. On the one hand, the Administration purports to seek innovative ways to attract new workers, but on the other hand it seeks to cut the very benefits that might attract them. While legislation must be passed to implement this proposal, this is not a new idea and is one NTEU will vehemently oppose.

Changing the rules now and reducing the government contribution in these cases will only raise the premiums for retirees. This is a misguided attempt by the administration to generate revenues on the backs of retired federal employees. It affects retirees and active workers at numerous federal agencies and should be defeated.

Finally, on a less ominous note, the Administration did include language in its budget which could correct the calculation of retirement annuities for individuals with part-time service. Thousands of civil servants who are eligible under the Civil Service Retirement System (CSRS) and have worked part-time in their careers are in jeopardy of losing credits for the years they worked full-time, because of a glitch in a 1986 law which changed the formula calculation. I have long supported correcting this problem which affects thousands of employees who choose to work part-time, often because of family obligations or illness. They should certainly receive the proper credit for their earlier full-time service.

While the President deserves commendation for indicating he will send corrective legislation, we need to hold him to this promise. Last year's budget also included this proposal and no legislation materialized.

Additional Health Care Needs

Mr. Chairman, in addition to these health care changes addressed in the President's budget, NTEU stands ready to work with the subcommittee save funds in the Federal Employee Health Benefits Program (FEHBP). This program which serves more than eight million federal employees, retirees and their families should use every available avenue to keep costs down while continuing to offer its notable quality health care plans.

I recently wrote to the OPM Director expressing concern and asking for an explanation as to why OPM failed to apply for the Medicare drug subsidy to which it is entitled. The Government Accountability Office (GAO), recently reported that the subsidy would have lowered the average 2006 FEHBP premium by 2.6 percent had OPM received the subsidy. Some of the individual health plans that serve a high number of retirees could have realized a slowdown in premium growth by as much as 3.5 to 4 percent. These savings could have been passed on to keep the enrollee portion of the premium down.

OPM should take advantage of every opportunity to keep health costs down for employees and retirees. Instead, OPM simply turned its back on the retiree Medicare drug subsidy and enrollees in the Federal Employees Health Benefits Program are paying the price. From my viewpoint, this is an easy way to save program costs and help federal retirees at the same time.

Another FEHBP reform we will be pushing will be in support of a higher federal contribution towards premiums. Right now, the government pays roughly 72 percent of FEHBP premium costs and employees and retirees pay the remainder. This contrasts sharply with most large private sector and state and local government employers who routinely pay an average of 80% of their employees' health insurance premiums. NTEU backs 1256, the Hoyer/Wolf legislation to increase the federal share of the premium to 80%, thereby reducing costs to enrollees.

Finally, NTEU will be happy to work with you on measures to keep premium costs down for both parties. Premiums rose last year by 6.4 percent and by over fifty percent since 2001. At the current time, OPM is not allowed to directly negotiate for lower prescription drug prices. This is something we believe Congress needs to look at to see if program costs can be reduced.

Contracting Out

As you know language was enacted last year which modifies the Office of Management and Budget's (OMB) revised A-76 Circular as the guideline for competitive sourcing. In essence, the language gives federal employees the right to bid on work and affords them a step toward equal treatment. It:

- **Allows federal employees to offer their own realistic best bid** with a most efficient organization (MEO) in job functions being performed by more than 10 federal employees;

- **Requires a 10% or $10 million cost savings** by the contractor in order for the work to be contracted out; and

- **Allows executive agency heads** to conduct public-private competitions **to bring contracted work back in-house.**

These important provisions allow federal employees the ability to fairly compete. These changes, however, must be made permanent and NTEU stands ready to work with the subcommittee to make these changes permanent. Secondly, we support strengthening and improving amendments such as prohibiting contractors from receiving a cost advantage in a competition due to inferior health benefits, and providing the same legal standing before the Government Accountability Office (GAO) and the Court of Federal Claims for appeals purposes. These strengthening provisions will surely help the federal workforce compete for positions and work they are qualified to perform.

IRS Private Tax Collection

On another contracting out subject, NTEU continues to strongly oppose the Administration's private tax collection program, which began in September of last year. Under the program, the IRS is permitted to hire private sector debt collectors to collect delinquent tax debt from taxpayers and pay them a bounty of up to 25 percent of the money they collect. NTEU believes this misguided proposal is a waste of taxpayer's dollars, invites overly aggressive collection techniques, jeopardizes the financial privacy of American taxpayers and may ultimately serve to undermine efforts to close the tax gap. We anticipate its complete failure as witnessed in a similar 1996 pilot program and will continue to work towards its repeal.

Let me be very clear: NTEU strongly believes the collection of taxes is an inherently governmental function that should be restricted to properly trained and proficient IRS personnel. When supported with the tools and resources they need to do their jobs, there is no one who is more reliable and who can do the work of the IRS better than IRS employees.

Instead of rushing to privatize tax collection functions which jeopardizes taxpayer information, reduces potential revenue for the federal government and undermines efforts to close the tax gap, the IRS should increase compliance staffing levels at the IRS to ensure that the collection of taxes is restricted to properly trained and proficient IRS personnel.

OPM and Flexibilities

The Office of Personnel Management (OPM) issues a manual of authorities and flexibilities that are currently available to the different federal agencies under Title V of the US Code, entitled *Human Resources Flexibilities and Authorities in the Federal Government.* It essentially contains a list of flexibilities and authorities under which federal agencies can make personnel accommodations to attract candidates to the federal government or to offer incentives for federal employees to remain in their government jobs.

The Government Accountability Office (GAO) has undertaken a number of studies focusing on the importance of designing and using human capital flexibilities. In one report (GAO-03-02), the GAO found that the flexibilities that are most effective in managing the federal workforce are those such as time off awards and flexible work schedules. In other words, flexibilities that allow employees to take time off from work – when it is most convenient for both the agency and the employee – that better balance work life and family responsibilities.

Unfortunately, OPM has not focused extensively on advertising existing authorities and flexibilities. OPM states in the Preface of its handbook, "We serve as a resource for you as you use existing HR flexibilities to strategically align human resources management systems with your mission." *(p.i)* Yet, most federal agencies do not take advantage of existing flexibilities. Agencies can offer numerous awards as incentives to employees. These range from things like cash awards to individuals and groups; to quality step increases; to group suggestion/inventions to improve an agency; to foreign language awards; to travel incentives; to referral bonuses and others. Before Congress moves to pass new laws, it should require OPM to promote existing authorities, and aggressively require federal agencies to examine current avenues available to them to recruit and maintain their federal employees.

In addressing personnel and workforce issues, let us remember that attracting talented federal workers is important. But retaining the excellent high quality workforce is just as important and utilizing the many existing authorities and flexibilities is an easy approach.

###

Mr. DAVIS OF ILLINOIS. If the Federal Government is going to tinker with the employee protections of 1.8 million people and how they earn a living and are represented in the workforce, it should be evidence based. It should not be based on anecdotes, theories, or ideology.

For example, some argue that Federal airport baggage screeners at the Transportation Security Administration should not be allowed to unionize because it would hinder TSA's ability to fight terrorism. There is no evidence that Federal employees who have been allowed to join unions since 1978 have hampered our ability to fight terrorism. However, there is plenty of evidence that management, particularly officials at the highest levels of our Government, have made decisions that undermine our ability to fight terrorism.

Over the years we have heard testimony from numerous witnesses, some who will be testifying again today, that the keys to successful personnel reform are significant funding to train managers and employees on new systems, collaboration with and buy-in from employees, and that the new systems be fair, equitable, credible, and transparent.

In reality, the evidence that we have to date indicates that in most cases employees have not bought into these systems, funding for these systems have been cut, and the systems do not appear to be fair or transparent, much less credible. Today's witnesses will help us to better understand and evaluate how these new personnel systems are being implemented and how we can move forward to ensure that we have a balanced and effective Federal personnel system.

Now I would like to yield to the ranking member, Mr. Marchant, 5 minutes for an opening statement.

Mr. MARCHANT. Thank you, Mr. Davis. It is an honor to serve on this subcommittee with you and be the ranking member. Thank you for convening this hearing today. I look forward to working with you over the coming days on many different issues faced in the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia.

Today's hearing will examine efforts in recent years to reform the decades-old Civil Service system at a handful of Federal agencies, specifically the Department of Defense, the Department of Homeland Security, the Transportation Security Administration, and the Government Accountability Office. Congress authorized all four of these agencies to overhaul their personnel systems in recent years. Today's hearing will give us an opportunity to evaluate the progress that has been made to date.

In addition, Congress has also authorized reforms to the personnel systems at the National Aeronautics and Space Administration, Securities and Exchange Commission, and the Internal Revenue Service, and the Federal Aviation Administration. The efforts at these agencies will presumably be the focus of future hearings.

Mr. Chairman, in conducting your first oversight hearing today, I applaud you for gathering a panel of experts that will provide the subcommittee with the analytical, dispassionate perspective on the efforts to date to reform the existing Civil Service system and to make recommendations as to where we might be able to help from here. I believe that this panel will help lay the foundation for subsequent hearings on the reform of all the other individual agencies.

As a newly appointed Ranking Member of the subcommittee, I look forward to learning from the witnesses before us today and become better educated on the issues facing the Federal workforce in the 21st century.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Kenny Marchant follows:]

Statement of Ranking Member Kenny Marchant
Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia
March 8, 2007
Hearing on "Status of Federal Personnel Reform"

Thank you for convening this hearing today, Mr. Chairman. I look forward to working with you over the coming years on many different issues facing the federal workforce, the Postal Service, and the District of Columbia.

Today's hearing will examine efforts in recent years to reform the decades-old civil service systems at a handful of federal agencies, specifically the Department of Defense, the Department of Homeland Security, the Transportation Security Administration, and the Government Accountability Office. Congress authorized all four of these agencies to overhaul their personnel systems in recent years. Today's hearing will give us an opportunity to evaluate the progress that has been made to date.

In addition, Congress has also authorized reforms to the personnel systems at the National Aeronautics and Space Administration, the Securities and Exchange Commission, the Internal Revenue Service, and the Federal Aviation Administration over the past decade. The efforts at these agencies will presumably be the focus of future hearings.

Mr. Chairman, in conducting your first oversight hearing today, I applaud you for gathering a panel of experts that will provide the Subcommittee with an analytical, dispassionate perspective on the efforts to date to reform the existing civil service system and to make recommendations as to where we might be able to go from here. I believe that this panel will help lay the foundation for subsequent hearings on the reform efforts at individual agencies.

As a newly appointed Ranking Member to this Subcommittee, I look forward to learning from the witnesses before us today and to becoming better educated on the issues facing the federal workforce in the 21st century.

Thank you, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Marchant.

Now we will go to opening statements by Members. Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman. I believe these people have suffered enough waiting for the work on the floor to be concluded. Mr. Chairman, I will submit my statement for the record, if it would be allowed, and I would like to get a chance to hear from this distinguished panel.

I want to thank the panel for helping the subcommittee with its work.

I yield back.

Mr. DAVIS OF ILLINOIS. And it shall, indeed, be entered into the record.

Ms. Norton.

Ms. NORTON. I thank you very much, Mr. Chairman, and I particularly thank you for having an early hearing on the status of the Federal workforce. You and I have sat through a number of years where, in amazement, we have seen the workforce going under unusual change, to put it politely, but I do believe that anyone who cares about the efficiency and the realm of the Federal workforce would want this hearing held now, given what I think most Members will agree is a major repair job of some kind that needs to be done.

What began as an attempt by the administration at reform has, by any standard, left the Federal workforce in disarray. Courts have thrown out the attempt at a personnel system, and not only thrown it out, but done so with quite caustic criticism. The GAO, which touted itself as the pay for performance model and the pioneer in use of other management strengthening techniques, has reaped the whirlwind with an organizing effort apparently underway at the GAO that, if I may say so, with responses or reported responses from the GAO which, like much of the administration's reform, looks like it imitates some of the worst of the private sector in opposing organizing efforts. That's something that I would ask subcommittee to look into specifically.

The administration after 9/11 seems to have taken the need to organize new agencies like TSA to be brought into the Federal system in order to rigorize it with other Federal workers, and then proceeded to take virtually all of the Civil Service and personnel system safeguards out of the TSA system.

We use the 9/11 to look at the Department of Homeland Security, which we just created, and the DOD, and essentially take away Civil Service protections, bargaining rights. In effect, we use the major agencies where most of the Federal workforce is to collapse the usual safeguards and hope that we can get to what was left and it would simply come tumbling down alongside it.

The fatal mistake, Mr. Chairman, if I may say so is not in reform, particularly after 9/11. It seems to me that was a perfect opportunity to step back and look at what must be done in an entirely new period in American life. It was the failure of the administration to do its homework, to ask first the basic question: why do we have such a system? Why do we have a section that builds in rights, for example, in the workplace? We have limited collective bargaining, nothing like what is found in the workplace. Why do we have rights in the first place? Once we analyze that, we go from there.

It's not just the size of the workforce. It has a lot to do with the history of corruption, but above all it has to do with the fact that it is a public or Federal workforce and what the administration has never understood, that due process protections of the Constitution apply to public employees. You can't get around that. Since you can't get around it, you have to find a way to do your reform consistent within it. If you don't, the course will take care of the rest, particularly if the protections, collective bargaining protections, are taken away at the same time.

Mr. Chairman, in the post-9/11 period we have been more dependent on our Civil Service workforce than at any time in our history. They are now doing things not only to make Government run in the usual fashion, but to protect the homeland, itself. It was just the wrong time to send the system in spiral by trying all kinds of things that each and every year it was clear were not only not working, but producing an overall system far worse than the one that was in place and far less efficient.

We have done major damage to the Civil Service system by taking actions of every variety. I admire your boldness. I do not admire your task and mission in attempting to repair what is left while keeping reform of some kind ongoing.

I thank you, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Thank you very much, Ms. Norton.

Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman.

It is remarkable that the Federal workforce is able to get up every morning and come to work under the conditions that have existed in recent years. One sadly comes to the conclusion that there is an agenda underway—and this administration is taking the lead on it—to discredit the Civil Service, and in the process discredit the notion of good government.

I have been amazed in just the short time I have been here at the number of hearings we have had that have focused in on practices that undermine our civil servants. For starters, cuts to resources that the Federal workforce needs to do its job properly; second, the outsourcing of governmental functions to private contractors who then are not managed properly, because, again, the oversight is not put there and there is lax accountability; and then, third, in the name of "reform," proposals for personnel systems within the Civil Service that really undermine collective bargaining rights and other rights and opportunities that our Federal employees deserve.

Then, of course, when agencies under-perform because of all those pressures that are being brought to bear on the workforce, the administration turns around and says, see, government doesn't work, and then cuts it again so it becomes this kind of potential death spiral for all those folks that are trying to do the right thing and improve the image of Government, as they should.

So I thank you for conducting the hearing. I think it is ironic that in the name of Homeland Security the administration has sought to cut a lot of corners and limit or escape the obligation from enforcing the rights of the Federal workforce, because I certainly know that if I go to the airport I want that screener to have high morale, to feel proud of what they do and good about what they do, to have a sense of dignity and a sense of productivity, because they are going to do their job much better and much more effectively, and that is going to protect our security much more than anything else would do.

So, again, thank you for conducting the hearing and looking at issues that really can improve morale, productivity, and the overall good government that we are trying to provide to the taxpayers.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Sarbanes.

Now the subcommittee will hear testimony from the witnesses before us today.

I would first like to introduce the witnesses, beginning with Mr. Robert Tobias, who is a distinguished adjunct professor in residence at American University. Mr. Tobias teaches courses in public management, leadership, alternate dispute resolution, and managing labor/management relations. He served on the Human Resource Management System Senior Review Advisory Committee, which was charged with reviewing the work of the Department of Homeland Security, Office of Personnel Management Design Human Resources Team, and provided options to DHS and OPM's agency heads.

Next, we have Dr. Curtis Copeland. He is currently a specialist in American Government at the Congressional Research Service [CRS], within the U.S. Library of Congress in Washington, DC. His specific area of research expertise is Federal rulemaking and regulatory policy. He is also head of the Executive and Judiciary Section with the CRS Government and Finance Division.

Next, we have Professor Charles Tiefer. He is a professor of law at the University of Baltimore School of Law. Prior to joining the University of Baltimore's faculty in 1995, he served as Solicitor and Deputy General Counsel of the U.S. House of Representatives for 11 years. He is a quoted expert on Federal Government and constitutional law.

Next, we have Mr. Joseph Swerdzewski. He is president of Joseph Swerdzewski and Associates, a human resources consultant and training firm. The firm is involved in helping Federal agencies with human resources reform initiatives and development of improved performance management systems. He served two terms from 1993 to 2001 as the General Counsel of the Federal Labor Relations Authority, where he was responsible for the investigation and prosecution of unfair labor practice violations.

Next, we have Ms. Hannah Sistare, who is vice president for academy affairs at the National Academy of Public Administration. She works with the Academy's 600 distinguished fellows in their efforts to enhance government at all levels. She also directs the Academy's Human Resources Management Consortium and manages the National Commission on the Public Service Volcker Commission Implementation Initiative at the Academy.

Finally, Mr. Kevin Simpson is the executive vice president and general counsel of the Partnership for Public Service. The Partnership is a nonpartisan, non-profit organization dedicated to revitalizing public service through a campaign of educational efforts, policy research, public/private partnerships, and legislative advocacy.

I want to thank each one of you for coming and being with us this afternoon. It is the committee's policy that all witnesses be sworn in, and so if you would please rise and raise your right hands.

[Witnesses sworn.]

Mr. DAVIS OF ILLINOIS. The record will show that each witness answered in the affirmative.

Thank you very much.

Your entire statements will be included in the record. Of course, the green light, as you have done this before, you know that the green light indicates that you have 5 minutes in which to summarize your statement. The yellow light means your time is running down and you have 1 minute remaining to complete your statement. And the red light means that your time has expired. Of course, at the end of the day all kinds of things can happen.

Let me again thank you all for coming.

Mr. Tobias, would you begin?

STATEMENTS OF ROBERT TOBIAS, DIRECTOR, PUBLIC SECTOR EXECUTIVE PROGRAMS, DIRECTOR, ISPPI, SCHOOL OF PUBLIC AFFAIRS, AMERICAN UNIVERSITY, WASHINGTON, DC; CURTIS COPELAND, SPECIALIST IN AMERICAN NATIONAL GOVERNMENT, CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS, WASHINGTON, DC; CHARLES TIEFER, PROFESSOR OF LAW, UNIVERSITY OF BALTIMORE, SCHOOL OF LAW, BALTIMORE, MD; JOSEPH SWERDZEWSKI, PRESIDENT, JOSEPH SWERDZEWSKI & ASSOCIATES, HAMPTON COVE, AL; HANNAH SISTARE, VICE PRESIDENT FOR ACADEMY AFFAIRS, DIRECTOR, HUMAN RESOURCES MANAGEMENT CONSORTIUM, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, WASHINGTON, DC; AND KEVIN SIMPSON, EXECUTIVE VICE PRESIDENT, GENERAL COUNSEL, PARTNERSHIP FOR PUBLIC SERVICE, WASHINGTON, DC

STATEMENT OF ROBERT TOBIAS

Mr. TOBIAS. Chairman Davis, Ranking Member Marchant, distinguished members of the subcommittee, I would like to thank you for this opportunity to testify on the subject of personnel reform in the Federal Government.

Congress gave the Secretaries of Defense and Homeland Security the authority to design and implement broad personnel reforms in their departments. My remarks will focus on pay for performance and labor/management relations.

Creating a pay for performance system that actually increases, that actually has the impact of increasing agency outputs and outcomes requires a two-step process. First is the creation of a performance management system that enables supervisors to more objectively discern the difference in performance based on outputs and outcomes, rather than applying the more subjective works hard standard. Next, once the discernment is completed, the reward attached to the outcomes must be sufficient to motivate behavior that increases individual and ultimately overall organizational performance.

Now, these steps have to be sequential. It is not possible to build a successful pay for performance system onto an unsuccessful performance management system. Until a credible performance management system is in place, employees will continue to perceive bonuses and awards as arbitrary. Even if substantial sums of money were made available, the money would not increase performance if the performance management system is faulty.

Now, I think that it is imperative that we establish a culture of performance where supervisors are able to credibly discern differences in employee outputs and outcomes. We don't need legislation to accomplish the creation of a performance management system, but we do need recognition that achieving such a system requires a collaborative, long-term, disciplined effort by Presidents, political appointees, SES executives, union leaders, and employees.

Both the promise of success and the cost of failure are large. I reference an article in my prepared statement where the author has concluded as virtually undisputed that goal setting does increase performance at all levels—individual, group, and organization.

Specific and challenging goals are associated with higher levels of performance, more so than either no goals or general "do your best" goals.

Now, the authors also point out that goal setting in the public sector is much more difficult than the private sector. Output and outcome goals are difficult to define for employees, managers, and the public, yet, if successful, goal setting increases employee engagement, individual and organizational performance, and taxpayer satisfaction. It is an outcome worthy of pursuit. Creating a performance management system, however, is very difficult. First, agencies have to define what organizational output and outcome means, and they have been struggling to achieve this since 1993 with the passage of the Government Performance and Results Act. Agencies have made progress, but there is a long way to go.

Second, a plan must be created for translating the output agency goals into individual goals that are linked to organizational goals.

Third, supervisors must spend time talking and listening to those they manage, coaching, evaluating performance, and monitoring organizational goal achievement. For most managers in the Federal Government, this is a very difficult challenge.

Currently, supervisors generally evaluate an employee's performance on whether the employee works hard. If an employee works hard, he or she is likely to be rated highly. Under a performance management system, the standard would be "achieves results." This would entail a change from a subjective evaluation of performance to a significantly increased focus on the achievement of objective performance results.

Long-term supervisory employee relationships have been built on a works hard set of expectations. Those relationships would have to evolve to accommodate another set of expectations. Supervisors would have to be trained to expect results and evaluate employees' work accordingly, and employees will want and expect support. It doesn't happen. Achieving this requires more than training on process. It requires a real focus on changing culture in an organization.

Supervisors are rated in the Federal Government for what they do, as opposed to how well they manage. But if we want increased organizational performance, that has to change. Employees have to be included as part of this effort, and they are not today. Employees have to learn. Managers have to learn. There has to be an exchange of what they do, how they do it, and how what they do are linked to organizational goals. Union leaders have to be involved in order to make this work. Union leaders have to be involved in creating a performance management system, and they haven't been effectively involved. If they are involved, there are fewer impact and implementation negotiations, there are fewer adversarial relationships, and faster implementation.

I also suggest that in order to be successful we need support from Presidents and the Congress. If importance on increasing performance were measured by the rhetoric of Presidents, performance would be important. If it were measured in terms of how much time Presidents spend on this effort, I think we would see that Presidents spend time on public policy creation, not public policy implementation.

If we want public policy implementation to be effective, if we want performance increases, there has to be a focus on public policy implementation starting at the top. Without Presidents spending time, political appointees won't spend time because there is only risk and no reward. Political appointees are evaluated not on the basis of how well they implement public policy, but rather on the public policy that they create.

So it seems to me that the President has to change his behavior before political appointees will change their behavior, before the Senior Executive Service will change their behavior, but I believe it is important that we find a way, working collaboratively, to define, design, and implement a performance management system that challenges employees to achieve agency mission by working better.

I think that if we look at the pay for performance system and evaluate its success, all we need to do is look at the surveys recently completed by the Senior Executive Association where the performance system——

Mr. DAVIS OF ILLINOIS. I'm going to ask you to summarize.

Mr. TOBIAS. Am I over? I'm sorry.

Mr. DAVIS OF ILLINOIS. Yes. Wrap up. And, if I could just say to the other witnesses, we don't personally have any difficulty in terms of listening. The ranking member has another appointment that he is going to have to try to keep, and so I would like to ask that the witnesses would stick to the 5-minute rule——

Mr. TOBIAS. I apologize.

Mr. DAVIS OF VIRGINIA [continuing]. So that he can hear each one of the witnesses before he has to go, and have an opportunity for questions. But thank you very much, Mr. Tobias.

[The prepared statement of Mr. Tobias follows:]

Testimony of

Robert M. Tobias, Director
Public Sector Executive Education
American University

Before The

House Subcommittee on
Federal Workforce, Postal Service and the District of Columbia

On

Personnel Reform in the Federal Government

March 8, 2007

Chairman Davis, Ranking Member Marchant, distinguished members of the Subcommittee; I would like to thank you for the opportunity to testify on the subject of Personnel Reform in the Federal Government.

Congress gave the Secretaries of Defense and Homeland Security the authority to design and implement broad personnel reforms in their Departments. My remarks will focus on the attempt to implement a pay-for-performance system while limiting the role employees play through their unions to address and resolve the significant problems the federal government seeks to resolve.

INTRODUCTION TO PERFORMANCE MANAGEMENT REFORM

Achieving successful implementation of the broad Congressional authority to set organizational and individual employee goals, and provide financial incentives for increased performance, requires a change in the behavior of every employee in DHS and DoD. Failure to successfully implement the initiative will lead to decreased, not increased performance.

At this point, the broad grant of Congressional authority has been not been implemented. DHS recently announced it would delay implementing a pay-for-performance system until it gets its performance management system right, and DoD has only 11,000 employees currently covered in its pay-for-performance system.

The rationales for embarking on the significant organizational change effort necessary to define, design, implement and monitor a pay-for-performance system are many:

1. The best and brightest will be attracted to the federal sector, and they will stay if they are paid based on their performance.
2. Employees are motivated when their individual performance goals are linked to organizational goals.

3. Organizational performance will be increased by incentivizing those who perform well to continue increasing their performance.

Translating a pay for performance system into output/outcome in the workplace requires a two-step process.

First is the creation of a performance management system that enables supervisors to more objectively discern the differences between employees' performance based on outputs and outcomes, rather than applying the more subjective existing test of "works hard." Once the discernment process is completed, the reward attached to increased outputs and outcomes must be sufficient to motivate behavior that increases individual, and ultimately overall, organizational performance.

The steps must be sequential; it is not possible to bolt a successful pay-for-performance system onto an unsuccessful performance management system. Until a credible performance management system is in place, employees will continue to perceive bonuses and awards as arbitrary. Even if large sums were made available, the money would not increase performance because of the perceived unfairness of the performance management system.

It is imperative to establish a culture of performance in the federal government, with motivated employees focused on achieving individual and organizational goals – employees overseen by supervisors able to credibly discern differences in employee outputs and outcomes. We do not need legislation to accomplish the first step – a performance management system. In DHS, DoD, and across the federal government we need the recognition that achieving a performance management system requires a collaborative, long-term, disciplined effort, by Presidents, political appointees, SES executives, union leaders, and employees.

Both the promise of success and the cost of failure are large.

DESIGNING A PERFORMANCE MANAGEMENT SYSTEM

Defining the process for creating a performance management system that includes employees and their representatives is critical for transparency, mutual learning, and acceptability. The creation of a performance management system is extremely difficult, and includes the following steps:

1. defining organizational output and outcome goals,
2. creating a plan for translating the goals by supervisors into individual goals linked to organizational goals,
3. ensuring that supervisors spend time talking and listening to those they manage, coaching, evaluating performance, and monitoring organizational goal achievement, and
4. successfully implementing the system.

Goal Setting and Increased Performance

Before we examine what managerial characteristics are necessary to design, implement, and monitor a performance management system, let us first look at whether such a system actually increases performance.

A recent article by James Perry, Debra Mesch, and Laurie Paarlberg reviewed approximately 2,600 research studies concerning the factors that motivate employees in the public and private sector to increase their performance (Perry 2006).

According to them, it is virtually undisputed that goal setting does increase performance at all levels: individual, group, and organization. As Perry points out, "" . . . [S]pecific and challenging goals are associated with higher levels of performance, more so than either no goals or general 'do your best goals'" (Perry 2006 509).

It should be noted that goal setting in the public sector is more difficult than in the private sector (Perry 2006). Output and outcome goals are difficult to define credibly to those who seek to achieve them, to those managing the effort, and to those benefiting from the goal achievement.

Yet, if successful, goal setting increases employee engagement, individual and organizational performance, and taxpayer satisfaction. Thus it is an outcome worthy of pursuit.

Defining Performance Goals

Congress recognized the potential for goal setting when it enacted the Government Performance and Results Act (GPRA) of 1993. Under the GPRA, every federal agency must submit a five-year strategic plan containing a mission statement; "general goals and objectives"; and a description of how the goals are to be achieved, "including a description of the operations processes, skills and technology, and the human capital, information, and other resources, required to meet those goals and objectives." Observers believed that the passage of GPRA would lead Congress to take a more active oversight role in public policy implementation, rather than focusing almost totally on public policy creation.

The challenge of goal setting is to craft individual and organizational outcome goals that are both consistent with agency mission and set at a level that drives innovation.

Since 1993, agencies have been struggling to identify outcome rather than output or "working hard" goals. There has been a great deal of well chronicled difficulty and resistance in Government Accountability Reports.

Agencies and agency leaders find it difficult to reduce their mission achievement or outcome to clear and measurable standards. To complicate matters, President Bush created the Program Assessment Rating Tool (PART) to evaluate more than 1,000 programs across the federal government. Both GPRA and PART

Program Managers have had a great deal of difficulty defining measurable program outcomes.

