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IMPROVING PERFORMANCE: A REVIEW OF PAY-FOR-PERFORMANCE SYSTEMS IN THE FEDERAL GOVERNMENT

HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

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IMPROVING PERFORMANCE: A REVIEW OF PAY-FOR-PERFORMANCE SYSTEMS IN THE FEDERAL GOVERNMENT

TUESDAY, JULY 22, 2008

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT
MANAGEMENT, THE FEDERAL WORKFORCE,
AND THE DISTRICT OF COLUMBIA,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:06 p.m., in room 342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Subcommittee, presiding.

Present: Senators Akaka and Voinovich.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. This hearing will come to order.

I want to thank all the witnesses for being here. It is good to shake your hands and to see you again, and especially I am glad to see Director Linda Springer. As many of you know, Director Springer announced that she will step down next month. I want to take this opportunity to thank her for her many years of public service and wish her the best of luck in the future. Ms. Springer, it was a pleasure to work with you and you have done a great job in the time that you have been here. God bless your way.

Today, the Subcommittee will examine pay-for-performance systems across the Federal Government. We have a full hearing today, so I will try to keep my opening remarks brief.

Pay-for-performance systems have increased in the Federal Government out of a desire to improve the link between an employee's pay and his or her performance. Ideally, the better someone performs, the greater their pay.

Since the Department of Navy demonstration project at China Lake began in 1980, the Federal Government has tinkered with pay and performance systems outside of the General Schedule (GS). The authority to implement pay-for-performance systems have been given to Federal agencies for employees in the Senior Executive Service and to the Internal Revenue Service, the Federal Aviation Administration, the Department of Defense, Transportation Security Administration, the Department of Homeland Security, components in the intelligence community, the Government Accountability Office, and many other agencies.

When Congress granted Federal agencies statutory authority to develop pay-for-performance systems, employee and management groups expressed many concerns with the ability of Federal agencies to design systems that are transparent, fairly evaluate employees' performance, provide a fair appeals process, include employees and their representatives in the design and implementation of these systems, provide sufficient training to managers and employees to implement systems, and budget sufficient funds to properly reward employees for their performance. I share many of these concerns, which unfortunately have become reality.

Federal pay-for-performance systems have often been modified from those in corporate America to address budgetary constraints. I continue to hear from employees that their performance rating and pay awards depend not only on their performance, but rather on that of other employees who are in competition with too limited resources to reward performance.

If the Federal Government is serious about new and more rigorous pay-for-performance systems, it must invest in those systems with enough money to provide a real performance incentive. Part of this investment requires taking the extra time and effort to ensure that employees are involved in the development of these systems and have a clear understanding of how they operate.

According to the last SES human capital survey, nearly 30 percent of respondents do not understand how increases in their salary and bonuses are determined. The 2007 DHS employee survey found that 55 percent of TSA employees do not believe their pay is based on their performance, and 48 percent do not believe their pay awards depend on how well they perform their jobs. If employees do not understand their pay system, or think it is unfair, it will not work.

Moreover, employee buy-in is essential to the government's effectiveness and efficiency. If employees are not involved and their concerns are not addressed, morale will drop and hinder agency mission.

A recent report from the DHS Inspector General on TSA's responsiveness to address employee concerns acknowledges that low employee morale at TSA continues to be an issue and can contribute to high attrition rates. The estimates for TSA's attrition rate range from 17 to 20 percent. This is too high.[1]

The GS system is not perfect. However, there are clear rules on how employees will be paid and under what circumstances pay increases are awarded. I am worried that we are spending hundreds of millions of dollars to transition away from the GS into new pay-for-performance systems at the cost of employee morale and agency mission.

I look forward to hearing from our witnesses on the implementation of pay-for-performance systems in the Federal Government.

My friend, colleague, and Ranking Member, Senator Voinovich, will be here shortly. So let's proceed to the first panel.

On our first panel this afternoon is Linda Springer, Director, U.S. Office of Personnel Management; Richard Spires, Deputy Commissioner for Operational Support, Internal Revenue Service;

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[1] The chart from TSA appears in the Appendix on page 177.

Gale Rossides, Deputy Administrator, Transportation Security Administration; Dr. Ronald Sanders, Associate Director of National Intelligence for Human Capital, Office of the Director of National Intelligence; Brad Bunn, Program Executive Officer, National Security Personnel System, U.S. Department of Defense; and Christopher Mihm, Managing Director of Strategic Issues, Government Accountability Office.

As you know, our Subcommittee requires that all witnesses testify under oath. Therefore, I ask all of you to please stand and raise your right hand.

Do you solemnly swear that the testimony you are about to give this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. SPRINGER. I do.

Mr. SPIRES. I do.

Ms. ROSSIDES. I do.

Mr. SANDERS. I do.

Mr. BUNN. I do.

Mr. MIHM. I do.

Senator AKAKA. Thank you very much. Let it be noted for the record that the witnesses have answered in the affirmative.

Before we begin, I want to remind all of you that although your oral statement is limited to 5 minutes, your full written statement will be included in the record.

Director Springer, will you please begin with your statement.

TESTIMONY OF HON. LINDA M. SPRINGER,[1] DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT

Ms. SPRINGER. Thank you, Mr. Chairman. I want to take a moment to thank you for the wonderful working relationship that you have led, along with Senator Voinovich, with the Office of Personnel Management (OPM), and with me personally during these years. It couldn't have been a more professional and more effective relationship. I thank you for your support and your interest in the workforce and for the work we have done together. So thank you very much, sir.

I want to talk today specifically about our progress with alternative pay systems in the Federal Government. OPM has been very active in monitoring these programs and in supporting implementation. In 2007, we issued three major reports on progress and today I would like to characterize just how we have been evolving in the Federal Government in this area.

There are three main periods of time that I want to comment on: The 25-plus years of alternative pilots and programs prior to 2004, the three major legislative initiatives that occurred after 2004, and then the current activities. So, that will sort of be the framework for my comments.

For those older alternative systems that began, as you said, in 1980 with the China Lake project, OPM maintains an archive of data that we use to evaluate these programs and how they are doing. In 2005, we issued a report summarizing these 25 years from 1980 on and reached several conclusions as a result of our

[1] The prepared statement of Ms. Springer appears in the Appendix on page 49.

work. Among those were that performance, rather than tenure, drove pay in those systems. Success of the systems depended on effective implementation. And that over time, with the proper implementation, employees did support alternative pay systems. It was noted that progress in some organizations was slower than others, as you would expect with new programs, but that overall, there were clearly positive trends.

Now, beginning in 2004, several legislative initiatives covered large groups of employees. The Senior Executive Service (SES) has been covered by a program that was required to make distinctions based on performance and certified by OPM with Office of Management and Budget (OMB) concurrence. In 2004, 76 percent of the SES members were covered by certified programs. Over the past 3 years, that has grown to 99 percent. Virtually all of these programs now meeting certification.

OPM recently conducted a survey of SES members, and among other things, we asked about the system, and we found that 93 percent of the SES believe that their pay should be based on performance, and 91 percent believe that they should be held accountable for achieving results. I think that is a testimony to the high performance standards of the Senior Executives.

We work closely with Chief Human Capital Officers to promote and to communicate the best practices of the SES. There is more to do and we are continuing to work collaboratively with the Chief Human Capital Officers to help this program work even better.

The National Security Personnel System (NSPS) has been a focal point for OPM. We work closely with the Department of Defense (DOD) on regulations, including the more recent ones that are required by the 2008 Defense Authorization Act. Our review of NSPS, as we have said in our published report, indicates that both employees and supervisors are developing a better understanding of expected performance and how their jobs link to the organization and to performance ratings and pay.

The Department of Homeland Security (DHS), the third major system as a result of legislation, has not progressed to that same point, although the TSA has initiated its own Performance Accountability and Standards System and the information on that has been provided separately in the testimony provided to the Subcommittee.

Currently, OPM has been working with agencies that of their own initiative believe they are ready under a demonstration program authority to test on a very measured basis performance-based systems for components of their agencies. These are not large projects. They are very self-contained and measured. They range from around 100 people up to maybe 2,500. There are currently five demonstration projects underway and they really are a logical step after that component of an agency has established the right performance infrastructure and they believe they are ready to move to test and learn from how a performance-based pay system could work.

As I mentioned in the beginning of my remarks, OPM has issued a report on the status of all performance-based pay systems from all of these periods. Our report concluded that pay-for-performance systems continue to be successful and provide a strong link between pay and performance rather than under systems where longevity is an important factor. It only comes after effort and hard work, but we believe that these systems are better able to recruit and retain a high-quality workforce. I am personally convinced that pay-for-performance systems can be effective for the Federal workforce when they are done properly.

Mr. Chairman, I thank you again for the opportunity to be here today and look forward to answering your questions.

Senator AKAKA. Thank you very much, Ms. Springer. Mr. Spires.

TESTIMONY OF RICHARD A. SPIRES,[1] DEPUTY COMMISSIONER FOR OPERATIONAL SUPPORT, INTERNAL REVENUE SERVICE

Mr. SPIRES. Thank you, Chairman Akaka. I am pleased to be here today to discuss the IRS's efforts to implement pay-for-performance and respond to any questions from the Subcommittee. It is an important issue as the Federal Government continues to look at ways to recruit and retain talented managers.

While I have worked at the IRS in various capacities since 2004, I have spent more than 20 years in private industry where pay-for-performance is commonplace, and from the perspective of the companies with which I was associated, has had great success. I recognize that there is not a perfect correlation between government and private enterprise and what works in one may not in the other. And in my 4-plus-year tenure at the IRS, I have seen some of the reasons why. However, the development of a strong pool of talented employees is such a critical issue for any enterprise that it is important that innovative programs be attempted.

In many respects, the IRS has been at the forefront of the pay-for-performance program in the Federal Government. We have been dealing with it for over 7 years as we have implemented such a system for our more than 7,000 managers. Though there have been some bumps along the way, the creation of pay bands and compensating employees for the quality of their work rather than their tenure with the agency has helped the IRS respond to the challenges presented in turning the agency into a modern and more efficient organization.

My written statement lays out much of the background of how we got into pay-for-performance and describes in some detail how we implemented the program and discusses some of the obstacles we faced. I want to focus my remarks this afternoon on two things. First, I want to outline the areas in which pay-for-performance has benefited our agency. Second, I want to offer some of the lessons we have learned so that other agencies that follow us can benefit from our experiences and have an easier transition.

Perhaps the greatest benefit of pay-for-performance for the IRS has been the opportunities afforded us in implementing the dramatic overhaul of the agency mandated by the IRS Restructuring and Reform Act of 1998. Specifically, the implementation of a new performance management system allowed us to link manager performance to the functional goals of the organization. Managers and their supervisors jointly develop specific performance commitments as part of annual performance plans that are designed to further

[1] The prepared statement of Mr. Spires appears in the Appendix on page 54.

the goals of the functional unit and the IRS. The pay flexibilities have enabled IRS to strengthen the linkage between manager performance and the overall IRS goals.

In addition, the overall job satisfaction among our managers, based on annual employee survey results, has been on an upward path since 2005.

Despite these benefits, the road has not always been smooth and without controversy. Let me offer several lessons we have learned, and frankly are still learning, that may benefit other agencies in the Federal Government.

First, agencies should move deliberately and cautiously to implement the program that is right for their organization, recognizing that any change in the way employees are paid will raise concerns on their part.

Second, communication is critical. Employees must understand how the program will work and how they will be affected. There must also be forums to have their questions answered.

Third, an effective performance evaluation system must be in place. Employees must understand the basis for their evaluation, and there should be a review system in place to make sure evaluations are being made on a consistent basis.

Fourth, supervisors and employees must be trained properly on how to use the system and make sound evaluations.

Fifth, ongoing program evaluation is essential to ensure that the pay-for-performance system is operating as intended, and agencies must be willing to modify and revise to meet the changing needs of their organization.

And finally, evaluations must be made free of any discrimination based on race, gender, age, or national origin.

I am proud to say that an overall evaluation of the IRS program by a third-party contractor found that since fiscal year 2004, there have been no disparate impact on any group of managers. The contractor analyzed the trends of the ratings data grouped by race, gender, age, and national origin. In each group, ratings trended in a similar path to the average ratings across all groups.

Thank you again, Mr. Chairman, for the opportunity to be here and I will be happy to respond to any questions.

Senator AKAKA. Thank you very much, Mr. Spires. Ms. Rossides.

TESTIMONY OF GALE ROSSIDES,[1] DEPUTY ADMINISTRATOR, TRANSPORTATION SECURITY AGENCY, U.S. DEPARTMENT OF HOMELAND SECURITY

Ms. ROSSIDES. Good afternoon, Chairman Akaka and Ranking Member Voinovich. I am pleased to be here today to discuss TSA's progress on our pay-for-performance system known as PASS. I am honored to represent the thousands of TSA employees, our Transportation Security Officers, who serve to ensure the safety and security of two million passengers a day. These women and men are dedicated security professionals with one of the most difficult jobs in government. These officers are the most tested in the Federal workforce.

[1] The prepared statement of Ms. Rossides appears in the Appendix on page 62.

Twenty-two thousand of our officers have been with TSA from the beginning. They have participated in the largest stand-up of a Federal agency in 50 years. They have stayed with us as we have responded to the evolving threat by continuously enhancing the security processes while also helping us build the infrastructure and the human capital system to properly pay, train, reward, and recognize their performance. They stayed for the mission.

There are two reasons TSA relies on pay-for-performance. Security is the first and foremost. Second, it is to instill a culture of high performance and accountability in our workforce.

Performance on the job has a special meaning to us. Let me be very direct. Our job is to stop a terrorist attack. Our officers work in an environment in which 99.9 percent of the people they see every day are not a threat, but the threats against our aviation system remain. TSOs want to get passengers through the security check point with a high degree of confidence that they have stopped anyone seeking to do harm. Your safety is their priority.

How does PASS improve security? When you get paid more to do a better job, you do a better job. PASS is targeted to reward excellent performance. That is an incentive to perform at the highest levels to which you are capable. PASS rewards the individual performance necessary to achieve TSA's organizational goals and that increases security.

TSA's pay-for-performance system is driven by validated data. Its performance metrics are standardized, measurable, observable, and almost completely objective. PASS has been adjusted based on the feedback from our officers about what the real job is. Our officers have told us that they want a pay-for-performance system because they know what is at stake. They want to know that their fellow officers are equally competent.

But building a pay-for-performance system takes time. It takes employee engagement. It takes leadership. It takes flexibilities in the human capital system. It takes continuous improvement. And it takes constant communication. But for us, it is essential.

In my 30 years of Federal service, 23 of them with the General Schedule, I have never been more sure of anything. The pay-for-performance system is the best way in this post-September 11, 2001 environment for TSA to manage and ensure the quality of persons on the front line. The effectiveness of PASS is proven by the statistics. More than half of our TSO workforce has been on the job for 4 years or more. TSA supervisors have a significant stake in the PASS program, as well. Successful implementation of the program is a component of their own PASS ratings.

At TSA, pay-for-performance ensures the technical proficiency of the people on the front line. Our goal is for our officers to be switched on and always at the ready. Pay-for-performance drives their higher level of performance because their earning power is directly tied to their learning power.

The senior leadership of TSA is passionately dedicated to its people and to the principles of pay-for-performance. We are committed to using the flexible human capital system provided under ATSA to make TSA a model performance-based organization. We are building a culture in which our workforce is actively engaged. It is through listening and working collaboratively with all of our officers to find solutions that will continue to meet our challenges.

While significant advancements are being made in our technology and our security processes, each day's success begins and ends with our officers. They are TSA's greatest investment. They are everyday heroes. In this War on Terror, the individual motivation of our officers to excel is critical to our success. We rely on the best to do the best at the security job, and pay-for-performance is vital to sustaining this top-performing workforce.

I look forward to answering your questions. Thank you.

Senator AKAKA. Thank you very much, Ms. Rossides. Dr. Sanders.

TESTIMONY OF RONALD P. SANDERS,[1] ASSOCIATE DIRECTOR OF NATIONAL INTELLIGENCE FOR HUMAN CAPITAL, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Mr. SANDERS. Good afternoon, Mr. Chairman and Senator Voinovich. Thank you for the invitation to testify at today's hearing. It is my pleasure to provide a status report to this Subcommittee on one of the Intelligence Community's most important strategic human capital initiatives, the National Intelligence Civilian Compensation Program.

Our program is modeled after the National Geospatial Intelligence Agency's innovative performance-based pay system, which has been operating successfully for a decade. The product of over 2 years of extensive interagency collaboration, the NICCP's five enabling IC directives have now been issued by the Director of National Intelligence. However, because of our complex statutory context, they will be implemented via departmental and agency personnel regulations. For example, DOD will do so with authorities established under Title 10 of the Code, CIA under Title 50, and so forth.

Why are we doing this? Today's complex national security challenges underscore the need for an IC workforce that is second to none. Outmoded civilian personnel policies and practices, especially those dealing with pay and performance management, are an impediment to excellence. The NICCP will replace them with a 21st Century pay and performance management program that is far more performance-based and market sensitive. In so doing, it will also transcend departmental and agency boundaries to better integrate and unify the Intelligence Community, while rewarding and reinforcing behaviors that are transformational in their own right, such things as analytic integrity, collaboration and information sharing, and critical thinking.

Further, the program will, to the extent permitted by law, assure a level playing field among our 17 agencies, most of which are in six cabinet departments. Most of the major IC agencies are not covered by Title 5. When you add them to those that are, you have six separate statutory personnel systems in the IC, each with different authorities and flexibilities.

Employee input has played a significant part in our design process. According to our surveys, less than a third of our employees

[1] The prepared statement of Mr. Sanders appears in the Appendix on page 68.

believe their pay depends on how well they perform. Conversely, less than a third of our workforce believes that management takes steps to deal with poor performers. These results suggest that a majority of the IC's employees want a stronger link between performance and pay, but they also have concerns.

We heard as much in a series of focus groups we held in each of our major agencies. In all, several hundred employees and supervisors were involved. We have tried to address those concerns in our final design.

With the final IC directives all signed, departments and agencies have begun communicating these changes to employees through dozens of town hall meetings and focus groups, websites and satellite broadcasts, even blogs. These efforts have reached thousands of employees and will continue throughout our implementation.

Our directives establish rigorous safeguards and oversight mechanisms to ensure that our system is credible, transparent, and above all, merit-based. For example, the directives require that all employees receive written performance expectations up front, with final ratings subject to at least two levels of management review, one of which is at the agency level specifically intended to protect against unlawful discrimination.

The directives also prohibit ratings quotas and forced distributions, and to ensure transparency in the performance pay process, they establish a standard mathematical formula and two additional levels of management review to ensure consistency and fairness in pay decisions.

We have also begun delivering a comprehensive training curriculum for managers, HR specialists, and employees that not only covers the technical aspects of the system, but the soft skills that are just as critical. Those involved in the performance pay process get even more instruction, including training to identify and correct any implicit or unintentional bias against protected classes of employees in the performance evaluation and performance pay process.

Finally, the directives establish an IC human capital board to oversee the entire effort. Chaired by the Principal Deputy Director of National Intelligence, the board is comprised of the deputy directors of each of our intelligence agencies—the senior career officials—as well as the IC's Chief of EEO and Diversity.

The system is fully funded in the National and Military Intelligence Programs of record and will be phased in over the next 5 years. It will be implemented agency by agency, with DIA this fall, with most remaining defense agencies and part of the FBI implementing through the end of 2009. The CIA and the Office of the Director of National Intelligence will follow about a year after that. In each case, performance pay decisions will typically follow 12 to 15 months thereafter, so we are approaching this with all deliberation. However, phases will ultimately be event-driven based on the readiness of each IC agency to proceed, not a calendar date.

To implement this program throughout the IC, we need some additional authorities and assistance from the Congress. As it stands today, our smaller elements, those covered by Title 5, do not have the statutory authority to implement the system. To remedy this, the Administration's 2008 intelligence authorization proposed that the DNI be authorized to extend flexibilities that Congress has given one IC agency to those that may not have it to keep the playing field level. As it did last year, the Senate Select Committee on Intelligence has included this provision in its Intelligence Authorization Act, S. 2996, and we ask for your support.

In conclusion, the NICCP is an essential ingredient of the IC's transformation. The first pay-for-performance system that is truly interdepartmental and interagency in nature, it was conceived through intensive collaboration and the final result will help the IC develop a stronger sense of unity and common purpose. That translates into mission success, the ultimate aim of the Intelligence Reform and Terrorism Prevention Act.

Thank you very much. I look forward to your questions.

Senator AKAKA. Thank you very much, Dr. Sanders, for your statement. Mr. Bunn.

TESTIMONY OF BRADLEY BUNN,[1] PROGRAM EXECUTIVE OFFICER, NATIONAL SECURITY PERSONNEL SYSTEM, U.S. DEPARTMENT OF DEFENSE

Mr. BUNN. Mr. Chairman and Senator Voinovich, thank you for the opportunity to speak with you today about the National Security Personnel System at the Department of Defense.

Successful NSPS implementation remains a critical transformation priority for the Department, and while we are still relatively early in our implementation, it is clear that NSPS is taking root. As of today, we have over 180,000 employees operating in the system. I would like to give you an update today on our progress.

We are just over 2 years into the implementation, and like any major transformation, we have had our share of successes and challenges. We believe, however, that NSPS is working. The active engagement and participation of our senior leaders, most notably Deputy Secretary of Defense, Gordon England, speaks volumes to the importance of our civilian workforce and the role NSPS plays in the transformation of our Department.

The design of NSPS has been deliberate, well managed, and transparent, based on guiding principles that include putting mission first, respecting our employees, valuing talent, performance, and commitment to public service, and ensuring flexibility and accountability.

It will take some time before the Department fully realizes all the benefits NSPS was designed to produce, but we are already seeing a powerful return on investment. An unprecedented training effort focused on performance management, greater and more frequent communication between employees and supervisors. They are talking about performance, results, and mission alignment. And better tools to compete for talent and reward exceptional performance. Overall, we are seeing positive movement in individual and organizational behaviors toward a performance culture. These returns are cause for optimism.

In April 2006, we began implementing the human resources provisions of NSPS. Over that 2-year period, we have converted approximately 182,000 employees and will convert another 15,000 to

[1] The prepared statement of Mr. Bunn appears in the Appendix on page 82.

20,000 beginning this fall. These transitions were preceded by comprehensive and extensive training to senior leaders, managers, supervisors, and employees with a particular focus on performance management. From the beginning of the program, we have worked to ensure that our organizations have sufficient time and resources to accomplish the training, prepare their employees, and implement when they are ready.

Several factors have contributed to our success to date, including the extensive consultations the Department and the Office of Personnel Management carried out with our stakeholders in the design process, the value and investment placed in monitoring implementation and making adjustments along the way, and perhaps the most important factor, the emphasis and resources we have dedicated to NSPS training, one of the most extensive civilian human capital training initiatives ever undertaken by the Department. As of June 2008, our employees have completed over a half-million NSPS-related courses.

Late last year, we completed our second full performance cycle under NSPS, resulting in performance-based salary increases and bonuses for over 100,000 employees in January. This was the culmination of a rigorous and robust performance evaluation and pay pool process that assigns ratings based on objective criteria and allocates rewards based on those ratings. The pay pool process, which has a proven track record in our personnel demonstration projects, is designed to ensure that appraisals and pay decisions are accomplished in a consistent, fair, and deliberate manner.

To ensure fairness in the system, we designed safeguards into the process. In addition to the thorough reviews of performance evaluations through the pay pool process, employees have the right to challenge their rating in a formal reconsideration process. Also, we have been very clear in our regulations, policies, and training that forced distribution of ratings is prohibited.