Creating a Plan to Implement the Goals

Assuming an agency is willing and able to set organizational outcome goals, the next step is for supervisors to link individual performance plans to agency goals: Once again, no easy task.

Managers must then communicate the individual goals to employees, and provide them with regular feedback on progress, coaching and development opportunities, and an evaluation based on results.

It is very easy to write a policy to achieve these goals; however, it is extremely difficult for 1.8 million federal supervisors and employees to redefine their relationship with each other in order to implement the policy.

Currently, supervisors generally evaluate an employee's performance on whether the employee "works hard." If an employee "works hard," he/she is likely to be rated highly. Under a performance management system, the standard would be "achieves results." This would entail a change from a subjective evaluation of performance to a significantly increased focus on the achievement of objective performance results.
Long term supervisor/employee relationships have been built on one set of expectations. Those relationships would have to evolve to accommodate another set of expectations. Supervisors will have to be trained to expect "results" and evaluate employees' work accordingly, and employees will want and expect support.

These respective expectations are rarely fulfilled in today's federal workplace, and changing them will not occur by decree, a policy issuance, or training based on learning about a new performance management system. Behavioral or culture change is not easy for anyone, and must be consistently led and supported for a five to seven year period of time.

Achieving the desired change is further complicated by the fact that many supervisors spend the majority of their time "doing" rather than leading, leaving little time or energy for employee performance discussions, development and coaching. And it is the "doing" rather than the leading portion of their job that is often rewarded by the supervisors' superiors. For many managers, leaving a career of "doing" would be difficult, and would not occur unless they were convinced they had to give up what has made them successful and provided satisfaction for something that is unknown and difficult.

Involving Employees in Goal Setting and Implementation Planning

If increased individual and organizational performance is the goal of a performance management plan, active, meaningful involvement of employees – either through their elected representative in an organized workplace, or by non-supervisory employees in an unorganized workplace -- is critical to its success.

It is difficult, if not impossible, to achieve necessary organizational change to improve agency performance without employees' active involvement, for the following reasons:

1. When employees understand the linkage between their efforts and desired agency outcomes, their engagement in their work and productivity increase. Employees want their work to be clearly linked to agency goals, according to an analysis of the Office of Personnel Management's Federal Human Capital Survey (conducted by American University's Institute for the Study of Public Policy Implementation). In existing systems, many agencies' failure to clearly identify output and outcome goals has left employees unsure of the impact of their efforts. Employee involvement in identifying agency output goals will showcase any difficulty in achieving

those goals, and will show employees how they can contribute to the goals' attainment.

2. Employee participation will lead to a more accurate mutual understanding of the work. Because most employee position descriptions are woefully outdated, any manager beyond the first level of supervision has little understanding of what employees do day-to-day. Only the employees who do the work can clearly describe it. If position descriptions were clearer and more accurate, both upper level management and employees would understand better how their work is linked to that of others, and whether it impacts agency goals. Once both employees and managers understand the linkages between a given job and agency goals, the program will have more credibility.
3. Employee participation allows managers a chance to leverage their employees' desire to make a difference to improve agency goal achievement. With dialogue, managers will learn how the work is performed, and employees will see how their work affects the achievement of agency goals.

In addition to being active, employee participation must be meaningful. It is not good enough for managers to listen to employee suggestions, retire to their offices, make a decision, announce it, and expect acceptance and enthusiastic implementation. Employees must be actively involved in the decision-making process. Dialogue, mutual listening and learning, statements of stakeholders' interests rather than of their positions, and sharing of all information used for decision-making are all critical to making the best possible decision -- and having that decision accepted and readily implemented.

Although many substantive issues in the creation of a performance management plan are outside the mandatory scope of bargaining in the federal sector, a union does have the right to negotiate the impact and implementation of any such plan. The union also has the right to negotiate "the appropriate arrangements of employees adversely affected" by the creation of such a plan. Further, the plan may not be implemented until all bargaining -- including all appeals to the Federal Service Impasses Panel, which has the authority to resolve all negotiating impasses -- is completed.

When employees through their union representatives are actively and meaningfully involved, fewer issues will be submitted to impact and implementation negotiation, and those issues bargained will take less time to resolve. The net result is faster implementation with better results.

Implementing a Performance Management System

It is a cliché that successful implementation of any large cultural change effort -- like the implementation of a performance management program -- depends on support from the top. In the Executive Branch, I suggest, support from the President, the Chief Executive Officer of the Executive Branch, is critical to success. Congress also has a critical role to play.

If the importance of increasing governmental performance is measured by Presidents' rhetoric, we would know that such improvement matters greatly. If importance were measured by actions, however, Presidents Clinton and Bush have apparently cared the most about performance improvement. President Clinton created his "reinventing government" initiative, and President Bush, his President's Management Agenda, augmented by the PART process.

However, these initiatives aside, best way to measure Presidential commitment is to add up the amount of a President's most precious commodity – personal time – spent on performance improvement. Using that yardstick, we find that Presidents Clinton and Bush, like all Presidents and political appointees before them, spend almost all of their time on creating public policy. They have typically been engaged in the traditional activities of marshalling support for new legislation, issuing new regulations that distinguish their ideas from those of their opponents, and resisting the legislative thrusts of their opponents.

Presidents Clinton and Bush have not changed their behavior to spend large amounts of their personal time setting performance goals, monitoring goal achievement, identifying best practices, and holding political appointees responsible for public policy implementation performance goals.

Political appointees have traditionally been evaluated by Presidents, history, colleagues, and prior political appointees based on public policy created. If a President is serious about creating a performance management system, however, he must model the behavior he seeks from his appointees by spending his personal time on performance improvement. I suggest few political appointees will change their attention from public policy creation to public policy implementation without changed behavior from the President. Unless a President takes the same risks he is asking his political appointees to take, the threat of failure looms too large, and the reward for implementing a performance management system too small.

Similarly, unless Presidents and their political appointees change their behavior, agencies' senior executives do not have either the authority or the incentive to make the changes necessary to implementing a performance management system. Even if they did, few would take the risk unless they were supported by the agency's political appointees.

Congress, as a coequal branch of government, has a role to play in creating a performance management culture in the Executive Branch.
Congress has appropriately spent time telling the Executive Branch what it does not want in connection with significant program failures (e.g. Katrina); however, the legislature has not spent much time telling agencies what specific performance it wants in the future – and, as important, providing the funds to achieve it.

Comptroller General David Walker urged Congress to change this:

> We [the GAO] have long advocated that congressional committees of jurisdiction hold oversight hearings on each of the major agencies at least once each Congress and preferably on an annual basis. Information on the linkages among plans, programs, budgets, and program results – which should become available as agencies' implementation of performance based management moves forward – could provide a consistent starting point for each of these hearings (Walker 1999, 27).

Risks of Implementing a Performance Management System

Given the fact that the cultural change effort envisioned will require an effort of at least a five to seven years, it will generate predictable resistance. There may not be enough interest and skill to create the program, and the probability of achieving a successful performance management system without these factors is not large.

Once begun, however, failure in such an effort could lead to (1) the potential loss of the recruiting ability at a critical time in the nation's history – over the five-year period when the largest number of federal employees ever will be retiring; and (2) a decrease in productivity. In short, organizational output could decline if the implementation of a performance management system failed.

Despite the substantial risks, however, I believe that we must find a way, working collaboratively, to define, design, and implement a performance management system that challenges employees to help achieve agency mission by working better.

PAY FOR PERFORMANCE

The Perry, Mesch and Paarlberg research discovered that financial incentives improve task performance in a private sector organization moderately to significantly in a successful performance management system. But in government, however, they found that "individual financial incentives are ineffective in traditional public sector settings" (Perry 2006, 507). The authors speculate that the failure "is likely due to a lack of adequate funding for merit pay and an absence of the organizational and managerial characteristics that are necessary to make pay for performance work in traditional government settings" (Perry 2006, 507).

There is some evidence that the federal government can successfully link performance management and pay for performance. For example, OPM noted that approximately 85,000 employees in 12 demonstration projects it approved (OPM 2005) "reported a much stronger link between pay and performance than under the General Schedule system." Similarly, after four years, the Air Force Research Laboratory reported that "[p]erformance accounted for 25 percent of differences in pay, compared to 0 percent under the General Schedule system" (OPM, 2005, 3).

Notwithstanding the successful linkage of performance management and pay-for-performance systems in the small, homogenous work forces (OPM 2005, 3) in OPM's Demonstrative Projects, implementing a pay-for-performance system on the scale of DHS and DoD has yet to be tried in the federal government. A recent survey of Senior Executives concerning the two-year-old SES pay-for-performance system clearly describes how an inadequate performance management system – coupled with lack of funding for performance achievement – actually decreases productivity:

Performance Management:

1. Agency executive performance management plan not available to them 49%
2. Agency executive compensation/pay policy not available to them 67%
3. Agency executive rating distributions not

	available to them	72%
4.	No discussion with superior about performance rating	17%

Pay for Performance:

1.	Of those who received the highest rating, percentage who received no pay increase	15%
2.	Of those rated above "fully successful" percentage who received no pay increase	33%
3.	Ratings reflect a preconceived quota or goal of fewer higher ratings.	53%

Impact:

1.	New system has had no or negative impact on their motivation	85%
2.	New system has worsened their morale	47%
3.	New system has worsened peers' morale	52%

Much of the learning from this small scale effort can be applied to the DHS and DoD effort. The SES project, however, does reinforce the basic proposition advanced by the Perry research: *that that there must be the successful implementation of a performance management system, before the implementation of a pay-for-performance system.* And, more importantly, a successful pay-for-performance system must be fully funded every year.

LABOR MANAGEMENT RELATIONS

In an organized workplace, and 80 percent of the employees eligible to be represented by a union have chosen union representation in the federal government, both unions and managers are in the workplace every day. The have a relationship, and the question for leaders of agencies is what kind of a labor management relationship do I want in order to maximize my chance of achieving my performance goals and objectives. Do I want a relationship that limits employee involvement and increases the chance of hostility in the workplace, or do I want a relationship that is inclusive, giving me a chance at making better decisions, and reduces formal grievances, unfair labor practices, and time spent in formal bargaining?

Over the last 50 years the government has changed from a workforce of 70 percent clerks to a workforce of 70 percent knowledge workers. Knowledge workers are hired because the government faces evermore complex problems and solutions. Yet, every survey indicates that the knowledge workers bring to the workplace is not being maximized by agencies (Best Places to Work 2005). However, instead of creating opportunities for including these highly sought workers, we see a policy of exclusion of their energy, thoughts, and insights.

Rather than finding new, creative ways to expand the opportunities to use the talented employees in their Departments, while protecting their management rights, they defined ways to limit the use of talented employees and expanded management rights.

The Circuit Court of Appeals rejected the DHS limitations, and is considering the similar DoD limitations. Notwithstanding the Court decisions, we need policies that tap the knowledge, skill, and ability of the federal employee workforce to assist in making better decisions and implementing change at a faster rate. Neither of these goals can be achieved with limited involvement of employees and an adversarial labor management relationship.

CONCLUSION

We need a performance management system that stimulates an increase in individual and organizational performance. The systemic organizational change effort envisioned needs disciplined support over an extended period of time. And that will not occur without the collaborative involvement of the President, political appointees, members of the Senior Executive Service, Mid-level managers, union leaders, and employees.

Similarly, collaboration is needed to involve employees through their union leaders to address the complex public policy implementation issues facing the government today.

It is possible.

REFERENCES

Best Places to Work in the Federal Government. 2005. Bestplacestowork.org.

Office of Personnel Management. 2005. *Alternative Personnel Systems in Practice in Practice and A Guide to the Future*. Washington, DC: Office of Personnel Management.

Perry, Mesch, and Paarlberg. 2006. Motivating Employees in a New Governance Era: The Performance Paradigm Revisited. *Public Administration Review:* 66(4): 505-14.

Perry, Mesch, and Paarlberg. 2006(a). Motivating Employees in a New Governance Era: The Performance Paradigm Revisited. *Public Administration Review:* http://www.aspanet.org/scriptcontent/custom/staticcontent/t2pdownloads/PerryArticle.pdf, 89-117.

Tobias. 2006. Tobias Commentary: Motivating Employees in a New Governance Era: The Performance Paradigm Revisited. *Public Administration Review:* http://www.aspanet.org/scriptcontent/custom/staticcontent/t2pdownloads/TobiasCommentary.pdf

Walker, David. 1999. *Major Management Challenges and Risks, A Governmentwide Perspective,* Washington, DC: Government Accountability Office, OCG-99-1.

Mr. DAVIS OF ILLINOIS. We will proceed to Mr. Copeland.

STATEMENT OF CURTIS COPELAND

Mr. COPELAND. Thank you very much, Mr. Chairman and members of the subcommittee. I am here to discuss several issues that CRS was asked to address related to the implementation of the GAO Human Capital Reform Act of 2004.

The first such issue is whether the Comptroller General told Congress and GAO employees during consideration of the legislation that all employees who received a meets expectation performance evaluation would receive annual adjustments to their base pay. The record indicates that the Comptroller General gave such assurances on several occasions. For example, at a July 16, 2003, hearing held by the predecessor to this subcommittee, the record indicates the Comptroller General said GAO had agreed to "guarantee annual across-the-board purchase power protection and to address locality pay considerations to all employees rated as performing at a satisfactory level or above, absent extraordinary economic circumstances or severe budgetary constraints."

He reiterated this concept several other times during his written testimony, and he confirmed that assurance when answering questions from Representative Chris Van Hollen during the hearing.

Minority views in the House committee report on the GAO Reform Act state the Comptroller General has "assured GAO employees that anyone performing satisfactory work will receive at least a cost of living adjustment."

During a September 16, 2003, hearing before the Senate Committee on Governmental Affairs the record indicates the Comptroller General told Senator Thomas Carper, "For the 97-plus percent of our employees who are performing at an acceptable level or better, we will protect them against inflation, at a minimum."

The Senate Committee on Governmental Affairs report on the GAO Reform Act states the committee had "received a commitment from the Comptroller General that, absent extraordinary circumstances or serious budgetary constraints, employees or officers who perform at a satisfactory level will receive an annual base pay adjustment designed to protect their purchasing power."

The next issue CRS was asked to address was whether all GAO employees with meets expectations ratings had received these annual adjustments. The short answer is no. According to GAO, 308 of 1,829 GAO analysts and specialists, about 17 percent, did not receive the 2.6 percent permanent pay increase that other GAO employees received in January 2006. These 308 employees all had meets expectations ratings or better. Most of these employees were at the second of GAO's three-banded pay system, roughly GS–13 and 14 employees, but some employees at all three levels were affected.

In March 2006, the House Appropriations Committee asked GAO to explain the difference between its statements in 2003 and its actions in 2006. GAO responded by saying the Comptroller General's statements in 2003 were "accurate at the time," but that subsequent events had altered his views on this issue.

The most significant of these events was a market pay study by the Watson Wyatt consulting firm indicating that many GAO employees were already paid more than what should be the maximum pay for their positions.

Another question CRS was asked to address was whether the Watson Wyatt study was correct that many GAO employees are, in fact, overpaid. The only way to make such a determination is to understand how the Watson Wyatt study was conducted. Specifically, what organizations were compared to GAO and what occupations were compared to GAO analysts. GAO has declined to provide this kind of detailed information to CRS, and it is not included in other sources, including its annual report to Congress on the GAO Reform Act. Therefore, we are unable to offer any observations about whether GAO employees are, in fact, overpaid.

Finally, CRS was asked to describe the financial implications of the Comptroller General's decisions to deny pay increases to certain GAO employees. Forecasting these kinds of financial implications is difficult and depends on a variety of factors; however, using what we believe to be reasonable assumptions, it appears the financial implications may be significant. As detailed in my written statement, by the year 2010 a GAO band 2A employee making $110,000 a year in 2005 made far more than $10,000 a year behind a comparable non-GAO Federal employee. Such a differential would also have a significant impact on GAO employees' pension. Assuming retirement at 2010 and receiving a pension for 20 years thereafter, a GAO employee could lose a cumulative total of base pay and pension of nearly $120,000.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions.

[The prepared statement of Mr. Copeland follows:]

Congressional Research Service

Statement of Curtis W. Copeland
Specialist in American National Government
Congressional Research Service

Before

The Committee on Oversight and Government Reform
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
House of Representatives

March 8, 2007

on
"Implementation of the New Pay System at the Government Accountability Office"

Mr. Chairman and Members of the Subcommittee:

I am here today to discuss certain issues related to the implementation of the new pay system at the Government Accountability Office (GAO). My testimony is based on work conducted last fall in response to a request to CRS from the current Chairman's office. Specifically, the Chairman asked (1) whether the Comptroller General indicated during Congress's deliberations on the GAO Human Capital Reform Act of 2004 (P.L. 108-271) that GAO employees who "met expectations" would receive annual cost-of-living adjustments; (2) whether all of those employees received those adjustments; (3) the financial implications of the Comptroller General's decisions for GAO employees; and (4) whether a pay study conducted for GAO by the Watson Wyatt Worldwide consulting firm indicated that GAO employees were overpaid in comparison to the relevant labor market.

Before addressing those issues, I should begin by disclosing that I worked at GAO for more than 23 years — from September 1980 until January 2004. I left more than six months before the GAO Human Capital Reform Act of 2004 was enacted. At GAO, I worked on a variety of issues, including civil service reform, ethics, and most recently, regulatory reform. At CRS, I am the head of the Executive Branch Operations Section within the Government and Finance Division, which includes civil service issues within its areas of coverage.

Annual Pay Adjustments and "Meets Expectation" Ratings

The first question that the Chairman asked CRS to address was whether the Comptroller General indicated during the deliberations on the GAO Human Capital Reform Act that GAO employees who perform at or above a "fully satisfactory" or "meets expectations" level on all relevant ratings dimensions would receive annual adjustments to their base pay. The record indicates that the Comptroller General, on several occasions, did address this issue in writing and orally to congressional committees, individual Members, and GAO employees. For example:

- At a July 16, 2003, hearing on GAO's human capital reform proposal before the House Government Reform Committee's Subcommittee on Civil Service and Agency Organization, the Comptroller General said in his written statement that, in developing the proposal, GAO's Executive Committee had adopted several recommendations from GAO employees, one of which was "the commitment to guarantee annual across the board purchase power protection and to address locality pay considerations to all employees rated as performing at a satisfactory level or above (i.e., meeting expectations or above) absent extraordinary economic circumstances or severe budgetary constraints." He went on to say that GAO planned to satisfy that commitment through a GAO Order rather than through legislative language, and that he had "committed to our employees that I would include this guarantee in my statement here today so that it could be included as part of the legislative record."[1] Later in his written statement, the Comptroller General reiterated that "if GAO is granted this authority, all GAO employees who perform at a satisfactory level will receive an annual base pay adjustment composed of purchase power protection and locality based pay increases absent extraordinary economic conditions or severe budgetary constraints."[2] A table included in the appendix to the Comptroller General's written statement said the annual across-the-board increase to base pay would be provided "for all satisfactory performers." A footnote to the table said that, "absent extraordinary economic conditions or serious budgetary constraints, all GAO staff rated as performing at a satisfactory level (i.e., meeting expectations or higher) can expect to receive at a minimum an annual adjustment designed to protect purchasing power (e.g., the Consumer Price Index) and address differences in compensation ranges by localities."[3]

- In response to a question from Representative Chris Van Hollen at the July 16, 2003, hearing, the Comptroller General said, "I have made it clear that, as long as employees are performing at the meets expectation level or better, then they will be protected against inflation." He said the only exception would be "extraordinary economic conditions, like deflation or

---

[1] U.S. General Accounting Office, *GAO: Additional Human Capital Flexibilities Are Needed*, GAO-03-1024T (July 16, 2003), p. 10, available at [http://www.gao.gov/new.items/d031024t.pdf].

[2] Ibid., p. 17.

[3] Ibid., pp. 28-29.

hyperinflation or serious budgetary constraints."[4] Representative Van Hollen then said, "Let me make sure I understand what you were just saying. You have provided an assurance that except under extraordinarily bad budget scenarios, for example, a situation much worse than anything we're encountering even today, and things are pretty bad today — that you would assure that employees who are meeting the minimal expectation would receive a COLA and locality pay; is that right?" The Comptroller General then said, "Yes, and we would have a different method. But yes, they would receive protection against erosion of purchasing power due to inflation, and some consideration of locality at a minimum."[5]

- Christopher A. Keisling, a member of the GAO Employee Advisory Council, also testified at the July 16, 2003, House Subcommittee hearing. In his written statement, Mr. Keisling said the Comptroller General had made several commitments to GAO employees that had tempered their concerns, including a statement that "employees who are performing adequately will be assured of some annual increase that maintains spending power. He outlined his assurance in GAO's weekly newsletter for June 30th that successful employees will not witness erosion in earning power and will receive an annual adjustment commensurate with locality-specific costs and salaries." Mr. Keisling went on to say that "To the extent that these steps are taken, overall employee opinion of the changes should improve because much of the concern has focused on making sure that staff who are performing adequately do not witness economic erosion in their pay."[6]

- GAO's human capital reform legislation (H.R. 2751) was introduced in the House of Representatives on the same day as the Subcommittee hearing (July 16, 2003). The House Government Reform Committee's November 19, 2003, report on the legislation included the views of the minority members of the committee, who said that the Comptroller General "has assured GAO employees that anyone performing satisfactory work will receive at least a cost of living adjustment."[7] H.R. 2751 passed the House on February 25, 2004.

- On September 16, 2003, the Senate Committee on Governmental Affairs held a hearing on pending GAO human capital legislation (S. 1522, which

---

[4] U.S. Congress, House Committee on Government Reform, Subcommittee on Civil Service and Agency Organization, *GAO Human Capital Reform: Leading the Way*, hearing, 108th Cong., 1st sess. (Washington: GPO, 2003), p. 78.

[5] Ibid.

[6] U.S. General Accounting Office, *GAO's Proposed Human Capital Legislation: View of the Employee Advisory Council*, GAO-03-1020T, July 13, 2003, p. 9, available at [http://www.gao.gov/new.items/d031020t.pdf].

[7] U.S. Congress, House Committee on Government Reform, *GAO Human Capital Reform Act of 2003*, report to accompany H.R. 2751, 108th Cong., 1st sess., H.Rept. 108-380 (Washington: GPO, 2003), p. 23, available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:hr380.108.pdf].

had been introduced in the Senate on July 31, 2003). In his written statement, the Comptroller General recommended passage of the legislation, and said that although GAO employees had expressed strong concerns about the initial proposal, "those concerns have been reduced considerably by the clarifications, changes, and commitments I have made."[8] He included a copy of his July 16, 2003, testimony as an appendix to his written statement, in which he said that one such commitment was "to guarantee annual across the board purchase power protection and to address locality pay considerations to all employees rated as performing at a satisfactory level or above (i.e., meeting expectations or above) absent extraordinary economic circumstances or severe budgetary constraints."[9] GAO's Employee Advisory Council did not testify at this hearing, but provided a statement for the record that was virtually the same as its testimony before the House Subcommittee two months earlier.[10]

- During the September 16, 2003, hearing, Senator Thomas Carper asked the Comptroller General how employees could be ensured protection against inflation in a pay for performance system. The Comptroller General said that "for the 97-plus percent of our employees who are performing at an acceptable level or better, . . . we will protect them against inflation at a minimum."[11]

- The Senate Committee on Governmental Affairs, in its December 9, 2003, report on the GAO human capital reform legislation said that the committee had "received a commitment from the Comptroller General that, absent extraordinary circumstances or serious budgetary constraints, employees or officers who perform at a satisfactory level will receive an annual base-pay adjustment designed to protect their purchasing power."[12] S. 1522 passed the Senate on June 24, 2004, and was enacted into law on July 7, 2004.

Several other descriptions of GAO's new pay system addressed this issue as well. For example, a set of questions and answers provided to GAO employees in June 2003 stated that "GAO will, absent extraordinary economic conditions or serious budgetary constraints, provide all GAO staff who are rated as performing at a satisfactory level (i.e., meets

---

[8] U.S. General Accounting Office, *GAO: Transformation, Challenges, and Opportunities*, GAO-03-1167T (Sept. 16, 2003), p. 33, available at [http://www.gao.gov/new.items/d031167t.pdf].

[9] Ibid., p. 60.

[10] U.S. General Accounting Office, *GAO's Proposed Human Capital Legislation: Views of the Employee Advisory Council*, GAO-03-1162T (Sept. 16, 2003), pp. 9-10, available at [http://www.gao.gov/new.items/d031162t.pdf].

[11] U.S. Congress, Senate Committee on Governmental Affairs, *Oversight of GAO: What Lies Ahead for Congress' Watchdog?*, hearing, 108th Cong., 1st sess. (Washington: GPO, 2003), pp. 19-20.

[12] U.S. Congress, Senate Committee on Governmental Affairs, *GAO Human Capital Reform Act of 2003*, report to accompany S. 1522, 108th Cong., 1st sess., S.Rept. 108-216 (Washington: GP0, 2003), p. 9, available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:sr216.108.pdf].

expectations or higher) both across the board and performance-based annual pay adjustments."[13] Using almost identical language, a GAO official testifying after passage of the GAO Human Capital Reform Act in July 2004 said, "GAO will, absent extraordinary economic conditions or serious budgetary constraints, provide all GAO staff whose performance is at a satisfactory level both across-the-board, and, as appropriate, performance-based annual pay adjustments."[14] Also, a newspaper article appearing after passage of the legislation by the House but before Senate consideration stated that GAO planned to hire a compensation consultant to compare GAO pay with other organizations, and quoted the Comptroller General as saying that "Regardless of how the review turns out, no GAO employee will take a cut in pay and all employees will receive an adjustment to keep pace with inflation each year."[15] Another article published in November 2005 quoted the Comptroller General as saying that "employees would receive a 2.6 percent across-the-board raise if they are meeting job expectations."[16]

Also, documents currently on GAO's website suggest that employees performing satisfactorily can expect an annual pay adjustment. For example, a description of the GAO Human Capital Reform Act's provisions states that the act "establishes a compensation system that places greater emphasis on job performance while protecting the purchasing power of employees who are performing acceptably."[17] GAO's *Human Capital Strategic Plan: Fiscal Years 2004-2006* states that "all GAO employees who perform at a satisfactory level will receive an annual base pay adjustment composed of purchase power protection and locality-based pay considerations absent extraordinary economic circumstances or severe budgetary constraints."[18]

Some GAO Employees Received No Annual Pay Increase

The second question that the Subcommittee Chairman asked CRS to address was whether all GAO employees who were rated as having met performance expectations did, in fact, receive an annual across-the-board pay increase in January 2006. GAO noted in its

---

[13] U.S. General Accounting Office, "Additional Human Capital II Questions and Answers (Second Set: June 27, 03)," p. 3, provided to CRS by House Committee on Government Reform staff. The same document (p. 4) also said "The Comptroller General has stated that, absent extraordinary economic conditions or serious budgetary constraints, all GAO staff who are rated as performing at the satisfactory level (i.e., meets expectations or higher) can expect to receive an annual adjustment designed to protect purchasing power (e.g., the Consumer Price Index "CPI") and address differences in competitive compensation by varying localities. Based on the results of last year's performance appraisal process, over 97 percent of GAO's analysts met this standard."

[14] Statement of J. Christopher Mihm, Managing Director, Strategic Issues, U.S. Government Accountability Office, *Human Capital: Building on the Current Momentum to Transform the Federal Government*, GAO Report GAO-04-976T (July 20, 2004), p. 18.

[15] Stephen Barr, "Other Agencies May Learn From GAO's Pay, Classification Review," *Washington Post*, May 13, 2004, p. B2.

[16] Stephen Barr, "GAO Radically Restructures Pay to Reflect Market Rates, Performance," *Washington Post*, Nov. 7, 2005, p. B2.

[17] Available at [http://www.gao.gov/about/namechange.html].

[18] U.S. Government Accountability Office, *The Human Capital Strategic Plan: Fiscal Years 2004-2006*, p. 9, available at [http://www.gao.gov/new.items/d041063sp.pdf].

response to questions after a March 10, 2006, hearing by the House Committee on Appropriations on GAO's FY2007 appropriation that of the 1,829 GAO Analysts and Specialists assessed for performance-based compensation and actually on board on the effective date of the pay adjustments, 308 employees (approximately 17%) did not receive across-the-board permanent pay increases in January 2006 (which was a 2.6% increase in base pay). Of these employees, 14 were in Band III (roughly GS-15 equivalent); five were in Band IIB (GS-14); 236 were in Band IIA (GS-13); and 53 were in Band I (GS-7 through GS-12).[19] GAO confirmed with CRS last fall that all 308 employees had performance ratings of "meets expectations" or better on all relevant competencies during the rating period.

Another of the post-hearing questions in March 2006 cited the Comptroller General's statements at the House Subcommittee hearing on July 16, 2003, assuring "purchase power protection" raises to all GAO employees who met expectations, absent extraordinary economic circumstances or severe budgetary constraints. Given these statements, the questioner asked why these 308 GAO employees who "met expectations" were not given an across the board pay increase. In response, GAO said the Comptroller General's statements to Congress in 2003 were "accurate at the time," but said "there have been significant subsequent events that have altered the Comptroller General's views on whether and when employees should receive pay adjustments."[20] GAO said the most significant of these events was the completion of the Watson Wyatt pay study, which indicated that certain employees were already paid more than what should be the maximum pay for their positions. As a result, 53 Band I and 236 Band IIA employees did not receive the 2.6% annual adjustment to their base pay in January 2006 because, according to the Watson Wyatt study, they were already paid more than the maximum salaries for their bands ($75,900 for Band I and $101,600 for Band IIA).

For employees at the Band IIB and Band III levels, GAO established additional criteria to qualify for an annual increase. For employees who were paid less than the maximum rate of their band, but more than a "speed bump" rate (established at about the 75% point of the bands), their ability to receive an annual pay increase was also based on their performance appraisals relative to those of other GAO employees in their team and band. For Band IIB employees, their rating had to be in the top 50% of their cohort; for Band III employees, their rating had to be in the top 80% of their cohort.[21]

As a result, five Band IIB employees received no annual adjustment to their base pay because they were paid more than the Band IIB speed bump ($118,000), and they were not in the top 50% of appraisal scores for their band and team. Similarly, 14 Band III employees received no annual pay adjustment because they were paid more than the Band III speed bump ($129,800), and they were not in the top 80% of appraisal averages for their band and team.

---

[19] "Final Questions and Answers Submitted for the Record as Part of GAO's 2007 Appropriation Hearing," Mar. 27, 2006, provided to CRS by House Committee on Government Reform :taff. GAO adopted a three-band pay system in 1989, and divided the middle band into Band IIA and Band IIB in late 2005 for the 2006 pay cycle. See U.S. Government Accountability Office, *Band II Restructuring* (GAO Order 2900.3), Nov. 4, 2005.

[20] Document provided to CRS by House Committee on Government Reform staff, p. 2.

[21] U.S. Government Accountability Office, *Pay Administration in the Analyst Performance-Based Compensation System*, Order 2540.3 (June 12, 2006).

Financial Implications of Receiving No Annual Pay Adjustment

The third issue that the Chairman asked CRS to address was the financial implications of the Comptroller General's decision to deny annual pay increases to certain GAO employees with "meets expectations" performance ratings. As noted, GAO employees in Band I and Band IIA who were already being paid in excess of the new maximum rate for their band were not eligible for the 2.6% annual pay increase in January 2006. These employees, under the system in place, will receive no annual pay increases until the maximum rate for their band increases to a point above the employees' current salary. Likewise, GAO employees in Band IIB were not eligible for the 2.6% pay increase in January 2006 if their salary was already over the "speed bump" for the band and if their performance rating was in the lower half of all other Band IIBs in their team. They will not be eligible for annual pay increases until their performance improves vis-a-vis others at their band level in their team or the "speed bump" increases to a point above the employees' current salary.[22]

Similarly, GAO employees in Band III were not eligible for the 2.6% annual pay increase in January 2006 if their pay was over the "speed bump" for the band and their performance rating was in the bottom 20% of all other Band IIIs in their team. However, unlike GAO employees in the other bands, the pay increases for Band III employees are no longer frozen. In late 2006, GAO revised its order on performance based pay and eliminated the "speed bump" for Band III; as a result, all Band III employees with a "meets expectation" rating are now eligible for an annual pay increase (this year, 2.4% at GAO).[23]

It is possible that the pay and the retirement annuities of certain Band I, IIA, and IIB employees will be permanently affected by the decision to freeze their annual pay increases. Perhaps the best way to illustrate this effect is through a hypothetical example involving the GAO employees most frequently affected by the pay freeze — those in Band IIA.

As shown in **Table 1**, if a GAO Band II employee in Washington, D.C., making $110,000 per year in 2005 was placed in Band IIA, because the pay cap for Band IIA in January 2006 was $101,600, the employee would not have been eligible for the 2.6% permanent pay adjustment that GAO gave that year. However, under the GAO system, that employee would have received 50% of any performance based compensation in the form of an increase in base pay. For example, as **Table 1** indicates, if the employee was eligible to receive $2,000 in performance based compensation in January 2006 (slightly higher than the average for Band IIA employees that year), he or she would have received a $1,000 increase in base pay, raising the employee's annual pay to $111,000 in January 2006.[24] In comparison, the annual pay of a non-GAO federal employee in Washington, D.C., making $110,000 per year in 2005 would have increased to $113,784 in January 2006 as a result of

---

[22] GAO notified CRS that both the maximum rate of the bands and the speed bumps will be increased using factors that the GAO Human Capital Reform Act requires the Comptroller to consider, including the need to protect the purchasing power of officers and employees of the Office. Between 2006 and 2007, the rate of increase was about 3%.

[23] U.S. Government Accountability Office, *Pay Administration in the Analyst-Performance-Based Compensation System*, Order 2540.3.

[24] GAO informed CRS that the average performance based pay increase in January 2006 was about $1,000.

the 3.44% government-wide pay increase at that time — $2,784 per year more than the GAO employee.

Table 1. Projected Changes in Annual Pay for GAO (Band IIA) and Non-GAO Employees Earning $110,000 in 2005

Year	Band IIA Pay Cap	GAO Employee Annual Pay	Non-GAO Employee Annual Pay	Non-GAO Employee's Pay Advantage
2005	N/A	$110,000	$110,000	$0
2006	$101,600	$111,000	$113,784	$2,784
2007	$104,700	$113,000	$116,788	$3,788
2008	$107,841	$114,500	$120,291	$5,791
2009	$111,076	$116,000	$123,900	$7,900
2010	$114,408	$117,500	$127,617	$10,117

Note: Changes in the Band IIA pay cap between 2006 and 2007 were slightly more than 3%, so the table assumes a 3% increase in subsequent years. GAO employees at this salary level received 50% of their performance based compensation in the form of base pay in 2006, and will receive 100% as base pay in 2007. The table assumes 75% in subsequent years, on a constant base of $2,000. The increase in non-GAO employees' annual pay was 3.44% in 2006, and 2.64% in 2007— an average of about a 3% increase. The table assumes a 3% increase in subsequent years.

That same sequence of events would continue in the next several years. For example, although the Band IIA pay cap in 2007 increased to $104,700, the employee's salary of $113,000 ($111,000 plus a $2,000 increase through performance based compensation, because the Comptroller General has decided to allow 100% of the performance based compensation to count towards base pay in 2007) still exceeds that cap, making the employee ineligible for the 2.4% annual pay increase at GAO in 2007. Meanwhile, the non-GAO employee in Washington received a 2.64% annual pay increase, raising his or her annual salary to $116,788 — $3,788 more than the GAO employee. Assuming a continuation of this general trend, by 2010, the GAO employee's salary would be about $10,117 less than the non-GAO employee's salary ($117,500 versus $127,617). Cumulatively, from 2006 through 2010, the GAO employee's annual pay under this scenario would be $30,380 less than the non-GAO employee's.

This difference in annual pay would have implications for the employees' pensions when they retire. Assuming both employees are in the Civil Service Retirement System, retire at the end of 2010, and both have 30 years of federal service, the GAO employee's "high three" salary (the average of his or her last three years) would be $116,000, yielding an estimated annual pension of $65,250.[25] In comparison, the non-GAO employee's high three annual salary would be $123,954, yielding an estimated annual pension of $69,724 — $4,474 per year more than the GAO employee's. Assuming that the two employees draw their pensions for 20 years, the cumulative pension difference (not including cost of living

---

[25] Civil Service Retirement System employees with 30 years of service receive pensions equal to 56.25% of their high three average salary.

increases that will likely be provided during this period) would be $89,480. This difference, when added to the $30,380 cumulative difference in salary described above, would yield a total salary and pension differential over the full 25-year period of $119,860.

Please note, however, that these estimates are based on various assumptions (e.g., the amount of the non-GAO pay increase, the rate of increase in the Band IIA pay cap, and the amount of performance based compensation earned and the percentage of that compensation that is allowed to be counted as base pay). Therefore, the actual amount of future increases or pay differentials may vary considerably from these estimates. Also, the estimates do not include any performance based pay that GAO employees may receive that is not counted as part of their base pay. On the other hand, the non-GAO employees' pay projections also do not include any bonuses, or any within-grade or quality step increases, that they may have received, the latter of which would increase the employees' base pay used in calculating retirement benefits.

Whether GAO Employees Were Overpaid

The last question that the Chairman asked CRS to address is whether the Watson Wyatt market based pay study indicated that GAO employees were overpaid. To answer this question, one must have an understanding of how the study was conducted, and how that information was used by GAO. The most detailed information that CRS has obtained on the study is a Watson Wyatt document dated November 8, 2004, entitled "Executive Committee Briefing: Final Market-Based Compensation Ranges."[26] The document is a series of PowerPoint slides that show "market based compensation ranges" and "impact analyses" by geographic region and career stream. The data indicate that hundreds of GAO employees were being paid above the expected pay ranges for their positions, and above the maximum salaries for their bands.

Section 3(a) of the GAO Human Capital Reform Act of 2004 requires the Comptroller General to "consider" several factors in determining GAO employees' annual pay adjustments, including "the pay rates for the same levels of work for officers and employees of the Office and non-Federal employees in each local pay area." The act does not indicate how "the same levels of work" are to be determined between GAO and non-GAO employees. However, the House report on the act states that, in considering factors related to economic data, "the data will be specifically related to positions at GAO."[27]

The Watson Wyatt document that CRS reviewed does not describe in any detail how the pay comparability study was conducted. In particular, the document does not indicate what specific companies were compared to GAO, or what specific occupations in those companies were compared to GAO analysts. Under a "Methodology" bullet on one slide, the text reads "Assigned benchmark jobs to ranges based on market data and location." The document does not describe how the "market data" were gathered for the study, including

---

[26] U.S. Government Accountability Office, *Executive Committee Briefing: Final Market-Based Compensation Ranges*, Nov. 8, 2004. Provided to CRS by House Committee on Government Reform Staff by electronic mail, Oct. 2, 2006.

[27] U.S. Congress, House Committee on Government Reform, *GAO Human Capital Reform Act of 2003*, report to accompany H.R. 2751, 108th Cong., 1st sess., H.Rept. 108-380 (Washington: GPO, 2003), p. 9.

which companies, governmental units, or other organizations were included, or which occupations in those organizations were used in the study and how they were matched to the GAO occupations. The second page of the Watson Wyatt document states that "Design objectives and methodology are described in our October 29, 2004 report." CRS asked GAO to provide a copy of this October 29, 2004, report last fall, but GAO declined to do so, characterizing it as "deliberative in nature."

Last fall, GAO described the pay study to CRS as follows:

> As a first step, Watson Wyatt met with career stream focal points within the organization to develop an understanding of the mission, job requirements and levels of responsibility. This process also entailed discussions with focal points to identify employers and labor markets to which GAO lost employees and from which GAO was likely to recruit employees. The next step in the process involved identifying benchmark or job matches in various published salary survey data. In addition, GAO collected some custom salary data from organizations that didn't participate in published salary surveys. Each of these surveys included salary data from numerous organizations. The contractors made recommendations of appropriate matches to be reviewed by the career stream focal points, including employees. The Executive Committee approved the final matches based on these recommendations.[28]

GAO said the "career stream focal points" included members of the Employee Advisory Council, and said the GAO/outside organization job matches were done using "a whole job comparison process rather than a point-factor or competency matching" process. GAO also said that the number of jobs used to determine each of the salary ranges for each of the jobs "varied depending on the career stream and job level," but did not provide any additional details. In response to a question asking which outside occupations were used to determine the competitiveness of GAO analysts' salaries, GAO said they were compared to multiple positions in published compensation surveys (e.g., "Consultant and Principle Consultant, Social Policy Research Analyst, Operations Research Analyst, Intermediate Professional, Research Associate and Fellow"). GAO did not provide additional details or identify by name outside organizations used in the study, but did say that the salary surveys included data "from organizations in the public and private sector, not for profit entities as well as the federal government."

Under Section 11 of the GAO Human Capital Reform Act, the Comptroller General is to include in each annual report to Congress "a detailed description of the methodologies applied under section 3 of this Act and the manner in which such methodologies were applied to determine the appropriate pay adjustments for officers and employees of the Office." The December 2006 report on the act's initial implementation, however, did not describe the Watson Wyatt pay study in detail, or how determinations were made that certain employees should not receive an annual pay increase.[29]

Apparently, GAO did not adopt the pay information exactly as provided by Watson Wyatt. For example, the slides from a "Special CG Chat" on November 3, 2005, indicate

---

[28] Information provided to CRS in writing in response to questions, November 2006.

[29] U.S. Government Accountability Office, *2006 Report on GAO's Use of Provisions in the GAO Personnel Flexibilities Act of 2000 and the GAO Human Capital Reform Act of 2004*, GAO-07-289SP(Dec. 2006), available at [http://www.gao.gov/new.items/d07289sp.pdf].

that Watson Wyatt recommended minimum salaries for each of the bands that were lower than what GAO ultimately adopted.[30] Specifically, in the Washington, D.C. area:

- Watson Wyatt recommended a minimum salary of $45,000 for Band I, but GAO elected to use $46,200;

- Watson Wyatt recommended a minimum salary of $60,000 for Band IIA, but GAO elected to use $69,800;

- Watson Wyatt recommended a minimum salary of $75,000 for Band IIB, but GAO elected to use $82,100; and

- Watson Wyatt recommended a minimum salary of $92,500 for Band III, but GAO elected to use $104,000.

Last fall, GAO informed CRS that these changes were designed to reduce the amount of overlap between the bands.

In summary, the documents that CRS reviewed and the other information obtained from GAO and elsewhere did not describe in any detail how the "market data" were gathered for the Watson Wyatt study. It is unclear how GAO occupations were analyzed and described; how Watson Wyatt and GAO ensured that the economic data used to determine market rates for GAO positions were valid and, in the words of the House report, "specifically related to positions at GAO"; and the methodology used by Watson Wyatt to calculate the salary minimums, maximums, and competitive rates. Without this type of detailed information, CRS cannot offer observations regarding whether GAO employees were "overpaid" at the time of the Watson Wyatt study or the January 2006 pay adjustment.

- - - - -

Mr. Chairman, that concludes my prepared statement. I would be happy to answer any questions that you or other Members of the Subcommittee might have.

---

[30] U.S. Government Accountability Office, *Band II Restructuring & 2006 Pay Adjustments*, Nov. 3, 2005, provided to CRS by House Government Reform Committee staff.

Mr. DAVIS OF ILLINOIS. Thank you very much.

We will go to Professor Tiefer.

STATEMENT OF CHARLES TIEFER

Mr. TIEFER. I applaud your holding hearings on this vital and controversial topic, and I appreciate the opportunity to testify.

I am a professor of procurement law. I am the author of the book "Government Contract Law."

Pay for performance not only just hasn't succeeded. One set of numbers from TSA illustrate what it has done to morale. Of TSA screeners, 82 percent, 17,000 who returned forms, 82 percent disagreed with the proposition high-performing employees are promoted; 86 percent disagreed with the proposition pay raises depend on how well employees perform their jobs. There is no confidence in the system.

But worse than that, it is not simply that it is not a success; it has channeled scarce personnel resources, the money, the training, the attention from the top level away from where they really could be used and really are needed.

I testified last May at a hearing about Department of Homeland Security, where you have a stark example. They have an impending shortage of people who can deal with IT, information technology, and procurement, and they should be devoting these personnel resources to training these people, recruiting them, retaining them. What happened? Because they diverted the resources over to this thing, this personnel system, look at what happened with FEMA after Hurricane Katrina. An agency which used to handle very competently disasters brought in a disastrous performance, itself. What it was doing personnel-wise was attending to the wrong things.

An even more serious concern from the legal perspective is the other radical elements besides pay for performance in the personnel reform of this administration. Suppressing collective bargaining, suppressing ruling out arbitration, doing away with appeal rights, these are core elements in NSPS in the Department of Defense and in what was attempted in Max HR for the Department of Homeland Security. They are the heart of labor representation.

Now, some mistakenly believe that the administration's efforts in that regard are just going to sort of run out of steam on their own because of lack of appropriations to carry them out and because of adverse legal decisions. As Delegate Norton's opening statement pointed out, courts have thrown out in their rulings aspects of these personnel systems. But I have to note that the key decision in this regard, which is a decision by the Department of Defense, by Judge Sullivan of this District, is on appeal. It was heard by a panel in December. This is a panel that has on it Judge Cavanaugh, formerly White House Associate Counsel, and so it is considered not impossible that he will rule and that the panel will rule for the White House in this regard.

Now, the House voted in July 2006, to withhold funding of the radical parts of NSPS, the ones I just ticked off, not the pay system, just the radical parts—the suppression of labor representation that Judge Sullivan had held illegal. That vote did not become the law, but, especially if there is an appellate ruling that overturned

Judge Sullivan's decision, that issue will be back front and center for this Congress and hearings by this subcommittee will be absolutely crucial. This is the forum. This is the place where that issue will be debated.

So much has changed since 2003, and it was a close decision even then to give the authority that was given, that it is hard to imagine the administration would be given a blank check to go ahead.

Another somewhat technical issue I want to mention, as far as we named the big systems. The big systems where personnel reform is taking place were all named earlier by Ranking Minority Member Marchant, who had the number. But there is one specialized one, and that passed last September. The Director of National Intelligence, John Negroponte, set in motion a pay banding system for the 16 agencies of the intelligence community that are under his supervision, which amount to about 50,000 civilians. DNI says it is going to be asking the Congress for what it calls "gap filling legislative authority" because it doesn't have complete legislative authority to do this. Its charter doesn't give it that.

Well, this subcommittee needs, as it is doing oversight over these personnel reforms, to get its views on this subject, so that when the DNI—Director of National Intelligence—tells the intelligence committees on their annual bill that it is just gap filling, that they will get someone who knows about personnel issues who says no, it is more controversial than that.

That completes my testimony.

[The prepared statement of Mr. Tiefer follows:]

UNIVERSITY OF BALTIMORE SCHOOL OF LAW
CTIEFER@ubalt.edu *Tel: (301) 951-4239*

Hearing on Status of Federal Personnel Reform

TESTIMONY BEFORE
SUBCOMMITTEE ON FEDERAL WORKFORCE,
POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA
HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

by Professor Charles Tiefer

NEW PERSONNEL SYSTEMS HAVE IMPOSED UNACCEPTABLE COSTS AND IMPACTS AT DOD, DHS, AND OTHER AGENCIES

I. Executive Summary
II. Overview of Costs and Impacts Generally
III. NSPS at DoD
IV. HCOP (MaxHR) at DHS
V. IC, GAO, IRS, and Other Agencies

Thank you for the opportunity to testify on the subject of the federal personnel reform at the Departments of Defense (DoD), Homeland Security (DHS), and elsewhere. There is no more vital and controversial subject. Only this Subcommittee can tackle it as it needs to be tackled – government-wide, across the board, taking a broad view of the developments, costs and impacts.

I am Professor of Law at the University of Baltimore Law School since 1995, and the author of a number of pertinent law review and journal studies, and book sections, on federal personnel and related procurement policy, besides testifying in 2003 (Senate) and 2006 (House) about earlier stages of the new personnel systems.[1]

[1] These include sections about personnel in CHARLES TIEFER & WILLIAM A. SHOOK, GOVERNMENT CONTRACT LAW: CASES AND MATERIALS (Carolina Academic Press 2d edition

I. Executive Summary

From the start of this Administration's drive to replace the civil service General Schedule with pay-banding at supervisors' loose discretion, there were cautionary expert voices. Studies of pay-for-performance warned that it did not tend to yield such positive results. A 2003 Kennedy School review concluded that the "conditions" for ""[p]ay for performance" to be effective "are often not met in the public sector, in part because of the complexity of the typical government product . . . ."

The concerns increased from 2003 on as the Administration withheld the resources needed for this change to have much chance of success. Concerns mounted further as the Administration introduced radical elements, notably an effort to suppress labor representation and appeal rights, supposedly for security flexibility. For a concrete example, the failure of FEMA under this Administration to deal with the aftermath of Hurricane Katrina reflects that the agenda of changing to the MaxHR personnel system had nothing to do with the effective disaster management that is FEMA's mission.

NSPS

In DoD, at NSPS, the Administration has set up a complex schedule. If the appellate panel (with Judge Kavanaugh on it – formerly associate White House counsel to President Bush) that heard the *Chertoff* case in December, rules in the Administration's favor, that schedule would leave it open to implement the most radical elements in NSPS, including suppression of labor representation. Also, the pay-banding could extend to all 650,000 of DoD's civilian employees. NSPS's implementation is summed up by how the factors already being used for rating employees not only included "how well they accomplished agreed-upon job objectives, [but] also . . . factors such as cooperation, communication and leadership." As one female Navy employee said, who found these like rating whether she was "personable" enough, "'Perhaps I am being cynical, but it would seem to me this aspect was added to the system in order to allow more subjectivity to the evaluation process.'"

DHS and Other Agencies

At DHS, the paybanding of HCOP (MaxHR) is only scheduled for a pilot program. But, if the Administration decides to expand the pilot, DHS in 2009 could still seek to shift all its employees from the GS to pay banding. This would set back DHS, distracting it from proper focus on integrating all its different units into one department.

Besides comment about GAO, IRS, and SES, it is noted here that the Director of National Intelligence (DNI) seeks a payband system for the whole intelligence community (IC). This may raise important legislative and oversight issues for this Subcommittee, like whether vital rights will be saved in cross-agency personnel systems.

2004 & Supp. 2006). In 1984-1995 I was Solicitor and General Counsel (Acting) of the U.S. House of Representatives, and participated in numerous oversight investigations of federal personnel and procurement policy. I testified in 2006 before a House Homeland Security subcommittee and in 2003 before a Senate Government Operations subcommittee.

II. Overview of Costs and Impacts Generally

For this testimony, I have reviewed a number of scholarly and survey studies, and journalistic accounts of new personnel systems. Some of the most relevant ones are cited in footnotes below, including some notably high-quality journalistic reports.

Starting in 2001, and particularly after obtaining new legislation in 2002-2003, the Administration showed ideological enthusiasm for setting up new personnel systems in government departments and agencies. The new and extreme ideology was first laid out in a Heritage Foundation study, and in proposed government-wide legislation (in 2001, the Freedom to Manage Act, and in 2005, the similar "Working for America" Act) – both of which notably pitched their ideology on a government wide basis rather than that the ideology related to some special national security reason.[2]

From the start, there were cautionary expert voices against putting too much confidence in the central step of replacing the civil service General Schedule with pay-banding at supervisors' loose discretion. This throws away the time-tested bedrock that the diverse units of the government have in common: all its units, to the extent relevant, were hitherto under the same government-wide personnel system, the "General Schedule" (GS) for the civil service.[3]

Studies of public-sector pay-for-performance warned that it did not tend to yield such positive results. These included the extensive work of Professor Jason Shaw spanning the public and private sectors.[4]

A comprehensive review of the literature was done in 2003 at the Kennedy School of Government at Harvard by two leading professors.[5] The Kennedy School review concluded that the "conditions" for ""[p]ay for performance" to be effective "are often not met in the public sector, in part because of the complexity of the typical government product . . . . the increasing role of . . . cross-agency collaboration, and the social comparisons and internal motivational dynamics of . . . public employees in particular."[6] And, the motivational dynamics depend heavily, not upon a pure piecework-minded interest in wages, but upon precisely the "public service motivation" as to which the Kennedy School review said "the reduction of intrinsic motivation through performance-based pay will be a correspondingly bigger problem."[7]

Second, the concerns increased from 2003 on as the Administration withheld the resources for this change to have much chance of success. The Administration launched pay-for-performance with inadequacy as to the needed elements: resources for pay

[2] Taking Charge of Federal Personnel, Heritage Foundation Backgrounder, No. 1404, Jan. 10, 2001, at http://www.heritage.org/Research/GovernmentReform/BG1404.cfm.

[3] A good review of how the General Schedule works is in Major John P. Stimson, *Unscrambling Federal Merit Protection*, 150 Mil. L. Rev. 165 (1995).

[4] Jason Shaw is a professor of management at the University of Kentucky. He is quoted about the relevance of his studies to this Administration's current initiatives in Shawn Zeller, *Performance Pay Perils*, GovExec.com, Feb. 15, 2004.

[5] Iris Bohnet & Susan C. Eaton, *Does Performance Pay Perform? Conditions for Success in the Public Sector*, in John D. Donahue and Joseph S. Nye Jr., eds., *For the People: Can We Fix Public Service?* (2003). Another large-scale report is National Academy of Public Administration & Center for Human Resources Management, *Broadband Pay Experience in the Public Sector: 15 Organizational Case Studies* (August 2003), at http://www.ourpublicservice.org/usr_doc/Broadband_Pay_in_the_Public_Sector_-_15_Case_Studies.pdf

[6] *Id.* at 250.

[7] *Id.* at 246.

increases and for training in the new system; and, a period to carefully develop performance criteria, and to work them out between managers and employees so as to damp down the employees' very natural concerns about the dangers of arbitrary and even punitive or discriminatory pay changes.

Third, the concerns mounted further as the Administration introduced radical elements, notably an unheralded effort to suppress rights supposedly for security flexibility – rights such as labor representation in collective bargaining, independent parties (such as neutral arbitrators) in labor-management dispute resolution, and appeal rights to protect against discrimination, whistleblower penalties, and other losses of rights.

What makes these elements so radical, namely, the established nature of the rights such as of labor representation, warrants elaboration.[8] Although the principal unions of federal employees emerged in 1917-1938, the contemporary framework of federal-sector labor management relations did not take its legally developed shape until Executive Order 10988 in 1962. Statutory codification occurred in Title VII of the 1978 Civil Service Reform Act. The Clinton Administration tried a relatively successful partnership effort, which the Bush administration largely ended in 2001.

There was nothing to foreshadow the Administration's radical effort, in the first instances at DoD and DHS, to severely undermine the role of such longstanding labor representation. Academic commentators have found little credibility in the newly-manufactured Administration claim that it was justified for security reasons.[9]

Moreover, this and other radical elements produced delays of the new personnel systems as the courts wrestled over many aspects, sometimes throwing out some flatly illegal parts, and as the Administration changed or postponed various aspects. These various delays mean the new personnel systems have become an even more long-lasting source of uncertainty and morale damage than imagined.

The central problem remains the Administration's inability to create the extensive, practical, and credible systems for measuring, in large and diverse departments with complex public-oriented (not simpler profit-oriented) missions, the "performances" on which pay would be based. Robert M. Tobias, with whom I could not agree more on this point, recently moderated a panel about the problems of performance management in which he laid out that:

> "If we don't know what performance is, it is impossible to have a pay-for-performance system that is transparent, that is credible. It will indeed be perceived as arbitrary . . . . <u>Very few agencies with whom I'm familiar have done the hard work of defining what performance means in the context of their organization.</u> They haven't decided whether they can actually do outcome goals. . . . And I suggest, if agencies have not done that hard work, there's very little chance of retaining the best, stimulating those in the middle to perform at a higher level, and/or identifying the non-performers and dealing with them. What is performance? That is the fundamental, unanswered question . . . . and it is [a]

[8] For the background through 2004, see Marick F. Masters, *Federal-Sector Unions: Current Status and Future Directions*, 25 J. Lab. Res. 55 (2004).
[9] Ruben J. Garcia, *Labor's Fragile Freedom of Association Post-9/11*, 8 U. Pa J. Lab. & Emp. L. 283 (2006), and sources cited in notes 115, 120.

question that has to be addressed and satisfactorily answered before we even begin to think about a pay for performance system."[10]

Let us put the lack of meaningful performance measures in concrete terms. Just around the time in 2005 when the Administration's drive for new personnel systems faltered, a great test occurred of the key department for that drive. The department was DHS; the great test was Hurricane Katrina. Whereas hitherto FEMA performed impressively in disaster management, with experienced personnel performing ably under the time-tested GS system, FEMA as part of DHS performed abysmally under the Bush Administration, directed by enthusiasts for the new personnel system, HCOP (then MaxHR). The failure of FEMA under this Administration to deal with the aftermath of Hurricane Katrina reflects that the agenda of changing personnel systems was a distracting political agenda, which undermined the effective disaster management that is the mission of FEMA's hitherto capable civil servants.

One wants to ask: what is going to be the pay-for-performance measure in post-Katrina efforts, that will take the place of the public service mission orientation that characterized FEMA before this Administration? Suppose FEMA employees went to New Orleans for post-Katrina efforts: should their pay go up based on how <u>much</u> they hold back on federal expenditures? One hopes not. Should their pay go up based on how <u>little</u> they hold back on federal expenditures? One hopes not. Neither simple measure is good. Their mission is too important and complex to go by simple quantitative pay-for-performance measures of counting how much or how little they spend. The motivation for FEMA employees was better before the Administration took control. And considering the abysmal failure of the political figures at DHS and FEMA, surely the need is not to destroy the civil service's capacity to function by taking away any rights it has to perform its mission in the face of such poor political leadership. So, it was at this time that the support plummeted in the public and Congress for the drive to remake the personnel system, in DHS among other agencies, according to the prescription of this Administration.