One of the key ingredients to effective program management is program evaluation. The Department has an ongoing evaluation effort to ensure the system is delivering the results we expect. Although we have not formally reported findings from our internal assessments, I can share some of what we are hearing and seeing.

NSPS is clearly a significant change for our workforce. It requires more time and energy than previous systems and many of our employees are not yet completely comfortable with the system. Performance plans and assessments need improvement, as many are struggling with translating organizational goals into individual measurable job objectives. Employees have also expressed concern over the pay pool process, how it works and whether it produces fair results, and many are having trouble accepting a more rigorous evaluation system.

Despite those concerns, it is clear that NSPS employees have a better understanding of how their jobs relate to the mission and goals of the organization. They see a stronger link between pay and performance. And there is increased dialogue between employees and supervisors about performance.

So far, the results we are seeing are similar to the experience of our personnel demonstration projects and other alternative personnel systems. We have said from the beginning that we expect it to take 3 to 5 years for employees to fully understand and embrace the system. However, we continuously monitor and assess NSPS and look for ways to address employee concerns by making adjustments to the system and improving our communications tools and training.

Is NSPS working? We believe it is. It will take time, however, to assess how well NSPS is working through thoughtful and thorough analysis and assessment. We also know that transformation takes time and can't be achieved overnight. In the meantime, we continue to gather information, listen to our workforce, and do what is necessary to ensure the system is credible, effective, and fair.

Thank you, Senator Voinovich and Mr. Chairman, for your ongoing support for our DOD civilian workforce and for providing this opportunity to share our experiences about NSPS. I look forward to your questions.

Senator AKAKA. Thank you very much, Mr. Bunn, for your statement. Mr. Mihm.

TESTIMONY OF J. CHRISTOPHER MIHM,[1] MANAGING DIRECTOR OF STRATEGIC ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. MIHM. Chairman Akaka and Senator Voinovich, it is a great honor to appear before you again today and I appreciate the opportunity. My specific role today is to discuss the preliminary results of our review of selected agencies' SES policies and procedures for performance pay.

As you know, successfully implementing the SES performance management pay authorities the Congress has provided is important for any number of reasons. First, leading organizations have recognized that effective performance management systems create a line of sight to help ensure that individual and organizational performance are aligned and thereby are effectively contributing to the meaningful results and outcomes that citizens value.

Further, effective agency-wide pay-for-performance initiatives must begin, in our view, at the SES level and then cascade down throughout the organization. In short, the SES must lead by example on performance management and pay reforms. The data that Director Springer quoted from the survey clearly indicates that the SES appreciates that it needs to have the leadership role in this.

Finally and especially important this year, effective performance management systems that link programs and daily operations to significant results can provide continuity during the upcoming Presidential transition by maintaining a consistent focus on results. Clearly, the new team will have a different set of goals and a different set of performance measures, but what the Administration with the current efforts of Congress and the agencies now are delivering is a ready-made vehicle the next Administration can use in order to implement its policy priorities.

My prepared statement focuses on agencies' policies and procedures for SES performance management and pay in a number of important areas, and our forthcoming report will discuss OPM and

[1] The prepared statement of Mr. Mihm appears in the Appendix on page 94.

OMB's oversight role and make recommendations to selected agencies, OPM, and OMB in that regard.

My bottom line today is that the agencies are making positive steps in addressing three important aspects of their performance pay systems. First, all of the agencies that we reviewed have policies in place that require Senior Executive performance expectations to be aligned with organizational results and for organizational performance to be factored into SES appraisal systems. However, on the other hand, OPM has found that while many agencies are doing a good job of this alignment, some performance plans fall short of identifying the specific measures used to determine whether or not the results are achieved. In other words, there is alignment at the front end. We need better data at the back end to see whether or not the success is actually taking place.

Second, all of the selected agencies had multiple rating levels in place for assessing SES performance, and as one would expect, in general, those SESes with the highest ratings received the largest bonuses. Several of the agencies, such as the Nuclear Regulatory Commission, Department of State, Department of Energy, have designed their appraisal systems to help allow for differentiations when assessing and rewarding executive pay by establishing tier structures or prescribed performance payout ranges based on the resulting performance rating. Tier structures identify up front that certain SES positions have greater complexity, greater responsibility for managing risk, greater responsibility for achieving outcomes, and therefore should have greater opportunities for higher bonus and pay awards.

Third, all of the selected agencies have built safeguards into their SES performance management systems, such as predecisional checks—you have heard a number of those today, of performance appraisal recommendations through higher-level reviews, as well as publishing information on aggregate results to help enhance the credibility, fairness, and transparency of their systems.

However, on the other hand, this is one area where much more work needs to be done. Sixty-five percent of the respondents to the OPM survey that Director Springer was mentioning—these are of SES—said that they were not given summary information of their agency's performance ratings, bonuses, and pay adjustments. This information is important in order to let someone know where they stand in the organization so that they can identify and take meaningful action in order to improve performance. It is both a transparency and fairness aspect as well as important to improving individual and organizational performance.

In summary, through the combined efforts of Congress, members of the SES, OPM, OMB, and the agencies, much progress on SES performance management has been made over the last several years. The key now, in our view, is to maintain and build on that progress and for the next Administration to use the SES performance management system to achieve additional results.

Mr. Chairman and Senator Voinovich, this concludes my statement and I would obviously be happy to answer any questions you may have.

Senator AKAKA. Thank you very much, Mr. Mihm, for your statement.

Now I would like to ask Senator Voinovich for his statement.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you very much, Mr. Chairman. I apologize for being late. We had the new President and the Prime Minister of Kosovo here and I have been working on those issues for a long time and I thought it was important that I at least congratulate them and have a chance to visit with them, so I hope you understand.

I would like to begin by thanking my good friend and partner on human capital issues, Senator Akaka, for holding this hearing. This is one of so many hearings that we have had over the last number of years on human capital. We want to make sure that the Federal Government has the right people at the right place at the right time to get the job done, and it is an issue that I have been involved with during my entire time on this Subcommittee because of my strong belief in the need for the government to invest first and foremost in its workforce.

The Federal Government has begun an important cultural transformation in how it manages its most important asset, its people. As we hear the testimony today, I would remind our other colleagues that such transformation does take time. Understanding and accepting the systems being implemented at several agencies require a change in thinking and an emphasis on continuous improvement, and we have again heard that from the witnesses here.

In commenting on management, Harold Geneen, former Chairman of International Telephone and Telegraph said, "It is an immutable law in business that words are words, explanations are explanations, promises are promises, but only performance is reality."

Our next generation workforce no longer seeks to work for an organization with the idea that they will stay there their entire professional career. People are looking to work hard and be recognized and rewarded, and that is why I have introduced the Federal Workforce Performance Appraisal and Management Improvement Act, which would require that Federal employees receive a written performance appraisal annually. Current law only requires periodic appraisals for job performance.

The legislation would also require that an individual's performance appraisal be aligned with the agency's strategic goals and be developed with the employee. The performance appraisal system would make meaningful distinctions among employee performance and require agencies to use this information in making personnel decisions.

I know there are a couple provisions of the bill that cause some concern because of the fact that it would prevent an employee from receiving an annual pay adjustment if that employee has not earned a "successful" performance appraisal. Mr. Chairman, I would argue that we owe the American taxpayer something to better ensure that they are getting value for their hard-earned dollar.

I would remind those who have concerns that before an agency would even reach the point where an underperforming employee would not receive a pay increase, the agency would be required work with the Office of Personnel Management to develop and refine its performance appraisal system. In other words, if they don't have a good appraisal system in place, and again, and we have heard this from witnesses, pay for performance doesn't work. Employees would have then 1 year under the performance appraisal system to understand how it would be used to make pay decisions.

These decisions would not be arbitrary or capricious. Managers would be required to receive appropriate training to judge the performance of their subordinates, make expectations clear to employees, and give constructive feedback. People want to know whether they are doing good or whether they are doing bad. The last thing they would like is to be ignored. This would support the Chairman's bill to improve the training provided to the Federal workforce.

The only way the Federal Government will succeed in accomplishing its many missions is to have motivated employees working towards the strategic goals of their respective agencies. Challenges facing our Nation, from gas prices and the growing budget deficit to our crumbling infrastructure, are too significant to rely on an antiquated pay system which rewards tenure, and I think that is more important today than ever before.

Everywhere I go today, whether it is in government or the private sector, we have a human capital crisis. Everybody is going to be out there trying to find the best and the brightest people to come to work for them, and I think that pay-for-performance, if properly implemented and explained and so on, is a real asset to our ability to attract the kind of people that we want to work for the Federal Government. It is going to be a challenge that we are going to have to continue to work on, but one I think that is very worthwhile.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Voinovich. And now we will have the questions.

Director Springer, according to OPM's 2007 report on pay-for-performance, the 2007 DHS employee survey, the recent SES employee survey, and other reports, there are mixed results on the success of pay-for-performance systems. Employees are not necessarily satisfied with their pay. They do not completely understand the pay system and many do not see meaningful distinctions in their performance evaluations. Earlier this year, the FDIC suspended its pay-for-performance system based in part on declining employee support.

Your message at this hearing is that pay-for-performance systems are a success in Federal agencies based on numerous evaluations that you have had. Our reading is not along those lines. If employee surveys point to problems within these pay systems, what other evaluations are you basing the success of the pay-for-performance systems on?

Ms. SPRINGER. Mr. Chairman, it is important to draw the distinction between the execution of specific programs and the notion of performance-based pay. What we find in the surveys, like the SES survey, is that most of our respondents do believe that performance should be a factor in determining pay.

In the areas where the implementation has not been at the level that we would expect, that doesn't negate the premise that people do believe that their performance should be recognized. It is more a matter of execution and how that has proceeded. It also, in some cases, is a function of training and just the basic infrastructure being in place. I believe both you and Senator Voinovich, as well as the panelists, have acknowledged that is foundational and critical to the success.

What I would say is that in the systems where the underlying infrastructure is in place, that you find a better result and better acceptance, and that is why we are encouraging this more measured demonstration approach that only proceeds when the agency has the infrastructure in place. But it doesn't negate the fundamental belief that most people believe that their performance rightfully should be a factor in determining pay.

Senator AKAKA. Mr. Spires, Ms. Rossides, Mr. Sanders, and Mr. Bunn, how are your agencies using the employee surveys and feedback to address the issues with pay-for-performance systems? Mr. Spires.

Mr. SPIRES. Yes, Mr. Chairman. We conduct an employee survey every year and some of those questions go to the heart of how we evaluate and reward our employees. On the not-so-positive side of this, our employees and our managers who are under pay-for-performance system tell us that we are still not yet measuring performance as well as we should. To distinguish those that are outstanding versus those that are just satisfactory or even below. Likewise, we are also told by our employees and managers that we are not yet dealing with poor performers as well as we need to.

But again, we think that a pay-for-performance system that we have implemented and have rolled out to our managers actually addresses some of these concerns. In fact, we are seeing increases in our employee satisfaction scores overall and we are seeing increases in these particular questions that have to do with how we both evaluate and we reward our managers.

Senator AKAKA. Ms. Rossides.

Ms. ROSSIDES. Yes, Mr. Chairman. We take a look at both TSA's survey results and the DHS survey results and look at all of the questions and the issues directly impacting the workforce. But the survey results give us the opportunity to focus on things like the importance of communicating directly with the employees on our pay-for-performance system and we have put a number of things in place this year to make that system transparent to the workforce.

Every TSO today can actually access their performance record online. We have direct communications with the TSOs on a quarterly basis. So the survey results really targets the leadership's attention on what our employees are asking for, what kind of information, and clarity around those survey results.

We are also corporately, all of the operating components are taking the DHS survey results and looking at what issues are common to all of the DHS workforce in terms of our law enforcement and security occupations. So those surveys are very valuable to us to help us guide the areas we need to focus on to improve the system.

Senator AKAKA. Dr. Sanders.

Mr. SANDERS. Mr. Chairman, we start with our surveys. We do an annual survey across all of the agencies in the Intelligence Community. And as I mentioned, those survey results suggest that our employees want this kind of system.

Let me tell you a statistic that may surprise you. About 50 percent of Intelligence Community employees have 5 years or less of service. And to be quite blunt, they are not going to have the patience to stay with us for a system that is based on tenure and time in grade. That is what they tell us in the focus groups.

We have reached thousands of employees in focus groups, 800 in the Office of the Director of National Intelligence alone, which is not much bigger than that, and that demographic and their views suggest that we need to develop and deploy this kind of system if we really want to win that war for talent that Senator Voinovich talked about.

Senator AKAKA. Mr. Bunn.

Mr. BUNN. Mr. Chairman, we have been using surveys for many years to assess the satisfaction of our civilian workforce. About 3 years ago, we started targeting the NSPS population both pre-implementation and post-implementation so that we could zero in on what the folks under NSPS are thinking about performance management, about pay and other workforce issues. We have been able to begin trending how our NSPS employees, what their attitudes are in comparison to the rest of the workforce. It is a cornerstone of our program evaluation effort.

That is how we are getting the valid employee feedback on what is going on with NSPS, in addition to visits to installations, focus groups with employees, and other normal outreach mechanisms. But we spend a lot of time focusing our questions specifically for our NSPS workforce and they have been extremely helpful so far as we have done our internal assessments, and we will continue to do that throughout the program. Thank you.

Senator AKAKA. Mr. Bunn, as you know, one of the main concerns raised by Federal employee unions over the recently proposed NSPS regulations is the definition of the term "rate of pay." The employee unions argue that the definition used by DOD and OPM would limit bargaining over procedures and work arrangements for determining overtime work, including rotation, seniority, and other methods for selecting employees fairly. Is it your intention to deny unions the ability to bargain over these type of issues?

Mr. BUNN. That is not our intention. We have heard the concerns through our formal public comment period with our recent revised regulations that were published back in May and through the national consultation process with the unions, their concerns over how we have defined the term "rate of pay."

Rate of pay is a term that is in the Defense Authorization Act from 2008 and it is specifically referenced as something that is not negotiable under NSPS. However, the term is not defined in the law and it is used in many different ways in current law, rule, and regulation. So what we attempted to do in our proposed regulation is define it in the context of NSPS.

We fully recognize that Chapter 71 of Title 5 applies with respect to collective bargaining in NSPS, but that term is one of the limitations in terms of collective bargaining, so we have attempted to deal with that in the regulation.

We are taking those concerns to heart. We are looking at that language that we have used. But we have no intention of denying the unions what they may bargain under the law under Chapter 71.

Senator AKAKA. OK. Can you elaborate on what exactly DOD is attempting to limit bargaining over?

Mr. BUNN. I think what the issue is, Mr. Chairman, is how we use the term, what we call applicability and conditions with respect to rate of pay. We understand that Congress's intent was to provide for collective bargaining for our bargaining unit employees who would be brought under NSPS with a limitation on bargaining over pay, which most Federal employees don't have a right to bargain over now. But there was a provision in the law that allowed for bargaining over procedures and arrangements with respect to that, which is a term of art in the labor relations arena.

What we have attempted to do is build and construct where we have some uniformity in how that bargaining would be done and define what is really meant by rate of pay, so, for example, decisions around modifying our pay band structure or adjusting the pay bands on an annual basis or the funding that goes into performance-based pay pools. There are certain things that we think are appropriate for bargaining under Chapter 71 rules and under the now Chapter 99 rules, but there are things that would remain off the table. So what we have attempted to do is define those things.

So for purposes of things like overtime, determining applicability on who would receive overtime, things that are currently in collective bargaining agreements, it is not our intent to go in and overturn those kinds of things that are currently bargained over in DOD.

Senator AKAKA. Well, thank you.

Mr. BUNN. Thank you, sir.

Senator AKAKA. Senator Voinovich.

Senator VOINOVICH. Thank you, Mr. Chairman. Before I ask my questions, I would like to thank Ms. Springer and Mr. Spires for your service in the Federal Government. I understand that both of you are going to be leaving. Ms. Springer and I got to know each other quite well over the years. She served over at the Office of Management and Budget and they convinced her to come back into government and I think you have done a really outstanding job over there. I appreciate your service and wish you good luck in our next endeavor.

Mr. Spires, I am not that familiar with your record, but thank you very much. I was impressed with what you had to say about what you are doing at the IRS.

Director Springer, OPM has an important operational responsibility to work with Federal departments and agencies to ensure reforms of performance management systems provide employees a fair and transparent system with meaningful opportunities to enhance communication, improve individual performance, and I would like to know how OPM has met this responsibility. Perhaps you could also make reference to a meeting in July that you had with the Chief Human Capital Officers where they discussed lessons learned from your recent survey of the Senior Executive Service. I would like to know what you have tried to do to make sure that these systems that we are putting in are robust and also maybe some of the things that you have learned from that meeting you had on July 14, 2008.

Ms. SPRINGER. Thank you, Senator. Let me also say that it has been a pleasure to work with you. As I said to Senator Akaka, there is really no better champion in the Senate than both of you for the Federal workforce, so thank you.

With respect to our oversight and our work with the agencies, one of the key things that we use is our Performance Appraisal Accountability Tool (PAAT) and there is a version of that specifically for the SES. The Chief Human Capital Officers (CHCO) Council, has worked with us in developing that, and that is one of the principal tools we use with each agency. We have OPM aligned with our different agencies so that there are dedicated people that work closely with the CHCOs and the performance managers at each agency.

So, not only do we work with them to assess their infrastructure and each of the things that the panelists have mentioned here today in their practice of performance development and monitoring, goal setting, all of the things, we assess them and give them a score based on that tool.

The community represented by the CHCO Council, half career, deputies that are career officials, have helped us develop that tool and they use it, as well, for their own diagnostic through the year.

We have had, as you have said, several sessions with the Council and the Subcommittee on Performance to have those agencies that score well on that tool share their best practices. In our hearing a year ago, you encouraged us to actually be more proactive in that area and use that council, and we have been doing that. Those performance-based pay practices are being adopted. They are being documented. They are being shared and our agencies tell us that that is helpful.

We are also having a CHCO Council Training Academy. That is the formal educational arm of the Council, again, dedicated in August to the SES survey and the agencies' practices that we learned there that got high marks. So the July meeting, the upcoming August meeting, all of these as well as the collaborative effort in developing our assessment tools help OPM to do that work.

Senator VOINOVICH. We have talked in the past about the SES and how it in certain areas has been very well received, in others, it has not. Can you give me an example of where you have had an agency where from the survey their folks weren't real happy and how your intervention has made any difference in terms of the next survey?

Ms. SPRINGER. If I may get back to you on that, I can give you some specific examples. However, I will tell you that in addition to getting agencies to reach a level of performance, there also is the effort of keeping the ones who have achieved it performing at that high level, as well. We are not focused just on the ones that need remediation, but also on maintaining the ones that have been doing a good job. But we will get you that information, Senator.

Senator VOINOVICH. Well, I think that if we are going to make any progress in this area, even this proposed legislation I am thinking about, it has got to start with the Senior Executive Service. And if you have people in there who are not happy with the system or don't feel that it has been implemented the way it is supposed to, the chances of making any progress with the rest of the agency, I think is remote. So I think that work is really very important, and I would really like to get your best guesstimate about which agencies are your super performers, and then your candid opinion about where we need to do some improvement.

Ms. SPRINGER. We will get that.

Senator VOINOVICH. Dr. Sanders, you have described a very comprehensive program that you have put together. I have two questions for you. One is, I just didn't realize all these agencies, Senator Akaka——

Mr. SANDERS. That is what keeps me awake at night.

Senator VOINOVICH. It is unbelievable. What guarantee do we have that when the next Administration comes in, that all this work that you have done is going to prove fruitful?

Mr. SANDERS. I don't know if there is a guarantee. As I believe you have heard Director McConnell testify, the personnel authorities of the Director of National Intelligence are somewhat ambiguous and the directives I have talked about, and maybe there is some good news here, the directives that I have talked about are literally agreements, treaties amongst the various departments and agencies in the IC. So where that legal authority is vague, the fact is you have cabinet Secretaries and agency heads who have said that ambiguity notwithstanding, we are going to agree as a matter of policy to move forward as a community, cutting across all of those departmental and agency lines. So while those regulations may not be "imposed," by the DNI, the fact that they were collaboratively derived may, frankly, make them more resilient in this transition. At least that is what I hope.

Senator VOINOVICH. Have you identified folks within the agencies where you are going to have a change in leadership that are committed to moving forward with this?

Mr. SANDERS. As I indicated, this effort has been largely led by the agency deputy directors, which are the senior career officials across the board, and that was done deliberately to ensure that we do have that continuity. They will be there through the transition and be prepared to brief the new agency heads.

In that regard, many of our agency heads are uniformed military, so they do transition independently of Presidential elections. We have already been able to sustain some of that continuity with the change in leadership in individual agencies.

Senator VOINOVICH. And you sense an understanding about how important this is for their ability to retain the folks they have and to attract other ones and they get that?

Mr. SANDERS. Yes, sir, I believe they do. We literally need a workforce that knows something about everything. We are at the cutting edge of this competition, this war for talent with the private sector, with other Federal agencies, and I think they understand that in order to keep that keen edge, in order for us to be competitive in that regard, we need the kinds of flexibilities that this system will give us. They also need that level playing field so that no one IC agency enjoys a competitive advantage over the others.

And since I have the floor, let me put one other thing on your radar screen for this Subcommittee. One of the things that I worry about is executive pay compression.

Senator VOINOVICH. I was just going to ask you about it.

Mr. SANDERS. This Subcommittee had a hand in fixing that problem 4 years ago. The passage of time has eroded those great benefits. And one of the things that I worry about is that your very best-performing executives, who will by definition be the first to reach that cap, are suddenly now against the ceiling. There are literally no financial rewards, at least those that go to base pay and annuity. This is something that I would ask this Subcommittee, the full Committee, this Administration and the next to take on before it becomes a crisis.

Senator VOINOVICH. We certainly will take that under advisement. When you are hiring new people, does the fact that you are implementing this performance system have any impact at all on their decisionmaking? In other words, we assume that it does, and I have mentioned that. But of anybody at the table, have you found that the fact that you do have this system in place has made your agency more attractive in terms of hiring folks?

Mr. SANDERS. Anecdotally, we get lots of stories from our recruiters, and as you may know, we get 100,000 to 150,000 resumes a year, the Nation's very best and brightest, and we have had to equip our recruiters with an information sheet on our pay-for-performance effort because that is a constant question amongst the best and brightest.

What are the rules of engagement when it comes to compensation? Will I be paid based on results or will I be paid based on tenure? And, of course, these are in most cases pretty young, pretty aggressive, very talented people, scary smart, and they, of course, want to be paid on the basis of results.

Senator VOINOVICH. Well, I know this, not anecdotally, but probably during the last maybe 6 or 7 years I have had at least a half-dozen people tell me they left the Federal service because they just felt that everyone was treated the same way and there wasn't any recognition for people who were performing at a higher level and cited that they were going someplace else where maybe their hard work and talent would be more appreciated than working for the Federal Government. Go ahead.

Senator AKAKA. Thank you very much, Senator Voinovich.

Ms. Rossides, according to a TSA briefing for Subcommittee staff, TSA uses quotas in its pay-for-performance system. I understand that unlike other Federal agencies, TSA is not prohibited from using quotas. However, I am concerned that the use of quotas undermines the pay-for-performance system. No matter how well an employee performs, he or she may not get a significant pay increase. Given that the use of quotas is prohibited in other agencies, why is TSA using them?

Ms. ROSSIDES. Mr. Chairman, we do not use quotas at all in our pay-for-performance system. In fact, we have what we have described to our employees as a rate and rank system. We have a sum of money that is part of our appropriation and the employees are scored at the end of the performance cycle under our pay-for-performance system based upon their performance during the year and they receive basically a rating on a scale of 100 points. And then depending upon the distribution of the performance of those employees, we give out our bonuses and pay awards based on that. But we do not have quotas under our system.

Senator AKAKA. At our hearing on the SES in 2006, Director Springer, you were crystal clear on the fact that quotas are prohibited for the SES pay-for-performance system. However, despite OPM and other agencies issuing regulations barring the use of quotas or a forced distribution of performance ratings, I continue to hear from employees, not just in the SES, that agencies are, in fact, using quotas. What guidance is OPM providing agencies on making meaningful distinctions in performance?

Ms. SPRINGER. In our annual guidance, which came out not long after that hearing, we added a dedicated section to agencies to reiterate to them that quotas were prohibited. That we would be including in our audit work reviews to make sure, to see if we spotted any instances of it. We also in cases where it came to our attention that an employee of an agency felt that they were subject to a quota, we wrote letters back to that agency to deal with it.

We have through the CHCO Council and very specific written communications of guidance to agencies reiterated very strongly that this is prohibited. It will be a constant effort for us of vigilance to make sure that, (A) we respond to what is reported to us, and (B) to generally, as a matter of course, be on the lookout.

Senator AKAKA. Thank you. Dr. Sanders, you state that IC employees will be evaluated on behaviors such as personal leadership, integrity, collaboration, and critical thinking. However, there is a dark side to promoting uniformity in the intelligence community in that it may promote a uniformity of analysis. I fear that convention and safe thinking will be rewarded and risk taking will be discouraged as more and more managers are trained to do performance evaluations with a common perspective. Analysis may miss what is important in order to conform with group thinking.

Differences of interpretation are important, and many have argued, as an example, that if the President has listened to the State Department's view of Iraq's weapons of mass destruction analysis, his decision to go to war would have been different.

What have you built into your performance evaluation process to ensure that not all analysts think alike and are not pressured into conforming their independent analysis to political pressure?

Mr. SANDERS. In fact, Senator, the very definitions of the words you described and the behaviors that we are trying to elicit amongst IC employees guard against that. For example, the definition of the performance element, Personal Leadership and Integrity includes the courage to speak truth to power. So employees have a set of behavioral definitions that deal with that specifically. Managers and executives, in their performance plans, under the behavioral part of them, are specifically charged with promoting and encouraging that courage to speak truth to power.

The same thing with collaboration. We have taken great care to define collaboration. It is not consensus. It is not group think. It is sharing information, but it is also conforming to analytic craft trade standards, which require alternative analysis. We want the sharp edges of a debate on any given intelligence topic to be exposed in the IC. So these definitions are deliberately intended and deliberately defined to do that, to guard against the very dysfunctions that you have described.

Senator AKAKA. Thank you. Ms. Springer, under the IRS pay-for-performance system, it is possible for a GS employee to get a higher rate of pay than their manager. According to a report from the Treasury Inspector General for Tax Administration on the IRS pay-for-performance system, this is a disincentive for GS employees to become managers. Similarly, under the SES pay-for-performance system, GS–14s and 15s are guaranteed pay raises that SES employees are not. Dr. Sanders points out the same problem in his testimony, that high-performing GS–15s are less likely to move into the SES if pay continues to erode.

Do you see a disincentive for GS–14s and 15s to enter into the SES because pay is not guaranteed under the SES pay-for-performance system? And if so, what do you plan to do about that?

Ms. SPRINGER. I think that there are several proposals that have been offered to deal with the disincentive from a pay standpoint of moving from the upper General Schedule levels into the SES. One of those that has been proposed, for example, is an automatic pay increase when you move up to the SES. That is something that we would be interested in exploring and working with the Subcommittee on. And, the SEA, I might add.

The whole challenge, and I don't think this is so much a performance-based pay issue as it is generally a pay issue, and the problem that you have moving from the one system to the other is a real issue and it is becoming increasingly so. I think that, clearly, we need to do something. If we don't, and if in the next Administration this isn't taken on, I think we will see more and more people disinclined to move into the SES. And, that is certainly not a desirable outcome.

But one that I would suggest off the bat that OPM and others working with your Subcommittee should do is to look at that proposal of an automatic increase.

Senator AKAKA. Thank you very much, Director Springer.

Mr. Mihm, as the various employee surveys show, there are still many concerns that employees have with the pay-for-performance systems. In 6 months, the new Administration will take office. What are the top three employee concerns that you think should be addressed before the transition occurs?

Mr. MIHM. Well, before the transition occurs, I think it will be very difficult because I think the top employee concerns, at least that we have seen in looking across the various agency surveys, and frankly GAO's, as well—we are not perfect by any means in this, our own employee concerns show these types of things—are long-term issues that need to be addressed.

The first, I would say, Mr. Chairman, is the clarity, honesty, and integrity of the entire performance management system. It is something there has been a lot of discussion about here this afternoon, something that you have certainly pointed out, of making sure that we have a good, validated, robust performance management system in place that has the confidence of managers and employees that we are accurately measuring and fairly measuring what we purport to measure. So that would be the first issue.

Second is, to make sure that we have adequate training in place, both for supervisors and managers. One of the things that you mentioned in your opening statement, sir, was about the costs associated with doing pay-for-performance the right way. In fact, kind of the flip side to that is that if you want to try and kill it, the way to kill it is try and do it on the cheap because the experience from the demonstration projects, and our experience in GAO is it takes an investment. It is an investment that is worth it, but it takes an investment if you are going to do pay-for-performance. It takes an investment initially in technology and making sure you get a robust performance management system, but it takes an investment in training, and that is an ongoing investment that you have to make.

And it is not just on how to do a performance appraisal. It is training on how to manage, how to lead, how to supervise, and there are huge gaps across the Federal complex in those types of basic leadership and supervisory skills.

And then the third key area I would say is making sure that we have the alignment in place, and this is making sure that the organizational goals cascade all the way down into individual performance expectations because that is going to be a key part of the transition. Because of the work of the Congress, the work of the agencies here and other agencies, they really have put in place a system that the next Administration, the next Congress can use as they are implementing their program priorities to make sure that they cascade down throughout the organization. It is by no means perfect, as you have been hearing. But it has taken a lot of work to get to where we are now. That is a tool that the next Administration, the next Congress can use in order to deliver effective results for the American people.

So I would say those are three key things we should focus on.

Senator AKAKA. Thank you very much, Mr. Mihm. Senator Voinovich.

Senator VOINOVICH. One of the things that I would be interested in knowing more about is training. With NSPS, for example, did the Department use a train-the-trainer model, or am I mistaken? Did you bring in other people to do it? I thought you trained the trainer and then you worked it out within the organization. Did that interfere with the job of those individuals that were taken off whatever they were doing to become involved in the training, and second of all, in terms of your budgets as to the allocation of resources for training?

I go back to my early days here when I did a survey when I first came to the Congress and I sent a letter out to 12 agencies and I asked them, how much money do you spend on training, and I think all of them said that they didn't know except one, and they said, we know but we won't tell you. [Laughter.]

Senator VOINOVICH. So I would like you to comment on both of those things, or anybody who wants to chip in on this question. We will start with you, Mr. Bunn.

Mr. BUNN. Senator, thank you. We used kind of a hybrid approach with respect to how we trained our workforce on NSPS. We certainly did the core development of the training, the materials, and delivery through a train-the-trainer approach, and that was for a couple of reasons. One, we wanted to ensure that we maintained control over the content and that the training materials themselves were of high quality and that we had the best control possible over those. We also wanted to ensure that we had a cadre of performance management experts that we could tap into as we moved through the process and institutionalized NSPS and pay-for-performance throughout the Department.

So we made a conscious choice to, in some cases, take people off of what they were doing and get them those competencies and skills in performance management, and it wasn't just their platform training skills but it was actually their performance management skills that we are now able to tap into.

We did use some external training vehicles, contractors. We brought in some retirees from various sources to help with training, but that was mostly to offset the load. But we certainly used our own internal resources to do that.

Senator VOINOVICH. What guarantee did you have that the last spiral received as much training as the first spiral, because Senator Akaka and I had a chance to visit with that first group of individuals and then in Ohio, I had a chance to visit with some of those folks. But one of the questions I had was that you started out with this great program and people understood it. What did you put in place to guarantee that that training was consistent with what you had in the beginning?

Mr. BUNN. Well, we certainly applied the resources to it and maintained the momentum as demonstrated by the resources we put to the whole program. We have spent millions of dollars implementing NSPS. It is no secret. We have reported on that before. And the majority of the resources we have spent have been on training.

What is interesting, Senator, there was a lot of attention paid to the first adopters, what we call our spiral 1.1s, those first organizations that came in, and we certainly saw the return on that investment. There was leadership engagement from all corners of the Department, including the organizations themselves.

I would probably point to the engagement of Deputy Secretary England and his engagement and leadership in maintaining cognizance over NSPS for the past 3 to 4 years as probably the biggest factor in ensuring that we had the resources as we went through implementation.

And what we are seeing so far in our employee surveys is that the folks who came in in the second and third tranches of NSPS, actually, the training was a little bit better than the very first set, mostly—and it makes sense—we learned lessons. We adjusted our training materials. We adjusted the content based on feedback we got from those first organizations and actually delivered a better product. We are also working on ensuring that we have institutionalized that training really from here on out so that we maintain and sustain the training as part of our normal human capital training for any organization that comes under NSPS.

Senator VOINOVICH. But the thing that really helped out was that Mr. England made it a very high priority and stayed on top of it.

Mr. BUNN. Absolutely, and to this day, he has maintained his awareness and he is very much in charge of NSPS.

Mr. SPIRES. I might just add real quickly that once our system had been set up, one of the things that we did was brought in an independent contractor with specialty in this area. This enabled focus groups and other types of evaluations to go on directly from the employees so that we could get candid feedback as to what was working well. But more importantly, what was not working well, and have adjusted based on feedback.

Senator VOINOVICH. That was your snapshot to look at how things were going?

Mr. SPIRES. Yes, sir.

Senator VOINOVICH. Ms. Rossides, I travel around the country and I have a special relationship with your people because I have a pacemaker, so I get a chance to talk to a lot of them.

Ms. ROSSIDES. Yes. [Laughter.]

Senator VOINOVICH. And I do my own survey as I go along. And I must say that in the last couple of years, things have gotten better. The issue seems to be two things, that some of the employees are not aware of the flexibilities that are available to them, particularly if they have a gripe that they want to have taken care of, and the others are complaining, some of them, that the system of evaluation is too objective and that there isn't enough subjectivity in the evaluation. So I don't know whether you would comment on both those things.

And last but not least, I know that there is going to be an effort made to eliminate the flexibilities that we gave your agency when it came into being because we had to stand up, some 50,000 people overnight. What would be your opinion in the event that these flexibilities were yanked and we went away from this very aggressive experiment? Fifty-five-thousand people in performance evaluations, it is a big deal.

Ms. ROSSIDES. Yes, sir, it is, and if I could start with that because I think the flexibilities that ATSA provided to TSA are enormously critical to our success in building this agency and continuously improving its performance. And specifically, those flexibilities have allowed us to provide to our front-line officers differences in pay for hard-to-fill airports, for example. It has allowed us to pay our part-time TSOs the full-time equivalency under health benefits. Those flexibilities have allowed us to build this pay-for-performance system and to continue to improve it.

Our PASS system is only in its third year, and as a lot of my colleagues here have said, it takes several years to get it right. And our commitment is to make sure that we continuously improve upon this and hear from our officers, just like you do.

The system is predominately objective. Roughly 70 percent of the assessment of the officers is an objective assessment. It is based on their performance on critical aspects of the job, including their ability to recognize explosive devices on the X-ray. It is based specifically on their training that they complete. And honestly, we think in the long term, this percentage of objectivity will help to build the credibility of the system for the officers and for the managers.

Last, I would say that this entire process requires the commitment of the top leadership, and your question to Dr. Sanders about the importance of continuing this kind of a system, we know we have several years of continuous improvement in this system. The leadership of TSA is predominately career people. Our succession plan for both the transition and the long-term maturity of TSA is to ensure that we have career people in the jobs, both in our human capital arena, but across the whole organization. And this is something that you can't start and stop in a year. This is something that takes years to perfect because when you are rolling out something like this to 55,000 people, it is an enormous transition. But we believe very strongly it is critical to our mission success.

The kinds of feedback that you are getting, the kinds of experience that you see as a passenger who requires special attention, shall we say, because of your pacemaker, is exactly the kind of concrete skill that we are building in our officers, and that is exactly what we are trying to measure through this pay-for-performance system.

Senator VOINOVICH. Thank you.

Ms. ROSSIDES. Thank you.

Senator AKAKA. Thank you, Senator Voinovich.

I have a question to Mr. Bunn and Mr. Spires. DOD is required to make meaningful distinctions in performance and not institute a quota system or engage in forced distribution. It has come to my attention that some DOD managers have been told that most employees should receive a performance rating of three. This looks a lot like forced distribution.

At the IRS, the Federal Mangers Association issued comments on regulations to revise the IRS broadbanding system and called for the elimination of performance rating caps or quotas.

Can both of you tell me what measures you are taking to ensure that you are making meaningful distinctions in performance and not arbitrarily lowering scores? Mr. Bunn.

Mr. BUNN. Mr. Chairman, I will start. We have heard that kind of feedback. I think the results, as demonstrated through this past performance cycle, say otherwise. We have a five-level system, as you mentioned. We had over 100,000 people rated. Roughly 57 percent of those folks were rated at level three, 36 percent were rated at level four, which is "exceeds expectations," and about 5 percent were considered role model, and then less than 2 percent were unacceptable or what we call "fair" performers. So that distribution, I think, shows that we are making meaningful distinctions.

We did set the bar high when we developed our performance evaluation system to ensure that it was rigorous and not that the expected outcome would be a three, a valued performer, but that it would take a lot to get above the valued performer level three. And I think, as I said before, when you look at the overall results, I think we have made meaningful distinctions, and those performance ratings also drove performance-based salary increases and bonuses. So the meaningful distinctions extended not only to the ratings, but also into the rewards and salary increase aspect of it.

So I would argue that we have taken great pains to ensure that we don't have forced distribution. Certainly all of our training materials, all of our regulations and policies prohibit forced distribution. It could be that there is some miscommunication out there about what the expectation should be, and we have through our evaluation process gathered feedback on that—and will take the steps necessary to make sure that what we are training and what we are communicating are appropriate. Thank you.

Senator AKAKA. Mr. Spires.

Mr. SPIRES. Mr. Chairman, first, I would like to say that there are many differences in my having come into the government from my 20 years in the private sector. But this challenge of how do you distinguish performance, but then also have the issue of limited amount of cash at play is a classic problem that not only faces those of us in the Federal Government, but in the private sector, as well. The issue of grade inflation comes into play here significantly, as well.

Specifically at the IRS, we have some guidelines because we don't want to have grade inflation in the sense that you get a lot of people at the "outstanding" level unless they deserve to be at that level. We have a system that has some checks and balances. We issue guidance, and I call it guidance—it is not a quota system—but is guidance around what we would expect the distribution to look like.

However, we have Performance Review Boards at both the organizational level and at the enterprise level across all of the IRS. Managers can come in and they can make a case for why individuals, for instance, in their organization should be rated at generally a higher level than the overall average and make that case.

So it is that balance point. We are trying to strike for balance. We don't have a system where essentially you can rate everybody "outstanding" and that will hold. Again, from a grade inflation perspective, is that really the case? It is tough. I mean, this is a tough problem because you are asking managers to rate their employees and to be open and honest. But also to give them the right rating. It is that balance point that we are striking by providing some guidance. Also having a process through these Performance Review Boards to ensure that we are doing the right things if people truly are operating at an outstanding level.

Senator AKAKA. Thank you very much.

Now, I have one final question not related to pay-for-performance and this is to Mr. Bunn. As you know, last year's NDAA contained a provision I authored to help reemployed annuitants at DOD who were forced to retire due to a reduction in force. I have employees in Hawaii who continue to ask me when DOD will issue regulations on that provision. Can you tell me the status of those regulations?

Mr. BUNN. I can certainly take that question back. That is not within my portfolio, but I am aware of that issue. I know that the policy that you are talking about is in the final stages of review within the Department and it should be out soon, but I will certainly get back to you with a more specific estimate for when the policy will be out.

Senator AKAKA. I would appreciate that.

Mr. BUNN. Yes, sir.

Senator AKAKA. Again, I want to say thank you to this panel for your responses. It will certainly help us in what we are trying to do. So thank you very much.

[Pause.]

I want to welcome our second panel, Carol Bonosaro, President, Senior Executives Association; John Gage, President of American Federation of Government Employees; Colleen Kelley, National President, National Treasury Employees Union; Jonathan Breul, Executive Director, IBM Center for the Business of Government; and Dr. Charles Fay, Professor, School of Management and Labor Relations, Rutgers University.

As you know, our Subcommittee requires that all witnesses testify under oath, so I ask all of you to please rise and raise your right hand.

Do you solemnly swear that the testimony you are about to give the Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. BONOSARO. I do.

Mr. GAGE. I do.

Ms. KELLEY. I do.

Mr. BREUL. I do.

Mr. FAY. I do.

Senator AKAKA. Thank you very much. Let the record show that the witnesses answered in the affirmative, and let me remind you that although your oral statement is limited to 5 minutes, your full statement will be included in the record.

It is good to see you again, Ms. Bonosaro. Please proceed with your statement.

TESTIMONY OF CAROL BONOSARO,[1] PRESIDENT, SENIOR EXECUTIVES ASSOCIATION

Ms. BONOSARO. Mr. Chairman, the Senior Executives Association appreciates the opportunity to share our experiences and views related to the current SES pay-for-performance system.

Since the creation of the SES in 1978, with its performance awards and Presidential Rank Awards, its members have been subject to a rigorous pay-for-performance system. That system was changed, as you know, in 2003 and has been in effect now for three cycles. A system that was meant to be transparent, flexible, and to reward performance has instead become a disincentive for many of the best employees who might otherwise desire to join the SES.

Senior Executives take on more duties, work longer hours, and have fewer rights than GS–15 managers, yet they receive no locality pay, no compensatory time, and no guaranteed annual pay raises, unlike General Schedule employees. With a large number of Senior Executives eligible to retire, it is critical that issues with the current pay system be corrected so that we will retain a highly qualified pool of applicants to fill their positions.

A comprehensive survey of the SES that SEA undertook in 2006, continued feedback from our members, and a survey recently completed by OPM shows several areas of concern with the system, in-

[1] The prepared statement of Ms. Bonosaro appears in the Appendix on page 119.

cluding pay overlap between GS–15s and the SES, perceived quotas, and lack of transparency in both the rating and pay adjustment processes.

One of the most disturbing findings of the SEA's survey was the opinion of 47 percent of the respondents that GS–14s and 15s are losing interest in applying to the SES. The OPM survey reported that only half of Senior Executives believe that the current system is helpful in recruiting qualified applicants to the SES. Anecdotal evidence we continue to receive indicates that the narrowing gap between SES pay and GS pay, coupled with the inconsistency of the SES system, result in a less attractive Senior Executive Service.

Another issue highlighted by the SEA's survey was the perception that agency quotas, not actual performance, drive decisions about performance levels and salary adjustments. Downward pressure on rating levels exists within many agencies and we continue to receive reports from executives whose ratings were reduced without explanation.

The certification process itself is a cumbersome one that some smaller agencies do not even attempt. It must be done every 1 or 2 years, and often the decision to certify does not come until well into the performance cycle.

We are also concerned with the consistency by which the SES pay system is being implemented. The OPM survey found that communication of the results of the system to executives—ratings, pay adjustments, performance awards—varied greatly from agency to agency. However, the greatest inconsistency has arisen from the total discretion that agencies have with regard to pay, and it is not unusual to find a disconnect between ratings and pay adjustments.

As one Senior Executive told us, he received no pay increase for several years despite receiving "fully successful" ratings for his performance at the Department of Energy. Largely because of this, he voluntarily resigned his position in the SES to move back to the "EJ" excepted service, where he then received the same 4.49 percent pay increase given to GS employees this year in the Washington region.

Our written testimony provides several other examples of this inconsistent and, on its face, arbitrary treatment.

In the 3 years of experience under the new system, one of the most striking results is the low salary adjustments. In 2007, the most recent year for which data is available, or at least was available prior to today, those SES rated "fully successful" the year before received an annual average salary increase of only 2 percent, substantially below the increase, 2.64 percent, received by GS employees in the Washington, DC area.

Given these issues with the pay system, it is no wonder that some who might otherwise aspire to the SES now perceive that the risks far outweigh the rewards.

SEA's recommendations for legislative fixes to the pay system include ensuring at least a minimum annual increase for those rated "fully successful" or better and including performance awards and retention allowances in the high-three retirement calculation. I think this would no doubt go a long way towards dealing with the pay compression Director Sanders referred to and even that Dr.

Springer admitted in her testimony, or in her response to your question, that pay compression is a problem.

We also recommend a longer certification period, guaranteed funding of at least minimum SES salary adjustments, a minimum increase in pay for new Senior Executives, rules for pay tiers if an agency has them, feedback to Senior Executives, and greater transparency in the Administration of these systems.

It is SEA's hope that with the adoption of our recommendations, the SES pay system will be one that adequately and fairly compensates those who perform the most challenging and important jobs in the career civil service and which will continue to attract quality candidates in the future. Thank you.

Senator AKAKA. Thank you very much, Ms. Bonosaro. Mr. Gage.

TESTIMONY OF JOHN GAGE,[1] PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. GAGE. Thank you, Mr. Chairman, for the opportunity to testify today. I will focus my remarks on the National Security Personnel System and TSA's past system. And thank you, too, Mr. Chairman, for your leadership in the 2008 National Defense Authorization Act, which in addition to excluding blue collar workers from NSPS, the law fully restored collective bargaining rights.

But AFGE remains profoundly concerned about the NSPS pay system. There are many issues, including new illegal restrictions on bargaining rights, the disconnection between pay and performance, despite what employees have been told, the requirement that performance ratings be pushed into a forced distribution or bell curve, the suppression of wages by permitting bonuses to be paid instead of base salary increases, and the virtual elimination of merit promotion.

On May 22, DOD proposed revised NSPS regulations which cynically and purposely attempt to evade Congress's mandate for collective bargaining. DOD intends to implement these regulations in October, preventing the next Administration from reviewing the pay system and making adjustments before it goes into effect. This double-cross is unfortunate, but predictable. We strongly urge the Congress to block the implementation of the May 22 proposed regulations.

Section 9902(e)(9) of the 2008 NDAA clearly says any rate of pay established or adjusted in accordance with the requirements of this section shall be non-negotiable but shall be subject to procedures and appropriate arrangements of Paragraphs 2 and 3 of Section 7106(b), the labor statute. And yet in its proposed regulations, DOD has broadened its definition of rate of pay to include the phrase, "and the conditions defining applicability of each rate." The proposed regulation goes on to list conditions defining applicability of each rate for a dozen pages, clearly intending to eliminate any bargaining of the very procedures and arrangements Congress mandated that DOD negotiate.

It is an act of cynicism and defiance on DOD's part to think it can define itself out of its statutory obligation. We urge the Senate to clarify in the Fiscal Year 2009 Defense Authorization Act that

[1] The prepared statement of Mr. Gage appears in the Appendix on page 134.

rate of pay does not include conditions defining applicability of each rate.

The 2008 NDAA also ensures that an NSPS employee will be guaranteed 60 percent of the GS nationwide pay adjustment and 100 percent of the GS locality adjustment every year, provided that the employee is rated above "unacceptable." As you know, DOD was prepared to give only 50 percent of the pay adjustment to employees in 2008 and none of its annual adjustment in 2009. The new law ensures that the full amount of the nationwide pay adjustment go for base pay increases.