III. NSPS at DoD

The Rise of NSPS

Pay-for-performance in the federal sector actually started with DoD – specifically, with a demonstration program at a Navy facility in China Lake, California, in 1980. Other demonstration programs followed, including in recent years, up to 45,000 DoD employees mostly in DoD's R&D laboratories.[11] In 2003 came a time when the Administration expanded its security-emphasizing political themes to embrace the need for DoD to get into Iraq for the supposed stockpiles there of weapons of mass destruction. Against a background of intensified national urgency over this alleged imminent security menace, the Administration obtained the authority in the National Defense Authorization Act for FY 2004, to extend a new personnel system in DoD beyond such demonstration projects, to embrace Secretary Rumsfeld's whole department.[12]

---

[10] Robert M. Tobias, Moderator, Panel 3, in <u>The Practice of Merit: A Symposium</u>, at http://www.mspb.gov/studies/rpt_02-06-07_proceeding/panel%203.htm.
[11] Trudy Walsh, *Performance Anxiety*, Government Leader, Jan. 13, 2006.
[12] 5 U.S.C. sec. 9902(a).

It must be emphasized that this occurred when public confidence was at a peak – from which it has had a dizzying decline – that the political leadership of DoD, such as Secretary Rumsfeld, Deputy Secretary Wolfowitz, and Undersecretary Feith – knew best how to run and use the department. There was a direct correlation between two views of the Department hierarchy: (1) that the way to handle logistics in Iraq, a subject I have extensively studied, was by sole source contracting to Halliburton rather than relying on career DoD civilian or military personnel or competition among suppliers; and, (2) and that the department's civilian employees should have their personnel rights substantially reduced and that they should be subjected to potent subjective pay control. Either way, the idea was not to depend any more upon the public spirit of the civil service, but on a much more top-down, hierarchical, politically controlled approach.

DoD promulgated final regulations in November, 2005.[13] In early 2006, federal employee unions successfully challenged major portions of the regulations, particularly those failing to ensure collective bargaining; those providing inadequate independent third party review of labor relations decisions; and those providing an inadequate process for appealing adverse actions.[14] Rather than simply letting go of these problems, notably those seeking to suppress labor representation, the Administration appealed, even though that meant the Administration was itself deferring, if not partly disabling, the rest of the new personnel system – notably, pay-banding.

The appeal was argued this past December. The possibility exists that the Administration will receive something it can call a victory in that appeal. Judge Sullivan's decision was straightforward and persuasive. But, the appellate panel includes Judge Brett M. Kavanaugh, who was a deputy for Ken Starr, the Whitewater counsel who pursued President Clinton, and then served this Administration as an associate White House counsel, next door, so to speak, to President Bush himself. As my book noted when Kavanaugh was nominated, he is "pretty clearly the opposite of an independent judge who would dispassionately and disinterestedly weigh arguments for and against the Bush White House."[15]

Status of NSPS Implementation

During the pendency of the litigation, the status of NSPS implementation has been as follows. Following the ruling by Judge Sullivan against NSPS, DoD officials made a complex deferral.[16] They reduced by 81 percent the first group of employees to be covered by the pay plan, just to 11,000. A second group – the number was later put at 66,000[17] -- would not transition to the performance-based system until October 2006 and January 2007, and these would not see their performance pay raises until January 2008. Then, the revised schedule delayed moving the third group into NSPS until 2007, and the rest of its 650,000 employees even later, so that the whole department would not be paid under the system until January 2009.

The implicit significance of this plan was two-fold. First, the Administration adhered to its desire to couple to its new pay system its effort, knocked down by Judge Sullivan, to suppress labor representation. The limited first group of employees were all

[13] 70 Fed. Reg. 66116 (Nov. 1, 2005).
[14] *AFGE v. Rumsfeld*, 422 F. Supp. 16 (D.D.C. 2006)(Sullivan, J.).
[15] Charles Tiefer, *Veering Right* 72-73 (2004).
[16] Tim Kauffman & Mollie Ziegler, *DoD Scales Back Pay Reform*, Army Times, Jan. 23, 2006.
[17] M. Z Hemingway, *he Battle Over Civil Service Reform, Fed. Times Almanac 2007*, at 8.

nonunion ones, so that the ruling did not squarely affect how NSPS applied to them. The House voted in July 2006 to withhold funding to carry out parts of NSPS deemed illegal by Judge Sullivan,[18] but that provision does not appear to have been enacted. An appellate ruling by Judge Brett M. Kavanaugh might allow a resumption of the drive to implement the radical provisions suppressing unions, independent third-party review of disputes, and appeal rights. Second, the deferral gave the Administration some time to wrestle with, or at least paper over, the increasingly evident problems of pay-banding, particularly as to developing criteria and conducting training.

Problems With NSPS Implementation

As the NSPS moved toward implementation, both studies and journalistic accounts reflected its problems. The GAO commented about several shortcomings in NSPS:[19]

> GAO Comments on Problems with NSPS
>
> The Department of Defense (DoD) has designed its own new human resources management system, called the National Security Personnel System (NSPS). Government Accountability Office (GAO) Comptroller General David Walker last week testified . . . GAO also has several areas of concern. First, DoD has considerable work ahead to define the "important details"—such as measures of performance. Second, the regulations do not require the use of core competencies that can help provide consistency. Third, although the regulations do provide for continuing collaboration with employee representatives, they do not identify a process for the continuing involvement of individual employees in the implementation of NSPS.

An account just a few months ago, "Transition to Pay for Performance Makes Some Anxious,"[20] discussed the practical details of the implementation of the pay-banding system. Notably, the pay-banding system not only could adversely affect an employee's current pay, but even a relatively short period of involvement in the system could very adversely affect an employee's lifetime pension.[21] Small wonder that pay-

[18] Aimee Curl, *House Tightens Grip on Appropriation for NSPS*, Fed. Times, Aug.7, 2006.

[19] FederalDaily, Nov. 22, 2005 (emphasis added). Comptroller General Walker 's testimony is at www.gao.gov/new.items/d06227t.pdf.

[20] Stephen Barr, *Transition to Pay for Performance Makes Some Anxious*, Oct. 31, 2006, at D4.

[21] In the private sector, defined contribution plans (typically 401(k)'s) make pensions determined by the contributions during the employee's whole tenure, so a reduction or cut-off of raises in the final couple of years has no special significance. In the federal sector, the pensions are determined by a formula applied to the "high-3" – the average of the three highest paid years of consecutive service. Typically, these are the final years.

Thus, an employee whose final three years came during the start of pay-banding, and who then got minimal raises, who suffer more than just three years of those pay raises, but the reduction of her "high-3" and hence of her whole pension. Such an employee would see her pension reduced for the rest of her life by the impact of that pay-banding.

banding can produce great anxiety among the senior employees, often those with the most extensive and varied experience.

In several respects, the pay system was poorly received. For one thing, although the small amount of money needed for its small-scale initiation was indeed made available, managers worried whether larger amounts of money needed for the larger-scale later pay raises would be. For another, the factors for rating employees not only included "how well they accomplished agreed-upon job objectives, [but] also . . . factors such as cooperation, communication and leadership."[22] Individual reactions shed light on the reception to these pay systems. As one female Navy employee told a reporter, "'Perhaps I am being cynical, but it would seem to me this aspect was added to the system in order to allow more subjectivity to the evaluation process.'"[23]

When Army Times published an Administration defense of NSPS, it received disagreeing responses from employees: one wrote a published letter that she "has worked for the Defense Department for more than 34 years. This system is age-biased."[24] Another wrote that "[i]n my 25 years of federal civil service . . . performance is not considered as much as personal favoritism in giving out rewards."[25]

Moreover, whatever personnel resources DoD has devoted to rolling out and maintaining NSPS have come at a serious cost. DoD faces an acute shortage of civilian employees in many key areas, as a generation comes to retirement and is not being replaced adequately by new hires and promotions. This is a "crisis" that Comptroller General Walker has testified about extensively.

This shortfall is visible in an area I am particularly familiar with, namely, in the acquisition, or procurement, workforce. DoD should be devoting all the personnel resources it can to training, retaining, promoting, and recruiting its acquisition workforce. Otherwise, it faces a recurrence of the procurement scandals of Iraq, namely, inadequate acquisition oversight leading to overdependence on self-interested vendors like Halliburton, and to the untrained, abusive private employees involved in a third of the incidents at Abu Ghraib. But, the personnel resources for training, retaining, promoting, and recruiting are being spent instead on pushing NSPS. The result: scandals of procurement waste and abuse now, and the prospect these will continue in the future.

IV. DHS and TSA

DHS

The new DHS personnel system was launched by the 2002 statute creating DHS. Initial regulations were issued in 2004. The system was to be called "MaxHR." Key elements were rejected by a district court decision in 2005 by Judge Collyer,[26] and by a unanimous appellate court decision in 2006.[27] More recently, the system shifted to a new plan, called "Human Capital Operational Plan," known as "HCOP" (so, at this interim

[22] Mollie Ziegler, *DoD Pay Reform Begins: Starting Small, Pentagon Sets Off on Rocky Road*, Fed. Times, May 8, 2006, at 1.
[23] *Id.* The employee added that she was worried that the extra factors would "penalize employees who aren't as articulate or personable." It could be, although it is not entirely clear, that she meant that penalizing those who are not "personable" in this context opens a window for sex discrimination.
[24] Letter, Fed. Times, Oct. 2, 2006, at 20 (signed letter).
[25] *Id.* (unsigned letter).
[26] *NTEU v. Chertoff*, 385 F.Supp.2d 1 (D.D.C. 2005); 394 F.Supp.2d 1237 (D.D.C. 2005).
[27] *NTEU v. Chertoff*, 452 F.3d 839 (D.C. Cir. 2006).

moment, it will be called "HCOP (MaxHR)"). This will set up a pilot project in 2008 focused just on the department's (relatively few) employees who work in intelligence.

If the Administration decides to expand the pilot, DHS in 2009 could still seek its old goal of shifting all its employees from the GS to pay banding.[28] The Administration would face an interesting situation in the extreme situation that the D.C. Circuit reverses Judge Sullivan's decision about NSPS and the Administration decided to unroll all of NSPS, including its radical provisions for suppressing labor representation. That problem is that for all their practical similarities, the DOD and DHS personnel systems spring from different statutes, and so an appellate decision unleashing NSPS at DoD would not in any way unleash the personnel system at DHS. So, the limit on what this Administration could do at DHS is presumably defined in terms of expanding the pilot project on pay banding from intelligence employees to a larger group.

I testified in detail at a Homeland Security Subcommittee hearing last May about the special reasons DHS's new personnel system was a problem for that department., and will summarize here. DHS faces a central daunting challenge of "integrating" itself – pulling itself together from many units – in just a few years. DHS is the largest department to come together since the Department of Defense in the late 1940s, and it consists of almost a dozen principal units of different natures originating in many different departments. Recent developments have made increasingly clear how seriously it sets DHS back in this goal of integrating itself, to saddle DHS also with the problem of creating a wholly new personnel system, based on pay-for-performance, from scratch.

The studies, surveys, and journalistic accounts reviewed for this testimony show that DHS's personnel system has recently shown many problematic aspects which mean that implementing a new personnel system has been, and will be, particularly setting back the task of integrating DHS. First, the new personnel system throws away one of the aspects that all the diverse precursor units of DHS have in common: all those units, to the extent relevant, were hitherto under the same government-wide personnel system, the "General Schedule" (GS) for the civil service. By continuing on with the new personnel system, DHS throws away that one unifying constant, and obliges its employees to set off on a bewildering and insecure personnel policy venture.

Second, the new personnel system tries to launch pay-for-performance in a situation missing many of the elements needed to have any chance for even minimal success, like a period of mission stability to carefully develop performance criteria, and to work them out between managers and employees so as to damp down the employees' very natural concerns about the dangers of arbitrary and even punitive pay changes.

And, the new personnel system draws away precisely those resources – the vital but limited attention and funding that DHS managers can devote to personnel matters – that DHS desperately needs to use, not to redo the existing pay system, which is not a particular priority, but to fill serious shortfalls in training and hiring, which should have the highest priority.

[28] Stephen Barr, *A Symbolic Setback to Linking Pay With Performance*, Wash. Post, Feb. 26, 2007, at D1.

TSA

Surveys both of DHS, and of TSA, have shown that the effort to create a new personnel system has been accompanied by very high levels of employee dissatisfaction. The 2006 survey at DHS turned up the following:[29]

> The Homeland Security Department . . . . ranked last on the Office of Personnel Management's 2006 Federal Human Capital Survey for job satisfaction and results-oriented performance, second to last for leadership and knowledge management, and fourth to last for talent management. The results are similar to those in a survey OPM conducted in 2004.

The TSA's own employee survey turned up similar results as described in a story in FederalDaily:[30]

TSA Screeners Show Discontent

. . . more than 17,000 TSA screeners returned 2004 TSA Organizational Assessment Survey forms. POGO said the results showed that of screeners who returned their forms:

- 76 percent disagree that "Creativity and innovation are rewarded" at TSA.
- 80 percent disagree that "Risk-taking is encouraged without fear of punishment for mistakes" at TSA.
- 73 percent disagree that "Disciplinary actions are applied fairly to employees."
- 68 percent disagree that "Managers provide an environment that supports employee involvement, contributions, and teamwork."
- **82 percent disagree that "High performing employees are promoted."**
- **86 percent disagree that "Pay raises depend on how well employees perform their jobs."**
- 60 percent rate TSA as "below average" or "one of the worst" organizations compared to other organizations.

Extensive attention has also gone recently to the provision in the original charter of the TSA that left to the Administration's discretion whether to allow collective bargaining for the TSA screeners. The Administration has refused to do so. Now, as part of legislation to implement the 9/11 Commission's proposals, the issue has returned.[31]

One need only look at the figures just quoted about the low morale at TSA, and the almost universal skepticism among employees that pay and promotion depend on merit, to see how important it is that the screeners have the same labor representation rights long enjoyed by other federal personnel in security such as those involved in

---

[29] Wade-Hahn Chan, *OPM Survey Finds Employees Enjoy Work, But Dislike Their Bosses*, FCW.COM, Feb. 12 2007, at http://www.fcw.com/article97635-02-12-07-Print.

[30] FederalDaily, Jan. 24, 2006. (Emphasis added.)

[31] Stephen Barr, *Union Proposal for Airport Screeners Stalls at the Gate*, Wash. Post, March 6, 2007, at D4.

immigration, customs, and federal prisons. As to these latter types, I have personal experience meeting with, and talking to, the labor representatives of these employees, such as the representatives of the federal prison guards. It is a vital part of their esprit de corps, if you will, that such guards organize, and strengthen what might be called their "unit cohesion" with their brothers and sisters by the right to join a labor organization. I cannot understand why not to let TSA employees raise their morale by similarly organizing together.

V. Other Agencies: Intelligence Community (IC), IRS, GAO and Other Agencies

Intelligence Community (IC)[32]

In September 2006, the Director of National Intelligence (DNI), John Negroponte, set in motion a pay-banding system for the 16 agencies under his supervision – the "intelligence community" or IC -- which amount to about 50,000 civilians. There are a number of uncertainties about this IC plan. It seems that this plan will keep that pay-banding system moving forward for intelligence organizations under the DNI's umbrella that are part of DoD and DHS, even if the departmental pay-banding systems for DoD and DHS are deferred or abandoned. Also, DNI admits that to take off of the GS the intelligence components from other departments, like State, Energy, and Treasury, that have not had statutory authority to do so, will require what DNI calls "gap-filling legislative authority." Presumably DNI would try to get such authority slipped through on the annual intelligence authorization.

It can only be hoped that as DNI tries to do this, the experience of this Subcommittee with personnel systems of the past will be brought to bear. It is by no means clear that DNI can avoid the problems that have beset DoD and DHS – problems that this Subcommittee is studying. One hopes that the intelligence committees will not be lulled by the DNI with the notion that Congress has no role than to pass so-called "gap-filling legislative authority."

Let us take a particular example, the best known around: "performance" about pre-Iraq invasion intelligence. The analysts at the State Department, which has an intelligence unit not under the NSPS or HCOP (MaxHR) laws, had the confidence to disagree with what the White House and DoD wanted, and to dispute the supposed evidence that Iraq had stockpiles of weapons of mass destruction. Under existing personnel law, they were out of reach for the White House and DoD to punish for their heresy. In contrast, the DoD made sure that its analysis stuck to the official story about those stockpiles. If the DNI gets too much authority, the next time around, the analysts at State would be whipped into line about the bogus weapons stockpiles – no pay raises, and nowhere else to turn, for anyone heretical enough to dispute the official story.

Moreover, the issue is also: which version of personnel reform will become the IC's? Already it is seen that NSPS and HCOP(MaxHR) could go in different directions, especially if the appellate panel ruled the Administration's way on NSPS after a different panel unanimously ruled against the Administration about HCOP (MaxHR). The

[32] Karen Rutzick, *Intelligence Agencies to Follow Defense in Personnel Reform*, GovExec.com, Oct. 19, 2006.

Administration will no doubt seek a version that gives the IC the lowest common denominator of employee rights, arguing that many of the IC employees currently work for DoD in agencies such as the National Security Agency. However, the lowest common denominator is not necessarily the best. Since this is an instance where the Administration must affirmatively seek new enacted authority, the Congress should put its rubber stamp away and see that the new authority is the best, not the lowest common denominator.

IRS

The IRS started its new personnel system well before the Bush Administration push. Basically, its effort dates back to the 1998 IRS reorganizational legislation. It had a very major goal in terms of changing the orientation of the agency's employees, away from a relatively exclusive focus on revenue-raising, towards more attention to "customer (taxpayer) satisfaction." Thereafter, the new personnel system was basically launched in 2001 as a system of paybanding for managers.[33] It emphasizes concrete, measurable standards.[34] By late 2005, the IRS had about 8,000 managers under a pay-for-performance system.[35]

It is difficult to generalize from the IRS system to others, for the personnel system changes in few other agencies result from the distinctive circumstances that led to a decision by Congress to reorient the IRS's mission in a specific new direction.[36]

GAO

This is not an occasion when a focus can be given to the GAO's new personnel system. Some public reports show the early results. A few months ago, the new pay-for-performance system at GAO received adverse comment, because of negative evaluations: "25-year GAO veterans feel insulted and unappreciated by a ranking system that implies that half of the analysis in his cohort are performing below a satisfactory level despite receiving good performance evaluations."[37] This past January, the discontent had apparently reached the point where GAO employees were attempting to unionize.[38]

SES

There is a pay for performance system for the Senior Executive Service (SES). It received major criticism after the release of a survey by the Senior Executive Association in late 2006.[39] The survey "revealed that 15 percent of respondents with the highest possible rankings at their agencies in 2005 had received no increase in salary in 2006, and respondents felt 'de facto quotas' were being enforced."[40] The SES is under much tighter Administration control than GS-level employees, and the SES's official voices are

---

33 The background is laid out in General Accounting Office, *Performance Management Systems: IRS's Systems for Frontline Employees and Managers Align with Strategic Goals, but Improvements Can Be Made* (July 2002).

34 Denise Kersten Wills, *I'm OK, You're Outstanding*, GovExec.com, July 1, 2006.

35 Trudy Walsh, *Performance Anxiety*, Government Leader, Jan. 13, 2006.

36 The IRS system was commented upon insightfully by the Colleen Kelley, President of NTEU, at hearings of this Subcommittee last September. Since this is the same Subcommittee there is no need for this testimony to recapitulate that testimony.

37 Florence Olsen, *"Ticked Off" About Pay at GAO*, Federal Computer Week, May 15, 2006.

38 Karen Rutzick, *GAO Employees Move Toward Vote on Union Representation*, GovExec.com, Jan. 23, 2007.

39 Senior Executives Association, *Lost in Translation: Survey of the Senior Executive Service Pay and Performance Management System* (2006).

40 *Leadership Changes Could Deter Pay-for-Performance Rollout*, Fed. Hum. Res. Week, Nov. 20, 2006.

generally reluctant to speak out forcefully against the Administration. So, the quiet message of this survey is important. It means that even for a group that is literally middle management itself, and so, in theory, a natural group for pay-for-performance, the way the new personnel system is being approached, imposes unacceptable costs and adverse impacts.

Mr. DAVIS OF ILLINOIS. Thank you very much. Of course, we will have opportunities during the question and answer period to dab deeper and further into these issues.

Mr. Swerdzewski.

STATEMENT OF JOSEPH SWERDZEWSKI

Mr. SWERDZEWSKI. Thank you, Chairman Davis, Ranking Member Marchant, for the opportunity to speak to you today and testify. Thank you for holding this hearing.

My firm has been actively involved in assisting unions and management with the implementation of NSPS. We have assisted in understanding how the collective bargaining system will work under SPS and assisting agencies with training their managers on how performance management will work and the classification and compensation systems. My summary remarks address two areas which I think are of significant concern.

As you are aware and as the previous speaker noted, the labor relations system, which is a crucial aspect of NSPS, is currently subject to a Federal district court injunction. The Federal district court in Washington, DC, has determined that the labor relations system created by DOD does not meet the requirements Congress established in the NSPS statute for collective bargaining. The case, as mentioned, is current on appeal to a three-member panel of the D.C. circuit.

The outcome of the litigation at this time is uncertain. The case before the D.C. circuit concerning the implementation of the new personnel system at the Department of Homeland Security was recently decided in favor of Federal unions. The D.C. circuit found that the regulations DHS issued on labor relations, which are strikingly similar to the labor relations regulations of NSPS, violate the union's right to engage in collective bargaining.

The NSPS system was designed, premised on there being little or no collective bargaining over any aspects of the new personnel system. It was based on immediately terminating provisions of collective bargaining agreements, which it found were in conflict with NSPS, and implementing the NSPS requirements without bargaining. This approach avoided bargaining with approximately 1,800 bargaining units in DOD.

While this was the approach chosen by DOD, there were numerous other alternative ways to implement NSPS, such as using ability to bargain at the national level with heads of DOD unions, rather than with each individual union.

As a result of DOD deciding to begin implementation for non-bargaining unit employees, which is happening as we speak, DOD could find itself with a bifurcated personnel system dependent on the decision of the D.C. circuit. Should the D.C. circuit decision be similar to the decision of DHS, DOD would have to determine whether redesign of the system would be necessary to accommodate the impact of collective bargaining. This would be a costly undertaking and time consuming.

Another option would be to bargain over NSPS under the current title five labor relations statute, once again incurring significant cost and delay for new potential litigation.

However, should DOD be successful in the current litigation, they would be faced with implementing the new system for a large number of employees and then having its NSPS labor relation system subject to the NSPS labor relation sunset provision in 2009. With the significant overhang of the entire labor relations controversy in DOD is that the labor relations system, itself, may be sunset in 2009, with little time in between the time that a successful decision for a DOD would be implemented and new collective bargaining taking place.

DOD is faced with a difficult decision. If it was to determine to proceed with implementation of NSPS with the outcome of the litigation uncertain, it may end up with a dual personnel system with attendant cost and inefficiency. A dual system increases the cost of personal administration and can have significant impact on the morale of employees. It may lead to inevitable comparisons of which employees are doing better under which system.

The second area of concern is tying a new performance management system to pay for performance before the performance system has matured. Every performance management system has implementation problems and kinks as it is first implemented. Some of these problems take a number of years to be worked out.

Performance management under NSPS is of significant new importance. It is just not an evaluation of performance, but it determines an employee's pay, bonus, and, most importantly, particularly in the area of rack and potential RIFS, retention and RIF, it significantly changes the aspect of how an employee is treated in RIF, and also leads to potential for non-competitive promotion.

The new system has significant strengths; however, it will take a period of time for employees and supervisors to be comfortable with its use and impact. To prevent the possibility of significant frustration with a new system and costs associated with disruption cause, using a step-by-step approach implementing pay for performance would appear to be more cost effective.

Thank you for the opportunity of testifying today.

[The prepared statement of Mr. Swerdzewski follows:]

JSA CONSULTING
Joseph Swerdzewski & Associates

Statement of Joseph Swerdzewski
Managing Partner

JSA Consulting

Before the

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
FEDERAL WORKFORCE, POSTAL SERVICE AND DISTRICT OF COLUMBIA SUBCOMMITTEE
U.S. HOUSE OF REPRESENTATIVES

The Honorable Danny K. Davis, Chairman
The Honorable Kenny Marchant, Ranking Member

Concerning

Cost and Impact on Morale, Minorities and Labor – Management Relations of Design, Implementation and Training Related to New Personnel Systems, at the Department of Defense, Homeland Security, Transportation Security Agency, Internal Revenue Service, and Government Accountability Office

March 8, 2007

JSA Consulting
Joseph Swerdzewski & Associates Consulting
Phone (256) – 503 – 2226; E-mail jswerdzewski@jsafed.com

Good afternoon my name is Joseph Swerdzewski, Managing Partner of JSA Consulting, a veteran owned, small business actively involved in assisting both unions and agencies in the transition to the Department of Defense (DOD) National Security Personnel System (NSPS) through providing training, consulting services and publications. For approximately the past 2 years we have been assisting unions and management to better understand how NSPS will affect labor relations and particularly collective bargaining rights of employees. We have also assisted agencies with the implementation of NSPS for non bargaining unit employees through training and consulting on the NSPS performance management, classification, and compensation systems.

Thank you Chairman Davis and Ranking Member Marchant for holding this hearing and providing me with an opportunity to present information about the costs associated with the design, implementation and training related to NSPS and its impact on employee morale, minorities and labor-management relations.

NSPS represents a revolutionary change in how federal employees are hired, promoted, disciplined and compensated. In its draft form it also significantly changes how labor relations currently operates under Title 5. There are significant and valid reasons for human resource reform. The Title 5 personnel system has not kept current with the needs of the federal government and its work force. Many of its practices and procedures have become cumbersome and restrictive in allowing federal agencies to quickly acquire new employees. Qualified employees are not eligible for promotion because of antiquated requirements such as time in grade. Discipline for performance based reasons has become a complex procedural thicket which must be surmounted to achieve a desired result. Compensation is governed by a rigid system that is not labor market sensitive, does not allow for recognition of truly outstanding performance nor necessarily provide incentive to employees. Collective bargaining under Title 5 can result in dragged out negotiations which don't meet the needs of either union or management.

Understanding that there is a need to reform the current personnel system Congress provided wide latitude to the Secretary of Defense and the Director of the Office of Personnel Management (OPM) to fashion a new personnel system for DOD employees. However, Congress was mindful of the role of federal unions in representing the interests of federal employees in the workplace. The Congress placed a requirement on DOD that any NSPS system implemented provide for collective bargaining. This requirement has been the subject of litigation between DOD and employee unions. As you are aware the NSPS labor relations system is currently been enjoined from being implemented by a federal court judge in Washington DC. This injunction is currently being reviewed by the District of Columbia Circuit.

The outcome of this litigation before the DC Circuit at this time is uncertain. A case before the DC Circuit concerning the implementation of a new personnel system for the Department of Homeland Security (DHS) resulted in a decision by a three member panel of the DC Circuit that the labor relations system proposed by DHS violated the rights of federal unions to engage in collective bargaining. The Court found that the system did not provide for the collective bargaining that Congress mandated be a part of the new human resources system at DHS. Since issuance of the decision, DHS has decided not to challenge the ruling of the DC Circuit. Recently DHS announced it would not be implementing pay for performance in conjunction with its new performance management system but would instead implement pay for performance at a later date.

The DHS labor relations regulations which were the subject of the litigation are almost identical to the NSPS regulations on labor relations. In fact the judge issuing the injunction in the NSPS case used the decision of the judge issuing the injunction against DHS as persuasive authority for his decision.

The NSPS litigation has lead to a bifurcation of the implementation of NSPS in DOD. DOD has begun implementing NSPS in various waves for non bargaining unit employees over the course of the last year. However, at this time it is uncertain whether, when or how NSPS will be implemented for bargaining unit employees.

The entire design of NSPS appears to have been premised on there being no collective bargaining over any aspects of the new personnel rules. It was based on immediately terminating existing collective bargaining agreements containing provisions found by DOD to be inconsistent with the new NSPS personnel rules and unilaterally implementing the new rules with little or no bargaining. For DOD this could be seen as a practical approach to implementing the new system for approximately 800,000 employees all at one time. This approach avoided negotiations with approximately 1800 individual bargaining units and the delays inherent in those negotiations. It also avoided having to wait until current agreements expired. While this is the approach DOD chose there are other approaches which could have resulted in achieving this same goal such as using the authority DOD was given in the NSPS Statute to bargain at the national level and avoid all local negotiations.

Should the DC Circuit Panel, which is currently deliberating over the future of the NSPS labor relations system rule in a similar manner to the Panel which heard the DHS case, DOD will have a significant decision to make with great cost implications and significant operational impacts. There are a number of options from which DOD may chose, all with cost implications. DOD may decide to revamp its current NSPS regulations to align them with current management rights enjoyed by agencies under Title 5. The current NSPS regulations create in some cases greater bargaining rights because DOD waived certain statutory requirements which were non negotiable, in favor of developing new DOD regulatory requirements which under Title 5 may be negotiable. This option will entail considerable expense and delay as a result of the need to develop a new design for the system and then completing the collaboration requirements required under the NSPS statute.

As another option DOD could decide to use its recently issued NSPS regulations with no changes and instead of developing a new labor relations system follow current Title 5 bargaining rules. This could lead to a significant amount of bargaining over the implementation of the rules and challenges to the rules through statutory appeal processes. The bargaining and challenges can lead to significant expense.

A third option would be for DOD to rework the NSPS labor relations system to meet the dictates of the decision. Once again this will take time and expense.

DOD is facing the provision in the NSPS Statute that sunsets in 2009 its authority to create its own labor relations system. This places a real question of the efficacy of spending the resources to implement NSPS for bargaining unit employees when in a year's time or slightly more union's will be able to bargain individually over changes to the NSPS system.

On the other hand DOD may be successful in the litigation before the DC Circuit and win a ruling overturning the District Court decision. While this would be a tremendous victory for DOD it is also not without its costs. Prior to implementation of NSPS the labor relations regulatory requirements of the draft NSPS labor relations system will have to be met. This will take time and expense. Depending on the time required once again DOD will be pushing up again the sunset provisions of the NSPS Statute. However, it would have the advantage of having the regulation implemented without bargaining. Should the NSPS labor relations system sunset, as discussed above, unions would have a right to negotiate. The implementation and then shortly thereafter subsequent changing of the system could lead to confusion and discord between labor and management.

Aside from the significant legal implications of the forthcoming decision on the NSPS labor relations system, having a bifurcated personnel system could be disruptive to the workforce. At this time some employees are covered by NSPS and some are not. There are definite advantages and disadvantages to both systems. Many employees may believe the current Title 5 system is superior to NSPS and avoid seeking positions covered by NSPS. The guarantee of a Congressionally set annual pay adjustment and Federal-wide locality pay adjustments may appeal to employees more than a DOD managed pay for performance system especially until it can be proven to employees that pay for performance works.

One of the advantages of NSPS is allowing for easier movement of employees to positions of greater responsibility through the use of reassignments within pay bands rather than the use of merit promotion. However with a bifurcated system with some employees in pay bands and the majority of employees not in pay bands this ease of movement by reassignment in a pay band will be lost. Employees working side by side with different NSPS status could have significantly different opportunities for promotion or increase in responsibilities and subsequent significant differences in pay.

DOD has chosen to begin implementation of NSPS without a clear picture of what the future holds for bargaining unit employees. A bifurcated personnel system could lead to long term costs in terms of administration of two separate personnel systems and on the morale of employees. Employees will be watching how the two systems compare which will place a greater burden on managers to explain and support what may be very different outcomes for employees under the two systems.

One of the most significant innovations under NSPS is the pay for performance system. Under NSPS employees are to be rewarded based on achieving results linked to an organization's goals. The new pay for performance system is based on creation of three new systems: a new system for classification of positions which eliminates the General Schedule and replaces it with pay schedules and pay bands; a new DOD-wide performance management system which bases performance on linking employee achievements with organizational goals and a compensation system which replaces the statutory Title 5 system in which compensation is set by Congress and replaces it with a system where compensation is set by the Secretary of Defense. All three of these systems have a profound effect on employees.

The new classification system provides greater flexibility to managers in compensating employees and does away with the cumbersome and somewhat byzantine and formulaic nature of Title 5 classification. Pay bands provide greater latitude for pay setting and therefore greater opportunity for both attracting and retaining employees. The new performance management system is to be used DOD wide removing the differences and potential inconsistencies between the various performance systems in use in DOD. It assesses an employee's performance on what is achieved and not just what an employee does in accordance with the employees' job description. These are significant strengths of the new system.

In the eyes of many employees the best performance system is either the last one they had or the next one they are going to have – it is never the one they are under now. Every new performance management system goes through a period of evolution as the supervisors and employees under the system gain a better understanding of how it works and what needs to be done to make the system work effectively. A system intending to cover approximately 800,000 employees will be under considerable scrutiny. A one size fits all system places considerable strain on both the supervisors and the employees as they struggle with what is required of them under the system. Making a common system for that many employees is a daunting task. Undoubtedly there will need to be reassessments and adjustments of the system as it is implemented throughout DOD.

To be effective under the new performance management system requires a new understanding of how performance management works and how to measure employee performance. This requires a clear understanding by supervisors of how to create job objectives tied to their organization goals that meet the SMART objective criteria required by DOD. It will take some time for supervisors and employees to understand how to be effective at performance management.

Under the DOD implementation strategy the pay for performance system is tied immediately to performance. There is no time allowed for the kinks and aberrations inherent in any new performance management system to be worked out before the system is applied to employees. As mentioned above DHS has decided to implement its new performance system first and then later link it to pay.

The new performance management system will have significant growing pains as do all new performance management systems. However unlike other systems this system has significant immediate impact on employees. Under NSPS an employee's performance rating will have direct effect on an employee's retention in case of a RIF and it will be determinative of an employee's pay raise and bonus.

In many ways the new performance management system is a more difficult system for supervisors to use than many predecessor systems. It should be given the time to mature before such significant demands are placed on it credibility. A particular area of concern, often expressed by both employees and supervisors, is the numerous levels of review of an employee's recommended performance rating by not just the second level supervisor but also the pay pool panel and finally the pay pool manager who makes the final decision on an employee's performance. The pay pool manager, in many cases, may be far removed organizationally and even geographically from many employees in the pay pool. Employees and supervisors wonder at how the pay pool manager is going to make such decisions fairly and how the supervisor is going to explain the decision if it is contrary to his/her recommendation. While these concerns with training and experience can be overcome it may be preferable for employees to gain this experience before subjecting them to the effects of the system.

I appreciate the opportunity to testify on this important issue and hope these remarks will be of use to the committee as they review the introduction of new human resources systems in the federal government.

Mr. DAVIS OF ILLINOIS. Thank you. Thank you very much.

We will proceed to Ms. Sistare.

STATEMENT OF HANNAH SISTARE

Ms. SISTARE. Chairman Davis, Ranking Member Marchant, members of the subcommittee, thank you for inviting me to testify on the operation of pay for performance systems in the Federal Government and recommendations for moving forward. My comments today represent my own views and those of a number of Academy fellows with extensive experience in this field.

I appeared before this subcommittee in 2003 to discuss performance and pay recommendations of the National Commission on the Public Service, chaired by Paul A. Volcker. The Volcker Commission was concerned that Federal personnel systems were not designed to establish and measure progress toward performance objectives and that the quality of performance was too often ignored. Today, performance based management systems are being implemented at agencies across the Government.

The experts predicted from the beginning that the design and implementation of these systems would take time, focused effort, and committed resources. This proved particularly true in the two huge departments Congress provided with new authority to institute such systems. The very size and complexity of Defense and Homeland Security has served to slow the process, and, as others have commented, there have been other intervening factors.

Despite these difficulties with these agencies, there is evidence that the Federal workforce and its leadership are more attuned to performance than in the past. As the Volcker Commission and many others have concluded, this change in the culture and operations of government is necessary for it to serve the public and the Nation in the 21st century.

The Academy has assisted several Federal agencies by conducting readiness reviews for the implementation of performance management and performance based pay systems. These include the FBI, the Navy, and the Federal Judiciary. Notably, the Academy and the agencies that it has worked with have found that such independent outside review is very helpful in identifying problem areas that need to be addressed.

Based on a review of its own studies and those by others, the Academy has produced a report on recommended actions for Federal agencies working to adopt pay for performance systems. We have provided copies of this report for the subcommittee's use. I will note a few findings which we feel have particular applicability for the successful implementation of pay for performance in the Federal Government today.

The first set of factors have to do with readiness. First, top leadership that is committed and capable of leading organizational change; preparation of first line supervisors for their critical role; clearly defined organizational goals and objectives; necessary reporting systems and infrastructure; sufficient human and financial resources; and an established policy and legal framework, including a clear definition of employees who are covered and how the program policies will affect them.

Factors contributing importantly to effective design and implementation are: top leadership support and expectations for the system, which is reinforced by managers and supervisors; a clear and persuasive statement as to why the new system is needed, and its anticipated benefits, particularly how it will contribute to employees' ability to better accomplish their work; a well-established, credible, valid performance management system; open communications and program transparency between and among all levels of the organization; a commitment to test the system components and refine them as needed; and a willingness to utilize independent reviewers to assess key steps in program design and implementation.

Some of these factors were identified early on in the Federal Government's pay for performance initiatives. Some have gained clarity as systems have been implemented. All have been validated by experience. They can serve as useful benchmarks for examining pay for performance programs and development and implementation.

In studying the track record in pay for performance in the Federal Government and its future, we believe there are some preconditions to future success. First, leadership commitment to the system—I have mentioned leadership three times now; commitment throughout the organization to the system; and recognition and understanding of its importance in achieving program goals; time for rehearsal, review, redesign, and retrying, all of which will build participant buy-in and trust; and consensus among policymakers and the Executive as to the overall design, implementation, cost, and financing of pay for performance systems and a commitment to support that consensus over a number of years.

That concludes my prepared remarks. I hope my comments and this report will be of use to this subcommittee.

[The prepared statement of Ms. Sistare follows:]

Hannah Sistare

Development and Implementation of Pay for Performance Systems

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

March 2007

ABOUT THE ACADEMY

The National Academy of Public Administration is the preeminent independent, non-profit organization for public governance. Established in 1967 and chartered by Congress, the Academy has become an independent source of trusted advice for every branch and level of government, Congressional committees and civic organizations. The Academy works constructively with government agencies to improve their performance and management through problem solving, objective research, comprehensive analysis, strategic plans, and connecting people and ideas. The Academy is led by its elected membership of more than 600 distinguished Fellows.

Development and Implementation of Pay for Performance Systems

The federal government is continuing to move to pay for performance systems (PFP). With the initiation of the Office of Personnel Management's (OPM) demonstration projects nearly 25 years ago, many of which were focused on PFP, numerous parts of the federal government have developed, tested, and implemented PFPs. These have included the Federal Aviation Administration, the Government Accountability Office (GAO), many banking regulatory agencies, and the entire senior executive system across the government. In addition, OPM has developed draft legislation that would expand PFP to the entire federal workforce.

This paper provides insight into the experience of various federal organizations in implementing PFP and specifically looks at:

1.) Factors that are critical to the successful development and implementation of a PFP;
2.) Specific successes, challenges, and issues that have been faced by other organizations during their development and implementation of a PFP; and,
3.) Recommended actions for federal agencies to provide a foundation for PFP development and for effective PFP implementation.

Many organizations strongly support the need for federal organizations to establish PFP that better align individual employee performance with organizational goals. However, as GAO has noted: "how it is done, when it is done, and the basis on which it is done can make all the difference in whether such efforts are successful."

With this is mind, creating a successful PFP will require that the federal agencies make significant improvements in the management of their career service and develop a broad array of PFP-related policies, systems, and procedures. Proposed PFP systems require consistent strong support by senior leadership; place significant new responsibilities on supervisors and managers; present the human resources staff with a multitude of serious challenges; and require the development of effective means to alleviate the widespread employee apprehension and skepticism that has greeted PFP efforts in organizations.

Critical Success Factors

PFPs have existed for 25 years in the federal government and now cover over 90,000 federal employees. Current systems include 12 demonstration projects and at least seven agency-based systems authorized by specific legislation. In addition, government-wide executive pay is performance-based.

Organizations that have evaluated these systems – including OPM, GAO, and the National Academy of Public Administration (the Academy), have concluded that they are superior to the General Schedule (GS) pay and classification system, and should, therefore, be extended to all federal agencies.[1] However, these organizations, as well as other pay for performance experts,

[1] *See,* attached Bibliography for a list of evaluative reports.

have pointed out the risks associated with moving to a performance-based pay system and a variety of factors that are critical to successful development and implementation of a PFP. These factors fall into two categories: a.) Organizational Readiness Requirements and Design, and b.) Implementation Requirements.

Organizational Readiness Requirements. Factors in this category are fundamental aspects of the organization's culture (i.e., leadership, management systems, resources, mission definition, and external relationships) that impact its ability to develop any major organizational change, such as PFP, successfully. They include:

- Leadership that is perceived as committed to and capable of achieving effective organizational change:
  - Senior leadership that is unified in support of a PFP, and will provide the necessary stability, continuity, and resilience;
  - Managers and supervisors who are convinced of PFP's value and will support its development and administration; and
  - A Human Resources management staff with the capacity and resources to develop and administer a PFP.

- Clearly defined organizational goals and objectives that provide the foundation upon which to base the objectives of a PFP.

- Sufficient and appropriate supporting systems and infrastructure related to:
  - Performance monitoring and measurement capacity;
  - On-going strategic planning; and
  - Information technology.

- Sufficient financial resources to meet the costs and requirements of a PFP.

- An established policy and legal framework for a PFP, including a clear legal definition of the employees covered and a basic policy regarding budget and cost parameters for ongoing compensation under the new system.

Design and Implementation Requirements. Design and implementation factors include the specific systems, programs, practices, etc., that are either part of the PFP or directly support and influence its development, implementation, and administration:

- A clear and convincing expression of top leadership support of and expectations for the PFP that is reinforced by managers and supervisors;

- A sound Concept of Operations and subsequent Operating Plan that provides the intellectual and operational framework for and direction to PFP development and implementation, and that: 1.) defines the specific objectives to be achieved; 2.) reflects lead functional and organization responsibilities; 3.) sets time frames that balance urgency and realism; and 4.) preserves flexibility to alter or revise the system.

- A well-established, credible and valid performance management system that is grounded in well-established work processes, systems, products, and outputs, and features well-defined work roles, job requirements, and performance expectations. The expected competencies and work results reflected in performance plans should reflect a clear connection between those of senior executives and those of subordinate executives, managers, supervisors, and employees.

- Well-defined career paths, promotion opportunities, training requirements, and employee development resources, along with appropriate tools, resources, and guidance to produce high-quality work. The absence or presence of these elements will significantly affect employee confidence in being able to succeed in a PFP environment.

- A change management strategy and process consisting of:

    - A Communications Plan that provides a road map for providing complete, timely, and accurate information about the development, implementation, and administration of the PFP, and is based on the needs of various stakeholders. It should highlight clear and persuasive reasons why the new system is needed and its anticipated benefits. The importance of effective communication is emphasized in numerous evaluation reports about PFPs. For example, the Academy's report, "Broadband Pay Experience in the Public Sector" states that "All organizations reviewed emphasized the importance of fostering communications with employees and managers using different available media forms. They all wished they had done more, even though they thought they had saturated their audiences with information."[2]

    - An Employee Involvement Plan that provides for early, continuing and meaningful involvement in the development and implementation of a PFP. Employee involvement will include communication measures, but also must be based on clear understandings with stakeholders regarding the specific nature of their participation. For example, protocols should be developed with the Director's Advisory Groups regarding the frequency and format for receiving their views and how they will be considered. As GAO points out in its *Symposium on Designing and Managing Market-Based and More Performance-Oriented Pay Systems*, "Involving employees and other stakeholders helps to improve overall confidence and belief in the fairness of the system, enhance their understanding of how the system works, and increase their understanding and ownership of organizational goals and objectives."[3]

    - External stakeholder relationships and understandings, especially with the relevant Congressional Committees and advisory groups, and other stakeholders

[2] *See*, National Academy of Public Administration, "Broadband Pay Experience in the Public Sector", July 31, 2003, pp. 10-11.
[3] *See*, GAO-05-832SP, p.19.

- A Training Program that enables employees to understand how PFP affects them and how they can succeed within it, and that enables supervisors to communicate performance expectations to their employees, provide feedback to them on their performance, and advise them of the steps they can take to improve their performance and manage their careers. Both employees and supervisors require training that provides information and understanding regarding methods and criteria for decision making.

- Policies and criteria for compensation decisions that are transparent and understandable with respect to both base and variable pay. This would include technically sound, understandable, and useful procedures for pay administration, position management, recruitment, and staffing decisions.

- Development, implementation, and administration governance and management of a PFP. This will include monitoring, analysis, evaluation, corrective action, communications, and continuous improvement.

- Information technology for PFP administration, implementation, data monitoring, and program evaluation.

- Financial management policies, systems, procedures and data that will support managing: a.) the costs of developing and implementing a PFP; b.) the costs of its on-going administration; and c.) PFP compensation costs.

- A due-process based grievance and appeals system regarding PFP practices and decisions. This system must be visible, understood, and produce timely and equitable results. It is an essential component of building and maintaining trust in PFP and ensuring its integrity.

Concerted and coordinated efforts to achieve these two sets of critical success factors are necessary to ensure successful development and implementation of a PFP. In addition, agencies should anticipate, to the extent possible, potential problems that could affect the PFP based on the following discussion of the experience of other organizations.

Experiences of Other Organizations

PFP experiences at other agencies provide some valuable lessons that should aid the Bureau. Clearly, there have been successes. DoD's implementation of PFPs at China Lake and at Navy and Air Force research facilities have better tied individual pay to mission contributions.

PFPs at the Office of the Comptroller of the Currency (OCC) and GAO have also been largely successful and provide useful examples of successful implementation strategies. Specifically:

- The OCC had prior experience in measuring organizational productivity and managing resources, and this helped pay for performance implementation there to be successful. Part of the reason for this pre-existing culture was the fact that the OCC operates on the basis of non-appropriated funds and, as a result, had a history of managing resources and measuring results. OCC also had a relatively sophisticated strategic and long-term planning process already in place.

- GAO's strong culture of employee involvement in policy development also helped to create an environment for successful pay reform implementation. Specifically, GAO has an employee advisory group comprised of elected representatives of various segments and levels of the GAO workforce. The Comptroller General regularly meets with this group and involves the group in policy development. GAO employees also have the opportunity to comment on all draft policies and these comments are taken into account when finalizing policy.

On the other hand, all organizations implementing PFP have had to deal with a variety of challenges. With one exception, the problems other organizations have faced with PFP did not prove to be insurmountable. They did, however, impede progress, and, in one instance, caused the agency to discontinue its system. These problems might have been prevented or mitigated if prepared for during system design and implementation.

- **Gaps in organizational readiness:** The Central Intelligence Agency (CIA) experienced serious gaps with respect to organizational readiness that resulted in a 20 year record of largely unsuccessful reform efforts. Specifically, the CIA efforts suffered from:
    - a lack of visible support by senior leadership;
    - insufficient sensitivity to long-established cultural norms and failure to bridge critical cultural and functional differences among major occupations within the agency;
    - strong resistance to increases in responsibility and authority of supervisors and managers;
    - constant rotation of personnel, which limited continuity in supervisor/employee relationships and impeded development of trust; and
    - failure to overcome a longstanding lack of emphasis on, and valuing of, effective administration and managerial skills.

- **Lack of clear reform goals with links to program goals:** The Federal Aviation Administration's (FAA) efforts to implement PFP did not initially define clear links between reform goals and program goals. This made it difficult to assess the full impact of PFP. As GAO pointed out in May 2004:

    > "Nine years have passed since [FAA] received broad exemptions from laws governing federal civilian personnel management. [I]t is not clear whether and to what extent these flexibilities have helped FAA to more effectively manage its workforce and achieve its mission. FAA has not yet fully implemented all of its human capital initiatives and continues to face a number of key challenges with regard to personnel issues. In our February 2003 report, we found that [FAA] had not fully incorporated elements that are important to effective human capital management into its overall

reform effort, including data collection and analysis and establishing concrete performance goals and measures." [4]

- **Unrealistic expectations regarding results:** Many PFP efforts have been hampered by unrealistic expectations. For example, OPM's 2002 evaluation of the PFP in the DoD Laboratories found that none of the Labs had reached the target of a 66% employee approval level of PFP, and noted that achieving this level of acceptance typically requires more than five years. Also, many PFP initiatives included improved organizational performance as an objective, but no evaluation findings demonstrate this objective has been reached. The evaluation of Department of Defense (DoD) Laboratories, for example, could find no link between PFP and changes in laboratory quality.

- **Performance appraisal flaws:** DoD implementers planning for the National Security Personnel System (NSPS) reported on January 17, 2006 that "feedback leads us to conclude we need more time to focus on simplifying the performance management design, getting performance objectives right, and ensuring the system is simple, clear, and understandable." [5] As a result, DoD delayed NSPS content-specific training scheduled for January 2006 until April 2006, changed the schedule for the first group of employees to receive performance reviews under the NSPS from early 2006 to April 30, 2006, and reduced the number of employees in that first group from 65,000 to 11,000.

- **Unanticipated delays in project implementation:** The DoD Science and Technology Reinvention Laboratory Demonstration Program's participating laboratories experienced a slow, difficult, phased implementation process in a turbulent environment. Intervening variables that negatively affected the project included mandated workforce reductions, reorganizations, the job market, a booming economy, and the regionalization of Human Resources services in DoD.[6]

- **Serious Problems Persist even in a Mature Systems:** The National Geospatial-Intelligence Agency (NGA) found that, after six years of experience with a PFP, there were significant implementation problems concerning accurate and consistent performance ratings and communication with employees. Only 53% of employees responding to a survey believed that supervisors provided accurate ratings. This lack of confidence in rating accuracy was in part affected by efforts to control two other problems, rating inflation and rating consistency. Communicating the purpose of these efforts to employees did not overcome the perception of many that performance scores were being "changed" and did not provide an accurate reflection of the employee's performance. Another communication problem was that of a general lack of understanding of how compensation decisions were made.

---

[4] *See, Challenges for Transforming Into a High-Performing Organization*, GAO-04-770T, p. 10.

[5] *See* NSPS, *What's New*, www.cpms.osd/mil/nsps; GOVEXEC. Com, *Daily Briefing*, January 17, 2006, *Pentagon scales back, delays first installment of NSPS*, Karen Rutzick.

[6] *See* The DoD S&T Reinvention Laboratory Demonstration Program, Executive Report and Recommendations, undated, based on Summative Evaluation 2002.

- **Excess Compensation Acceleration:** Although OPM has concluded that overall experience with PFP indicates that costs are controllable, there have been instances where this has not been the case. The most recent example is the Office of Federal Housing Enterprise Oversight's (OFHEO) decision, after nine years under a broad band pay system, to return to a system of 18 grades similar to the GS system. Problems that led to this change were employee dissatisfaction with a lack of vertical promotions, career ladders, and overcompensation (i.e., employees moved quickly within the bands based on performance ratings and soon started earning beyond their market value).[7]

  The National Institute of Standards (NIST) also faced this cost issue when a substantial portion (about one third) of its employees reached the upper limit of their bands. This limited their annual base pay increase to that provided by the annual, government-wide base pay adjustment. Although GS employees face a similar limitation when they reach the top of their grade, employees in a PFP appear to develop a greater sense of dissatisfaction with this issue. This, in turn, has required agencies to place more emphasis on bonuses to reward high performing employees at the top of the band. NIST now requires that pay-capped high performers receive a minimum bonus equal to the amount of pay increase they would have received if they were not capped.[8]

- **Unintended pay disparities:** GAO found that its PFP was paying too much for some analysts but not enough for supervisors. This was attributed to the lack of a market study when the PFP bands were implemented in 1989. To address this problem, GAO split the middle one of its three bands for analysts in order to provide a higher compensation range in the upper band for supervisory employees. This change has necessitated allowing analysts in the split band to apply for placement in the supervisory band – apparently, it is not clear who among the affected employees is a supervisor supervisors, and has caused some unrest among those not selected for the higher band.[9] Another impact of the band split and the market study is that some employee's future earnings could be lower.[10]

Recommended Steps to Implement PFP

To establish a solid foundation for implementing a successful PFP, federal agencies will have to address the critical success factors systematically and take steps to avoid the types of problems discussed in this paper. The following are actions agencies should take to address the wide range of tasks and issues PFP development and implementation presents:

1. Develop a conceptual operations guide that reflect what an agency needs and expects from the PFP. A useful current reference in this regard might be the DoD "Requirement

---

[7] *See* GovExec.Com Daily Briefing, January 6, 2006, *Agencies Discover Paybanding Pitfalls,* Karen Rutzick.
[8] *See* GovExec.Com Daily Briefing, January 6, 2006, *Agencies Discover Paybanding Pitfalls,* Karen Rutzick.
[9] *See* GOVEXEC.com, Daily Briefing, December 28, 2005, *GAO to move employees to market based pay,* Karen Rutzick; FEDERALTIMES.com, March 20,2006, *GAO employees balk at reform, criticize 'secrecy,'* Mollie Ziegler.
[10] *See* GOVEXEC.com, Daily Briefing, December 28, 2005, GAO to move employees to market based pay, Karen Rutzick.

Document for National Security Personnel System (NSPS)."[11] Specifically, attention should be given to:

a. Making the conceptual operations guide a key communications document that presents the agencies' best thinking about PFP as it applies to the organization.
b. Supporting PFP with data and analysis to the fullest extent possible, especially with regard to identifying why PFP is needed and what its expected benefits will be.

Prepare a data-based analysis regarding the agency's view of the specific issues, challenges, and problems related to: a.) the human capital goals for the agency); and b.) the stated objectives for how PFP will contribute to effective management of the agency. Examples of questions to address include the nature and causes of difficulties in: attracting and retaining top talent; recognizing and rewarding top performers; identifying and dealing with poor performers; and tying individual performance to strategic objectives. Answers to these questions will in turn support a more precise definition of the desired attributes and requirements for the new PFP.

2. Assess the agency's readiness for a PFP as well as for undertaking the effort to develop one. This would include addressing the extent to which the above discussed indicators of organizational readiness requirements exist and what needs to be done to raise them to a sufficient level to support the movement to a PFP. Typically, an organization will find that further development is necessary, and the assessment of gaps will identify measures that should be taken as part of the Operating Plan.

3. Critically assess the agency's performance appraisal system to identify any issues that might adversely affect its utilization in a PFP environment. As noted earlier, a critical success factor is a well-established, credible, and valid performance management system that is grounded in well-established work processes, systems, products, and outputs, and with well-defined work roles, job requirements, and performance expectations. It is also critical to ensure that the performance elements and competencies are valid and include results measures that are linked to organizational goals and to SES performance plans.

4. Define and begin to acquire resources for PFP development, implementation, and administration. This includes resources needed for system design; communication; automation enhancements – such as automated performance appraisal, classification and compensation systems; training; conversion into the new system; ongoing salary administration; revised classification and qualification standards; and system monitoring and evaluation. OPM has concluded that a PFP results in increased administrative costs that should be identified early and budgeted for.[12]

---

[11] *See,* "Requirements Document for National Security Personnel System (NSPS)," NSPS Requirements Document, September 25, 2004, http://www.cpms.osd.mil/nsps/pdf/NSPSRequirementsDocument.pdf.

[12] *See, Alternative Personnel Systems in Practice and a Guide to the Future,* United States Office of Personnel Management, October 2005, and *Demonstration Projects and Alternative Personnel Systems: HR Flexibilities and Lessons Learned,* OPM, undated.

5. Establish a project management and governance structure, including an implementation team equipped with adequate personnel and other resources. The team's priority tasks would include the steps outlined above, as well as addressing the design and implementation requirements discussed previously. Various approaches regarding a governance structure are possible. The OCC, for example, established a Steering Committee of senior executives and managers to oversee development of OCC's compensation performance management and position evaluation programs, and an implementation committee to ensure integration of policy, training, communication, and technology development efforts.

6. Begin communications and employee involvement to demonstrate top level support and commitment. Effective communication planning and execution is extremely critical. For example, at the DoD Research Laboratory demonstration projects, communication was found to be a high-impact managerial competency and essential to the PFP. None of the Laboratories scored high on communication, but all improved. According to the OCC, the most significant lesson from its experience was the difficulty of finding the appropriate communication medium to satisfy employee information needs. It found that employees did not routinely read information that was posted on the Intranet or transmitted to them electronically or by mail. Consequently, the OCC adopted a very intense face-to-face communication strategy to keep employees and managers informed.[13] OPM concluded recently that "Leaders must engage stakeholders, dedicate resources, motivate staff, provide directions, promote and reinforce change, and create a strong performance culture."[14]

7. Prepare a detailed development and implementation/operating plan that provides a realistic and flexible road map to timely and effective implementation. An especially relevant lesson from prior PFP initiatives is that the development and implementation process will take longer than expected. At the DoD Laboratories, about two years were required to design and obtain approval for each project. The OCC's original plan was to complete development within 18-24 months. However, to avoid implementation in January 2000 – which was considered high risk given technology issues associated with Y2K conversions, a year was added to OCC's development and implementation plan. The agency *Operating Plan* should reflect data and analysis related to the organizational readiness factors and the design and development requirements. It also should provide detailed development and implementation tasks and timelines.

---

[13] *See* DHS Working Paper Interview Summary.

[14] *See, Alternative Personnel Systems in Practice and a Guide to the Future*, p. 9.

Mr. DAVIS OF ILLINOIS. Thank you very much. I am certain that they shall.

We will proceed to Mr. Simpson.

STATEMENT OF KEVIN SIMPSON

Mr. SIMPSON. Thank you very much, Chairman Davis and Ranking Member Marchant.

I represent the Partnership for Public Service. We are a non-partisan, non-profit organization. We are dedicated to revitalizing the Federal Civil Service by inspiring a new generation to serve our country and transforming the way the Federal Government works.

I think the biggest contributions that we can make to this conversation are to convey, first of all, a sense of urgency about the need for reform; two, a historical context for the different flexibilities and innovations that are represented by the two most currently prominent reform efforts at DOD and DHS; and, three, the importance to this committee and to agencies of import focusing on matrix during the course of implementing these new innovations.