But to ensure the viability of the DOD pay system, DOD must be required to adjust its pay bands by the full amount of the nationwide pay adjustment, just as grades in the GS system are adjusted annually. In DOD's proposed regulations, the Secretary can adjust different pay bands by different amounts and the minimum and maximum rates of each pay band by different amounts.

Mr. Chairman, we have heard from so many managers and employees about the implementation of this new pay system. They complain that it is unpredictable, unfair, and opaque. Supervisors have been ordered to withhold information from their employees about their ratings. The pay pools are required to force performance ratings into a bell curve, and the decision about how and by how much to compensate an employee for performance is completely arbitrary.

When supervisors substitute bonuses for salary increases, workers lose not only in base salary, but also in their defined benefit pensions and in contributions to the Thrift Savings Plan. The result, Mr. Chairman, is the suppression of wages and benefits for civilian DOD employees.

Under NSPS, promotions are rare. Employees might be given additional duties by their supervisor with a subjective pay raise or bonus in what NSPS calls reassignments, but there will be no clear pathway to that advancement, nor is there a requirement that the reassignment be open to competitive or even that other employees know about the opportunity. The Merit Promotion System will be all but dead. Bias and favoritism are inevitable.

On Transportation Security Officers, Mr. Chairman, TSOs continue to be drastically underpaid, around $30,000 annually. TSOs are subject to the pay system known as PASS. While it is virtually impossible to obtain data or even basic information about how the system is supposed to work, to make matters worse, TSA continually changes the playing field. Employees believe that PASS is based on favoritism, not performance. Last December, TSA disclosed that TSOs would receive a smaller pay raise in 2008 than in 2007, even if they received the same or better performance rating as the previous year.

On March 25 of this year, TSA Administrator Hawley sent a memo to all TSOs making changes to PASS, agreeing that it had become too complicated and that TSOs are being trained and tested on different standards and these standards do not reflect how TSOs do their job. Yet in May, TSA implemented the infamous image test, and in a stroke of astounding contradiction continued to hold flawed previous test results against TSOs.

To make matters worse, TSOs still have limited access to image test training. The new training software is not available at all airports and in some cases does not work. Trainers are given wrong information about identifying threat objects during the test, which led directly to TSO test failure.

TSOs with excellent work histories and commendations have been told they may lose their jobs. But instead of correcting the test and properly training TSOs, the agency has come up with another policy that continues to hold previous test failures against TSOs but allows management to retain and retrain whoever they want, making the new and improved image testing even more unfair than it was.

TSA consistently ranks at the bottom of all surveys of employee morale in the Federal Government. This workforce is too important to be treated so callously. These workers need a rational pay system before the attrition rate climbs higher. AFGE urges the Subcommittee to end the PASS system and place TSOs under the General Schedule that applies to other Federal workers, including their colleagues throughout DHS.

That concludes my statement, Mr. Chairman.

Senator AKAKA. Thank you very much, Mr. Gage. Ms. Kelley.

TESTIMONY OF COLLEEN M. KELLEY,[1] NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Ms. KELLEY. Thank you very much, Chairman Akaka, Ranking Member Voinovich, for the invitation to discuss pay-for-performance systems in the Federal Government.

The President's fiscal year 2009 budget submission reaffirmed his commitment to replace the current GS pay system with a more subjective pay banding system. OPM's December 2007 report touts the Administration's alternative so-called pay-for-performance systems now in many Federal agencies as successful experiments.

NTEU does not agree with the notion that the GS system needs to be replaced, and I believe the evidence is now clear that current pay-for-performance systems have not been successful. To the contrary, alternative pay systems have produced a litany of failed experiments, widespread employee dissatisfaction, inequitable distribution of resources, abuse in ratings systems, and rampant employee confusion leading to low morale. I don't know of one pay-for-performance system that currently gets good reviews from employees who are working under it.

The goals of recruiting and retaining high-quality employees and better accomplishing the agency mission are simply not being met by these pay systems. NTEU believes that for a pay system to be credible and effective, it must either be set in statute, like the GS system, so everyone understands the rules and consequences, or there must be collective bargaining so employees can have a role in the pay system and can have remedies for unfairness.

The Transportation Security Administration has neither collective bargaining nor a statutory pay system. It is a prime example of the failure of a current pay-for-performance system. Under the TSA PASS system, employees are constantly tested, but if they fail,

[1] The prepared statement of Ms. Kelley appears in the Appendix on page 149.

they are not told what they did wrong. The training is minimal. A majority of Transportation Security Officers do not even know what is expected of them to get a pay raise. Only 21 percent of TSA employees believe that promotions are based on merit. Fewer than one in four believe that their pay raise is determined by their performance.

The PASS system has resulted in the highest attrition rate in the Federal Government, and now TSA has awarded a $1.2 billion contract to Lockheed Martin to perform its human resource activities, including pay. NTEU believes this taxpayer money could be better spent by putting TSOs under the existing GS pay system and increasing staffing and reducing airport congestion, rather than increasing contractor profits. TSOs must also be afforded collective bargaining rights like their coworkers throughout the Federal Government.

At the IRS, where we heard earlier that managers are under a pay banding system, the Federal Managers Association has spoken out against the system's forced pay quotas and they said that pay was not necessarily dependent upon performance ratings. In addition, the Treasury Inspector General for Tax Administration found a number of deficiencies in the IRS managers' pay-for-performance system. A July 2007 TIGTA report states, "The IRS risks reducing its ability to provide quality service to taxpayers because the IRS pay-for-performance system potentially hinders the IRS's ability to recruit, retain, and motivate highly skilled leaders." If these alternative pay systems are jeopardizing the achievement of an agency's core mission, in this case to provide quality service to taxpayers, how can we justify continuing or even expanding their use?

Even at agencies where pay is negotiated through collective bargaining, NTEU has seen problems. In September 2007, NTEU won an important legal battle when an arbitrator ruled that the Security and Exchange Commission system was found to discriminate against African-American employees and employees that were 40 years of age and older. The SEC has since agreed to freeze its flawed merit pay system and is working with NTEU.

Similar problems existed at the FDIC, where we collectively bargain over pay. Only 12 percent of employees surveyed found that the pay system rewarded performance there at the FDIC. To Chairman Bair's credit, that program was also suspended and NTEU is also working with that agency on a revision.

The GS system, though much maligned, has rules, standards, and evaluations which must be written. Employees receive within-grade raises and career ladder promotions based on performance criteria. Locality adjustments make it market sensitive. Flexibilities, like awards, quality step increases, telework, student loan repayment, and others, are authorized and should be used more extensively to attract and keep talented employees in government.

In conclusion, NTEU supports a moratorium on new pay-for-performance systems and a review of those that are in place to see whether they are successful in accomplishing their goals. Those that are failing should be canceled. NTEU also strongly believes that collective bargaining over pay must be provided to employees under alternative pay systems to provide employees with a check on abuse.

Thank you again for the opportunity to testify and I would welcome any questions you have.

Senator AKAKA. Thank you very much, Ms. Kelley. Mr. Breul.

TESTIMONY OF JONATHAN D. BREUL,[1] EXECUTIVE DIRECTOR, IBM CENTER FOR THE BUSINESS OF GOVERNMENT, AND PARTNER, IBM'S GLOBAL BUSINESS SERVICES

Mr. BREUL. Thank you, Chairman Akaka and Senator Voinovich, for the opportunity to discuss performance pay systems in the Federal Government.

The question of how to compensate civil servants remains what I would call a thorny issue. Public sector positions no longer necessarily offer a job for life, and Federal departments and agencies are increasingly in competition with the private sector to recruit and retain top performers. One solution widely used in some parts of the private sector is to replace or complement the traditional civil service system of automatic salary increases based on length of service with financial reward for good performance, or performance-based pay.

In order to gain a better understanding of the challenges and issues related to performance-related pay, the IBM Center has sponsored and published three recent research reports by public management experts. The first report, "Designing and Implementing Performance-Oriented Pay Band Systems," is by Jim Thompson at the University of Chicago. According to Professor Thompson, pay banding is not a new concept to the public sector. The essential concept is that for purposes of salary determination, positions are placed within broad bands instead of narrow grades. And according to Mr. Thompson, the preponderance of data shows that these systems have achieved high levels of employee acceptance. However, the degrees of success seem to vary depending on how well those systems have been designed and implemented.

Mr. Thompson's report goes on to describe nine different performance-oriented pay band systems that have been in operation in the government, in some cases for more than two decades. He makes the case that successful designs are those that, one, achieve a balance between efficiency, equity, and employee acceptance; two, acknowledge the soft as well as the hard design features; and three, fit the organizational context.

A second IBM report is "Managing for Better Performance: Enhancing Federal Performance Management Practices," by Howard Risher and Charles Fay, who is sitting to my left. The authors of this report recognize that performance management is recognized worldwide as a critical factor in helping individuals and organizations achieve their goals. When done correctly, performance management becomes a powerful and effective tool to drive individual and organizational performance. When done poorly, it can create an atmosphere of distrust between managers and employees, ultimately limiting performance and the organization's ability to achieve its full potential.

Fay and Risher argue that the responsibility for effective management of employee performance rests squarely on the shoulders

[1] The prepared statement of Mr. Breul appears in the Appendix on page 161.

of executives and front-line managers. They emphasize the management of employee needs are a core responsibility of every manager. In this view, it is critical that managers understand and effectively practice the fundamentals of performance management, including planning, monitoring, developing, appraising, and rewarding employee performance.

The third report is "Pay for Performance: A Guide for Federal Managers," by Howard Risher. Risher insists that research over the years confirms that organizations benefit when they recognize and reward employee and group performance. He explains that for the new system to succeed, managers need to be comfortable with their new role in overseeing such systems. This makes it essential for them to play a role in planning and implementing the new systems.

Risher argues that pay-for-performance, including the reward system, must be an integral part of an organization's overall strategy to create a performance culture. Further, he contends that Federal agencies will have to overcome barriers of cynicism and distrust among Federal employees, and there will be what he calls bumps and detours along the way, so agencies must expect to adjust their plans with experience.

He concludes that, in the end, the new policy can be expected to contribute to improved agency performance. Importantly, however, Risher warns that the transition will not be easy. "This may prove to be the most difficult change any organization has ever attempted," but in the end, he believes it will better serve the needs of the Federal Government than the current General Schedule salary system.

In conclusion, the question of how to compensate public employees remains a thorny one. Performance pay is an appealing idea, but research indicates that implementation, as well as improving government performance, remains complex and deceptively difficult, both technically and politically.

Thank you, Chairman Akaka and Senator Voinovich, for holding this important hearing and for remaining engaged on the important issue of improving management and performance of government.

Senator AKAKA. Thank you very much, Mr. Breul. Dr. Fay.

TESTIMONY OF CHARLES H. FAY,[1] PROFESSOR, SCHOOL OF MANAGEMENT AND LABOR RELATIONS, RUTGERS UNIVERSITY

Mr. FAY. Chairman Akaka and Senator Voinovich, thank you for giving me the opportunity to testify on compensation and pay-for-performance again. Given my background, it should be obvious I have a bias favoring strong performance management systems and pay-for-performance in general. When well designed and well implemented, these systems can and do increase employee understanding of what is required of them and increase both their performance and organizational outcomes. Flawed programs can and do decrease productivity and employee job satisfaction.

[1] The prepared statement of Mr. Fay appears in the Appendix on page 165.

I think it is appropriate for the government to institute pay-for-performance systems. It is clear that agencies have done their homework in studying the large literature on private sector performance management and pay-for-performance systems. That said, I see many of the same problems in the various systems implemented by government agencies that plague similar systems in the private sector.

First of all, these programs seem too ambitious. They are trying to do too much, too fast, for too many.

Second, the culture that makes "meets standards" performance a failure, and it is in most of these systems, needs to be changed. When "meets standards" is a failure, you are going to end up with an excellence entitlement mentality and no system will be able to differentiate high performers from standard performers.

Third, managers need to be held accountable in terms of pay and their own performance for performance management and pay-for-performance. Many managers think they are far too busy to do pay-for-performance, to do performance management, and if managers don't have time to manage, it is questionable what they should be doing.

The programs and particularly the DOD programs confuse market adjustments and performance bonuses. Employees expect to be kept whole against market, and it is clear from union and employee complaints that they know the difference between market adjustments and performance bonuses. Hence, all the arguments about comparison with GS, which is getting the FEPCA adjustments, as compared to what is happening in the pay-for-performance systems. The market adjustment issue is particularly important to government workers because they generally make less than equivalent private sector workers, especially from about GS–8 or GS–9 upwards.

For a variety of reasons, government employees are much more heavily unionized than private sector employees. You can't simply import private sector programs into government and expect them to work well. Unions in general are opposed to performance management and pay-for-performance systems because employees and employee representatives lose partial control of terms and conditions, and you have heard that again today. I hear both that employee representatives have been active in the design and Administration of these systems and that they have been precluded from participating in that. In a unionized organization, they should be very heavily involved in designing and implementing the systems.

Having bonus pools, as the Department of Defense system does, where ratings and bonuses are calibrated, is one of the better designed approaches in these systems. However, calculating the bonus pool solely as a function of the salaries of the members of the pool is inappropriate. It rests on the assumption that the aggregate performance of employees making up each pool is equal across pools and that the employees of each pool are equally strategic to the agency or the department. Neither of these assumptions is likely to be accurate.

Calibration committees should not be negotiating ratings or awards. When bonuses appear to employees to be a function of the negotiating skill of their manager, or when there is a drive for some specific distribution of ratings, the whole system loses any value in motivating those employees.

At the same time, there should be an effort to standardize reward share numbers across pools. A "meets standards" employee should receive the same number of shares regardless of the pool to which he or she is assigned. Similarly, the range of share measures that each performance level can be assigned is problematic. When a "meets standards" can be assigned any one of four or five different sets of performance shares, it is clear that there is lots of room for bias and arbitrariness in the system.

Performance management systems and pay-for-performance systems for employees who work as parts of groups or teams need to have team citizenship taken into account as part of their performance. Otherwise, they will be motivated to maximum individual performance even at the expense of suboptimizing group performance. Performance ought to be rated and rewarded at the level at which it occurs, and particularly in the kind of service jobs at the government, it rarely occurs at the individual level.

It is not clear what evaluation systems have been built into the various pay-for-performance systems. The previous panel discussed some of that, but I will make one point about that in a minute.

The 2007 Annual Employee Survey results of the Department of Treasury, for example, notes that only 27 percent of employees believe pay raises are determined on how well employees perform their job. Only 32 percent of employees state they typically receive formal or informal feedback from their supervisor. Those are signs of a broken system or one that never worked in the first place.

Furthermore, I think that just looking at employee reactions to systems is really the wrong measure and I was surprised that none of the people on the previous panel spoke to the real issue that private sector organizations always look for as a measure of goodness of the pay-for-performance system, and that is the performance of the organization gets better. If you are tying individual criteria and performance criteria, to organizations' success, then the measure of success of the system is whether the organization increases its success.

Thank you. I will be happy to answer any questions.

Senator AKAKA. Thank you very much, Dr. Fay.

My first question is to all of the witnesses. As we discussed on the first panel, I continue to hear from employees about the use of quotas or forced distribution of ratings. Can each of you discuss your thoughts on the use of quotas and how you would recommend agencies avoid actual or perceived quotas. Ms. Bonosaro.

Ms. BONOSARO. Well, it has been an interesting phenomenon to watch. I think certainly in the first year or two, our strong suspicion is that many agencies felt that the way to achieve certification with the Office of Personnel Management and OMB of their systems was to show a substantially lower number of outstanding ratings, to push the ratings down. I think there was just no doubt that—let us simply say there was an informal message that was operating within the agencies.

My guess is that is less true now. However, we still have examples of executives who find that their ratings have been reduced without explanation. Whether that arises because that political superior is unwilling to actually address substantial issues with the executive's performance or whether there is a hang-over, if you will, about the need to suppress higher ratings, it is very difficult to tell because very few of the people involved, the individual executives, want anyone to move forward and make a case out of them. They value their jobs and they recognize that doing that is not going to be to their ultimate advantage.

I think, too, that there has been finally one unfortunate example that we faced where Navy had literally a PowerPoint presentation with a graph, a normal distribution curve, which they were using with regard to the SES system, and when we brought it to OPM's attention, their ultimate conclusion was that it was not a quota, it was a notional system, and I frankly don't quite understand what that meant, but rather that it was some generalized idea of perhaps how ratings should look.

With regard to a remedy, the OPM regulations prohibit the use of quotas. I think that one remedy is certainly for OPM to be willing to quickly jump on every instance we can bring to their attention where we can convince an executive to permit us to do that, and another is to put that prohibition in statute, to make clear that we take it seriously. We don't have any particular recommendation for what the penalty should be if the statute is violated, but I think it would send a message that we are serious about this.

And then finally, I think the message that Director Springer talked about has to be reinforced every year and pushed down through the agencies, that there is a clear interest in evaluating and rating every executive fairly and not with regard to some presupposed outcome.

Senator AKAKA. Thank you. Mr. Gage.

Mr. GAGE. Senator, just look at the time line, what DOD does in rating an employee. In October, the supervisor gives the employee a performance plan. The following September, the supervisor has to rate the employee on that performance plan, but he is forbidden to talk to the employee about that rating or to give him that rating. Then in October, he has to sit down and do a new performance plan, even though he doesn't know what is going to happen with his original rating, nor does the employee.

The rating in November, or what the supervisor submitted, that rating goes to the pay pool. They do whatever they want, which is a forced distribution and apply these ratings to a curve. Then in January, the supervisor is finally told what the rating is for the employee and how much money the employee will get or not get.

If this is transparent—employees are not fools, Senator. They understand that the supervisor's rating, which should be the employee's performance matched to that performance plan, has nothing to do with the real rating he is going to get or the money he is going to receive.

So I suggest that the Subcommittee just look at DOD's own time line and see if it is believable, that there is not a bell curve or a forced distribution going on. Employees already know there is.

Senator AKAKA. Ms. Kelley.

Ms. KELLEY. Whether agencies acknowledge there is a quota system or not, there is, and it happens for two reasons. One, because they have this notional idea of how the workforce is performing and should be distributed, which really just makes a farce of the system. If you announce that only 25 percent of employees or some fill-in-the-blank percentage can be "outstanding" or excel or a role model or whatever the new term of the year is, the fact is, what you are saying to the other 75 percent of the employees is no matter how well you do, even if you are doing exactly the same thing as those top 20 or 25 percent, there are too many of you to be rated that way. So it makes the whole system a farce, and from there, the conversation has nowhere to go but down and it has zero credibility for employees.

But one of the other reasons that I believe it happens is because of limited resources in the Federal Government. When the agencies are given their budgets, they then decide how they are going to divide that up, and it is a system that requires that if one employee is going to get more, that another employee will get less based on however the agency decides to distribute their funds.

So there is a very real issue within the Federal Government when it comes to appropriations, but then if the agencies are not making wise decisions, it leads to very serious problems like we saw in the FDIC and in the SEC. In both of those cases, the agency announced—they announced as part of their program a forced distribution system, that only 25 percent of the employees in the FDIC, they said, could be rated at the highest level, and it had nothing to do with their annual evaluation or whatever their rating was. It was their rating plus some invisible criteria that managers would come up with. They actually gave it a name. They called it a Corporate Contribution Factor. You will find a definition of it nowhere in English, anyway, that employees can hang their hat on. And the system, as a result, had zero credibility, again, with employees.

Now, as I said, the good news is the FDIC and the SEC are now sitting down with NTEU to fix that system. But whether they admit it or not, there is a forced distribution system and a quota system. They can come up with all the names with it that they want and they can say that it is a suggestion, that it is not written in stone, but it is implemented as if it is written in stone, in our experience.

Senator AKAKA. Mr. Breul.

Mr. BREUL. Mr. Chairman, I don't think there is any real room for a quota. What I would do is reframe the question a little differently and ask how many employees receive an honest performance appraisal that tells them where they really stand. It was my experience in government for many years that too often, very few receive a real honest appraisal of where they stand, and I think this is equally unacceptable.

Managers can't call themselves managers unless they regularly tell their people what they are doing well and how they need to improve. So the whole notion of an honest, transparent appraisal system, I think is an essential element here.

Senator AKAKA. Thank you. Dr. Fay.

Mr. FAY. Yes, Senator Akaka. You know, faculty deal with the same problem all the time in grading. Everybody wants to make an A. It doesn't happen that way. What does happen is if you develop a measure of learning or performance that accurately describes or accurately taps what people are supposed to have done, then if you rate against standards, you will get whatever distribution you get. I think it would be great if every employee in the government got an "outstanding" and deserved it. I think it is pretty bad if they all get it and they don't deserve it, but I think it is equally bad if 57 percent of them get a "meets standards" just for some financial purpose.

As a couple of people have said, employees are not stupid. They figure this stuff out and nothing loses credibility for a system faster than having any kind of artificial constraint on where people come out.

Private sector organizations face the same problem and what they do is a senior manager will go into a junior manager and say, "I noticed you gave everybody in your unit an 'outstanding.' If they are all outstanding, how come your department is a failure?" That is, performance rating has to roll up the organization just as the goals of the organization roll down, and if a department is performing in an outstanding fashion against whatever criteria the organization has set for that unit, then maybe everybody in the department does deserve an "outstanding." If the department is failing, maybe everybody deserves a "non-acceptable."

Senator AKAKA. Thank you very much, Dr. Fay. Senator Voinovich.

Senator VOINOVICH. I am certainly glad that I am here today to hear this testimony. I am going to get the transcript of what Mr. Gage and Ms. Kelley had to say today and I am going to get it over to the Departments and get to the bottom of this, because if what you are saying is true, it is shocking. It is not what we intended to do. So I just want you to know that we are definitely going to follow up on what we have heard today, or I have heard today.

How much do you think of some of what is going on is the result of agencies not having the budget that they ought to have and they are trying to figure out how they can cut back, and as a result of that, the systems get shortchanged?

Mr. GAGE. I think that is at the bottom of this whole system. I have talked with some of our base commanders, who are very good people and have run very fair bases, and they said, "with this new pay-for-performance, my money is very tight. Of course, I am going to tap into that and I am not going to use it for employees. I am almost forced to do it."

So I think this is just an elaborate scheme, Senator, to reduce overall Federal pay. And if you go through the mechanics of it like we have had to do just to try to understand it, it is just fraught with bias and prejudice and it is a system that it is going to be very hard to get out—it is just not going to be named abuse.

So I had better ideas of this. I think Colleen did, too. We really tried to work with some of these agencies. DOD refused to work with any of the unions. But I am really concerned that this is the end of the good part of the civil service as we know it.

Ms. KELLEY. I think definitely the resources is the starting point of the problem, but they are given X resources and then the question is how you spend it, and whether you are going to build a system that has any credibility to employees or not. That is not what has been done. In fact, as I listened to Dr. Fay, I will give you another example of what we see happen often that is, managers receive bonuses and awards and not one employee in their group is recognized with an award or any kind of recognition. So how could that manager be so successful if every one of their employees were just OK and did nothing to be recognized?

I mean, there are a lot of flaws in the system that, for me, are about implementation. So even if you start with the fact there is not enough money, which there is not, and the agencies need to be funded to be able to recognize the top performers, that money should be provided. But whatever the pool of money is, then the credibility with which it is distributed is about implementation.

So it is really a two-part question for me. It is, yes, the resources are needed, but then the agencies should be accountable for the implementation of how they spend that money and how they recognize and reward employees. And today, I have yet to see a system that I could point to that I would say NTEU would support, and I would like to see that. I have looked at every one of these systems that OPM and that the Administration point to as successes and employees will tell you every one of them is an abysmal failure.

Senator VOINOVICH. Ms. Bonosaro, would you like to comment, and then I have another question for you.