First, the question of urgency. It is our long-held view at the Partnership that modernizing current personnel systems is essential. Many personnel systems are still based on a general schedule of pay and position classifications that was first implemented in 1949. The result is that the Federal Government's current system for recruiting talent, top to bottom, under-performs on almost every task it has. It is slow in the hiring, it is insular in the promoting, it is out of touch with actual performance and the rewarding, and it is stingy with the training.

When young Americans are asked to picture themselves in public service careers, they imagine being caught in stifling bureaucracies where seniority and not performance rules. Perhaps most alarmingly, large numbers of employees, including many senior executives carrying a vast amount of institutional knowledge are soon going to be retiring. The Federal Government will have to be much more aggressive than it has in the past to attract new talent at all levels, and the American people are increasingly concerned that government is often unable to execute its assigned roles in a competent manner.

We strongly believe that the path to renewed vigor and competence requires continued innovation of the Federal Government's personnel system. The stakes are high and the status quo is unacceptable.

The next question is what shape should the reforms take, and that is where an awareness of the historical context of these reforms becomes important. The new personnel systems we are talking about now at DOD and DHS did not develop in a vacuum. Many elements of those new systems were drawn from preexisting demonstration programs, and those programs have yielded measurable improvements in hiring and retention and employee engagement. Other elements, unfortunately, are brand new and essentially untested, including those in labor relations and employee appeals.

Now, over time many Federal agencies have made the case for HR reforms, and, as Chairman Davis noted in his opening statement, DOD and DHS are simply the latest and the largest. My written testimony offers some detail about the progress that they have made, but I would like to offer three over-arching observations about that track record.

First, past demonstration projects offer an assurance to employees and supervisors that reforms like recruitment flexibilities and pay banding and revamped performance management systems can work, but the converse is also true. The farther we step away from those proven models, as in the proposed labor/management sections of the NSPS, which would have no real precedent in the various demonstration projects, the more difficult it is to draw on those past experiences to ensure successful implementation.

Second, change can take time. Even successful demonstration projects initially engendered employee resistance. That is only natural. People don't like change. Over time, however, if the system is being successfully implemented, you should see reduced levels of resistance. For example, the pay banded pay for performance demonstration project at the Navy's China Lake Naval Weapons Center was initially favored by only 29 percent of employees, but by 1998 that number had grown to 71 percent. Significant organizational change can frequently take 5 to 7 years to accomplish.

Third, as Congress weighs how to proceed with these personnel reforms, it will be important to find agreement on what we hope to achieve through these reforms and then regularly measure our progress toward these goals. Choose your key matrix and stick with them.

In that regard I would commend to your attention work that the Partnership has done in the form of the best places to work rankings, which build off of OPM's Federal Human Capital Survey to provide consistent measures over time of relative levels of employee engagements, as well as several other workplace environment characteristics, such as the quality of leadership that has been mentioned quite a bit by the other panelists here, and support for diversity.

More broadly, we recommend special attention to the areas of recruitment, retention, the existence and extent of skills gap, the ability of performance management system to make meaningful distinctions, and leadership.

That concludes my testimony. I look forward to answering your questions.

[The prepared statement of Mr. Simpson follows:]

PARTNERSHIP FOR PUBLIC SERVICE

Written Testimony of Kevin Simpson
Executive Vice President and General Counsel
Partnership for Public Service

Prepared for

The House Committee on Oversight and Government Reform
Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia

Federal Agencies with Human Resources Flexibilities: An Assessment and Recommendations

March 8, 2007

Chairman Davis, Representative Marchant, Members of the Subcommittee, thank you very much for the opportunity to appear before you today. I am Kevin Simpson, Executive Vice President and General Counsel of the Partnership for Public Service, a nonpartisan, nonprofit organization dedicated to revitalizing the federal civil service by inspiring a new generation to serve and transforming the way the federal government works. We appreciate your invitation to discuss the human resources (HR) management flexibilities currently available in statute for the Departments of Defense and Homeland Security, the Transportation Security Agency, the Government Accountability Office, and a variety of other federal departments, agencies, and agency subcomponents.

The Partnership has two principal areas of focus. First, we work to inspire new talent to join federal service. Second, we work with government leaders to help transform government so that the best and brightest will enter, stay and succeed in meeting the challenges of our nation. That includes all aspects of how the federal government manages people, from attracting them to government, leading them, supporting their development and managing performance; in short, all the essential ingredients for forming and keeping a world-class workforce.

An Urgent Need for Action

Americans need effective government, and the key to good government is good people. The report of the 9/11 Commission said it best: "[T]he quality of the people is more important than the quality of the wiring diagrams." Every day, we rely on our federal government to deliver vital services, from protecting the homeland to promoting a competitive economy to preserving our natural resources. Today, our nation faces challenges of unprecedented complexity – from combating terrorism and competing in a global marketplace to dealing with an aging population at home.

These new challenges require new skills from our federal workforce. Yet, at this critical time, a record number of experienced federal workers will soon retire, resign or otherwise leave the government, and insufficient interest in and knowledge about federal service leaves us with an inadequate pipeline of talent to replace these losses. Aggressive and immediate action is needed to strengthen the federal civil service, match new skills to current challenges, and build a government that the public deserves and the times demand.

The federal government's human capital crisis defies easy solutions and will require a comprehensive strategy. The federal government will live up to its potential in serving the American people only when our best and brightest answer the call to federal service and enjoy a work environment that empowers them to perform at their best. There are significant human capital challenges facing the federal government regarding its ability (or inability) to attract and recruit the talent it needs and to manage the federal workforce so that talented employees stay and succeed in achieving desired results.

The federal agencies and organizations that have been granted special HR authorities by Congress all, in one way or another, made a business case for change. One major theme in almost all of these organizations is that the current General Schedule (GS) pay and classification system established in 1949 is no longer sufficient to attract and retain the best and brightest. Another common complaint fueling the drive for special HR authorities is the federal hiring process, which has become increasingly unwieldy for agencies and applicants alike.

An Overview of Civil Service Reform Efforts

For much of its history, the federal civil service and the underlying HR laws, policies, and practices intended to guide federal workforce management were remarkably uniform across agencies. However, as the demands upon government grew over the past several decades in response to a growing population and a more complex and technologically advanced world, it became clear that some civil service reforms were needed.

Perhaps the largest civil service reform effort in recent memory was the Civil Service Reform Act of 1978. The 1978 Act made some significant changes to the civil service, such as the creation of the U.S. Office of Personnel Management and the Senior Executive Service. It provided, for the first time, statutory recognition of labor-management relations. When the law was passed, Congress recognized that the specific government-wide reforms being authorized were unlikely to be sufficient, and it established a research and demonstration project authority (title 5 U.S.C. § 4703) to help guide future reform efforts. Over time, several of the demonstration projects undertaken were allowed to become permanent alternative personnel systems.

Congress has also recognized for quite some time that "one size doesn't necessarily fit all" when it comes to HR systems. For example, the U.S. Post Office became the U.S. Postal Service in 1970 with significant changes in its HR policies and systems that had previously been guided by Title 5. Earlier, in creating the Tennessee Valley Authority, Congress gave it wide discretion in the development of its HR systems. Similarly, the Veterans Administration (now the Department of Veterans Affairs) was given authority to manage its medical personnel under a different legal framework, Title 38 of the U.S. Code. The National Nuclear Security Administration in the Department of Energy is the latest federal organization to announce plans to become a demonstration project.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) gave special pay-setting authority to agencies such as the National Credit Union Administration (NCUA) and the Federal Deposit Insurance Corporation (FDIC). The Securities and Exchange Commission (SEC) was recently given comparable authorities. The Internal Revenue Service (IRS), Federal Aviation Administration (FAA), NASA, the Transportation Security Administration (TSA), and Congress's own Government Accountability Office (GAO) have all been granted special HR authorities by Congress. The Departments of Defense and Homeland Security, which together employ over 42 percent of all civilian employees in the executive branch, are only the most recent federal departments granted relief from parts of Title 5 of the U.S. Code that were deemed too inflexible or counter-productive.

A Current Assessment

So, how well have these department and agency-specific personnel systems been implemented and have the desired end-results been achieved? In summary, here are our perspectives on a selected number of those agencies:

- **Demonstration Projects:** The federal organizations and subcomponents with special HR authorities established as demonstration projects (5 U.S.C. § 4703) were carefully vetted as to their readiness to "test" alternative personnel systems. A detailed project plan was developed; employees under union bargaining agreements were not included without prior consultation or negotiation, as appropriate; and a rigorous external evaluation of the demonstration project was conducted.

  While many of the demonstration projects were subjected to refinements over time and at least one attempt at gain-sharing (Pacer Share at McClellan Air Force Base) expired with a finding that it did not meet expectations, most demonstration projects were ultimately judged to be superior to the systems they replaced. This was the case even when a majority of federal employees were initially resistant to the changes being made since, over time, employee acceptance typically improved.

  A January 2004 GAO report (GAO-04-83) based on an examination of "pay for performance" approaches at six established demonstration projects found, for example, that the pay-banded, pay-for-performance demonstration project started in 1980 at the Department of the Navy's China Lake Naval Weapons Center was initially favored by only 29 percent of employees, but by 1998 that number had grown to 71 percent. GAO concluded that it "strongly supports the need to expand pay-for-performance in the federal government. How it is done, when it is done, and the basis on which it is done can make all the difference in whether such efforts are successful."

- **The Government Accountability Office** (GAO) presents another interesting example of an alternative personnel system. The GAO, of course, operates as part of the legislative branch. Until the mid-1970s, GAO followed many of the same Title 5 HR rules and regulations as the executive branch. For a number of years, however, GAO has operated under a pay-banded, pay-for-performance approach. Most recently, that has included a move to market-based pay. This latter move came with a determination that at least some jobs in GAO were being paid "above-market."

  GAO employees, based on published media accounts, have expressed unhappiness with the most recent changes. However, since GAO has shared some of its annual employee survey results with the Partnership for Public Service in order to be included in our "Best Places to Work in the Federal Government" rankings, we know that while overall employee satisfaction did decline by approximately three percentage points between 2004 and 2006, GAO's own employees still rate it among the top five "best places to work" compared to other large departments and agencies.

- **The Federal Aviation Administration** (FAA) was unique in that Congress effectively removed FAA from almost all of the restrictions of Title 5 and gave them great latitude to design a more effective HR system. After a series of false starts, during which FAA found it necessary to proclaim that it would adhere to the basic merit principles and veterans preference and was ultimately directed by Congress to grant their employees appeal rights to the Merit Systems Protection Board which they had replaced with an internal review board, the FAA completed the design and implemented the system. While FAA has now had time to achieve a better balance, for a time, the main change for FAA seemed to be the negotiation of higher wages for employees. The lesson learned here is that some guidance from Congress and clearer expectations are beneficial in reform efforts.

- **FIRREA agencies.** Those agencies covered by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) benefited largely from the ability to set higher, more market-sensitive wages for their employees. The law also requires that the pay levels be comparable to that of one another for comparable jobs, lest they simply compete with one another. Clearly, the ability to set higher, more competitive salaries has benefited the ability of the FIERRA agencies to hire and retain needed talent. It should be noted, however, that higher salaries alone do not translate into a better work environment. Two FIRREA agencies, the National Credit Union Administration (NCUA) and the Federal Deposit Insurance Corporation (FDIC) both pay similar wages and both operate under a pay-for-performance approach. However, the NCUA has consistently ranked substantially higher than the FDIC in the "Best Places to Work" rankings.

- **National Security Personnel System.** The Department of Defense designed a comprehensive set of proposed regulations to implement the NSPS that drew heavily from its experience with alternative HR systems under the 1978 demonstration project authority (Title 5 U.S.C. § 4703). DOD proposed a pay-banded approach to compensation that would be more market-sensitive as well as more performance-sensitive than the GS system. Other changes proposed by DOD and authorized in the NSPS involve additional flexibilities in the areas of hiring and some new "workforce shaping" provisions to address current or anticipated skills gaps.

  DOD also designed some alternatives to its labor-management relations policies and to the process by which employees could appeal a proposed adverse personnel action. Those proposed changes had <u>not</u> been previously tested through demonstration projects or in other federal organizations. When these latter changes were challenged in court by employee unions, the D.C. District Court enjoined those parts of the regulations as inconsistent with the legal requirements of the NSPS. A decision on a DOD appeal of the lower court ruling is expected from the D.C. Circuit Court of Appeals in the next several weeks. In the meantime, DOD has started implementation of their proposed changes for selected non-bargaining unit employees only. This latter implementation is being done in "Spirals" with the first of three initial roll-outs (Spiral 1.1) implemented in 2006. The first performance management cycle and payouts under Spiral 1.1 were completed in January 2007.

While a full evaluation of the impact of the NSPS is premature, we note that many of the principles -- other than those proposed in the areas of employee due process and labor-management relations -- have been thoroughly tested in DOD and a number of other federal agencies over the past 25 years. It will take a period of time before the effects and potential benefits of the NSPS can be fully assessed. However, we believe that many (but not all) aspects of NSPS – if implemented with employee involvement and strong congressional oversight – have the potential to make a positive difference and to gain acceptance by the DOD civilian workforce.

- **Department of Homeland Security.** Similar to and preceding the NSPS, the Department of Homeland Security (DHS) was granted major exemptions from Title 5 requirements, including in the areas of pay and performance, when it was created under the Homeland Security Act of 2002. DHS went through an extended consultation period with employees and other stakeholders while designing their new HR systems, dubbed "MaxHR," that included a pay-banded approach to pay and was intended to be more sensitive to performance than the GS system. DHS, however, also designed new approaches to labor-management relations and employee appeals. As with the NSPS, the latter were challenged in court by employee unions. In the case of DHS, the final court ruling that the planned labor-relations provisions are inconsistent with the law has not been appealed further.

  Most recently, DHS has announced their intent to "move beyond MaxHR" and to focus on broader HR issues and initiatives under a "Human Capital Operational Plan." The plan will focus on improved hiring and retention, creating a "culture of performance" based on well-thought out and implemented performance management plans, and enhanced training and development. While there are still plans to move toward a more market and performance-sensitive pay system, DHS is moving at a slower pace than originally planned. It is, of course, much too early to assess the results of the alternative personnel systems authorized by Congress for DHS since they have largely remained in the planning stages. However, the current direction and more deliberate pace of change within DHS is a promising development.

In short, well over half of the 1.8 million civilian employees in the executive branch work in agencies whose HR systems are no longer tied by statute to the General Schedule (GS) pay and classification system. Most of the latter agencies also have additional flexibilities in the areas of performance management and hiring.

It's clear that the process of making major changes in federal HR systems, especially in pay and performance management, involves culture change and well as system change. Such change is inevitably slow and iterative. The changes that have occurred in the aforementioned agencies have a mixed track record, to be sure, especially in terms of employee acceptance. We note, however, that a number of the federal agencies that have been allowed to operate under alternative personnel systems such as SEC, NASA and GAO have consistently been rated by their employees as among the top ranked "Best Places to Work."

In summary, we believe that movement back to the 1949-era General Schedule or a roll back of the authorities discussed above would likely have greater costs than benefits. None of the alternative personnel systems have been "magic bullets," but over time most have been improvements over what existed previously and the affected organizations would be loathe to return to the previous state. The challenge, therefore, is to effectively move forward from here and to ultimately bring all federal department and agencies onto a level playing field to the extent practicable.

Recommendations

In response to the current situation, the Partnership has the following recommendations:

1. Congress should allow federal agencies to continue their pursuit of more market-sensitive pay systems that also allow more flexibility in recognizing employee performance, classifying jobs and setting initial pay – particularly when the features of these alternative systems have been tested previously in a demonstration project.

2. Congress should require that an agency's alternative pay system must meet certain requirements, and be certified by OPM, GAO, or another entity specified by Congress, <u>before</u> it is implemented. The requirements for certification should include (a) a fair, credible and transparent performance appraisal system, (b) a means of ensuring employee involvement and ongoing feedback, and (c) a mechanism for ensuring the system is adequately resourced.

3. A key criterion for the success of any alternative personnel systems will be the presence of highly competent managers, supervisors, and HR professionals. Congress should ensure that federal agencies are making the necessary investment to select, train, and effectively manage the individuals in these key occupations, specifically with regard to their responsibilities under an alternative personnel system.

4. Congress should ensure that any alternative personnel system operate under common government-wide ground rules, and, in fact, Congress has provided such ground rules in most of the recent reform efforts (with FAA and TSA somewhat the exceptions). These ground rules should include:
    a. Adherence to the Merit System Principles in 5 U.S.C. § 2301(b) and the Prohibited Personnel Practices in 5 U.S.C. § 2302(b);
    b. Collaboration with and involvement of employees and managers;
    c. Collective bargaining with employee representatives via negotiated agreements;
    d. Due process rights for employees; and,
    e. Adherence to veterans' preference.

5. To assist agencies in designing a compensation system that conforms to these common ground rules, OPM should design a replacement for the 1949 General Schedule pay system and the associated classification system that is available as a template for all

agencies. The alternative system should be market-sensitive and give greater weight to performance than does the GS system.

6. Congress should carefully review and consider limiting future agency-initiated changes to the employee appeals process and labor-management relations to alleviate employee concerns about (a) fair and equitable treatment and (b) having a workplace in which they can be involved in decisions that affect them or their work.

7. In the case of the NSPS, the Subcommittee should review the process by which employees may appeal adverse personnel actions and consider a larger role for an adjudicatory body outside of, and independent from, DOD. One obvious approach would be to enlarge the role that the current regulations assign to the U.S. Merit Systems Protection Board. Of course, the forthcoming decision by the D.C. Circuit Court of Appeals will strongly influence this area.

8. Again, in the case of the NSPS, the Subcommittee should review the proposed changes to labor-management relations to examine concerns of bargaining unit employees regarding the ability of their union representatives to adequately safeguard their interest in (a) being treated in a fair and equitable manner and (b) having a workplace in which they can be involved in decisions that affect them or their work. Once again, the forthcoming decision by the D.C. Circuit Court of Appeals will strongly influence this area.

9. The Subcommittee should arrange for an ongoing assessment of current and future alternative personnel systems, as would be required if those alternative personnel systems were being designed and implemented under demonstration project authority. This ongoing assessment should be based on established criteria and indicators that will provide Congress with much-needed, objective insight into the impact of alternative personnel systems on agencies' missions and employees.

10. Congress should closely monitor agencies' investments in training and development. Too often, these accounts are among the first to be cut, when the fact is we need to be investing more in training and development, particularly when we are demanding more of managers and implementing a new system.

11. To assist Congress in the exercise of its oversight responsibility and to respond to any concerns that current or future HR reforms might actually detract from the ability of the respective federal agencies to accomplish their mission, the Partnership recommends the development and use of a set of metrics for the specific purpose of evaluating the reforms over time. Such metrics will only be of value if the Congress, the agencies, and other key stakeholders agree on a common set of measures to inform future decision-making. The following principles should apply in this regard:
    a. The key to effective oversight will be looking at the *right* measures, not the *most* measures.
    b. Metrics should include qualitative as well as quantitative measures.
    c. Metrics should not impose an undue collection and analysis burden on DOD.

d. Metrics should be used to inform decision-making and not simply to monitor compliance/non-compliance.

The Partnership has recently completed a thorough review of human capital metrics in federal, state and local governments, as well as the leading practices of top companies in the Partnership's *Private Sector Council (PSC)*, that serve as a useful guide to the Subcommittee in its oversight capacity.

Based on this research and mindful of the principles mentioned above, we recommend that the Subcommittee work with agencies pursuing alternative personnel systems to collect and analyze **metrics in seven areas**: *recruitment, retention, skills gaps, performance distinctions, performance culture, leadership* and *implementation*. The Subcommittee could gain additional insight from the data by looking at these metrics by specific demographic group – e.g., minority employees or a particular age group – as compared to the workforce as a whole.

Recruiting
To assess whether they are winning the war for talent, leading organizations are collecting information about **new hire rates** – e.g., the ratio of new employees hired to the number of planned hires for critical skills – and **new hire quality** – e.g., monitoring Federal Human Capital Survey results about the skills of new hires.

Retention
To measure whether DOD is retaining high-performing employees with critical skills, we recommend that the Subcommittee look at the **attrition rates of high performers** compared to overall attrition and the **attrition rates of critical skill employees** compared to overall attrition.

Skills Gaps
If NSPS is achieving its goals, DOD should be closing the gap between the **actual numbers of employees with a critical skill compared to the number needed**. Ideally, the Subcommittee will monitor the results over time to assess whether the gap is decreasing.

Performance & Rewards
A modern compensation system should make meaningful distinctions between employees based on their performance. Members can evaluate whether managers are effectively using the NSPS by monitoring **employee evaluations** – e.g., the numbers of employees reaching the various levels of performance – and **employee bonuses and rewards** – e.g., the number of employees receiving various levels of pay and bonuses.

Performance Culture
The Partnership advocated for, and the final NSPS legislation included, a provision requiring an annual survey of employees across the federal government. The survey should prove to be an invaluable window into employees' views of their agencies' management practices.

The survey questions specified in recent regulations issued by OPM include several questions about supervision and pay that constitute a **Performance Culture Index** with items such as:

- Promotions in my work unit are based on merit.
- In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.
- In my work unit, differences in performance are recognized in a meaningful way.

The Subcommittee can compare the results of components participating alternative personnel systems with the results of components operating under the General Schedule system. The Subcommittee and the agencies involved will want to monitor the results over time to track whether the "performance culture" is increasing.

Leadership
In any organization, it is vital that supervisors and senior leaders treat employees fairly, resolve disputes in a reasonable manner, and have the respect of their employees. Members of the Subcommittee can evaluate leadership effectiveness by using another set of questions from the Federal Human Capital Survey. The Partnership has created an **Index for Effective Leadership**, which we use in our *Best Places to Work* rankings. This index includes items such as:

- I have a high level of respect for my organization's senior leaders.
- Complaints, disputes or grievances are resolved fairly in my work unit.
- In my organization, leaders generate high levels of motivation and commitment in the workforce.

The Subcommittee can compare an agency's scores on these questions to scores across government and the private sector.

Implementation – Pulse Surveys
Finally, it is important to examine real-time data on the success of alternative personnel systems and their implementation. **Pulse surveys** are short surveys going to a small, representative sample of employees used to provide leaders with real-time information on critical issues. Agencies could administer pulse surveys semi-annually to examine employee opinions on system training/briefings, understanding of the new system, satisfaction with the new system, et cetera. This data will allow agencies to improve the rollout of their systems based on employee feedback.

Conclusion

Mr. Chairman, Representative Marchant, Members of the Subcommittee, we thank you again for the opportunity to share our views on the new personnel systems in the federal government and our recommendations for the best way forward. We look forward to being of assistance to this Subcommittee and to the Congress as you consider the future of federal civil service policy.

Mr. DAVIS OF ILLINOIS. Thank you all so very much. I will begin the questioning process.

Mr. Simpson, you indicated a sense of urgency relative to the need for reform. Should we not be as urgent as you indicate? What do you see happening, or what would be the consequences of a lack of that urgency?

Mr. SIMPSON. I think our fear is that we see a continued deterioration of the ability of government to perform its core functions in a competent and accountable way. Every organization depends on its workforce to get its job done, and I think there is a growing consensus that the quality of your workforce influences the ability of the organization to achieve its stated goals. I think what we fear is that the ability of government to perform in the way the American taxpayer expects continues to decline if we don't continue to innovate on these systems.

Mr. DAVIS OF ILLINOIS. You stated in your written statement that GAO has shared some of its annual employee survey results with the Partnership in order to be included in your best places to work in the Federal Government rankings. Since the Partnership did not conduct the survey, itself, how knowledgeable are you as to how GAO conducted the survey and whether or not the results were validated?

Mr. SIMPSON. We had several discussions with GAO and we were satisfied that the manner in which GAO implemented the survey to their employees was comparable to the way in which the OPM administers the FHCS across government, that employees were free to fill out the survey and respond in ways that they thought appropriate. In fact, the GAO, relative to many other Federal agencies, still registers at a very high level of employee engagement. They are a very professional, dedicated, talented workforce.

Mr. DAVIS OF ILLINOIS. Were there questions in the survey specifically about pay increases and the band two split?

Mr. SIMPSON. The only questions that we used were those that we could compare to the questions administered in the Federal Human Capital Survey. I know that there are questions about satisfaction with pay, which we incorporated into our index, but I'm sure that there are probably very specific questions unique to OPM which we did not incorporate into our analysis.

Mr. DAVIS OF ILLINOIS. Then how comparable would you say that the GAO study is to other Federal agency studies that you have reviewed or come into contact with?

Mr. SIMPSON. The GAO provided us enough data points with respect to overall employee engagement—and really this is just a matter of essentially four key questions trying to gauge what your overall satisfaction is with government—to allow us to include them in our overall rankings. That's all that was necessary for us to incorporate them into the best places to work product. Beyond that I can't really speak in a very knowledgeable way to exactly how well the GAO does or does not track the rest of the Federal Human Capital Survey.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Ms. Sistare, in your written testimony you stated that, despite the difficulties DOD and DHS are experiencing in implementing their new personnel systems, that there is evidence that much productive work has been done and that the Federal workforce and its leadership are increasingly more performance attuned. Specifically, what productive work has been done by DOD and DHS in regards to its personnel system?

Ms. SISTARE. Well, regarding those two agencies, I would say that the initial work they have done, and redone in some cases where they found they had problems, has started to lay the basis for a performance management system. I distinguish that from performance based pay in that I think if a performance management system is established appropriately, you are 80 percent of the way there.

Now, my particular comment related more to the work that the Academy has done in looking at work that has been done at other agencies, the early work that was done in setting up demonstration projects, work that has been done, for instance, at FAA where they had trouble at first but have now gotten more on track. One of my colleagues is working with the IRS and has found that many of the components for performance management are in place. There still is a need to pull it all together.

So my comment was not so much referring to DHS and DOD, where they have had significant problems, but elsewhere in government where this kind of effort is ongoing.

Mr. DAVIS OF ILLINOIS. Thank you very much.

I would now yield to the ranking member, Mr. Marchant, for his first round of questions.

Mr. MARCHANT. Thank you, Mr. Chairman.

I think on the first round I only have one question, and then ask for a response from each of the panelists.

What would you have this committee do to correct these situations? We have been in a period of change now for almost a decade, it looks like. There doesn't seem to be a lot of happiness and joy with the system. So we have a committee, we have a new majority, we have kind of an opportunity now, so what would you have this committee do? Would you have them withdraw the congressional authorization to proceed with this whole concept?

Would you just drop the whole idea, go back to the way things were before? Would you abbreviate the goals? Would you shorten the timeframe for implementation? Would you file new bills? Would you file legislation that gave specific guidance and direction to how anything would be implemented?

It seems like there has been a lot of study about the subject and how it has not worked. From my background and perspective, I think the most important work this committee can do, Mr. Chairman, would be to come up with an idea, a better idea of how to move forward.

I would like to have your response. We will just go in the same order as the original witnesses, if you don't mind.

Mr. TOBIAS. I think, Congressman Marchant, that the real focus of attention needs to be on performance management, not pay for performance; defining goals, creating evaluation systems, and supporting the change in the culture to a more results oriented situation in agencies. I believe that if employees see how their work is linked to agency mission, that you will get a significant increase in employee engagement and productivity in agencies across the Government.

I think what has happened in DOD and DHS is that the focus has been on the second step in the process, pay, and not enough focus on the first step, a performance management system. So what we have is people getting pay when there is no real distinctions that are made on a credible basis of performance, so people get very angry about that.

Until you have a performance management system in place, you can't have a pay for performance system. And, with respect to what Congress can do about that, I think it goes in a couple of ways. One, I think Congress, most committees, have not really cared much about performance and what agencies achieve or don't achieve or whether the goals are outcome or works hard goals. I think Congress is very concerned when the executive branch makes a huge blunder, as it often does, but on a day-to-day basis or on a week-to-week or month-to-month basis there's not much attention on the kind of performance goals that agencies create.

So I would urge more focus of attention on the kind of performance objectives that agencies create and whether or not they achieve them. Do they create outcome performance goals and do they achieve them? That would give the political appointees, the Senior Executive Service reason for doing the hard work necessary to create a performance management system.

Mr. COPELAND. Mr. Congressman, I am with CRS. CRS doesn't take positions on legislation or make recommendations, so I will pass and leave it to my other panel members.

Mr. TIEFER. Too tempting for me. I can't resist that way. I think you could act on two different sets of things. One is that, as to the parts of the personnel systems that impact collective bargaining, arbitration, and appeal rights, the labor representation provisions, you should de-authorize those. You should simply codify the decision of the D.C. circuit panel in the Chertoff case that did so for the Department of Homeland Security and not wait for or not care what happens with other.

And then, as for pay for performance, I think that you should report conditions such as the availability of sufficient money for ample pay raises and say without these conditions being fulfilled, without enough training, without the measures that people are talking about here, and so forth, it can't be ruled out.

Mr. SWERDZEWSKI. I would simply look at the same question that Mr. Tobias talked about, which is the performance management system, which to me is the key to the entire reform effort. The concept is you are trying to improve performance. Unfortunately, when you immediately link pay to a brand new system it looks more like cost containment to employees than improving performance, and that's a significant issue. It is a concern to managers, not just a concern to employees, themselves.

Taking a new system such as performance management, having dealt in the trenches with people trying to work with a new system in SPS, they understand the value of linking organizational goals to achievement. That's a significant strength of the new NSPS system, linking those goals, making sure that people are actually getting results, not just simply performing duties.

The problem with the system, however, is that it is very difficult to take a one-size-fits-all system relating to 800,000 employees and say it is going to work perfectly the first time out. It is a very complex system to begin with, and it is very difficult for an employee to understand how something which is going to apply across the board to everyone is going to apply to them, linking that directly to their pay, and particularly more so than just their pay but to their status in RIF, which really is a very significant issue to many employees because of the ups and downs of what happens in DOD.

A step-by-step approach where Congress first authorizes a new performance management system similar to the one authorized, which is linking goals to achievement, and then reviewing and giving the agency an opportunity to show the results of that system and then linking it to pay, if that is an appropriate process.

Ms. SISTARE. I definitely agree. Focus on performance management and getting it right first. Also, I would suggest that employees know more, not less, about how the system is going to affect them and they have a chance to participate in the development of those standards. I think some of the early regulations left a lot for later manipulation. But maybe most important is that Congress and the executive branch and all concerned parties reach consensus on where we are going to go next and a commitment to understanding what resources that takes and a commitment to provide them.

Mr. SIMPSON. I would like to associate myself with the comments of the other members of the panel in terms of the importance of putting performance management first, and I would add that I think an appropriate thing to do would be to require agencies to obtain some kind of outside certification that can be provided by OPM or GAO or even NAPA that their system, in fact, does meaningfully differentiate between levels of performance, because I think we all agree that is the predicate. Once that is in place, then you increase dramatically the likelihood that your attempts to then link pay to performance are going to succeed.

I also believe that Congress should probably revisit the labor management and adverse appeal provisions of the NSPS, because I think that they stand in the way in a very fundamental way of the kind of employee buy-in and engagement and communication between supervisors and employees that are going to be necessary for the systems to succeed.

Mr. MARCHANT. Thank you, Mr. Chairman.

I would just have one followup question. Are you aware of any major corporate or public entity that has gone into a performance based management that did not have the element of the additional pay that was mixed with it, that was successful that did not have the element of additional pay involved in it, where it was performance based but there was no reward for the performance?

Mr. TOBIAS. In the article that I cited in my testimony the authors review about 2,600 situations where a combination of elements were examined. There are a subset of where only performance management was included. I don't recall exactly which, but the answer is yes.

Mr. SIMPSON. If I could offer one additional response, I also believe—and I would like to offer specifics in a supplemental submission to the subcommittee—that you can have a successful and there have been examples of successful performance management systems without adding additional pay or adding additional resources. You take the resources you have and then improve the way in which you are distributing them across your existing employees.

It also might not always be pay. Sometimes it is reward, recognition. So long as those recognition and other intangible rewards flow from a credible determination by a manager that this person has performed better than this person, or this team has performed better than this team, that is all you need for a strong performance management system.

Mr. MARCHANT. Thank you, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Mr. Lynch is recognized for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. Again, thank you and the ranking member for holding this hearing.

I would like to ask the panel—and, again, thank you for your willingness to help this committee with its work. The National Treasury Employees Union National President Colleen Kelley has raised a number of, I think, valid concerns about the whole pay for performance protocol, and just recognizing that the challenges we have, with the massive impending retirements from the Federal system is really at a critical level right now. We would be hard pressed to replace these experienced, high-performing, very well-trained employees, and, as well, we are having tremendous turnover at DHS, you know, the baggage screeners, we have just got big turnover with new employees. I think the system is bordering on crisis.

Since it is really the organizations we want to work, we want these—in other words, the airport is not safer just because one employee is doing their job. They need to all work as a cohesive team. Same with all the departments and DHS, as well as Treasury.

It just seems to me that it is counter-intuitive to think that by rewarding one employee here and there and denying pay to other employees here and there in a system that may be working or may not be working, it doesn't achieve our goals. As a former iron worker, as someone who actually, you know, has a little bit of experience working in a union environment, it seems to me that would be a disincentive.

As a worker, to me that would appear as just being favoritism, because there is no system here. There is no objective system here for when the extra pay is to be rewarded and to whom. So it will appear, from a worker standpoint, as just being arbitrary. I think it would be disastrous to morale in the workplace. That's what I am hearing. That is what I am hearing from the employees at DHS.

I know that the National Treasury Employees Union has pointed out that there was a study conducted—I believe it was the Hayes Study that they referred to—that they did a senior manager pay band evaluation on this system for the IRS in 2004. Here are some of the results: one, 76 percent of the covered employees felt the system had a negative impact or no impact on their motivation to perform their best.

Now, 63 percent said it had a negative or no impact on their overall performance of senior managers. This is a quote from the study: "only one in four senior managers agreed that the senior management pay band evaluation is a fair system for rewarding job performance or that ratings are handled under the system." Last, increased organizational performance is not attributed to this senior management pay band evaluation.

I think it is about leadership and about getting teams to work together. You have positive peer pressure, you have leadership, and that's what leads these organizations to perform to our expectations. I just am a little bit frustrated in talking with the employees because they are disheartened and there's very poor morale.

One of the systems that has gone through the A–76 process and has sort of adopted this model is the system that is in existence right now over at Walter Reed. It went from a system of all Federal employees that were doing a tremendous job, world class institution, they went in and did an A–76, all the Federal employees left. Big exodus. They put in a bunch of employees who were not qualified, that were judged by the patients over there and the people who are our constituents as being inadequately trained, and it has just been a disaster over there.

I hope that, first of all, I would like to hear the thoughts of the panel, rather than just going on, about the idea of working as a team unit and as an organization to achieve the goal. It is no good if I am a team leader and I am getting a good evaluation and all my employees get lousy evaluations and don't do their jobs. Why the heck should I get a performance bonus? I'm not doing my job because the people who work for me are not doing their job.

And right now, I don't know, I was going to say this sounds good on paper. It doesn't even sound good on paper. I'm very discouraged by it and I think there has to be a better way to get our act together here and get the most out of our employees. We can start by treating them with a little bit of dignity and get them to work together.

I will just yield. Try to do your best to respond. Thank you.

Mr. TOBIAS. Well, I think the issue of whether there should be individual or group awards is a really critical question. I think that is part of how you design the performance management system. Is it you against you? Or is it you two working toward a common goal? Getting that right, as you suggest, is an important element, and it hasn't been achieved.

I think the statistics that you cite point out the risk of going forward before you are ready. If the goal is to increase productivity and the result is to decrease productivity, then you have had just the opposite result, and I think that shows up in the statistics you cite.

Mr. SWERDZEWSKI. One thing that has always struck me about pay for performance is that it assumes that the most significant factor that influences an employee's performance in the Federal sector is pay, which is basically a private sector model. Pay is what you look for. Pay is what increases your esteem in the organization. I think part of it is saying that pay is the most significant thing that an employee looks for in the Federal sector, I think that's probably inaccurate.

Many Federal employees did not come for pay, because many Federal employees would have made a lot of money in the private sector, not in the Federal sector. I think that's part of the concept of marrying the Federal employees' public service, which is not based on pay, which is based on avocation, which is based on something they want to do with being paid a living wage and being paid a valid wage. It's different than what the private sector is. The private sector does not necessarily have the same mission or the same confidence in that mission that the Federal employees do.

Mr. LYNCH. I couldn't agree with you more. I think, in closing—and I want to yield back—when you look at many of the jobs that are performed by Federal employees, you know, I just think of September 11th and the days thereafter. I was elected on September 11th. You know, we had 465 fire fighters who all went up the stairs and public employees, all union employees, by the way, covered by a collective bargaining agreement, heroes every one of them. All those firefighters went up, did their jobs.

And in the days after that when we had the anthrax attacks here in Washington the postal employees, in great risk to themselves—you know, we were nervous at the time that the mails would stop, that commerce would stop. It was the postal employees who went to work, knowing that there was anthrax in some of those packages at Brentwood and elsewhere, those loyal postal employees went to work, not because of their pay scale but because they believed very much in the work they were doing and they are as patriotic as anyone.

So I agree with what you are saying, that it is an avocation. It really is. There is a lot more self satisfaction and self fulfillment that goes into a lot of these jobs, although pay is definitely important. I want to say that. But I think this model misses a lot of that. I think we have to just take another look.

I agree with the assessment that we have to make sure we have this right before we implement it. Thank you.

I am sorry for going on, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. I think we are trying to get as much information, and I always think that passion helps to bring it out.

Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

I have a question first for Mr. Copeland. On page 10 of your testimony you indicated that, though you got some framework, some general sense of so-called Wyatt study—and here I am quoting—you were not told which companies, government units, or other organizations were included or which occupations in those organizations were used in the study and how they were matched to the GAO occupations. Could a study be validated without this information?

Mr. COPELAND. Ms. Norton, I don't believe so. I think in order to validate a pay study you have to know basically what went into it. You have to know what occupations were compared to a GAO analyst. You would have to know what organizations were compared to GAO. Without that information, I think you would be at a loss to know whether or not the study, itself, was valid.

Ms. NORTON. Well, I must say I am surprised, to say the least, that GAO, whose job it is to pull such information out of others, would have declined to give that information about itself, particularly since it has literally preened before this committee about how successful its own efforts have been. I note that for the record.

But let me tell you where I began. I began with the notion that this system has been in place for a very long time, so it stands to reason that if you favor a fair system, as I do, then the burden is on you to, in fact, change it, as opposed to leaving it to people who would essentially see it go to do so.

So you start out with I named some of the major assumptions I believed were at the root of a system that otherwise would seem quite mysterious. One was to avoid favoritism. Another was to avoid corruption. Remember, a lot of these have to do not with efficiencies but with what to avoid. A third was simply to manage a large number of employees, you know, almost 2 million.

There are other values, other reasons, but you ask anybody who knows anything about the system in the broad, I think there would be agreement on that. Therefore, if the GAO does not want to be transparent about its study, then it seems to me they are stopped right at the gate right then.

The whole notion of not getting information back, information at least says to employees that they are basing this on something that has been validated. Then they have to go from there if they have other problems with it.

Second, just let me say that I also start from the notion that if you have had a system in place for decades and you want to wean people away from it, you had better think about how that is done, especially if the perception is that you are asking them to give up something that they had before. It may seem quite intangible. It may be something like pay, which is the most tangible.

My own experience in the private sector, the fact is that I served on the board of three Fortune 500 companies. One was unionized, the other was not. I know for the record that one of the processes—sorry, that's the wrong word for it—one thing that the private sector does to keep unions out is to try to equalize the pay and benefits. So, to the extent that there is a perceived or actual reduction in any, and you are trying to reform a system, you are not even at the gate, much less out of the gate. How do you draw people to a new system?

I think most in the private sector are results oriented, not process oriented. I am the first to agree that there are major differences and we can't imitate that sector entirely, but in its results orientation it is important to note that one of the things they would to is to make sure employees didn't think they were losing something. So there is something about beginning with pay. Some of you have testified about this. Right out of the gate you say hey, by the way, some of you are going to lose, and then you expect the whole workforce to salute.

Mr. Simpson, on page 6 of your testimony, "changes that have occurred in the aforementioned agencies have been a mixed record, to be sure, especially in terms of employee acceptance." I appreciate that you have gone through, in your testimony, those agencies. "We note, however, that a number of the Federal agencies that have been allowed to operate under alternative personnel systems, such as SEC and NASA, and GAO—" better watch out whether or not you can continue to use that one—"have consistently been rated by their employees as among the top rated, best places to work."

Now, given the agencies—SEC, NASA, GAO—I ask you whether you regard the employees of those agencies as typical of the Federal workforce.

Mr. SIMPSON. In some ways they are atypical, in that their level of technical expertise and educational achievement is very, very high. Overall, for the whole Federal workforce, that is a progression that has been happening for some time, as the Government has moved from a largely clerical workforce to a more educated, more accomplished set of workers. But I take your point that, to some extent, smaller agencies with more focused missions, have an easier time of cultivating high levels of employee engagement.

Ms. NORTON. So if you wanted to convince Federal employees, unionized or not, that the movement of this system is going to be fair, couldn't your demonstration programs more clearly mirror the average worker, particularly since the others are apparently being asked or are going to be asked to accept the very same system that is used for these top tier workers?

Mr. SIMPSON. I'm sorry, I didn't catch that.

Ms. NORTON. I'm asking whether these demonstration projects should be geared to the average employee if the average employee in time will be asked to live under the same processes that have been used for the top tier.

Mr. SIMPSON. If I understand your question correctly, Congresswoman, I do think that is a fair thing to ask of the people who may be subjected to those demonstration project processes, with the caveats that we have talked about already, that there should be assurances that managers know how to differentiate in terms of performance and that there is buy-in from the employees about the ways in which their performance is going to be measured and what it is that the organization is trying to accomplish. Does that answer your question?

Ms. NORTON. Well, of course. I think you have answered my question. I think you have answered it honestly. If we are talking about typical employees, you are not going to get them to think they ought to go for pay for performance when you tested it with master scientists, SEC employees, who, under Federal law, because they compete with one another and they don't want them stealing one another, we have been very clear must, of course, meet market rates, and that means these people are being very highly paid.

Again, one has to ask who is the Federal employee, and perhaps get a composite. I appreciate your demonstration examples. I am trying here to learn how to get the Federal employee to buy in. I am very disturbed that the opposite has occurred. And GAO, which is unionized, I mean, what do you have to do to teach employees? And GAO wasn't unionized, and now gets a union, or attempts to get a union as a result here, does seem to me that that was not the result that this administration desired. It has to be learned from. I don't want to keep the union out, but I would like the union to come in in the usual way.

Normally, the Federal workforce has not been unionized because there has been some radical transformation forced upon them.

You and your agencies, I was curious. You named the FAA. That's an agency that is under my jurisdiction in another committee. You said for a time they seem to be the—and I realize they are even more different—seem to be the negotiation of higher wages for employees. Then you say the lesson learned here is that some guidance from the Congress and clear expectations are beneficial in reform efforts.

What have you referenced? What should Congress have done there? Because FAA were, in fact, bargaining for wages.

Mr. SIMPSON. You know, I am actually not familiar enough with the situation at FAA to offer you an intelligent comment on that particular piece of the testimony.

Ms. NORTON. Well, I appreciate that. Let me tell you what I think you suggest here, at least in large. When employees accept a new system—and the ranking member, it seems to me, was getting to this question when he asked about whether or not there had been pay increases of any kind. I believe that was the word. But his implication certainly was whether or not people thought they were losing anything or gaining anything.

My question to you, or for that matter, to others, is whether or not, when you are trying to accomplish a, let us say, very significant change in the system, whether you should assume that there is going to have to be—forgive my use of this term—some version of a quid pro quo. Yes, what you had here you are losing, but you are not losing in the long run, and here is why. I wonder if any of you sitting at that table would accept changes that did not assure you that, for what was taken from you, something perhaps entirely different but comparable enough would come forward so that it was worth the change and it was worth your going along with it without protest.

I am essentially asking whether you think, in the history of humankind, there are people who want to give up something without recognizing that they are getting something in return, or whether you think that efficiency for the Government, 9/11, changes that we require should be enough for the average Federal employee to say, OK, you say change, we give up. We won't sue. We won't unionize. We understand what your needs are and we will do what you say. Is that not counter-intuitive?

Mr. SIMPSON. My sense is, Congresswoman Norton, that it helps if you can convey to a workforce that the implementation of a new personnel system is never going to result in a reduction of the current set of benefits and pay that they have. I think workforces can be persuaded to give up a certainty of a certain set level of benefits in exchange for a less certain set of benefits if they are convinced that those less certain set of benefits could be distributed in a way that is credible, that tracks actual performance.

Ms. NORTON. And so, Mr. Simpson, you would say, for example, that at GAO they should at least have been assured that the Wyatt study was validated enough to make that assurance, wouldn't you, given what you just said?

Mr. SIMPSON. Yes.

Ms. NORTON. And if you were sitting at the GAO and you had met what appeared to have been the standards set by the leadership, but the study hadn't been viewed by any outside expert, could you possibly accept the changes that the GAO was asking you to put into place?

Mr. SIMPSON. I think that goes to the attitudes that the GAO employees have toward the ways in which GAO employees can move up and flourish. Do they believe that their supervisors are credible in the way in which they are distributing what rewards are available to them to give?

Ms. NORTON. Does anyone else have an answer to that question? I know some of the questions I am asking now are what can only be called intuitive human actions and reactions. Really, I'm trying to stay away from how much training you need, how good managers have to be, what the steps have to be. I am trying to step back and look at the whole system and say it is after 9/11, haven't changed the system in three or four decades, go. How do I go at it? The first thing I look at is what is the average person going to respond to.

Mr. TOBIAS. Well, I think you are on to something, and what were the changes that were implemented? Narrowing the scope of bargaining so as to exclude unions and employees from the process, the implementation of, as you suggest, a pay for performance system where people gave up and got little when this was supposed to stimulate them or incentivize them to perform more. And I think, in answer to your first question, what does somebody get from participating in an effective performance in a system where there is effective performance management.

The answer is it leverages why people come into the Federal Government. If I come to the Federal Government and I come to the SEC or I come to NASA, I come to HHS, or I come any place else with the idea that I am going to make a difference and that my work will make a difference in how the agency does its work, and I have performance goals that are linked to that difference, I will perform better, I will be more engaged, I will be more satisfied. That has nothing to do with pay. It has only to do with setting targets that are clearly linked to my interests in why I came to the agency in the first place.

Mr. COPELAND. With regard to GAO, clearly the GAO employees were very concerned about the changes that were being proposed by the GAO Human Capital Reform Act. The Comptroller General mentioned those concerns in his testimony before this subcommittee 3½ years ago and before the Senate. In fact, the GAO Employee Advisory Council said that the GAO employees were very concerned about the changes. But the Comptroller General repeatedly assured them that if they met performance expectations they would get a cost of living increase, and the fact that 308 employees at GAO did not get that, despite those assurances, I think is the source of a lot of the concerns and some of the activities that you mentioned.

Ms. NORTON. Mr. Chairman, I do want to say that I think that is a poison pill. I'm talking about a poison pill for doing this anywhere else in the workforce now. If you take the GAO, which is generally accepting these changes, and then you have what appears to be a breaking of the word of top management, even though they may slice it differently, that appearance is going to kill any acceptance for the rest of the workplace employees, especially those at a lower level, which are most of them.

Finally, Mr. Chairman, may I say we are not even following our own best practices, which are do as much centrally as possible. Do as much quid pro quo or appearance of quid pro quo as possible. I take the buy-outs during the Clinton administration, the huge downsizing of the Federal workforce. Buy-outs are now going to be far more punitive, and so they are being fought.

But essentially the Federal Government said here's some money—I don't know, it was $25,000 or something they were talking about. Anyway, we need all of them back now. But they said, essentially, to those of you who are near retirement, here's $25,000. We have invested a lot of skills in you, so these employees knew that they could go into the workforce, and a lot of them were Baby Boomers, continue to earn, and then centrally thousands upon thousands left. Not a peep. You didn't hear the unions, you didn't hear studies, you didn't hear GAO reports, because there was a sensible way, not all this fancy stuff, just looking to how human beings have to be treated in order to get them to lead.

Now we, of course, had other ways to thin the workforce. We chose that way. It worked. I note again for the record, Mr. Chairman, I think we need to do a hearing on forced buy-outs such as occurred in the Library of Congress, other agencies.

Finally, let me just cite perhaps the ultimate example of a sector in terrible trouble, perhaps the worst trouble of all, and that's the manufacturing sector and the automobile industry, in particular. Look at GM just floating downward. You can give it all the reasons you want to. You can blame it on the union, you can blame it on the cars, you can blame it on the global economy. But GM, there are ways for an employer who has collective bargaining to quickly get rid of these employees. One is to just shut the place down.

It is interesting how GM is proceeding. It, too, is proceeding on a quid pro quo basis. Its health care is the problem. People are giving up and recognize they are giving up some of the best health care in the planet in order to accept certain kinds of buy-outs. I cite examples from our own workforce and our own experience, I cite examples from perhaps the worst of the private experience to say I think we have been playing around the edges of how people deal with human experience and get people to want the same thing that their adversary wants.

I think, Mr. Chairman, it may be too late, particularly with the GAO experience. That will reverberate throughout the Federal workforce like a wildfire, so whatever you are able to do, Mr. Chairman, in repair work, I think at least for a long time is only going to be repair work. I thank you for trying, and especially by beginning with this hearing this afternoon.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman.

I wanted to see if you could validate a way that I am trying to look at this and analyze it. We talked a lot about the performance management system and whether the system, itself, that is being implemented at DOD and DHS and so forth is well structured and whether it makes sense, and so forth, and we have talked about whether you have to sort of nail down the performance management side of it first, in terms of people understanding clearly what they are trying to achieve, and then maybe the pay portion of it can come later. Those are all important things.

My colleague also addressed this issue of quid pro quo, that people aren't going to buy into any system that they are transitioning to unless they feel like they are getting something, but that is really just one side of the equation. The other side of the equation is the conditions under which you implement any new system. In other words, even if the system, itself, was the best system in the world—and you have talked, Mr. Simpson, about how it could take 5 to 7 years to transition any workforce to change a culture from where it has been to where it needs to be.

So even if the system, itself, is the best kind of system it can be, the next question is: is the environment into which you are placing it one that facilitates the transition or does not facilitate it. That is what I am particularly interested in, because my sense is that the conditions that the workforce is in now are ones that all contribute to resistance.

You are going into an environment where collective bargaining rights are being challenged, where personnel are working under difficult conditions where you don't have enough personnel to handle the job, where they are subject to these outsourcing, which destroys morale, etc. So is that a fair point?

In other words, for those of you who have studied what makes a transition in a performance evaluation system work best, isn't it highly relevant the conditions into which you are putting the system and you are making the transition?

Mr. SIMPSON. Congressman Sarbanes, I think you are on to something. I think you are on to something, as Mr. Tobias would say. It is particularly with respect to two points.

You know, challenges to collective bargaining are really very corrosive to employee trust and the ability of employees to communicate in a very effective way with supervisors inside of that agency, and it strikes me that I think that is a very hostile condition in which to try to implement the kind of really more vigorous dialog that is necessary to implement any kind of pay for performance system.

Pay for performance is a good goal, not just because it puts more pay in the hands of people who are performing well, but it obligates all of the parties to pay attention to what it is that the organization is trying to accomplish. It has a salutary effect of focusing them on what it is that is good performance, what is exemplary performance.

The question of resources is also incredibly important, as I have tried to note in my opening remarks. Very frequently resources are lacking with respect to particularly training and development of the next generation of leaders in the Federal Government, and those things are frequently being overlooked in the Federal space and I think that when you are facing a challenge as large as DHS they shouldn't be, and that actually this subcommittee and Congress as a whole has a very important role to play in trying to make sure that those kinds of needs are adequately resourced.

Mr. TOBIAS. I agree totally, Congressman Sarbanes, and I would put it this way: everything you have described increases the risk that the effort will fail, and so if the issues that you identify are not tended to, if they are not focused on, if they are not addressed and satisfactorily resolved, it will make it very difficult if not impossible to do the steps that we have been describing today.

Mr. SARBANES. Right, and that doesn't have to be about politics or ideology; it could simply be saying when you implement reform, particularly reform to an evaluation system, it is important, if you want it to work, to make sure that the conditions that people are working under are positive conditions or it is not going to work as a matter of structure. Forget about whether you believe in unions or you don't believe in unions, whatever. You want that workforce to feel like somebody respects them, is paying attention to them, is giving them the resources they need, etc., because it is tough enough to implement a system like this and make the transition, even if all those conditions are the best they can be—and, of course, they are not the best they can be.

So Mr. Chairman, along the lines of what the ranking member said, I would hope that recommendations that come forward from you and others as to what we can do with respect to improving this transition would not only address the system, itself, as we have done, but there would be a second set of recommendations that says the conditions, the environment in which a change like this is going to happen well has to be improved and supported and enhanced in the following ways or we can predict now that it is not going to work.

I yield back.

Mr. DAVIS OF ILLINOIS. Thank you very much.

I have a few additional questions, if the panel doesn't mind.

Dr. Copeland, let me ask you, last fall, in response to a request that I made, you researched the GAO Human Capital Reform Act, and are you aware of any statements made by the Comptroller General or the GAO prior to the passage of the Reform Act in July 2004, indicating that a market-based pay study might prevent GAO employees with meets expectations performance ratings from receiving the annual pay adjustment?

Mr. COPELAND. Mr. Chairman, I am not aware of any such statements. The statements prior to the enactment of the legislation centered—the caveat that was offered in relation to the failure to provide these annual pay adjustments was whether there would be, in the Comptroller General's words, extraordinary economic conditions or severe budgetary constraints. No mention was made, to my knowledge, of market pay studies as a possible intervening variable.

Mr. DAVIS OF ILLINOIS. You indicated in your testimony that GAO would not discuss the details of how the Watson Wyatt Study was prepared. Did you come across any information that would indicate that Watson Wyatt would allow GAO or other clients to preselect the organization occupations to which pay comparisons would be made?

Mr. COPELAND. I did. One of Watson Wyatt's brochures refers to a product line known as peer pay reports, which they say—I will just read briefly from it. It says, "Peer pay reports are custom compensation reports that include the responses of companies from our data base that you decide are relevant for your information needs." Their Web site goes on to describe these peer pay reports as allowing the client to review demographics and determine the best fit for your sample, and then you pick the final list of companies to be included in your peer pay report. It goes on to say that if the on-screen report does not yield the data that you want, you may repeat the steps until the appropriate sample has been identified.

I would caveat this by saying I do not know that GAO used these peer pay reports. I do not know the extent to which GAO pre-selected these companies. I just offer that as an observation that is a product line that Watson Wyatt does offer.

Mr. DAVIS OF ILLINOIS. Let me ask you, in the course of your research did CRS ask to meet with GAO to obtain information on the implementation of its new pay system. And, if so, did you meet with GAO? And, if not, why not?

Mr. COPELAND. We did ask to meet with GAO. We scheduled a meeting. The meeting was canceled the day before the meeting was to occur. GAO indicated they would respond to our questions only in writing.

Mr. DAVIS OF ILLINOIS. Did you send questions to GAO in advance of the proposed meetings? And did GAO answer all of the questions? If not, which ones did GAO not answer and why?

Mr. COPELAND. We did submit questions. They answered most of the questions, but not all. The questions that they didn't answer centered on issues related to the statutory authority under which the Comptroller General decided that these 308 employees should not receive an annual increase. The other questions that they did not answer focused on the Watson Wyatt Survey, itself. The one document, in particular, that we asked to receive that was referenced in another document, a 2004 document, they indicated was deliberative in nature and therefore they would not provide it.

Mr. DAVIS OF ILLINOIS. Let me ask if each one of you would respond. Perhaps this will be our last question. Would it be accurate to surmise that pay for performance is a very difficult system to actually design and implement, and that, if it is going to be used, there are still a great many kinks that need to be worked out of the system. I mean, those kinds have to be dealt with in an open, honest kind of way from my assessment. Would you just respond, and perhaps we will begin with you, Mr. Tobias, and go right through and perhaps would end our hearing.

Mr. TOBIAS. I think a critical value in any effective pay for performance system is transparency, not 90 percent, not 95 percent, but 100 percent transparency. You can't have a credible pay for performance system without 100 percent transparency. I think that goes without saying. And I think it is also true that there is no agency—not DOD, not DHS or anywhere else in the Federal Government—who has a performance management system in place today that would be the basis for a fair, credible pay for performance system. They don't have it.

So it seems to me that it is premature to be implementing pay for performance when we don't have a performance management system in place. I believe that is why DHS 2 weeks ago backed away from implementing a pay for performance system. They recognized that they have not gotten the performance management system right, so they are not going forward with pay for performance. Not so in DOD.

Until you get it right, until you get the first step right, you should not be taking the second step.

Mr. COPELAND. The difficulty that you mentioned in implementing a pay for performance system is evidenced by the fact that 26 years ago now I was working at GAO, and the second job that I worked on at GAO was looking at the implementation of merit pay for GS–13s to 15s. The end result of that review was that you really have to get the performance management system right first before you implement merit pay, so the comments made today are very reminiscent of 25 years ago.

Mr. TIEFER. Mr. Chairman, I happen to agree with Mr. Tobias completely. The example he picked is not a small example, it is a giant example; namely, that the Department of Homeland Security backed away 2 weeks ago because of, as you say, to put it mildly, that it is very difficult to design and it has a lot of kinks.

To read from the Washington Post story at that time by Steve Barr, the reason that it had to be lost momentum, the DHS system, the personnel system for that Department, was because of overly ambitious goals, adverse court rulings, and budget cuts. One would imagine that one can't quite understand why the Department of Defense is moving forward. It just must assume that it has a budget flow that isn't limited the way DHS is. Otherwise, it would see reality also.

Mr. SWERDZEWSKI. Working with Federal employees for many years and having asked this very simple question—what's the worst part of your performance management system, whatever the system is—the worst part universally they seem to answer is: my supervisor never talks to me, never tells me what my performance is.