Ms. BONOSARO. I think that certainly has been somewhat of a problem in regard to the SES system, and obviously all of the pay adjustments in the Senior Executive Service are now totally discretionary with the agencies so that even budget issues aside, an agency could determine not to grant any pay adjustments. But certainly we have seen some examples over the years where budget has entered into it. I think right now, there has been a decision at the NLRB, for example, to give no performance awards because of budgetary problems.

I think, too, that sometimes what we have thought is that perhaps the reason that performance awards have been more forthcoming than more substantial pay adjustments in the SES is because you don't then build that into salary. It is a one-time payment. So that is one of the reasons why one of the legislative provisions we are recommending is to guarantee that some budget be devoted to the system.

Senator VOINOVICH. We have had 2 or 3 years of pay for performance in SES and we still have some agencies that are doing great and others are not doing so great. Would you like to comment about, first of all, where the agencies aren't doing a good job, at least from the surveys that come back, if OPM has really done an adequate job of getting in there and working with them to find out what is wrong and why it is not working in terms of what they are doing versus another agency where the folks understand the system and seem to be satisfied with it.

Ms. BONOSARO. Well, I think just taking one of the areas where the differences between agencies, where it is most obvious was with regard to transparency and communicating results and information about the system, and there were tremendous differences between the agencies, which was really difficult to understand because it is not rocket science to share these results with executives.

I think there, OPM Director Springer really did make a very strong effort as part of the certification process to make clear to agencies that communication was critical. So it really is difficult to understand what is going on there.

I honestly don't have a good enough sense of exactly what they are doing beyond the work in the CHCO Council with regard to some of the agencies.

One of the problems, I think, that makes it difficult to fully understand some of the disconnects is that all of the data we see, for example, with regard to pay adjustments, are averages. So when we see, for example, that Senior Executives rated "fully successful" receive an average 2 percent pay increase, we don't know how many receive no pay increase or how many receive a 1 percent pay increase or a 5 percent pay increase. So some of the data really masks some of the differences.

But there are very clear differences and I think one of the really striking things were some of the poor results at OMB, which is charged with acting with regard to agency certifications in the system. So it is, frankly, a bit baffling.

Senator VOINOVICH. I am very frustrated because we still have some poor performers out there, and apparently even with OPM involved. Is it your impression that is not being done, that there is not enough concern at OMB to try to make sure that the system is successful, or do you think they are just hiding behind the budget, too?

Ms. BONOSARO. I honestly don't know. I wish we had a good answer for you. I think a lot of this—we have to go back to the beginning and the fact that this legislation was adopted with no hearings. There is no legislative history. So in essence, OPM developed regulations that took almost a year to do. Agencies didn't get geared up quickly enough, and then they were scrambling. I think the learning curve has been pretty steep and there wasn't enough, at least early enough on, not sharing between the agencies that knew what they were doing or trying to do it well and enough clear guidance from OPM. But then you had two agencies both involved in looking at these systems. So I think, frankly, it didn't get off to a very good launch and now you are trying to clean it up, frankly.

Senator VOINOVICH. Is the CHCO Council doing any good? I mean, it has been in place for 5 years and we have elevated human capital to a higher level, supposedly, in the Federal Government where people are paying more attention to the people that work in the agencies. Is it—or you don't see any difference?

Ms. BONOSARO. Those of us at this table are invited to the CHCO Council meetings once a year, so it is a little difficult to comment on what they are doing the rest of the time.

One of the things, though, that we do believe is that if we still had the office in OPM that oversaw—that was kind of a focal point for the Executive Corps, that we would have a much clearer understanding of what they were doing and there would be some clearer direction. Now, OPM, Linda Springer may well disagree with that, but there are several parts of OPM that have been involved in this process and I think one clear focal point, having this under their wing, certainly would have been helpful. And also a good deal more sharing among the agencies that were doing well. It is just my impression that did not get started early enough and well enough.

Senator VOINOVICH. Well, I will just finish up with this, that I think the communication is extremely important and there ought to be a vehicle there at OMB for that to go on. I know way back when we got started, I think President Clinton had where you had a chance to meet with the Administration. Wasn't there something set up in the President's office where the unions had a chance to come in and talk to some folks and have a chance to have your voice heard at a high level?

Mr. GAGE. Yes.

Senator VOINOVICH. One of the things that Senator Akaka and I might do is just to maybe look at some of these things, and whoever the next President is, make some recommendations on how we think we can improve the situation to get this flow of information. I can't believe, you say you can't even get over and talk to the people at the Defense Department. That is just incredible. Thanks.

Senator AKAKA. Thank you, Senator Voinovich.

Mr. Gage, you heard Mr. Bunn's response to my question over DOD's intention with the definition of rate of pay. What are your thoughts on his answer?

Mr. GAGE. Well, they have taken "rate of pay," which is pretty simple, three words, and wrote about 12 pages of regulations that it would go into every aspect of pay, even procedures put in for fairness to employees over time, differentials in pay, night differentials. It would be all subject to management discretion, non-negotiable, can't talk about it.

Don't take my word, Senator. It is right there in the regulations. We have had a number of experts around and met with all our people and I feel it is really—it is shameful, what they did, especially after Congress very directly told them that this stuff was negotiable and restored our bargaining rights, and for them to come about regulations and then try to submit it at the end of this Congress, and you know this 60-day rule, if you all don't do anything, it is in effect, and it is just—well, I think it is dirty pool. It is certainly not the way to have a discussion or a collaboration on something as important as this.

Senator AKAKA. Dr. Fay, you testified for pay-for-performance to work in the Federal Government, there has to be a legitimate appeals system in place for employees who feel they have been treated arbitrarily or in a biased fashion. What in your opinion comprises an adequate appeals system? Do you believe the systems in place at Federal agencies, particularly ones we have discussed today, have adequate appeals systems?

Mr. FAY. I can't speak to all of those agencies, but let me give you an example from IBM, which is a non-unionized company, generally speaking. They have a system where if an employee feels that he or she has been mistreated, arbitrarily treated by the organization, that they go first to the HR unit. If the HR unit cannot resolve it to the employee's satisfaction, it then goes into a system where someone from a different part of the organization comes in and hears it, hears the problem and makes a decision.

When it first started, there were a significant number of those where managers got fired, got pay reduced, had a variety of bad things happen to them. As time has gone on, managers understand that you can't treat people arbitrarily or unfairly and so a far smaller percentage do, in fact, turn out in favor of the employee.

But they still run—and another thing they do that I think is pretty remarkable, very few private companies do this, they put the person who made the complaint into a pool with other people who have made complaints. They select another pool who are equivalent in terms of their performance, in terms of their education, a variety of things. So they have parallel pools. And then they track the pools and make sure that people who filed a complaint don't end up out in limbo or laid off or anything at any greater rate than members of the other pool.

That is, they go beyond just hearing and correcting when they see things are bad. They do two things I think are important. One is that managers who do behave in an arbitrary, capricious fashion feel it. They learn not to do that very quickly if they stay. And then second, they follow up to make sure that the employee does not suffer from having made a complaint, whether it is a supported complaint or not a supported complaint. You know the problems that whistleblowers in government agencies have and this was IBM's attempt, and a very successful one, to prevent people who filed this particular kind of complaint from being retaliated against.

Senator AKAKA. Well, let me ask my final question to Mr. Gage and Colleen Kelley. I am very concerned about the low morale reported at TSA and the disturbing picture painted by the responses to the 2007 DHS employee survey. Based on feedback that you all received from employees, what are the biggest concerns employees have with the TSA Performance and Accountability Standards System (PASS)? Mr. Gage.

Mr. GAGE. I interview TSA employees probably once a month and, for instance, they are supposed to do this one test with a contractor and it basically is they have to pat down, I believe it is a Lockheed contractor person and they don't get any feedback from the person they are patting down. But if they do something wrong in that pat down, they see that they are rated badly for that very important standard and they don't know why. Their supervisor doesn't know why. He wasn't there. He didn't do it.

So there are so many of these things, while they say they are objective standards, they are not objective as far as the employee is concerned. He doesn't even know what he did wrong. And I hear that again and again and again. The same thing with the image test, which is completely unfair. Yet they say, well, you flunked the test, but why did I flunk it? How did I flunk it? What did I do wrong? I think I am a good TSO Officer.

So I think that is one of the big things, but the other thing is the inflexibility of their leave policies and working conditions. Those are really the two big complaints that I get.

Ms. KELLEY. And I would add that the third one is the issue of pay and pay raises. There is no TSO who knows what it is they have to do to get a better pay raise next year, and they would tell you that pay raises are distributed based on favoritism and cronyism, not based on skills; not based on performance of the job. And they would say that in the same way it is true for promotions, whether it is to a lead TSO position or to a manager position.

Senator AKAKA. Senator Voinovich.

Senator VOINOVICH. As I say, I do my own personal survey and the last couple of years, I am getting better responses from people, but I will say that some of them think that their evaluation is too subjective. I am aware of the fact that somebody else is doing it, and what you are basically saying is that once it is done, employees don't get any feedback about where it was that they failed and they are left in the dark about their performance.

Mr. GAGE. And by a contractor.

Senator VOINOVICH. Yes. I wasn't aware of the details of the contract.

Ms. KELLEY. Well, the $1.2 billion contract I mentioned is a new Lockheed Martin contract, and that is for them to develop and deliver a human resources system and delivery of their pay system. So that is an additional $1.2 billion, with a B, contract, in addition to the one that Mr. Breul mentioned where they actually come in and conduct the testing of the TSOs.

Senator VOINOVICH. How long ago was that contract signed?

Ms. KELLEY. I believe within the last 6 to 8 weeks. It is very recent.

Senator VOINOVICH. I will check into it.

Mr. Gage, you testified that DOD refused to work with the unions. Do you have any examples of when you have been over there and tried to get some input with them, and who do you contact there?

Mr. GAGE. Well, I have known Mary Lacey for a long time. I used to—when she was down at Indian Head. It was pretty clear during the last session of Congress where we were at loggerheads certainly on the collective bargaining aspects of NSPS, and we tried some negotiation—one meeting. But it was very obvious that there just wasn't discussion. There just wasn't an attitude of, well, what are your concerns and how can we work to answer some of your concerns.

It was basically very—and through the whole collaboration process, it was an our way or the highway type of approach and there was no collaboration. There was no discussion. And I thought that was kind of odd because Ms. Lacey and I had done a lot of business in the past. But on this—this was a much different thing. I think DOD as an organization had their mind made up and they were going to do it their way and there was no looking back and no turning around.

Senator VOINOVICH. I think one of the things that I understood was is that in terms of the implementation of the system, the people that are going into the system now are really not the unionized employees.

Mr. GAGE. Oh, yes. Well, they haven't been. But under these new regulations—see, we have wage grade exempted. They are out of NSPS totally. Why, you might ask? That is a good question. But the GS, the GS people now are the ones that are—the GS bargaining unit, non-management types, they are the ones that will be going into NSPS in these coming spirals under these new regulations that they put in. So we are completely concerned about that and——

Senator VOINOVICH. My understanding is that they still have to go down some more spirals before they touch those people in the Defense Department that are members of your union——

Mr. GAGE. They are talking about this fall, or the fall next year.

Senator VOINOVICH. Next year.

Mr. GAGE. Yes.

Senator VOINOVICH. And that part of the reason why that they may not have had the level of discussion you would like is because they haven't gotten to your people yet. That is what I have heard. When we have had Mary Lacey in, she seems to be very committed to the system.

Thank you.

Senator AKAKA. Well, I want to thank this panel. The performance of Federal agencies, as we know, depends on the ability of its workforce to trust the system that governs employee pay and performance. From improving transparency and communication to ending quotas or the perception thereof, there remain many problems with pay-for-performance systems at Federal agencies. We must address these issues in order to maintain the integrity and the trust of our civil service and ensure that the Federal Government is an employer of choice.

Again, I want to thank all of the witnesses for being here today. I look forward to continuing to work with you and with Senator Voinovich to address these issues.

The hearing record will remain open for 1 week for additional statements and questions from Members.

This hearing is adjourned.

[Whereupon, at 4:56 p.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENT OF
THE HONORABLE LINDA M. SPRINGER
DIRECTOR
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

on

PAY FOR PERFORMANCE IN THE FEDERAL GOVERNMENT

JULY 22, 2008

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you to discuss the progress to date in the implementation of pay-for-performance for members of the Senior Executive Service, National Security Personnel System and others in Government. I want to thank you Chairman Akaka and Senator Voinovich, for the continuing support you and the other Members of the Subcommittee have demonstrated for effective performance management. Since my last appearance before you on this topic, the Office of Personnel Management (OPM) has continued its work with agencies to implement effective performance-based pay systems. We continue to evaluate these systems and have published three major reports in 2007 on system implementation progress. In May 2007, OPM issued two comprehensive reports assessing the implementation and progress of the Department of Defense National Security Personnel System and the Department of Homeland Security Alternative Personnel System. In December 2007, a status report on all performance-based pay systems was published. These reports can be found at http://www.opm.gov/aps/reports/index.asp.

Today I would like to characterize the evolution of pay-for-performance in the Federal Government in three major phases – the 25 plus years of alternative personnel systems prior to 2004, the 3 major legislative performance-based pay initiatives occurring after 2004, and current activities.

Alternative Personnel Systems Prior to 2004

OPM, under chapter 47 of title 5, U.S. Code, is permitted to establish and evaluate personnel management demonstration projects to test whether specific changes in Governmentwide human resources management policies and practices would result in improved Federal personnel management. Congress has also, in certain instances, established agency-specific alternative personnel systems under independent statutory authority. These include pay-for-performance systems at the Internal Revenue Service, the Government Accountability Office, the Intelligence Community, and others.

Since the implementation of the first demonstration project in 1980, OPM has maintained an archive of evaluation data on strategic compensation and effective performance management. In 2005, we issued a report summarizing the 25 years of successful experience with all existing alternative pay systems. The report also provided a look at how performance management systems throughout Government have been upgraded and judged against stringent standards. The conclusions were significant: agencies were discarding the General Schedule in favor of more practical classification and market sensitive pay; performance – not tenure – drives pay; success depended on effective implementation; over time, covered employees supported alternative pay systems; and, agencies funded their systems out of existing budgets. It was noted that "progress in some organizations has been slower, as would be expected with experiments. Nonetheless, the evidence presents clearly positive trends."

Major Legislative Performance-Based Pay Initiatives

Senior Executive Service

Members of the Senior Executive Service (SES) have been covered by a pay-for-performance system since 2004, when Congress provided for their appraisal systems to be certified as making meaningful distinctions in performance. OPM, with concurrence by OMB, makes these certification decisions. Agencies must have certified appraisal systems in order to pay their senior executives above the rate for Executive level III (now $158,500), up to the rate for level II ($172,200). Certification is also required for agencies to be able to apply a higher aggregate pay limitation, equal to the Vice President's salary.

Between 2004 and 2007, coverage of SES members under certified appraisal systems rose from 76 percent of all SES members to 99 percent. By the end of 2007, 46 SES appraisal systems met the criteria for certification.

As implementation of certified appraisal systems has broadened, measurable goals tightly linked to mission requirements are much more prevalent and agencies are assessing performance of organizational units, communicating that performance to rating officials, and ensuring their rating distribution reflects the unit's performance. Earlier this year OPM conducted a survey of career SES members which revealed that 61 percent of SES members are satisfied with their pay. Additionally, 93 percent of the SES believe their pay should be based on performance and 91 percent responded that they should be held accountable for achieving results. Today we are releasing the annual Senior Executive Service Pay for Performance report for fiscal year 2007 which shows that agencies are distributing higher performance awards and pay adjustments to their top performers.

While these achievements are a testament to the hard work of agency personnel, more can be done to improve the process. OPM continues to work closely with the Chief Human Capital Officers Council and the agencies to ensure progress is achieved.

As you know, the Chief Human Capital Officers Council has been an important partner in our efforts to implement pay-for-performance. The Council's Subcommittee on Performance Management worked with OPM on the development of the SES Performance Appraisal Assessment Tool (SES-PAAT). Agencies use the PAAT to audit their own SES appraisal systems and performance plans against certification criteria to ensure their systems have sufficient rigor. A CHCO Council Training Academy was held to solicit agency feedback on the tool. Additionally, the Subcommittee held a session on pay-for performance best practices where agency leaders shared information with others. Finally, just last week, at its July 14 meeting, CHCO Subcommittee members discussed lessons learned from the interviews OPM conducted with agencies regarding the survey of the SES. In addition, we plan to showcase lessons learned from those agencies that scored well on the SES survey during our August CHCO Council Training Academy Session. The Council and OPM are continuing to collaborate on identifying and sharing best practices and supporting the continued success of the program.

National Security Personnel System (NSPS)

OPM and the Department of Defense (DoD) have been partners in developing and revising the National Security Personnel System since Congress authorized its creation as an alternative personnel system when it enacted the National Defense Authorization Act for fiscal year 2004. Since then approximately 180,000 civilian employees have converted to this system. Under NSPS, jobs are placed in broad pay bands based on the nature of the work being performed and required competencies. Pay increases are based on performance. In addition to strengthening the link between pay and performance, this system gives DoD more flexibility in assigning employees new or different work, and the ability to promote broader skill development and advancement opportunities within pay bands.

NSPS has strengthened communication between employees and managers reinforcing accountability at all levels. We also have seen widespread agreement among employees and supervisors that they now have a better understanding of expected performance and how their jobs align with the mission of their organization and a strong link between employee performance ratings and pay. Annual raises and bonuses under NSPS are based on performance, and higher pay increases are provided to the highest performers. Under NSPS, the quality of performance plans and assessments is improving. Continuous program evaluation provides a mechanism for routine feedback and system enhancements in areas such as protocols.

Regulations governing NSPS are being updated jointly by OPM and DoD to conform to statutory changes made in the National Defense Authorization Act for fiscal year 2008 and to make necessary adjustments based on lessons learned. These changes include excluding blue-collar employees from coverage under NSPS and requiring all employees with a performance rating above "unacceptable" to receive at least 60 percent of the annual Governmentwide General Schedule pay increase, as well as changes related to matters other than pay and performance management. Proposed regulations were published in the Federal Register on May 22, 2008. We are currently reviewing comments and we expect to publish final regulations this fall.

Department of Homeland Security (DHS)

In May 2007, OPM published a report on the status of the DHS alternative pay system. While DHS has not implemented a pay-for-performance program for its employees at DHS Headquarters, the Transportation Security Administration (TSA), a component of DHS, has initiated the Performance Accountability and Standards System (PASS) program for its Transportation Security Officers (TSO) and many other TSA employees. This pay-for-performance initiative provides at a minimum a Comparability Equivalent Increase (CEI) equal to the cost-of-living increase mandated by Congress in the Consolidated Appropriations Act of 2008 to be paid to all DHS employees. Additional PASS benefits above and beyond the CEI are based upon individual performance. A summary of the pay for performance payout has been provided in the testimony submitted to the Subcommittee today by TSA.

Current Activities

Demonstration Projects

There has been continued interest in performance-based pay systems. Four new demonstration projects have been proposed within the last year. OPM has given final approval for a demonstration project at the National Nuclear Security Administration at the Department of Energy, and preliminary approval to the Veterans Health Administration at the Department of Veterans Affairs, the Office of Federal Student Aid at the Department of Education, and the Food Safety and Inspection Service at the U.S. Department of Agriculture. At this time there are a total of five demonstration projects underway, including the DoD Acquisition Demonstration Project. The Department of Commerce demonstration project was converted to a permanent alternative personnel system in March of this year.

Latest Findings

As I mentioned in the beginning of my remarks, OPM issued a report last year on the status of all performance-based pay systems. At that time, nearly 300,000 Federal employees were working under performance-based pay systems. Since then, approximately 50,000 additional employees have been brought under the Department of Defense's NSPS.

Our report concluded that pay-for-performance systems continue to be successful, based on numerous evaluations and a demonstrably stronger link between pay and performance than under systems where pay is based on longevity. Successful implementation of performance-based pay has come only after substantial effort, but has resulted in transformed performance cultures that are much more results-oriented than previously. It should come as no surprise that these pay-for-performance systems are better able to recruit and retain a high-quality workforce.

I remain firmly convinced that pay-for-performance is critical for attracting a 21st Century workforce. Results demonstrate that given time and proper implementation, performance-based pay systems can be effective for the Federal workforce.

Mr. Chairman, thank you again for the opportunity to be here today. I'd be happy to answer any questions you or other Members may have.

WRITTEN TESTIMONY OF
RICHARD A. SPIRES
DEPUTY COMMISSIONER, OPERATIONS SUPPORT
INTERNAL REVENUE SERVICE
BEFORE THE
SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA
ON
IMPLEMENTATION OF PAY FOR PERFORMANCE

JULY 22, 2008

Good afternoon Chairman Akaka, Ranking Member Voinovich, and Members of the Subcommittee. My name is Richard Spires and I am the Deputy Commissioner for Operations Support of the Internal Revenue Service. I am pleased to be here today to discuss IRS' efforts to implement pay for performance and respond to questions from the Subcommittee.

The IRS is not new to the pay for performance issue. We have over seven years of experience working on this matter, and we have tried to move deliberately to implement such a system for our more than 7,000 managers. Though there have been some bumps along the way, the creation of paybands and compensating employees for the quality of their work rather than their longevity with the agency has helped the IRS respond to the challenges presented in turning the agency into a modern and more efficient, 21st century organization.

The Senate recently confirmed Doug Shulman as the 47th Commissioner of the IRS. Commissioner Shulman has made it clear that one of his priorities as Commissioner is to reach our human capital goals. He understands the IRS probably has more interaction with individual Americans than any other Federal government agency. As such, he knows how important it is that we all do our jobs well because how we do our jobs probably shapes how Americans view their government.

By supporting and motivating employees through exceptional human capital programs, we can recruit and retain a highly skilled and high performing workforce. And if we can do that, the IRS will have what it needs to be an employer of choice and achieve our mission.

The Commissioner knows that our pay for performance program is an important component of a strong human capital program.

Today, I would like to offer you some background on why IRS introduced pay for performance, discuss a report issued by the Treasury Inspector General for Tax Administration (TIGTA) and how we responded to their recommendations, stress the importance of performing evaluations in a fair, non-discriminatory manner, and finally offer some observations on what our seven years of experience has taught us about implementing pay for performance.

Background

In 1998, Congress passed the IRS Restructuring and Reorganization Act (RRA). As the name of the law indicates, RRA totally transformed the IRS and changed dramatically the way we did business.

For example, prior to enactment of RRA, IRS was organized geographically with leadership organizations and decision-making by managers dispersed across the country. After enactment, however, we reorganized along functional lines to support the different taxpayer segments – Wage and Investment, Small Business/Self-Employed, Large and Mid-Sized Businesses, and Tax Exempt/Government Entities – with much of the senior leadership based at the IRS headquarters located in Washington, DC.

Recognizing the dramatic shift that this and other changes included in RRA required and the potential impact on the tens of thousands of employees that might be affected, Congress included personnel flexibility provisions that authorized the Secretary of the Treasury to establish one or more paybanding systems covering all or any portion of the IRS workforce under the General Schedule (GS) pay system, subject to criteria to be issued by the Office of Personnel Management (OPM). Accordingly, OPM prescribed criteria for IRS payband system that followed the principles included in RRA in December 2000.

In providing this flexibility, Congress recognized that the IRS needed the ability to recruit and retain high-quality leadership to transform the Service into what Congress envisioned when it enacted RRA. Accordingly, IRS would have the flexibility to design its salary and incentive structures to support mission accomplishment, base pay decisions on performance rather than length of service, and implement a new Performance Management System that was aligned to organizational performance.