An essential part of performance management is the interaction between supervisors and their employees. Those employees are concerned that they want to know where their performance is. That issue, which is the interpersonal relationship, is not really addressed by any of the pay for performance systems, any of the performance management systems. It is the intangible which is the glue, which is the teamwork, which was mentioned by one of the Congressmen, that keeps people working successfully, is this relationship. When we have pay for performance, which includes significant levels of review and performance ratings that go well above the level of the individual's supervisor, we have undermined that confidence and we have undermined that support.

These issues have to be resolved. Employees need to understand that they can trust this system before the supervisor who never talks to them has significant sway over their future with the Federal Government.

Ms. SISTARE. Well, as I posit that, by definition a successful performance management system includes those conversations, and until people are able to have them they are not going to have a successful system. But those successful conversations, when they take place, can drive individual productivity and performance and Government's meeting its missions.

Mr. SIMPSON. I don't think there is any doubt that effective leadership is important in terms of getting the greatest productivity out of an organization. Leaders can also use pay for performance systems to aid and abet their own leadership abilities and their ability to engage and cultivate engagement among their staff. Clearly, their transparency and their credibility are important factors in their ability to effectively use pay for performance systems. I think there have been records of achievement and benefits achieved through pay for performance systems in the demonstration projects that we referenced in our written remarks.

Mr. DAVIS OF ILLINOIS. Well, let me thank each one of you for not only your contribution but also for your patience and your willingness to perhaps readjust and to be here longer than we had anticipated. Of course, sometimes schedules are such that there isn't much that you can, in fact, do about it. But we want to thank you also because you have contributed significantly to the very first hearing of this subcommittee during this session of the Congress. We think that it sort of sets precedent for what is yet to come, so we look forward to continuing to interact with all of you in a very meaningful way.

Again, I want to thank you for having come, and we appreciate your participation.

This hearing is now adjourned, and without objection it stands adjourned.

[Whereupon, at 5:10 p.m. the subcommittee was adjourned.]

[The prepared statement of Hon. Elijah E. Cummings and additional information submitted for the hearing record follow:]

U.S. House of Representatives
110th Congress

Opening Statement

Representative Elijah E. Cummings, D-Maryland

"Status of Federal Personnel Reform"

Subcommittee on Federal Workforce and Agency Organization
Committee on Oversight and Government Reform

March 8, 2007

Mr. Chairman,

Thank you for holding this vitally important hearing to investigate federal personnel reform.

I am aware that the Bush administration has made significant changes in the way that the federal workforce operates, and I am concerned about how these changes impact our government's ability to function as effectively and efficiently as possible.

Further, I am concerned about how the people who work for the federal government have been affected.

I am deeply troubled by reports of low morale, poor labor-management relations, and unacceptable treatment of minority workers.

The federal government should serve as a model for how we want all employers to treat their workers, and instead it is the exact opposite.

I am ashamed that individuals who choose to pursue a career in public service are not treated better, and I am concerned that our government's ability to function is suffering as a result.

I need only mention incidents at the Walter Reed Medical Center and Hurricane Katrina for everyone to know what I am talking about.

But I assure you that the failures go much deeper than these high profile cases.

Our federal workforce is broken, and I fear that the practices of this administration are to blame.

I am troubled by what appears to be a system-wide disregard for employee satisfaction, and the abandonment of the principle that all federal employees deserve fair, equitable treatment.

Thank you and I yield back the remainder of my time.

SUBCOMMITTE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

MARCH 8, 2007

Attached Articles	Date of Article
Effort to Give TSA Screeners Union Rights Advances-Washington Post	2/16/07
A Symbolic Setback to Linking Pay with Performance-Washington Post	2/26/07
U.S., Canadian executives share concerns about Performance Pay-Government Executive	3/1/07
Lawmakers seek assurances that GAO may Unionize-The Hill	2/28/07
Job Security Lures Young and Old to Government Work-Washington Post	2/20/07
Lawmakers weigh intervention in Defense personnel reforms-Government Executive	3/06/07
Senate Defeats bid to strike TSA union rights provision-Government Executive	3/06/07
GAO Fights Employee's Lawsuit	3/08/07

washingtonpost.com

Effort to Give TSA Screeners Union Rights Advances

By Stephen Barr
Friday, February 16, 2007; D04

It was a good day for unions.

A Senate committee yesterday approved a measure that would give collective-bargaining rights to about 43,000 airport screeners at the Transportation Security Administration. The committee's action followed House approval of similar legislation last month.

If the Senate goes along with the committee's decision, the issue of union rights for TSA screeners is likely to provoke a rare clash with the White House over federal workplace rules. After the House vote, the Bush administration vowed to oppose the legislation.

The American Federation of Government Employees, which has pushed hard to bring TSA screeners into the union fold, praised the committee's decision and predicted the measure would improve working conditions for screeners.

"It is good news," said *John Gage*, the union president. AFGE plans to bring about 800 members to Washington near the end of this month to lobby Congress on behalf of the screeners, he said. "We have some work to do with the Republican side of the aisle, and I think we will be successful."

Sen. *Joseph I. Lieberman* (I-Conn.), chairman of the Senate Homeland Security and Governmental Affairs Committee, proposed the union-rights amendment to the Senate bill that would implement unfinished recommendations of the Sept. 11 commission. He prevailed on a party-line vote of 9 to 8.

As part of the response to the 2001 terrorist attacks, Congress created the TSA to take charge of passenger and baggage screening at the nation's airports. It also provided the head of the TSA with leeway to set personnel rules and ban unions.

The TSA later merged into the Department of Homeland Security, where unions filed suit to stop proposed curbs to bargaining rights.

But Lieberman said "personnel management has been troubled at TSA" and concluded that "it is time to give TSA screeners parity with other security officers within TSA and DHS in terms of their employment rights and protections."

Sen. *Tom Coburn* (R-Okla.), a committee member, spoke against Lieberman's amendment. He said there have not been sufficient hearings on unionization of TSA workers, that the 9/11 Commission Report did not recommend it, and that allowing unions at the TSA would strip the agency of its ability to quickly deploy employees to respond to terrorist threats.

But AFGE had lobbied senators before the vote, contending that current law permits agencies to take whatever personnel actions they deem necessary to respond to emergencies. The union stressed that other law enforcement bureaus in Homeland Security, such as Border Patrol and Customs and Border Protection, permit their employees to be represented by unions.

"Denying these people rights that everyone else has in Homeland Security is not based on any rational reason," said Gage, who brought a TSA screener from New Haven, Conn., this week to meet with Lieberman and explain why screeners should be able to join unions.

TSA officials said steps have been taken to ensure that security screeners can share their views with agency management. An employee advisory council brings in screeners from around the country to offer advice on compensation and other issues, and the TSA is rolling out a model workplace program to airports to teach employees and managers how to collaborate and resolve workplace issues, the officials said.

"This is our way to get our employees heard and let them have a voice and a seat at the table," said *Gale Rossides*, an associate administrator at the TSA.

The agency recently completed its first year under a pay-for-performance system that was designed with feedback from more than 4,000 employees, "telling us what was important," Rossides said.

Turnover at the TSA is declining and compares favorably with the transportation and utilities industries, Rossides said. In fiscal 2006, the TSA's attrition rate was 16.5 percent, while turnover was 19.6 percent in transportation-utilities sector, she said.

"We are continuing to focus to drive that number down," Rossides added.

Talk Shows

Steven L. Katz, a former Senate committee counsel and a former federal agency executive, will be the guest on "FedTalk" at 11 a.m. today on federalnewsradio.com and WFED radio (1050 AM).

John Salamone, executive director of the Chief Human Capital Officers Council at the Office of Personnel Management, will be the guest on "The IBM Business of Government Hour" at 9 a.m. tomorrow on WJFK radio (106.7 FM).

Stephen Barr's e-mail address isbarrs@washpost.com.

washingtonpost.com

A Symbolic Setback to Linking Pay With Performance

By Stephen Barr
Monday, February 26, 2007; D01

MaxHR is out.

Human Capital Operational Plan is in.

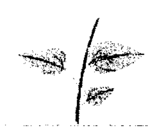
The name change at the Homeland Security Department reflects a new set of priorities aimed at improving how thousands of Border Patrol, customs and immigration officers are hired and how career leaders are chosen and trained.

But the name change -- from trendy branding to prosaic government jargon -- also can be taken as a symbol of how one of the Bush administration's signature efforts to shake up the federal workforce lost momentum because of overly ambitious goals, adverse court rulings and budget cuts.

The shift to the new plan means that a key goal of the Bush White House -- to use about 110,000 Homeland Security employees as a model for a rigorous pay system with raises linked to job performance ratings -- will not be completed before the presidential election in 2008, leaving it to a new White House team to forge on or abandon that effort.

Marta Brito Pérez, who became the department's chief human capital officer five months ago, called the decision to adopt a new workforce management plan "the right thing to do."

"It should be reassuring to the employees, employee representatives, the Hill and the public," she added.



Instead of pushing forward on a department-wide performance-based pay system, Homeland Security will set up a pilot project in 2008 focused on the department's employees who work in intelligence. The pilot will be coordinated with a pay initiative being developed by the director of national intelligence for the government's primary intelligence agencies.

Because intelligence analysts are in high demand across government, the pilot project should help the department stay competitive in hiring and pay while also providing a test of Homeland Security's new performance management system. That system calls for developing job goals for employees, tracking their accomplishments and using job ratings to steer larger pay raises to the best workers.

"There was a conscious decision that this organization needs to have a good performance management program in place before pay can be linked to it," Perez said. "We have to get this right."

If the pilot goes well, the department in 2009 could move to the next step: shifting employees off the 15-

grade General Schedule, a decades-old pay system that the Bush administration faults as giving too many automatic pay raises to federal workers, and into "pay bands" where salaries are more closely tied to occupation and geographic location.

But changing pay rules at Homeland Security may prove difficult. Federal unions have won court rulings that block the department's efforts to limit their bargaining rights, and the department will probably have to negotiate with unions over the design and implementation of a new pay system.

The unions and some employees are skeptical about revamping pay practices, in part because they believe giving managers greater discretion over raises will let them play favorites or use pay decisions to single out employees for punitive actions.

Under the new plan, known as HCOP, the department will focus on hiring and retaining a talented and diverse workforce, creating a "culture of performance," creating high-quality training programs and improving leadership development programs.

Pérez said the department is not jettisoning MaxHR, which kicked off in February 2004. "We are moving beyond Max in areas that are keys to our success," she said.

Still, she acknowledged in an interview, "every time someone mentions Max, their eyes roll," apparently because it has become tainted by union lawsuits or because it is no longer seen as living up to its catchy name.

"We're not going to be using the term MaxHR anymore," Pérez said. "Folks around here don't seem to like it. It is not reflective of the things we are doing."

Stephen Barr's e-mail address isbarrs@washpost.com.

Lawmakers seek assurances that GAO may unionize

By Kelly McCormack

Government Accountability Office (GAO) Comptroller General David Walker last week met with Rep. Albert Wynn (D-Md.) and assured the congressman that he was not opposed to the organization of a union within his agency.

Despite Walker's assurances, Wynn drafted a letter supporting GAO workers' efforts to form a union. The letter gained the endorsement of 21 other members of the House and Senate, who demanded that Walker honor his employees' desire to organize.

"Some concerns had been expressed that Mr. Walker might oppose the union," Wynn said. "I met with Mr. Walker and we had a good, cordial conversation. He assured me that he wasn't opposed to the union."

Wynn told Walker that the letter, which "did not make any specific accusations," was sent out Friday, Feb. 23.

Along with Wynn, House Majority Leader Steny Hoyer (D-Md.), House Education and Labor Committee Chairman George Miller (D-Calif.) and Sen. Hillary Rodham Clinton (D-N.Y.) were among the lawmakers to sign on to the letter. Three pro-labor Republicans also signed the letter: Reps. Frank LoBiondo (N.J.), Charlie Dent (Pa.) and Chris Smith (N.J.).

In late January, the International Federation of Professional and Technical Engineers (IFPTE) announced that GAO employees launched a union-organizing campaign intended to represent 1,500 agency analysts and analysts in field offices across the country.

However, according to a source familiar with union activities who spoke on the condition of anonymity, Walker has not remained neutral during the campaign.

"He has not been that neutral up to this point," the source said. "He was probably in violation of law in union-organization campaigns – and if not the law, then the spirit of the law."

"... WE WANT TO ENSURE THAT THEY ARE PERMITTED TO PROCEED WITH THIER PROTECTED SELF-ORGANIZATIONAL ACTIVITIES ..."

Lawmakers' letter

The 22 lawmakers urged Walker to respect the rights of GAO employees and pleaded with him not to meddle in the campaign.

"Now that the GAO analysts have chosen to exercise this right, we want to ensure that they are permitted to proceed with their protected self-organizational activities free from interference," the lawmakers continued. "Further, once the analysts file their election petition, we urge you [to] work cooperatively with them to ensure that the election is completed expeditiously and in good faith."

The letter cites the GAO Personnel Act, which states GAO employees have "the right to engage in self-organizational activities freely and without fear of penalty or reprisals, and for a labor-management relations program consistent with Chapter 71 of Title V – the labor-relations law that gove[rns o]ther federal employees."

FILE PHOTO

Rep. Albert Wynn (D-Md.)

Walker responded in a letter yesterday, saying that he has "stated both internally and externally on numerous occasions" that he recognizes the rights of certain GAO employees to organize. However, he noted that the management at the GAO has "certain legal rights" related to union activities, including the "right to challenge any attempt by the union to organize certain types of employees."

"Let me assure you that we are prepared to fully support a timely election process the union meets the related requirements for a vote," Walker wrote.

However, the source said that the IFPTE lawyers recently warned Walker against speaking out against the union. The source noted that Walker has said that the GAO employees seeking to unionize are "disgruntled" and that the union does not have enough support to have an election.

Said the source: "The IFPTE found it necessary to send him a letter to cease and desist his anti-union statements."

The source said that the union's up-or-down election would most likely be held this spring.

Many GAO employees have complained that the federal agency has no internal oversight function and that its leader has consistently ignored employee concerns.

Over the last year, GAO employees and lawmakers have questioned Walker on a rating system that kept nearly 17 percent of employees from receiving a cost-of-living salary adjustment. In addition, some employees have said there has been racial discrimination within the agency. The House Oversight and Government Reform Committee as well as several lawmakers and employees have questioned Walker on several of these issues.

"We want to put Walker on notice and have Democrats and Republicans say to him, 'We're watching and we think these people have the right to form a union if they so choose,'" the source said.

The GAO is commonly called the "watchdog" agency. It oversees how the federal government spends taxpayers' money and recommends to Congress how to make the government "more effective and responsive," according to its website.

GOVEXEC.COM DAILY BRIEFING
March 1, 2007

U.S., Canadian executives share concerns about performance pay

By Brittany R. Ballenstedt
bballenstedt@govexec.com

Patterns in the results of surveys of U.S. and Canadian government executives suggest that personnel systems linking pay to job performance may have universal flaws, executive association officials said Wednesday.

"It is critical to gain insight into how executives with two similar but different systems, in two different countries, could share the same experiences, and what that means for the future of such performance management systems," said Carol Bonosaro, president of the U.S. Senior Executives Association.

Both SEA and its Canadian counterpart, the Association of Professional Executives of the Public Service of Canada, surveyed executives last year to gather their views on performance-based personnel systems.

Executives in both countries expressed support for the principles underlying the systems, but signaled concern about the lack of transparency and effective communication in implementing them. Both groups also voiced some dissatisfaction with pay components of the systems, and signaled that pay-for-performance has little effect on the quality of their work or innovation.

Eighty-six percent of respondents to the U.S. survey said performance-based systems and higher pay had no effect on their job performance, or that of their peers. In Canada, 74 percent of executives said performance management programs have made no difference in the quality of their work.

Fifty-six percent of SEA respondents said their level of motivation had not changed due to the implementation of a performance-based personnel system. In the Canadian survey, 61 percent of respondents said personal values and job satisfaction provided stronger incentives for quality work than pay-for-performance programs.

The United States launched a new personnel system for Senior Executive Service members in January 2004. The overhaul entailed more meticulous ratings of job performance and moved executives to broad pay bands, providing added flexibility to reward high-achieving executives. It also provided a higher overall pay cap.

The Bush administration instituted the system with the idea that it would serve as a basis for further legislation to extend pay-for-performance to rank-and-file federal employees.

Bonosaro said her organization supported the system at first, but "the survey results demonstrate that something has been lost in translation as [it] has been implemented."

This document is located at http://www.govexec.com/dailyfed/0307/030107b1.htm

washingtonpost.com

Job Security Lures Young and Old to Government Work

By Stephen Barr
Tuesday, February 20, 2007; D04

The government's Generation Y may not be that much different from older entry-level hires when it comes to deciding on federal employment, new survey data suggests.

When asked the single most important factor in coming to work for the government, the top response for new hires younger than 30 and the 30-and-older hires was the same: job security.

Annual pay raises, vacation time, sick leave, health insurance and retirement were also cited as important, with few differences in the response rates between those older than 30 and those younger than 30.

With substantial numbers of baby-boom-generation federal employees projected to retire in 2008 and 2009, researchers have been trying to capture the attitudes of Gen Y (18- to 29-year-olds) toward the government and gauge their interest in working for Uncle Sam.

The survey by the Merit Systems Protection Board, which makes recommendations for improving the civil service, found that entry-level hires held generally favorable impressions of the government, with no significant differences based on age.

For example, factors seen as strengths of federal employment included job security (97 percent), benefits (89 percent) and advancement opportunities (86 percent).

Even areas often perceived as weaknesses of the government fared well in the survey. The new hires were positive about pay (71 percent), interesting work (85 percent) and reputation (80 percent).

The MSPB surveyed 2,000 full-time professional and administrative employees who were newly hired into career, entry-level jobs, from General Schedule 5 through GS-9. That is the job classification and pay system for most federal employees, and it covers most white-collar federal positions.

The survey respondents were not inexperienced, recent college graduates, which is the group assumed most likely to be seeking entry-level jobs in the government, according to a MSPB summary of the survey. The average age of the new employees was 33. About one-third had one to five years of full-time work experience before joining the government, and 18 percent had 20 years or more of work experience.

When asked how long they expected to work for the government, 78 percent of those 30 and older said until they retire. For those younger than 30, the MSPB said, 72 percent said either until they retire or that they had no expectations, suggesting that the Gen Y employees are not necessarily going to quit after three to five years, as some experts have speculated.

Steve Nelson, director of the Office of Policy and Evaluation at the MSPB, cautioned that the survey results should be taken as "initial insights" and said that more research is needed to determine whether new government hires are notably different than their contemporaries opting for private-sector jobs. The survey results are to be released as part of a larger study later this year.

Focus on Management

A proposal to elevate management oversight inside the Department of Homeland Security has been approved by a Senate committee as part of legislation that would implement unfinished recommendations from the 9/11 Commission.

The amendment, sponsored by Sen. *George V. Voinovich* (R-Ohio) and other senators, would create a deputy secretary for management at Homeland Security and make it the No. 3 position in the department. Appointees to the new position would serve a five-year term and would need a background in managing large, complex organizations, according to the bill. The new position would replace the current undersecretary for management.

The Department of Homeland Security has been hit by high turnover in key jobs and has been faulted by some members of Congress for poor procurement- and financial-management practices. "I am convinced the existing management structure at the department is insufficient and is hampering its ability to be successful," Voinovich said.

The amendment was approved last week by the Senate Homeland Security and Governmental Affairs Committee, chaired by Sen. *Joseph I. Lieberman* (I-Conn.).

The committee also approved a bill sponsored by Voinovich that would exempt defense science and research laboratories from the new National Security Personnel System until 2011. The labs operate with specialized personnel systems geared to help them recruit and retain top-notch scientists for weapons and technology research.

The labs had been scheduled to join the NSPS, a performance-based pay system being rolled out by the Pentagon, in 2008. But the NSPS timetable appears to be slipping, and Voinovich does not want to see the labs folded into the NSPS without adequate time for evaluations, an aide said.

A Pentagon spokesman said the Defense Department would not oppose the delay if Congress approves the bill. "We will certainly go along with it and allow the labs to determine what are the best personnel requirements for them," he said.

Stephen Barr's e-mail address isbarrs@washpost.com.

GOVEXEC.COM DAILY BRIEFING
March 6, 2007

Lawmakers weigh intervention in Defense personnel reforms

By Brittany R. Ballenstedt
bballenstedt@govexec.com

After hearing testimony from Defense officials and union representatives Tuesday, members of a House Armed Services subcommittee said that congressional action would be necessary to fix the Pentagon's new personnel system, which seeks to link pay to performance and limit collective bargaining rights.

"The National Security Personnel System is intended to help DoD respond to its human resources needs for the 21st century. But was it the right fix?" asked subcommittee chairman Solomon Ortiz, D-Texas.

In the 2004 Defense authorization bill, Congress granted the department authority to create a new human resources system, based on the notion that the current system was too rigid and outdated to allow the department to respond with agility to modern threats of terrorism. Tuesday's hearing was the first on the system since its authorization.

In that time, NSPS has come under harsh criticism from unions, which claim the labor relations rules associated with the system effectively eliminate collective bargaining. The Pentagon has appealed a lower court ruling against the system's labor relations aspects. That case is still under appeal, with a decision expected this month.

Rep. Joe Courtney, D-Conn., said the most critical element in continuing with the personnel system is finding "common ground." He asked John Gage, president of the American Federation of Government Employees, and Michael Luis Dominguez, principal deputy undersecretary of preparedness for the Defense Department, whether this would require congressional intervention.

Dominguez argued that congressional action should not be taken until the appeals court makes its decision. He contended that NSPS is working, arguing that it will take years before the department realizes all the expected benefits. "We are already seeing a powerful return on investment," he said.

But Gage and Marick Masters, a business professor at the University of Pittsburgh, argued that congressional action should not be delayed, especially because the issue deals so heavily with employee rights. "It's the responsibility of Congress to really get this straight," Gage said.

Gage said AFGE is more than willing to sit down with department officials to reach an agreement in modifying the statute that authorized the system, but said doing so would require Defense officials to come to the table.

"Both sides are going to disagree until the courts and Congress react, so why don't we just cut to the chase?" Courtney said.

Rep. Walter Jones, R-N.C., asked whether the system is placing a burden on taxpayers. He asked Dominguez to identify exactly how much money has been devoted to NSPS since Congress authorized the changes in 2004.

Dominguez said $65 million has been spent, but Gage argued the figure is far more.

"It is certainly in the hundred millions," Gage said. "They've spent $65 million in lawyers' fees alone."

Meanwhile, Max Stier, president and chief executive officer of the nonprofit Partnership for Public Service, argued that though NSPS has flaws, something needs to replace the current General Schedule pay and classification system that was created in 1949. "It is no longer sufficient to attract the best and brightest," he said.

Stier recommended that lawmakers allow the Defense Department to continue with certain aspects of NSPS that already have been tested through demonstration projects, before reaching a final conclusion about the effects or benefits of the system.

Furthermore, Stier suggested the subcommittee review the appeals process by which employees may fight against adverse personnel actions, and investigate the proposed changes to labor-management relations that would affect employees in bargaining units.

Ortiz said the most important factor is achieving a sense of morality in the system to ensure that talented and valued employees are not subject to harsh work rules.

"There is no perfect justice," Courtney said. "You're giving us no choice but to act."

This document is located at http://www.govexec.com/dailyfed/0307/dailyfed/030607b1.htm

GOVEXEC.COM DAILY BRIEFING
March 6, 2007

Lawmakers weigh intervention in Defense personnel reforms

By Brittany R. Ballenstedt
bballenstedt@govexec.com

After hearing testimony from Defense officials and union representatives Tuesday, members of a House Armed Services subcommittee said that congressional action would be necessary to fix the Pentagon's new personnel system, which seeks to link pay to performance and limit collective bargaining rights.

"The National Security Personnel System is intended to help DoD respond to its human resources needs for the 21st century. But was it the right fix?" asked subcommittee chairman Solomon Ortiz, D-Texas.

In the 2004 Defense authorization bill, Congress granted the department authority to create a new human resources system, based on the notion that the current system was too rigid and outdated to allow the department to respond with agility to modern threats of terrorism. Tuesday's hearing was the first on the system since its authorization.

In that time, NSPS has come under harsh criticism from unions, which claim the labor relations rules associated with the system effectively eliminate collective bargaining. The Pentagon has appealed a lower court ruling against the system's labor relations aspects. That case is still under appeal, with a decision expected this month.

Rep. Joe Courtney, D-Conn., said the most critical element in continuing with the personnel system is finding "common ground." He asked John Gage, president of the American Federation of Government Employees, and Michael Luis Dominguez, principal deputy undersecretary of preparedness for the Defense Department, whether this would require congressional intervention.

Dominguez argued that congressional action should not be taken until the appeals court makes its decision. He contended that NSPS is working, arguing that it will take years before the department realizes all the expected benefits. "We are already seeing a powerful return on investment," he said.

But Gage and Marick Masters, a business professor at the University of Pittsburgh, argued that congressional action should not be delayed, especially because the issue deals so heavily with employee rights. "It's the responsibility of Congress to really get this straight," Gage said.

Gage said AFGE is more than willing to sit down with department officials to reach an agreement in modifying the statute that authorized the system, but said doing so would require Defense officials to come to the table.

"Both sides are going to disagree until the courts and Congress react, so why don't we just cut to the chase?" Courtney said.

Rep. Walter Jones, R-N.C., asked whether the system is placing a burden on taxpayers. He asked Dominguez to identify exactly how much money has been devoted to NSPS since Congress authorized the changes in 2004.

Dominguez said $65 million has been spent, but Gage argued the figure is far more.

"It is certainly in the hundred millions," Gage said. "They've spent $65 million in lawyers' fees alone."

Meanwhile, Max Stier, president and chief executive officer of the nonprofit Partnership for Public Service, argued that though NSPS has flaws, something needs to replace the current General Schedule pay and classification system that was created in 1949. "It is no longer sufficient to attract the best and brightest," he said.

Stier recommended that lawmakers allow the Defense Department to continue with certain aspects of NSPS that already have been tested through demonstration projects, before reaching a final conclusion about the effects or benefits of the system.

Furthermore, Stier suggested the subcommittee review the appeals process by which employees may fight against adverse personnel actions, and investigate the proposed changes to labor-management relations that would affect employees in bargaining units.

Ortiz said the most important factor is achieving a sense of morality in the system to ensure that talented and valued employees are not subject to harsh work rules.

"There is no perfect justice," Courtney said. "You're giving us no choice but to act."

This document is located at http://www.govexec.com/dailyfed/0307/dailyfed/030607b1.htm

ROLL CALL

GAO Fights Employee's Lawsuit

March 8, 2007
By Elizabeth Brotherton,
Roll Call Staff

A class-action lawsuit filed against the Government Accountability Office alleges the agency has repeatedly discriminated against older workers, a claim similar to those made by GAO employees who are seeking to form a union.

But that lawsuit currently is in the midst of a dismissal challenge from GAO officials, who allege the employee who filed it has failed to state a claim and did not exhaust all administrative remedies before going to court, a legal requirement that must be met to sue a federal agency.

Analyst James Moses originally filed the suit in the U.S. District Court for the District of Columbia in October 2006. In the lawsuit, Moses claims management has discriminated against auditors 45 years of age and older by denying pay increases and promotions while demoting and terminating certain older employees.

Moses is seeking $300,000 per plaintiff in the case, along with back pay and court costs.

"It's terribly important, because the GAO is the watchdog agency of the government," Moses' attorney, Walter Charlton, said of the lawsuit. "The auditors who know the most are the older, experienced folks who know where all the skeletons are."

A spokesman for the GAO could not be reached for comment by press time.

Filed on behalf of more than 300 GAO employees who are over 45 years old, the lawsuit claims the GAO and its Personnel Appeals Board denied older workers promotions and pay increases based upon their age, race and gender. Court documents point to the restructuring of the agency's pay structure to a market-based, performance-driven system as one way the agency has discriminated against older employees in recent years.

Moses alleges there is a secretive statistical database system that monitors employee data.

"This system was used to deprive [Moses] and persons similarly situated on an across the board basis of equal treatment under the laws, and to measure and create methodology to achieve the unequal treatment of some employees based upon their race, age and gender," the lawsuit reads. "Most importantly, the GAO falsely informed the Court that no such system existed."

In December, GAO attorneys filed a motion to dismiss the case, which stipulates that Moses failed to file an intent to sue with the Equal Employment Opportunity Commission on time and failed to state a claim under the Age Discrimination in Employment Act. Since then, Moses and his attorney have been fighting to keep the case alive.

On Monday, Moses filed a reply to the court stating that all "statutorily required notices were complete and timely" and the "complaint is well pled."

"The case is up to the courts," Charlton said. "I am proceeding vigorously to bring this thing to a conclusion so that justice is done, and my clients get what's coming to them. And they deserve it."

Another group of GAO analysts, meanwhile, are in the midst of a unionization effort.

Those analysts claim the agency's move to change pay structure lowered morale and hurt many older, experienced employees who were denied raises and promotions. Union organizers have said they hope to hold a vote on unionization sometime this spring.