Program Implementation

We implemented the first payband in March 2001. It was directed to Senior Managers (SM) and it consolidated Grades 14 and 15 in the GS into a single 10-step payband. This payband had salaries ranging from the equivalent of a GS-14 Step 1 through a GS-15 Step 10. Under the new system, Senior Managers continued to receive their basic pay, including locality pay, similar to that provided to GS employees. The entitlement to step increases that were previously available under the GS system was removed. Employees were eligible every two years for a performance based increase, and progressed to the next step within the payband if their performance ratings met or exceeded certain performance standards.

A similar payband structure was implemented in November 2001 for the new IRS campus functions, including Accounts Management, Submission Processing, and Compliance. This payband for Department Managers (DM) incorporated salary grades GS-11 through GS-13 into a single 16-step payband.

From two critical perspectives, implementation of the flexibilities was critical in successfully carrying out the mandates of RRA.

First, implementation of the new Performance Management System allowed us to link manager performance to the functional goals of the organization. Managers and their supervisors would develop specific goals and objectives designed to further the goals of the functional unit and the IRS. The manager could then be evaluated at the end of the year based on his or her success in meeting the agreed to goals.

Second, implementation of the paybands helped us realign Senior Management positions as the organization shifted from a decentralized, geographic based hierarchy to an organization where leadership was based on functional needs. It also helped realign Department Managers in our campus functions.

Former IRS Commissioner Everson decided to continue expansion of pay for performance in line with the President's Management Agenda. In September 2005, the IRS implemented a Frontline Manager (FM) payband using the same criteria as for the Senior Manager and Department Managers – the Office of Personnel Management criteria from 2000. Beginning in 2002, the IRS had an independent contractor conduct multiple evaluations of the SM and DM paybands. The results of these evaluations and feedback from Executives and SM and DM employees afforded the IRS the opportunity to incorporate modifications to the design of the FM payband.

Unlike the SM and DM paybands, the FM payband consisted of 11 single-grade bands (GS 5 through 15) with open-rate ranges of pay (no steps) that are the same as the GS Pay System for the correlating grade. Also unlike the original paybands, Frontline Managers are eligible for a performance based increases to their salary each year. The performance based increase replaces the GS Pay System within-grade step increases, quality step increases, and annual across-the-board pay adjustments.

Effective March 2006, the SM and DM paybands were modified to incorporate a stepless design (range of rates) and an annual review, just like the FM payband. However, SM and DM paybands remained multi-grade paybands. For example, the SM payband has a minimum rate of GS-14 Step 1 and a maximum rate of GS-15 Step 10. Only the 10 steps within this range that were established when the program was originally designed were eliminated. Similarly, the DM payband ranged from GS-11 Step 1 to GS-13 Step 10 and the 16 steps were removed. All managers continue to receive the GS locality pay for where they work.

TIGTA Report and IRS Response

In July 2007 the Treasury Inspector General for Tax Administration (TIGTA) published a report entitled *The Internal Revenue Pay-for-Performance System May Not Support Initiatives to Recruit, Retain, and Motivate Future Leaders* (Ref. Number 2007-10-106).

The overall objective of this review was to determine whether the IRS pay for performance system effectively links compensation to individual performance. The report analyzed the implementation of the IRS pay for performance program, more specifically the implementation of the FM payband, and made four specific recommendations for program improvement.

The first recommendation concerned the fact that the payband system for Frontline Managers essentially retained the GS pay system and only removed the incremental steps within each grade. The single grade band structure was implemented to meet the diverse needs of the IRS workforce and mission, while recognizing the wide variety of occupations and grades that were difficult to group into common levels of work. And while the creation of broad occupational paybands has some obvious benefits, this allowed the focus to shift to performance based pay, and preserve the current classification framework until other occupations can be banded.

The second recommendation related to the fact that the IRS Commissioner retains the authority to determine the level of pay increases for managers, and TIGTA recommended that the IRS Commissioner guarantee a salary increase to those mangers who are rated as having "Met" performance expectation. Specifically, the fear was that the Commissioner could determine not to provide an increase to managers who were classified as having "Met" performance expectations. This would mean such a manager could end up with less of an increase than a comparably situated employee under the GS system. This in turn could possibly act as a disincentive for individuals to move into management slots.

However, since the inception of the IRS paybands in 2001, those managers with a "Met" performance rating have received a performance based increase that was the same as the increase provided to all GS employees. We continued that practice this year when we announced on May 21st that the GS increase would be the minimum increase for Met ratings and above.

The third recommendation was that the IRS should consider alternative sources of funding for the performance based salary pools and ensure amounts dedicated for increases are sufficient to both reward top performers and compensate other managers equitably, based on their performance.

Finally, TIGTA recommended the Chief Human Capital Officer should offer employees an opportunity to express concerns and questions about the new pay system directly to Human Capital Office experts. TIGTA further recommended that that there be an effort to communicate more openly and timely with employees before implementing any new changes to the employee's compensation and benefits.

The IRS takes seriously the TIGTA recommendations. We have already implemented one of the recommendations by improving communications with affected managers. Late last year, we completed a strategic communication framework. As part of this we partnered with management associations such as the Federal Managers Association (FMA) and the Professional Managers Association (PMA) as well as our internal stakeholders on communications relating to performance based increases and other aspects of pay for performance. Through this partnership, specific communications were developed to address questions surrounding performance based increases and shared with all managers. In 2006 managers expressed frustration and discontent that they were not informed until October that a "Met" rating would receive an increase equivalent to the GS. Consequently, in 2007 managers were informed in June that managers with a "Met" performance rating would receive a performance based increase equivalent to the GS. And, as I mentioned earlier, we made the similar announcement for 2008 in May.

In addition, we conducted a survey in February 2008 to determine how best to communicate with managers. We wanted to know how managers liked to receive their communications so we could tailor our program to meet those needs.

We also continue to conduct outreach sessions and focus groups to obtain stakeholder (employees, executives, and representatives from FMA and PMA) input on the IRS Paybanding System.

We have also updated our Payband Resource Center for Managers as information becomes available, and posted the performance based increased values, an updated salary calculator, and other frequently asked questions.

We also agreed with two of the recommendations. In fact, prior to the TIGTA audit we had already initiated a third-party evaluation of the IRS Pay for Performance System in its entirety, including an assessment of the Frontline Manager payband and a review of the performance-based salary pools. Since the IRS just implemented the FM payband in 2005, and redesigned the SM and DM in 2006, the IRS has just completed its second performance based increase and now can begin to evaluate trends. That evaluation is being conducted in three phases over a five year period, and will determine whether, and how strongly, our current pay-for-performance system supports our human capital organizational goals to recruit, retain, and motivate future leaders. We are also considering the TIGTA recommendation for modifying the IRS FM pay system.

The one recommendation that we did not agree with was the one that would inappropriately reduce the authority of the IRS Commissioner and guarantee a salary increase to those managers that were rated as having "Met" expectations. As I indicated earlier, the Commissioner has always approved a standard increase for those that are rated as having "Met" expectations.

I should point out that OPM issued proposed changes to the IRS broad banding criteria in April 2007. The proposed revised criteria did not guarantee or provide for a minimum base pay increase for employees rated "Fully Successful" (i.e., a rating of "Met" under the IRS performance appraisal system). The Professional Managers Association, Federal Managers Association, and the National Treasury Employees Union commented that employees rated "Fully Successful" or "Met" should be guaranteed an increase at least equal to the base pay increase in the band rate ranges. OPM is considering these comments, along with Treasury's and IRS's views concerning a minimum base pay increase for "Fully Successful" employees, as it develops the final regulations. It is possible that OPM could decide to revise the criteria to guarantee a minimum increase for "Fully Successful" employees.

Performing Evaluations Fairly

IRS has approximately 7,200 permanent managers. Of this total, approximately 5,300 are permanent Frontline Managers; 1,500 are permanent Senior Managers; and 350 are permanent Department Managers. During filing season, the IRS may have an additional 1,000+ temporary managers.

To maintain credibility in the performance management evaluation process, it is important that performance evaluations be done in a fair, non-discriminatory manner. IRS is committed to that.

The performance evaluation process really begins a year in advance when managers meet with their supervisors to discuss their goals for the year and how they plan to meet those goals. They meet again mid-way through the year to discuss progress toward those goals. Finally at the end of the year, the supervisor meets again with the manager and rates him or her based on one of five levels of performance: Outstanding, Exceeded, Met, Minimally Satisfactory or Not Met.

In an effort to further monitor the performance evaluation process and to ensure objectivity and consistency, the initial evaluation of a supervisor will be reviewed by a Performance Review Board (PRB). It is the policy of the IRS that annually each division/function will review the summary evaluation ratings of their managers on a corporate basis. Each PRB ensures that ratings consistently reflect similar performance across work unit lines, and validates that the ratings support individual and organizational performance.

Within the IRS, performance based increases as well as bonus parameters are consistent across all functional units. That means that a manager within our Wage and Investment Division who is rated as "Outstanding" will receive the same performance increase as a manager in our Small Business division with an identical rating. Managers across all functional units with the same rating will receive the same performance based increase. Each functional unit has discretion to determine the specific performance bonus amount; however, the overall performance bonus parameters are applied across functional units.

Accordingly, the performance based increase for Outstanding will always be greater than for someone who was rated as "Exceeded," which in turn will be higher than someone rated as "Met." Someone who was rated "Not Met" would not receive any performance based increase.

A similar system exists for bonuses. A manager receiving an "Outstanding" summary evaluation will receive a bonus. Someone rated as "Exceeded" ***may*** receive a bonus and someone who is rated as "Met" would only receive a bonus under extraordinary circumstances.

It is also important that evaluations be made free of any discrimination based on race, gender or national origin. We asked the third party contractor that is conducting the overall evaluation of the entire program to look at this issue and offer its assessment. The contractor has concluded its evaluation and found that since Fiscal Year 2004, there has been no disparate impact on any group of employees in the Senior Manager (SM), Department Manager (DM), or Frontline Manager (FM) paybands. The contractor analyzed the trends of the ratings data grouped by gender, age (Over 40 and Under 40) and ethnicity. In each group, ratings trended in a similar path to the average ratings across all groups.

Lessons Learned

As the interest in pay for performance escalates across the Federal government, the IRS finds itself in the unique position of having information to share. We have certainly gained experience along the way, made adjustments to our system, and are still learning as we go. We will continually reassess all aspects of our pay for performance system and refine it to support the mission and goals of the IRS.

Based on our seven years of experience with our own program, we can offer some suggestions that might prove useful to agencies that might pursue paybanding or pay for performance in the future.

Specifically, we have found first-hand that a successful pay-for-performance system must incorporate the following key elements:

- Agencies should move deliberately and cautiously to implement the program that is "right" for its organization. There is no "cookie cutter" program that an agency can adapt as its own;

- Communication is critical. Managers must understand how the program will work and how they will be affected. There also must be forums to have their concerns and questions answered;

- An effective performance evaluation system must be in place. Managers must understand the basis for their evaluation and there should be a review system in place to make sure evaluations are being made on a consistent basis;

- Supervisors/managers must be trained properly on how to use the system and make sound evaluations; and

- On-going program evaluation is essential to ensure that the pay for performance system is operating as intended. Agencies must be willing to modify and revise their systems to meet the changing needs of their organizations.

Summary

We have found that a properly implemented pay for performance plan can have obvious positive benefits for any agency. Perhaps most important of these is the fact that employees are rewarded for the quality of their work and not the tenure in their job. But perhaps equally important is the fact that such a system necessitates that managers at all levels are forced to interact in such a way that they discuss the agency's goals and how their individual performance relates to those goals.

As I indicated at the beginning, we tried to move deliberately in implementing pay for performance, but we still faced numerous bumps in the road. However, the benefits far outweigh the problems. It has helped us make the organizational transition required by RRA and link compensation to performance.

Thank you again, Mr. Chairman for the opportunity to be here and I am happy to respond to any questions.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION

Statement of

GALE ROSSIDES
DEPUTY ADMINISTRATOR

Before the

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

JULY 22, 2008

Good afternoon, Chairman Akaka, Ranking Member Voinovich, and distinguished members of the Subcommittee. I am pleased to be here today to discuss the progress the Transportation Security Administration (TSA) is making on the development and implementation of its pay for performance system.

As you know, Congress created TSA as a performance-based organization. We believe aligning pay and performance to create a highly motivated workforce enhances our nation's security. A motivated workforce is alert, on-the-go, ready to act. It is precisely the kind of workforce we need to win a war against an enemy seeking to harm us by exploiting our nation's transportation system. Pay for performance rewards technical proficiencies and workplace behaviors in ways that simply cannot be duplicated by the General Schedule as applied to other federal employees. And at TSA, it rewards employees for successfully securing our transportation network.

Not only does pay-for-performance benefit the American public, but it benefits each and every TSA employee working shoulder-to-shoulder with one another. Our collective strength is based upon the motivation of each individual. To prevent another terrorist attack utilizing our transportation network, every TSA employee on the front line wants the person working next to him or her to have the same dedication and sense of mission that they possess. Pay-for-performance also advantages TSA as an organization. It has strengthened accountability by our supervisors, whose own performance is evaluated by how effectively they administer the program.

TSA's pay-for-performance system is a vibrant one. We have made continual efforts to improve the program, as evidenced most recently by a series of changes adopted at the beginning of 2008.

Development and Implementation of a Pay-for-Performance System

The Aviation and Transportation Security Act (ATSA), P.L. 107-71, required that an individual employed as a security screener may not continue to be employed in that capacity unless his or her evaluation demonstrates that the individual (A) continues to meet all qualifications and standards required to perform a screening function; (B) has a satisfactory record of performance and attention to duty based on the standards and requirements in the security program; and (C) demonstrates the current knowledge and skills necessary to courteously, vigilantly and effectively perform screening functions.

This congressional mandate resulted in the creation of TSA's pay-for-performance system. Developmental efforts included interviews with senior management, focus groups and large group meetings with Transportation Security Officers, teleconferences, written surveys, and reviews of internal and external best practices. Information-sharing meetings were held with senior leadership and the managers and staff of the major organizational elements within TSA. A nationwide performance management system "Best Practices Survey" was sent to Federal Security Directors and two nationwide performance management system surveys were distributed. This extensive data collection effort was undertaken so that the people whose performance would be measured had a role to play in developing the system.

TSA examined and analyzed a variety of performance management documents in use at airports across the country, including: procedural memoranda for testing, evaluating, remediating, rewarding or disciplining performance; performance management handbooks; performance agreement templates and forms; job aids; observation checklists; and training calendars. The program was validated further through a survey conducted among the same airport staff who participated in area focus groups in June 2005 and a single follow-up focus group at TSA Headquarters. As part of the survey, the screening workforce also voted on the name of the system. On April 1, 2006, the Performance Accountability and Standards System, or "PASS", went into effect.

PASS underscores our focus on individual and organizational performance rather than on employee tenure – the higher the level of performance, the higher the level of financial reward. Under PASS, TSA has established specific performance levels and set pay in connection with those performance levels. PASS currently applies to our Transportation Security Officers (TSOs), Lead TSOs, Supervisory TSOs, some Master and Expert TSOs, and our Security Managers. These individuals constituted a workforce of 38,558 in the 2007 PASS performance cycle and comprise the front line of our national security mission by operating security checkpoints at our nation's airports and screening over two million individuals daily.

PASS is driven by validated data. Its performance metrics are standardized, measurable and observable. A premium is placed on continuous education, training and communication. PASS components include management proficiency, technical proficiency, readiness for duty, training and development, collateral duties, supervisory accountability, and competencies such as customer service, decisiveness, oral communications, conflict management and teambuilding. These components reinforce organizational values and promote professionalism and strong leadership. As I previously indicated, our supervisors have a significant commitment to PASS and are evaluated on how effectively they administer the program. Successful implementation of PASS is a component of their PASS rating.

Continual Improvement to Address Employee Concerns

TSA was not satisfied to simply roll out the PASS system. Since its inception, PASS has been monitored on a continual basis and suggestions are actively solicited from the workforce. These suggestions – many of which came from the National Advisory Council (NAC) that will be discussed later – have resulted in a number of changes.

In 2008, TSA will issue revised Standard Operating Procedures (SOPs) and will roll out significant new training as part of our ongoing Checkpoint Evolution initiative. We want our employees focused on doing their jobs instead of being overburdened with administrative requirements. SOP tests and three assessments have been removed for some job categories, thereby sharply reducing PASS administrative requirements. We reduced the number of core functions associated with all positions and we introduced a quick "One-Click" interface to PASS Online that greatly reduces the amount of time spent online entering employee performance information.

Additional changes include elimination of named categories (such as "Role Model of Excellence") and replacing complex business rules with numeric scores. At the end of the performance period, payout levels will be distributed based simply on the points, out of a total of 100, an employee earns during the performance period.

PASS is a vibrant system and we will continue to study ways to improve pay for performance for our workforce.

The Role of the National Advisory Council

TSA is dedicated to listening to and addressing the concerns of its employees. An ongoing dialogue on employee-related issues is critical to maintaining an effective workforce and ensuring a successful pay-for-performance system. One of the most effective venues for maintaining a constructive dialogue has been through the National Advisory Council.

The NAC is composed of TSA employees from around the country selected by their peers to two-year terms to interact regularly with TSA leadership and program offices on employee-related issues. Its role as a forum for candidly discussing PASS and other employee-related issues has been invaluable. Both TSA Administrator Kip Hawley and I have participated in every single quarterly meeting and most monthly conference calls with the NAC. I have found the open and honest dialogue with my fellow workers one of the most rewarding aspects of my job. It is an effective way of obtaining unfiltered feedback from the frontline workers, engaging in in-depth conversations with one another about the challenges facing our agency, and for finding constructive solutions in an inclusive and expeditious manner. Not only does the NAC assist me and all of TSA's leadership in identifying improvements to PASS, it also enables TSA to respond to our TSOs regarding their overall compensation and benefits program.

A clever and patient terrorist can find ways to exploit our technology and our standard operating procedures. However, that terrorist is far less likely to exploit the capabilities of a motivated and well-trained workforce which remains fully engaged in performing their jobs. By maintaining an ongoing dialogue with our workforce through the NAC and other forums, we are building and retaining a motivated workforce. By listening to our employees and by acting upon their concerns, we are continually improving PASS. And, in the fight against terrorism, the preservation and improvement of our workforce focuses on the resource most likely to ensure our protection.

Effectiveness of Pay-for-Performance

The effectiveness of our pay-for-performance system is borne out by the statistics. Over 50% of our TSO workforce has been on the job for four years or more. The average tenure of our TSO workforce is 3.5 years. TSOs who stay with us more than six months are likely to remain with us for the long term.

In Fiscal Year (FY) 2007, the TSO voluntary attrition rate was 17.4%. For full-time Officers, the voluntary attrition rate was 11.6%, which includes transfers to DHS components and other Federal agencies and voluntary retirements. When you eliminate that "positive attrition," the full-time TSO voluntary attrition rate was 8.43%. The FY 07 attrition rate for part-time TSOs was 37.4% (35% when you eliminate the same "positive attrition"). It is typical in any work environment that part-time attrition is much higher than that of full-time workers. TSA has increased the number of part-time hires to provide the flexibility needed to efficiently address airline scheduling. When viewed separately, full-time and part-time voluntary attrition have declined steadily since 2004.

Pay-for-Performance Payout

The most effective way to describe the payouts that TSA has paid to its workforce under PASS is illustrated in the chart below. As these figures show, over 60% of the PASS-covered workforce received a payout in 2008 based upon their work performance in 2007 that fell into the two highest performance levels. Performance in 2007 improved significantly over the previous year, suggesting that the motivation associated with pay-for-performance drives an employee to excel. And it is that striving for excellence that aids securing our homeland.

The amount of PASS benefits paid out in FY 2008 has increased over the previous year's amount. The 2008 payout (based upon 2007 performance) totaled $76,776,511.00, without benefits, as opposed to a total 2007 payout (based upon 2006 performance) of $67,947,085.00. The figure below illustrates the 2008 payout for the 2007 performance period under each of the five ratings.

2008 Payout for 2007 Performance Period

Rating	Concept	Number Rated in FY07	FY08 Payout (FY07 performance)
Role Model of Excellence	Very substantial increase	15.38%	CEI* + 3.5% increase + $2,000 bonus
Exceeds Standards	Fairly substantial increase	45.96%	CEI* + 2% increase + $1,000 bonus
Achieves Plus	Small increase	26.68%	CEI* + 1% increase + $1000 bonus
Achieves Standards	Small bonus	11.57%	CEI* + $500 bonus
Does Not Meet Standards	No increase	<1%	CEI* only

* Comparability Equivalent Increase for Jan. 2008 was 3.5%.

TSA Workforce Incentives

In addition to providing pay-for-performance, TSA is continually looking for other ways to create workforce incentives. A few examples include government contributions at the full-time rate for health benefits for part-time TSOs, new career opportunities, and the creation of split shifts.

Part-time TSOs are a critical component of TSA's flexible security approach. These same employees generally pay a higher percentage of total costs of health insurance than full-time federal employees. These higher health benefit costs become an impediment to retaining part-time employees. Consequently, to provide more affordable health care coverage and retain part-time TSOs, TSA worked with the Office of Personnel Management to permit part-time TSOs who elect Federal Employee Health Benefits coverage to pay the same lower cost for health benefits as full-time TSOs. In some cases, this workforce incentive has saved part-time TSOs up to 65 percent of the cost of health care.

Career opportunities for TSOs were expanded by creating a new full-performance level position and through the implementation of the Behavior Detection program, which utilizes behavior observation and analysis techniques to identify potentially high risk individuals based on deviations from security baselines. TSOs have opportunities to advance if they apply and are selected for these positions.

To more effectively utilize TSO resources and meet scheduling demands at airports, TSA increased the use of split shifts. Split shifts are comprised of two shifts (generally one in the a.m. and one in the p.m.) with a break of at least two hours between the shifts. The use of split shifts provided TSOs with additional opportunities for full-time employment by working shifts that are otherwise staffed with two part-time TSOs. In addition, at some airports, TSOs who are assigned to work split shifts are able to work 10-hour shifts four days per week, which is especially helpful in reducing the cost of commuting to work.

Pay-For-Performance: The Optimal Performance System

The morale of our workforce is positive. It is reflected not only by the statistics but by the enthusiasm with which I am greeted by TSOs at NAC meetings and at airports around the country.

It is not coincidence or luck that provides safe skies, roads and rails. It is the creation and preservation of a layered system of security. While significant advances have been made in our technology and security processes, each day's success begins and ends with our people. The motivation of those employees is a critical ingredient to our success. I believe pay-for-performance plays a significant role in motivating and sustaining an exceptionally talented and well-performing workforce.

In the post-9/11 environment, pay-for-performance provides our employees with the best system to ensure accountability in a fair and objective manner while promoting security in the transportation domain. The pay-for-performance system enables TSA to succeed in its mission of ensuring accountability, enhancing professionalism, and promoting security.

TSA is committed to maintaining a fair and objective system for measuring performance and assuring that its workforce remains accountable to the public to provide security of the highest standard. Thank you again for the opportunity to bring you up to date on our progress with this important system.

Dr. Ronald P. Sanders

Associate Director of National Intelligence for Human Capital

before the

Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

Improving Performance: A Review of Pay-for-Performance Systems In the Federal Government

22 July 2008

Statement for the Record

STATEMENT OF DR. RONALD P. SANDERS
ASSOCIATE DIRECTOR OF NATIONAL INTELLIGENCE FOR HUMAN CAPITAL

HEARING BEFORE THE
SENATE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

"Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government"

July 22, 2008

I. Introduction

Good afternoon Mr. Chairman, Senator Voinovich, and distinguished Members of the Subcommittee. Thank you for the invitation to testify at today's hearing. It is my pleasure to provide a status report to this Subcommittee on one of the Intelligence Community's (IC's) most important strategic human capital initiatives: the National Intelligence Civilian Compensation Program (NICCP). In this regard, I will describe the business and mission "case" for the NICCP; some of the principles we established to guide its design, development, implementation and evaluation and how we have addressed them in the several Intelligence Community Directives (IC Directives) that establish the system; and our phased implementation schedule. As requested, I will also pay particular attention to how we will prepare managers to administer the NICCP, as well as to how we will deal with the potential for bias and quotas in their evaluation of employee performance. In addressing these points, I would note that we recently provided this Subcommittee with a copy of a comprehensive report on the NICCP (along with its enabling IC Directives) that was requested last year by the House and Senate Intelligence Committees.

By way of background, the NICCP is modeled after the National Geospatial-

Intelligence Agency's (NGA's) innovative performance-based pay system, which has been operating successfully for a decade. The product of over two years of extensive inter-agency collaboration, the NICCP's five enabling IC Directives commit the DNI and the heads of the various departments and agencies that have the authority to set the pay of their IC employees to a common set of pay and performance management policies and practices; however, because of our complex statutory context (described below), they will be implemented via departmental and agency personnel regulations. For example, in DoD, the NICCP's Directives will be implemented as part of the Department's Defense Civilian Intelligence Personnel System, established by the Congress in 1996 under title 10, USC.

II. The Case for Action

Today's complex national security challenges underscore the need for an IC workforce that is second to none. Outmoded civilian personnel policies and practices, especially those dealing with pay and performance management, are an impediment to excellence. The NICCP is our response. It will establish a 21st century pay and performance management framework for the U.S. Intelligence Community, one that is far more performance-based and market sensitive than the General Schedule. It will also transcend departmental and agency boundaries to better integrate and unify the IC. That is the essence of our "case for action."

First, and most importantly, the NICCP is designed to transform the IC. That is the mandate given the DNI, and this effort may be one of its most powerful levers. As I will discuss in a moment, the NICCP serves as a unifying force, helping to bind the Community together. That is transformational in a general sense. However, in my view, its potential impact is even greater at the individual and organizational level. In this regard, the NICCP includes a set of IC-wide performance management principles and policies that, among other things, require that IC employees be evaluated on such transformational behaviors as personal leadership and integrity, collaboration, and critical thinking. Likewise, their managers will be assessed on how well they promote and enable these behaviors. These "performance elements" are at the heart of intelligence reform, and when they are linked to performance and pay, they will help foster a new, more integrated and collaborative IC culture.

Second, the NICCP will, to the extent permitted by law, assure a "level playing field" among the 17 agencies that comprise the IC. The importance of this cannot be overstated. Unlike the rest of the Federal civil service, most of the major IC agencies fall outside the coverage of title 5 of the US Code (USC), as well as the rules and regulations of the Office of Personnel Management (OPM). For example, personnel authorities for the Central Intelligence Agency (CIA) and the Office of the Director of National Intelligence (ODNI) are codified in title 50 of the Code, whereas Department of Defense intelligence agencies have their own personnel authorities under title 10. In addition, the Congress has authorized both the Department of Homeland Security and the Federal Bureau of Investigation to waive certain key title 5 provisions (for example, those dealing with pay and job classification). When you include those IC elements that remain under title 5, there are no fewer than six separate personnel systems covering IC employees.

In fact, after much collaboration, we have managed to create an overarching compensation framework that cuts across the lines of 17 agencies (15 of them in six cabinet departments) that comprise the IC and binds them together under a common set of pay and performance management policies. That is what may make the NICCP unique… to my knowledge, it is the first performance-based pay system in the Federal government with an inter-departmental and inter-agency scope, and it may serve as a model for the Congress and OPM as you contemplate government-wide pay reforms.

Finally, the NICCP will enable the IC to better reward excellence and expertise, a critical consideration when you have set about to build a workforce that must literally "know something about everything." We also believe this will improve our ability to recruit and retain the best talent.

While I will be pleased to answer any questions the Subcommittee Members may have regarding the details of the NICCP's "architecture" and enabling Directives, I would like to focus the remainder of my statement on three topics that I believe are of interest to Subcommittee Members: (1) how we solicited employee input and feedback in designing the NICCP, and the nature of that input; (2) our plans for ensuring that supervisors and managers are fully prepared for their responsibilities under the NICCP; and (3) the various safeguards and oversight mechanisms we have established to ensure the NICCP is implemented and administered in a way that is merit-based, credible, and transparent.

III. Employee Engagement

In designing the NICCP, we paid particular attention to those guiding principles identified by OPM and the Government Accountability Office as being essential to the success of a pay-for-performance system. Indeed, we went so far as to memorialize them in one of our IC Directives. Perhaps the most important of those principles concerns employee involvement and engagement, and we have made this one of our top priorities.

Our annual IC Employee Climate Survey served as our starting point. While our most recent survey results from 2007 are encouraging – our employees continue to rank the IC among the top Federal employers – there are still areas for improvement, and a number of them will be addressed by the NICCP. For example, less than one-third of our employees believe their pay raises depend on how well they perform on the job, and less than half see a linkage between performance and promotion; conversely, less than a third of our workforce believes that management takes steps to deal with poor performers. These results are consistent with our 2005 and 2006 surveys, and they suggest that the vast majority of the IC's employees want a stronger linkage between performance and pay, promotion, and retention decisions.

To supplement our surveys – and directly engage our employees in the design of the NICCP – we also commissioned a series of employee focus groups in each of the major IC agencies, beginning in early 2006. In all, several hundred employees and supervisors were asked for their views on performance-based pay, and we took it upon ourselves to ensure that we addressed each and every one of them in the final NICCP design. For example:

- Many employees were worried that in "breaking away" from the General Schedule system, IC payrolls would be short-changed, so one of our IC Directives specifically commits the IC to submit civilian pay budget requests to the Office of Management and Budget (OMB) and the Congress that are no less than the amount that would have been budgeted had the IC remained under the General Schedule.
- Employees were also worried that their salaries would not keep pace with the cost of living if across-the-board GS pay increases were to be put "at risk" in the performance-based pay process, so another of our IC Directives states that all IC employees who receive a performance rating of "Successful" or higher will receive the full GS increase, plus any applicable locality adjustment. However, employees rated "Unacceptable" will not receive either of those increases, nor will they be eligible for performance pay.

- Some employees were concerned that pay-for-performance would force employees to compete against one another and discourage collaboration and teamwork, so one of our IC Directives specifically requires every IC employee, manager, and executive to be evaluated on how well they collaborate with their peers and co-workers. Other employees were concerned that they would feel compelled to simply tell their leaders what they wanted to hear in order to get a high rating, so that same Directive requires that employees be evaluated on their personal integrity and their willingness to "speak truth to power;" That Directive also requires that managers and executives be evaluated on whether they encourage their employees to do so.
- Finally, most employees expressed misgivings about the ability of their supervisors and managers to effectively administer a performance-based pay system, so we adopted a mathematical formula developed by the NGA as a basis for calculating an employee's performance pay increase. The formula is based on such objective factors as the employee's performance rating and current salary, the ratings distribution in the performance pay "pool," and the funds allocated to that pool. Note that this formula produces a *preliminary* payout…that amount can be changed by higher-level management, but only with full justification, full disclosure, and approval by an even higher level of management.

Most of the IC Directives containing these provisions were signed by the DNI in April and May 2008, and our departments and agencies have now begun the process of communicating with their employees through a variety of means to inform them of the changes that are underway. Our agencies have already held dozens and dozens of town hall meetings and focus groups and conducted world-wide Web and satellite broadcasts; they have also used intranet Web sites and even blogs to get the word out. These efforts have reached thousands of employees and will continue throughout implementation.

IV. Safeguards and Oversight

If the NICCP is to accomplish its goals, our employees must regard it as fair, credible, transparent, and above all, merit-based. Further, we must make certain that nothing we do under its rules unlawfully impacts minorities, women, and members of other legally protected classes in the IC. These words have been codified as NICCP guiding principles in our IC Directives, and those Directives establish rigorous IC and agency-level planning, oversight, and accountability mechanisms to ensure that we stay true to them.

For example, our Directives require that all employees receive written performance expectations at the start of the performance evaluation period, and undergo a mid-year review to receive feedback on their performance. Further, all end-of-year performance appraisals will be subject to at least two levels of management review and approval before they are finalized, including an agency-level review specifically intended to protect against any unlawful discrimination and ensure agency-wide consistency. In this regard, the Directives prohibit any sort of ratings quota or forced distribution. Employees dissatisfied with their final rating may request reconsideration from a management official above and/or outside their rating chain, and of course, our employees always have the right to file a grievance, appeal, or complaint regarding their rating, in accordance with their agency's regulations.

Once ratings are finalized, the separate performance pay process begins. We bifurcated these processes deliberately, to alleviate employee concerns that ratings would be changed after the fact, once pay deliberations began. Instead, an employee's final rating is taken as a "given" in the mathematical formula we have adopted for calculating an employee's preliminary performance pay increase. However, the amount initially provided by the formula can be changed by a higher level of management, but only in accordance with published criteria, approval by an even higher level of management, and full documentation and explanation to the employee. In this regard, performance pay increases are subject to two additional levels of management review – first by a pay pool panel (typically led by a third-level manager or executive) and then by agency-level officials, again to ensure consistency and protect against unlawful discrimination.

Finally, to oversee the entire NICCP effort, from design and initial deployment to administration and evaluation, the DNI has established an IC Human Capital Board. Chaired by the Principal Deputy Director of National Intelligence, the Board is comprised of the Deputy Directors or equivalents of the major IC agencies and elements, as well as the Principal Deputy Under Secretary of Defense for Intelligence; membership also includes the IC's Chief Human Capital and Chief Financial Officers, as well as the ODNI Chief of Equal Employment Opportunity and Diversity.

Among other things, the Board is charged with assessing the "readiness" of each agency at each major NICCP implementation milestone, using a comprehensive assessment tool (developed by the Office of the Under Secretary of Defense for Intelligence and adapted for IC-wide use) to examine and evaluate an agency's progress against detailed implementation standards – for example, completion of pre-implementation supervisory and managerial training. In addition, the Board will review the overall results of each NICCP performance appraisal and performance pay cycle to ensure IC-wide consistency and transparency.

V. Training: the Key to Success

Last, the Subcommittee asked that we describe the training we intend to provide as part of NICCP implementation, as well as on an ongoing basis thereafter. In close collaboration with our departments and agencies, especially DoD, we have developed and have begun delivering a comprehensive training curriculum for senior executives, managers and supervisors, human resource (HR) specialists, and employees that covers not only the technical aspects of the NICCP and its various departmental and agency implementing instructions (that is, the mechanics of the system), but also the "soft" skills that are just as critical – such things as setting clear performance expectations, monitoring performance and giving constructive feedback, and making (and explaining) performance distinctions among employees. I have included a chart in my written statement that summarizes all of the hours and days of training associated with the implementation and administration of the NICCP, especially for supervisors and managers, and it is already being delivered in the Defense Intelligence Agency (DIA) and the other DoD components that will implement the NICCP later this year.

Of particular note is the extensive training we will provide to those management officials who will be involved in the actual performance pay-setting process; they have a special responsibility, and we intend to invest heavily in their training to ensure that they are able to meet it. For example, managers who serve on pay pool panels – that is, those officials that have the authority to approve or adjust an employee's preliminary performance payout – will receive no less than 2 and as many as 3 days of intensive training that among other things, will equip them to identify and correct any implicit or unintentional bias against women or minorities in the performance evaluation and pay-setting process., The bottom line: we know how critical training is to our success, and we will not shortchange it in any way.

VI. Event-Driven Implementation

The IC will phase in the NICCP over the course of the next five years. It will be implemented agency by agency, beginning with DIA this fall, with most remaining Defense agencies and the FBI implementing 12-15 months later, through the end of 2009. The CIA and the Office of the DNI will follow about a year after that (in late 2010), with our smaller elements converting in FY 2011 and 2012, Congress permitting. The costs associated with implementation (training, HR information systems reconfiguration, etc.) and conversion (that is, salary increases to compensate converting employees for the amount they've earned towards their next increase in compensation are fully funded in the National and Military Intelligence Programs of record.

This timetable notwithstanding, implementation will ultimately be event-driven, based on the "readiness" of each IC agency, rather than on an arbitrary calendar date. For example, the NICCP Directives require the IC Human Capital Board to regularly review each agency's progress against its implementation plan, as well as against the standards established by our readiness assessment tool; in addition, the Directives identify three major pre-implementation milestones and require an IC agency head to certify (subject to review by the Human Capital Board) that the agency has completed all of the actions specified at each milestone – for example, that the agency has trained all of its supervisors, or that it has successfully conducted a "mock" performance pay exercise – before proceeding to the next implementation stage. Thus, we are proceeding carefully. No IC agency will implement the NICCP before it has been certified as ready to do so.

However, we will need some additional assistance from the Congress in order to fully realize the promise of the NICCP. As it stands today, all of our largest agencies – that is, those that employ the vast majority of IC employees – already have sufficient statutory authority (albeit derived from a variety of different statutes) to fully implement the NICCP's polices; indeed, most are not bound by title 5 of the US Code and OPM rules. That is not the case with our smaller elements; they are so bound, and as a result, will not be able to take advantage of the NICCP. They simply do not have the legal authority to do so.

This is problematic: while these other agencies – in the Departments of Justice, Energy, Treasury, and State – are full-fledged members of the IC, funded by the NIP and critical to the National Intelligence Strategy, they will be placed at a competitive disadvantage relative to their IC peers when it comes to compensating their employees. They will also be unable to share other personnel flexibilities (such as deployment incentives, foreign language incentive pay, and various student scholarships) that have been authorized for one or more but not all IC agencies over the years. In other words, without additional authority, they will no longer be on a "level playing field" with their sister agencies.

To remedy this, the Administration's FY 2008 Intelligence Authorization request proposed that the DNI be authorized to take personnel flexibilities that Congress had already granted to one IC agency and extend them to one that did not have those flexibilities. In the case of an IC agency covered by title 5 USC, that extension would require OPM and departmental concurrence, as well as congressional notification. The Senate included that provision in its final FY 2008 Authorization, but the provision was not accepted in conference. The Administration requested this proposal again this year, as part of the FY 2009 Intelligence Authorization request, and the Senate Select Committee on Intelligence has again included it in its Intelligence Authorization Act, S. 2996. We urge the Subcommittee's support.

We also need congressional assistance in another critical area: executive pay compression. This is a problem quite familiar to this Subcommittee, one that was temporarily fixed four years ago with major reforms to the Senior Executive Service (SES). At that time, the Congress raised the SES pay cap to Executive Level II on an agency-by-agency basis – and only if OPM and OMB "certified" that an agency meant certain rigorous standards. Those changes were welcome, but their benefits have been eroded by the passage of time.

Here is the problem: each year, the locality-adjusted General Schedule increases at a greater rate than the Executive Schedule, and since locality-adjusted rates for GS-15 employees are capped by that Executive Schedule (at Level IV), the "real" salary potential for GS-15 employees continues to shrink. This is especially problematic in a performance-based pay system, because it reduces the base pay potential available to an agency's highest non-executive performers. It is just as problematic for executives. Those who perform at the highest level should expect to be rewarded with base pay increases that exceed the annual Executive Schedule adjustment, but if they are – and if they continue to perform at that high level year in and year out – our best and brightest executives quickly reach the cap. Once there, their base pay increases are limited to the annual Executive Schedule adjustment…no matter how well they perform. And high-performing GS-15s are less likely to aspire to the SES if the relative financial rewards continue to erode.

Simply put, pay compression undermines pay-for-performance; and it will eventually squeeze our best senior managers and executives out of Federal service. The Administration (this one as well as the next) and the Congress must begin to address this issue now, before it becomes a crisis.

VII. Conclusion

The NICCP, with its foundation of common pay and performance management policies, is an essential ingredient in the IC's transformation. It will help us develop and sustain a stronger sense of unity and common purpose across the IC, and that translates into mission success – the ultimate aim of the Intelligence Reform and Terrorism Prevention Act.

In that regard, we in the IC are proud of the NICCP, not so much because of its substance (although we believe that the design will prove to be successful) but rather because of the unprecedented process we followed in developing and now implementing the system. As I have noted, we believe the NICCP is the first pay-for-performance system that is truly inter-departmental and inter-agency in nature, conceived through intensive collaboration and carefully balancing the need for both uniformity *and* flexibility. And we did it in one of the Federal government's most demanding mission environments, working through a complex web of laws and a legacy of agency autonomy and independence. If we can do it under these most challenging conditions, so too can the rest of the Federal government.

Thank you very much. I look forward to answering any questions the Subcommittee may have.

STATEMENT OF

MR. BRADLEY BUNN
PROGRAM EXECUTIVE OFFICER
NATIONAL SECURITY PERSONNEL SYSTEM
DEPARTMENT OF DEFENSE

BEFORE THE

SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA
UNITED STATES SENATE

ON

IMPROVING PERFORMANCE: A REVIEW OF PAY-FOR-PERFORMANCE SYSTEMS IN THE FEDERAL GOVERNMENT

JULY 22, 2008

FOR OFFICIAL USE ONLY
UNTIL RELEASED BY THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

BIOGRAPHY

Brad Bunn, a member of the Senior Executive Service since November 2003, was named the Program Executive Officer (PEO) of the National Security Personnel System (NSPS) in May 2008. Appointed by the NSPS Senior Executive, Deputy Secretary of Defense Gordon England, Mr. Bunn leads the comprehensive policy and program office responsible for the design and implementation of NSPS.

Prior to his appointment, Mr. Bunn was Deputy PEO, NSPS, where he served an integral role in the planning, design, development, implementation, and assessment of NSPS. Concurrently, Mr. Bunn served as Director of the Defense Civilian Personnel Management Service (CPMS) from June 2005 to May 2008, where he supported the Under Secretary of Defense (Personnel and Readiness) and the Deputy Under Secretary of Defense (Civilian Personnel Policy) in planning, formulating, and managing civilian personnel programs, including policy support, enterprise human resources (HR) information systems, and Department-wide civilian personnel administration services for the Military Departments and Defense agencies.

Mr. Bunn has over 17 years experience in the Department of Defense (DoD) as a human resources professional holding operating and staff level positions in the areas of HR information systems management, policy development, and project management.

Mr. Bunn earned a Bachelor of Arts degree in political science from the College of William and Mary in Williamsburg, Virginia and participated in the Defense Leadership and Management Program (DLAMP). He has received the Defense Civilian Personnel Management Service Exceptional Civilian Service Award, the Navy Distinguished Public Service Award, and the Navy Meritorious Civilian Service Award.

Mr. Chairman, Senator Voinovich, and distinguished members of the Subcommittee: Thank you for the opportunity to speak with you about the National Security Personnel System (NSPS) at the Department of Defense (DoD). Successful NSPS implementation remains a critical transformational priority for the Department, and while we are still relatively early in our implementation, it is clear that NSPS is taking root; as of today we have over 180,000 employees operating under NSPS. I'd like to give you an update on our progress.

You called this hearing to discuss pay-for-performance systems in the Federal government and specifically hear from me about the process DoD followed to develop, implement, and evaluate NSPS. We are just over two years into implementation, and like any major transformation, we have had our share of successes and challenges. I can confidently state that NSPS is working. The active engagement and participation of our senior leaders, most notably, Deputy Secretary of Defense Gordon England, speaks volumes to the commitment the Department has to the importance NSPS plays in transforming our Department.

The design of NSPS has been deliberate, well managed, and transparent, based on guiding principles that include putting mission first, respecting our employees, valuing talent, performance, and commitment to public service, and ensuring flexibility, responsibility, and accountability. We have moved carefully and deliberately to design and implement a system that achieves the Department's goal for a flexible human resources system that is credible, mission-driven, and results-oriented.

It is early in our journey, and it will take some time before the Department fully realizes all the benefits NSPS was designed to produce, but we are already seeing a powerful return on investment: an unprecedented training effort focused on performance management directed at employees *and* supervisors; greater and more frequent communication between employees and supervisors – people are talking about performance, results, and mission alignment; and increased flexibility in competing for talent and rewarding exceptional performance. We are seeing positive movement in behaviors towards a performance culture. These returns are cause for optimism.

The purpose of NSPS is the same today as it was in 2003 when Congress gave the Department the authority to develop a more flexible civilian personnel management system - to improve our ability to execute our national security mission. As Secretary England has noted on several occasion, NSPS itself is not the goal, rather it is a tool to achieve the goal of providing an environment where people can excel. NSPS improves the way the Department hires, compensates, and rewards its civilian employees, while preserving employee protections and benefits, veterans' preference, and the enduring values of the civil service. NSPS provides a performance management system that better aligns individual performance with DoD's mission and strategic goals, as well as a rigorous evaluation system that makes meaningful distinctions in performance and rewards.

Implementation of NSPS

In November 2005, the Department and the U.S. Office of Personnel Management (OPM) jointly published final NSPS regulations, and in April 2006, the Department began implementing the human resources provisions of NSPS. Approximately 11,000 employees from numerous DoD organizations were converted to NSPS as part of our phased approach to implementation. Between October 2006 and April 2007, we converted an additional 103,000 employees. The most recent conversions took place between October 2007 and May 2008, when an additional 68,000 civilians were moved under NSPS, bringing the total number of NSPS employees to approximately 182,000. These transitions were preceded by comprehensive and extensive training to senior leaders, managers, supervisors, and employees, with a particular focus on the performance management aspect of NSPS. From the beginning of this program, we have worked to ensure that our organizations have sufficient time and resources to accomplish the training, prepare their employees, and implement when they are ready.

The next major phase in our transition is the conversion of approximately 20,000 employees beginning in the fall of 2008. By the end of this calendar year, the total number of employees who have transitioned to NSPS will exceed 200,000 – more employees than any Cabinet-level agency except the Department of Veterans Affairs.

Key Success Factors

There are several key factors that have played a role in our progress to date. The first factor was the extensive consultations the Department and OPM carried out with our stakeholders including employees, managers, supervisors, employee representatives, members of Congress, and a number of public interest groups. During the design phase, the Department held hundreds of town hall meetings, focus groups, and other outreach efforts to hear from multiple stakeholders. We reviewed thousands of written comments during the initial rulemaking process. While it was impossible to accept every suggestion and recommendation, each one was thoughtfully considered, and the Department changed and adapted the system to respond to this important input.

The second factor is the value and investment placed in monitoring implementation and making adjustments along the way. My predecessor and I have hosted several leadership conferences to collect and share lessons learned, review progress, and determine necessary changes. Feedback from leaders on the "front line" of implementation has been very useful in identifying areas that need attention, including improvements to automation, communications, and training.

The third factor is the feedback we solicit and receive from our employees. As a result of employee feedback, we have made several adjustments. For instance, employees and supervisors expressed the need for additional training and tools on writing effective job objectives and performance assessments. As a result, we expanded our training and launched a new tool on our website to assist employees with these critical activities. Supervisors expressed a need for additional guidance on compensation management and pay setting – in response, we issued comprehensive guidance. We are also working on enhancing the competencies and skills of our human resources professionals, so they are better equipped to consult and support organizations under NSPS. Broad communication and transparency is a hallmark of our implementation process as demonstrated by our public website. From April 2006 through June 2008, the site has received over 107 million visits.

The fourth and final success factor is the Department's robust training program. It is one of the most extensive civilian-focused training initiatives ever undertaken by the Department. From conversion through the appraisal cycle, we have provided our employees multiple training opportunities on core NSPS elements, with a special focus on the performance management system. Training is offered in a variety of formats and through diverse channels, from classroom instruction to online self-paced sessions. As of June 2008, our employees have completed over a half million NSPS-related courses. In addition to training on NSPS mechanics, employees and supervisors are trained in "soft skills." Supervisory training focuses on how to build, coach, and mentor employees and teams; techniques for conducting effective performance conversations; and how to manage change. Employee training focuses on how to communicate and interact with their supervisor and focus on outcomes and results. Our goal is to make sure participants understand NSPS and their roles in making it successful.

Pay Pool Process

NSPS has gone through two performance cycles and completed its second performance-based payout in January of this year. NSPS is designed to promote a performance culture in which the performance and contributions of civilians are fully recognized and rewarded. The NSPS performance management system provides a rigorous and robust method for appraising and evaluating employee performance based on standard performance benchmarks, with safeguards in place to ensure employees are treated equitably and fairly.

Last November, 974 pay pool panels met to review appraisals, assign ratings, and allocate performance-based salary increases and bonuses. The pay pool process, which has a proven track record in our personnel demonstration projects, is designed to ensure that appraisals and pay decisions are accomplished in a consistent, fair, and rigorous manner. The pay pool process ensures that managers and supervisors apply consistent standards when rating employees and includes a structured way for leaders to discuss individual and team performance within the context of mission and organization goals.

Under NSPS, employees are evaluated on a five-level rating system, with "1" being unacceptable, "3" being a valued performer, and "5" representing role model performance. Of the more than 100,000 employees rated last year, 57 percent received a Level 3 (Valued Performer); 36 percent received a Level 4 (Exceeds Expectations); and five percent received a Level 5 (Role Model). Less than 2 percent of employees received a Level 2 (Fair), and only .2 percent received a Level 1 (unacceptable) rating. These ratings resulted from deliberate and rigorous reviews of rating official and employee narrative assessments of performance in comparison with standard DoD-wide performance indicators. Because NSPS is a pay for performance system, these performance ratings drove salary increases and bonuses, with exceptional performers receiving greater rewards, and unacceptable performers receiving no increase or bonus. The average performance-based salary increase was 3.4 percent, with an average cash bonus of 1.7 percent. These ratings and payouts reflect a rigorous evaluation of performance based on standard criteria, and demonstrate meaningful differentiation in levels of performance and the associated rewards.

To ensure fairness in the system, we built safeguards into the process. In addition to the thorough reviews of performance evaluations through the pay pool process, which includes a final review and approval by senior leadership (known as a Performance Review Authority, or PRA), employees have the right to challenge their rating through a formal reconsideration process. Most importantly, forced distribution of ratings (i.e., setting pre-established limits, targets, or goals for the percentage or number of ratings that may be assigned at any or at each level) is strictly prohibited.

Impact of NDAA FY08

As with any system implementation, we anticipate and expect NSPS to evolve and change over time. As a result of statutory changes included in the National Defense Authorization Act for Fiscal Year 2008, certain aspects of NSPS have changed. These changes include:

- bringing NSPS under government-wide rules for labor-management relations, adverse actions, disciplinary appeals, and reduction in force;
- excluding Federal Wage System (blue collar) employees from NSPS coverage;
- requiring that NSPS employees with a performance rating above "unacceptable" receive at least 60 percent of the annual government-wide General Schedule pay increase as a base

salary increase (with the remaining portion allocated to pay pools for performance-based increases); and

- requiring that NSPS employees with a performance rating above "unacceptable" receive local market supplement adjustments in the same manner as General Schedule locality pay increases.

On May 22, 2008, DoD and OPM jointly published proposed regulations for public comment in the *Federal Register* to conform to the provisions of the NDAA FY08 and to make modifications as a result of operational lessons learned over the past two years. We have received over 500 comments on the proposed regulations and are reviewing them to determine what changes will be made in the final regulations. Concurrent with the *Federal Register* process, we engaged in national consultation with the ten unions holding DoD national consultation rights. We anticipate publication of the final regulation later this year.

Program Evaluation

One of the key ingredients to effective program management is program evaluation, and this applies to NSPS. The Department has an ongoing evaluation effort – a mechanism to monitor effectiveness – to ensure the system is delivering the results we expect. The Department has a comprehensive approach to assessing NSPS that includes: continuous learning and adjustment through monitoring and lessons learned discussions; in-depth, comprehensive analysis and assessment of empirical data; and adaptation of best practices from OPM and the Government Accountability Office (GAO) for assessing alternative personnel systems.

We are looking at data and information from a variety of sources, including annual performance and payout results; annual surveys of the DoD civilian workforce (including targeted sampling of NSPS employees); field visits and focus groups with NSPS organizations;

leadership meetings and lessons learned workshops; samples of NSPS performance plans; analysis of personnel transactional data; feedback from human capital accountability reviews; and special studies of high-interest topics. Results and findings from these assessment efforts will be used to inform NSPS design and policy reviews.

In addition to internal reviews, the Department continues to work with OPM in its assessments of NSPS. Last year, preparedness and the implementation process was reviewed. This year, OPM will look at our progress since the first year. Further, GAO has a current engagement on performance management system safeguards and accountability mechanisms. We will carefully consider findings and recommendations from these efforts as we move forward.

The Department has also gained considerable insights from the evaluations of the other DoD personnel demonstration projects, including those in place at the Defense Laboratories. All of these are important features of our spiral implementation methodology which allows us to make adjustments to the system as we move forward.

Although we have not formally reported findings from our internal assessments, I can share some of what we are hearing and seeing. NSPS is a significant change, particularly in the area of performance management, for employees and supervisors. It requires more time and energy than previous systems, and many of our employees are not yet completely comfortable with the system. Performance plans and assessments need improvement, as many are struggling with translating organizational goals into individual, results-oriented, and measurable job objectives. Employees have expressed concern over the pay pool process, and whether it produces fair results. It is clear, however, that employees have a better understanding of how their jobs relate to the mission and goals of the organization, and there is increased communication between employees and supervisors about performance.

Some employees are struggling with the idea of receiving a Level 3 (Valued Performer) rating in a five-level system, particularly those who converted from systems where almost all employees received the highest rating. Some supervisors have reported difficulty in fully understanding how the pay pool panel process works, including gaining a common understanding of the various rating levels. That said, many supervisors report that they are glad to have a system that allows them to recognize and reward top performers.

We have heard from Pay Pool Managers who reported using their experiences and feedback from the workforce to modify local business rules and practices, alter pay pool structure, and change pay pool panel membership. Organizations have reported the importance and value of conducting "mock" pay pools halfway through the year so they can work through problems before the actual process.

So far, the results we are seeing are very similar to the experience of other personnel demonstration projects and alternative personnel systems, including those within the Department. We have said from the beginning that we expect it to take three to five years for employees to fully understand and embrace the system. However, we continue to monitor and assess NSPS, and look for ways to address employee concerns by making adjustments to the system and improving our communications, tools, and training.

Is NSPS working? We believe it is. We also know that transformation takes time – it cannot be achieved overnight. We are taking the time to do it right – Secretary England has repeatedly stated that NSPS is event-driven, and we continue to approach our design and implementation with this in mind. It will take time to assess how well NSPS is working – it will take several performance cycles for us to effectively evaluate how well the performance management and pay pool processes are working and where adjustments are needed for long-term sustainment. In the meantime, we continue to gather information and prepare to accomplish the comprehensive evaluation needed to ensure the system is credible, effective, and fair.

The Department is committed to an open, ongoing process of communication and consultation about NSPS with Congress, our employees and their representatives, and key stakeholders.

Thank you for your ongoing support of our DoD civilian workforce, and for providing me this opportunity to share our experiences with NSPS. I look forward to your questions.

United States Government Accountability Office

GAO

Testimony before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

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HUMAN CAPITAL

Selected Agencies Have Implemented Key Features of Their Senior Executive Performance-Based Pay Systems, but Refinements Are Needed

Statement of J. Christopher Mihm, Managing Director
Strategic Issues

GAO
Accountability * Integrity * Reliability

GAO-08-1019T

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Highlights

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Why GAO Did This Study

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July 22, 2008

HUMAN CAPITAL

Selected Agencies Have Implemented Key Features of Their Senior Executive Performance-Based Pay Systems, but Refinements Are Needed

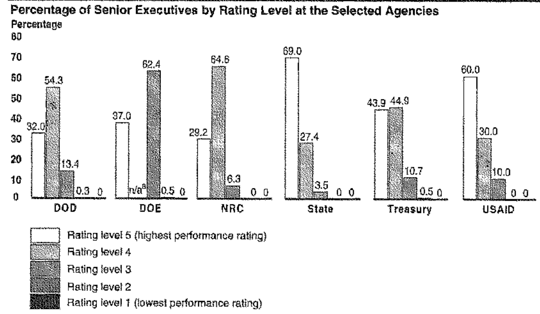
What GAO Found

Overall, the selected agencies are making positive steps toward three key areas related to OPM and OMB's certification criteria, with some opportunities for refinements in these areas.

Factoring organizational performance into senior executive performance appraisal decisions: All of the selected agencies have policies in place that require senior executives' performance expectations to be aligned with organizational results and organizational performance to be factored into appraisal decisions. Improvements in communicating organizational performance to reviewing officials could be made.

Making meaningful distinctions in senior executive performance: While all of the selected agencies have multiple rating levels in place for assessing senior executive performance, senior executives were concentrated at the top two rating levels in the fiscal year 2007 appraisal cycle, as shown below.

Percentage of Senior Executives by Rating Level at the Selected Agencies



Source: GAO analysis of agency data.

Note: DOE uses a four-level appraisal system.

Building safegnards into senior executive performance appraisal and pay systems: The selected agencies varied in how they implemented predecisional checks of appraisal recommendations through higher-level reviews and Performance Review Boards as well as transparency in the aggregate results with opportunities to improve communication of aggregate appraisal results to all senior executives.

Mr. Chairman, Senator Voinovich, and Members of the Subcommittee:

I am pleased to be here today to discuss our preliminary results concerning selected agencies' policies and procedures for the performance-based pay systems for career members of the Senior Executive Service (SES). As you know, in recent years, Congress and the administration modernized the performance appraisal and pay systems for senior executives by requiring a clearer link between individual performance and pay. Specifically, agencies are allowed to raise SES base pay and total compensation caps if their performance appraisal systems are certified by the Office of Personnel Management (OPM) with concurrence by the Office of Management and Budget (OMB) as, among other things, linking performance for senior executives to the organization's goals and making meaningful distinctions based on relative performance.

In our past work on performance management and pay issues, we have reported that performance-based pay cannot be simply overlaid on most organizations' existing performance management systems.[1] Rather, as a precondition to effective pay reform, individual expectations must be clearly aligned with organizational results, communication on individual contributions to annual goals must be ongoing and two-way, meaningful distinctions in employee performance must be made, and cultural changes must be undertaken. Most important, leading organizations have recognized that effective performance management systems create a "line of sight" showing how unit and individual performance can contribute to overall organizational goals and can help them drive internal change and achieve external results.[2] As you know, effective performance management systems that hold executives accountable for results can help provide continuity during times of leadership transition, such as the upcoming change in the administration, by maintaining a consistent focus on organizational priorities. We have reported that there are significant opportunities to strengthen agencies' efforts in holding senior executives accountable for results through their performance management systems—

[1]GAO, *Human Capital: Symposium on Designing and Managing Market-Based and More Performance-Oriented Pay Systems*, GAO-05-832SP (Washington, D.C.: July 27, 2005). For additional information on our past work related to SES performance management systems and the certification process, see app. II of this statement.

[2]GAO, *Human Capital: Senior Executive Performance Management Can Be Significantly Strengthened to Achieve Results*, GAO-04-614 (Washington, D.C.: May 26, 2004).

in particular, by linking senior executives' performance expectations to the achievement of results-oriented organizational goals.

OPM's recently released 2008 governmentwide SES survey results found that senior executives across the government recognize the importance of linking pay to performance with about 93 percent of the respondents strongly agreeing or agreeing that pay should be based on performance. In addition, the majority of senior executives reported that their performance ratings were linked to their salary increases and bonuses to a very great or great extent. However, senior executives recognized the challenge of making meaningful distinctions in performance—a key criterion for agencies' certification of their SES appraisal systems. Specifically, less than a third of senior executives governmentwide strongly agreed or agreed that bonuses or pay distinctions were meaningfully different among executives.

At your request and Senator Dorgan's, we are preparing a report highlighting selected federal agencies' policies and procedures for their SES performance appraisal and pay systems and OPM and OMB's oversight of the certification process (for additional background on the governmentwide SES performance-based pay system and certification criteria, see app. I). Today, I will present preliminary observations from our ongoing review. As requested, I will discuss the policies and procedures at selected agencies addressing three key areas: (1) factoring organizational performance into senior executive performance appraisal decisions, (2) making meaningful distinctions in senior executive performance, and (3) building safeguards into senior executive performance appraisal and pay systems. In our forthcoming report, we plan to report on OPM and OMB's oversight role and make recommendations to the selected agencies on areas of refinement for their senior executive performance appraisal and pay systems and to OPM and OMB to strengthen their oversight roles.

For our review, we selected the U.S. Departments of Defense (DOD), Energy (DOE), State, and the Treasury; the U.S. Nuclear Regulatory Commission (NRC); and the United States Agency for International Development (USAID) based on variations in agency mission, organizational structure, size of their career SES workforces, and past results of their SES performance appraisal systems through rating and bonus distributions. To date, we have analyzed these agencies' SES performance management policies, directives, and guidance, and other related documents; interviewed cognizant agency officials, including OPM and OMB officials, regarding the certification process; and analyzed aggregate SES performance rating, bonus, and pay adjustment data as provided by the agencies for fiscal year 2007. In analyzing the fiscal year 2007 appraisal data, we defined our universe of analysis as career senior executives who received ratings. In calculating the percentage of eligible senior executives who received bonuses (cash awards) or pay adjustments (increases to basic pay) and average amounts, we excluded executives who received a rating less than "fully successful" (level 3), as applicable, from the eligible population since those executives are not eligible to receive bonuses or pay increases, according to the selected agencies' policies. We also excluded senior executives at NRC, Treasury, and State who received Presidential Rank Awards from our calculations of percentages of eligible SES members receiving bonuses and average amounts because those individuals were not considered for bonuses that year, according to the agencies' policies. In order to have consistency in our analysis across selected agencies, we included senior executives who were rated but left their positions—because of retirement, attrition, or assignment to a lower grade—prior to performance payouts being made in our analysis. The agencies' policies and practices varied in whether or not senior executives who retired were eligible for performance payouts. We checked the agency data for reasonableness and the presence of any obvious or potential errors in accuracy and completeness. We also reviewed related agency documentation, interviewed agency officials knowledgeable about the data, and brought to the attention of these officials any concerns or discrepancies we found with the data for correction or updating. On the basis of these procedures, we believe the data are sufficiently reliable for use in the analyses presented in this statement. Agency officials also verified the accuracy of the facts presented in this statement.

The examples of the selected agencies' policies and procedures for their SES performance-based pay systems are not generalizable to the governmentwide SES population and all executive branch agencies. We did not assess how the selected agencies are implementing all the policies and procedures for their SES performance-based pay systems. An agency may have implemented a policy related to the three key areas even if it is not specifically highlighted in this statement. We conducted our work from October 2007 to July 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In summary, the selected agencies are making positive steps in generally addressing three key areas related to OPM and OMB's certification criteria through their SES performance-based pay systems with some opportunities for refinements of their systems. First, all of the selected agencies have policies in place that require senior executives' performance expectations to be aligned with organizational results and organizational performance to be factored into senior executive appraisal decisions. However, OPM has found that while many agencies are doing a good job of clarifying the alignment of executive performance plans with agency mission and goals, some of the plans often still fall short of identifying the measures used to determine whether the results are achieved. While the agencies identified common organizational assessments for consideration in senior executive appraisal decisions, NRC and Treasury identified other types of tools to assess performance at the office or bureau level. OPM has emphasized the importance of communicating to individuals involved in appraisal decisions the effect organizational performance can have on individual ratings and overall rating distributions through briefings or other communications. Several of the selected agencies shared the organizational performance assessments and communicated the importance of considering organizational performance through briefings, training, or document packages for the Performance Review Board (PRB) meetings, while State did not communicate any information regarding organizational performance.

Second, while all of the selected agencies have multiple rating levels in place for assessing senior executive performance, several of the agencies, such as NRC, State, and DOE, designed their appraisal systems to help allow for differentiations when assessing and rewarding executive performance by establishing tier structures or prescribed performance payout ranges based on the resulting performance rating. However, our analysis shows that the senior executives are concentrated at the top two rating levels for the most recently completed appraisal cycle. Further, at almost all of the agencies, the highest-performing executives, rated as "outstanding" (level 5), made up the greatest percentage of eligible executives receiving bonuses with the largest bonuses on average, with the exception of NRC where all the eligible executives rated at the top two levels received a bonus. For pay adjustments, the majority of eligible senior executives rated at fully successful or higher received pay increases, but unlike bonus distributions, at some of the selected agencies, the highest performing executives did not comprise the greatest percentage of executives receiving pay increases with the largest increases on average.

Third, all of the selected agencies have built safeguards into their senior executive performance appraisal and pay systems—such as predecisional checks of performance appraisal recommendations through higher-level reviews and PRBs as well as transparency in the aggregate results—to help enhance the credibility, fairness, and transparency of their systems, although they varied in how the safeguards have been implemented. Our preliminary results show that there are opportunities for USAID to improve the communication of aggregate appraisal results to all senior executives, rather than just individual appraisal results to the appropriate executive. Communicating an executive's individual rating conveys information about how well the executive has performed against the expectations in the performance plan, but is not sufficient to provide a clear picture of how the executive's performance compares with other executives in the agency.

Factoring Organizational Performance into Senior Executive Performance Appraisal Decisions

In our past work on performance management, we have identified the alignment of individual performance expectations with organizational goals as a key practice for effective performance management systems.[3] Having a performance management system that creates a "line of sight" showing how unit and individual performance can contribute to overall organizational goals helps individuals understand the connection between their daily activities and the organization's success. According to OPM, agency systems do not yet place sufficient emphasis on achieving measurable results. OPM has said that the criterion for alignment with organizational results is often the hardest of the certification criteria for agencies to meet. While many agencies are doing a good job of clarifying the alignment of executive performance plans with agency mission and goals, some of the plans often still fall short of identifying the measures used to determine whether the results are achieved, according to OPM. This challenge of explicitly linking senior executive expectations to results-oriented organizational goals is consistent with findings from our past work on performance management.[4]

To help hold senior executives accountable for organizational results, beginning in 2007, OPM required agencies to demonstrate that at least 60 percent of each senior executive's performance plan is focused on

[3]GAO, *Results-Oriented Cultures: Creating a Clear Linkage between Individual Performance and Organizational Success*, GAO-03-488 (Washington, D.C.: Mar. 14, 2003).

[4]GAO-04-614.

achieving results and has clear measures associated with those results to show whether the goals have been achieved in order to receive certification of their SES appraisal systems. The selected agencies in our review have designed their appraisal systems to address OPM's requirement of aligning individual expectations with organizational goals. For example, in setting expectations for the individual performance plans, DOE requires the senior executives and supervisors to identify three to five key performance requirements with metrics that the executive must accomplish in order for the agency to achieve its strategic goals. Weighted at 60 percent of the summary rating, the performance requirements are to be specific to the executive's position and described in terms of specific results with clear, credible measures (e.g., quality, quantity, timeliness, cost-effectiveness) of performance, rather than activities. For each performance requirement, the executive is to identify the applicable strategic goal in the performance plan. To ensure that agencies are implementing their policies for alignment of performance expectations with organizational goals, OPM requires agencies as part of their certification submissions to provide a sample of executive performance plans, the strategic plan or other organizational performance documents for establishing alignment, and a description of the appraisal system outlining the linkage of executive performance with organizational goals.

Further, OPM requires agencies to consider organizational performance in appraising senior executive performance to receive certification of their SES appraisal systems. According to OPM and OMB officials, the main sources of organizational performance that agencies use are the performance and accountability reports (PAR) and Program Assessment Rating Tool (PART) summaries, which capture agencywide as well as program- or office-specific performance. While identifying appropriate assessments of organizational performance to be used in appraisal decisions, agencies are also to communicate the organizational performance to the senior executives, PRB members, and other reviewing officials—including supervisors who complete the ratings—involved in appraisal decisions prior to the completion of individual performance ratings. In its certification regulations,[5] OPM does not specify the format in which agencies need to communicate organizational performance; however, OPM has emphasized the importance of communicating to individuals involved in appraisal decisions the effect organizational

[5] 5 CFR Ch. 1, Pt. 430, Subpart D.

performance can have on individual ratings and overall rating distributions through briefings or other communications.

All of the selected agencies have policies in place for factoring organizational performance into senior executive appraisal decisions. While the agencies identified common organizational assessments, such as the President's Management Agenda (PMA), PAR, or PART results for consideration in senior executive appraisal decisions, several agencies identified other types of tools to assess performance at different levels of the organization, such as the bureau, office, or program levels. For example, NRC provides summary reports capturing office-level performance to rating and reviewing officials for appraising senior executive performance. Twice a year, NRC's senior performance officials (SPO)—two top-level executives responsible for assessing organizational performance—conduct assessments for each office that take into account quarterly office performance reports on their operating plans, an interoffice survey completed by the other directors as identified by NRC on the office's performance, as well as the office director's self-assessment of the office's performance. According to an NRC official, the resulting SPO summary reports are used in the midyear feedback by senior executives and their supervisors to identify areas for improvement for the remainder of the appraisal cycle. At the end of the appraisal cycle, rating officials and PRB members are to consider the SPO summary reports in appraising senior executive performance.

To assess bureau-level performance, Treasury uses a departmentwide organizational assessment tool that provides a "snapshot" of each bureau's performance across various indicators of organizational performance, such as the PAR, PART results, PMA areas, OPM's Federal Human Capital Survey results, budget data, and information on material weaknesses. The performance information is provided to PRB members and reviewing officials to help inform their senior executive appraisal recommendations.

The selected agencies varied in how they provided and communicated organizational performance assessments to PRB members and other reviewing officials to help inform senior executive appraisal recommendations. Several of the selected agencies shared the organizational performance assessments and communicated the importance of considering organizational performance through briefings, training, or document packages for the PRB meetings, while one agency did not provide or communicate any information regarding organizational performance.

For example, at Treasury, all the PRBs across the department were briefed on the tool used to assess organizational performance and the importance of considering organizational performance in appraising senior executive performance. DOD provided the heads of its components with a departmentwide organizational assessment to be used in appraising senior executive performance and, as a check across the components, asked for copies of the training given to the PRB members and other reviewing officials on factoring organizational performance into senior executive appraisal recommendations. Through the office of the Deputy Secretary for Defense, DOD developed an assessment of the department's overall performance against its overall priorities for fiscal year 2007. According to a DOD official, the components had the flexibility to develop their own organizational assessments using the department's assessment as a guide and to consider other indicators of organizational performance. Having the components provide the department with their communications of organizational performance helps provide a check in the process across the components and ensures that the spirit and policies of the performance management system are being followed, according to a senior DOD official.

As part of the documents received prior to the meeting, NRC provides PRB members with various indicators of organizational performance, such as the SPO summary reports, PAR, and PART information. As part of communicating the organizational assessments, NRC instructs the PRB members to review the summary of proposed ratings and scores for consistency with SPO reports, PAR, and PART outcomes, with rankings of executives recommended by office directors, and across offices and programs. Similarly, DOE provides its PRB members snapshots of the Consolidated Quarterly Performance Reports relevant to the senior executives that measure how each departmental element performed respective to the goals and targets in its annual performance plan. According to the Director of the Office of Human Capital Management, the Deputy Secretary also verbally briefed the PRB members on the importance of considering organizational performance in appraising executive performance.

On the other hand, State did not provide its PRB members and other reviewers with any specific information on organizational performance to help inform their senior executive appraisal recommendations for the most recently completed appraisal cycle. According to State officials, PRB members received packages of information to help inform their decisions, including senior executives' performance plans and appraisals, the performance management policy, and the memo from the Director General of the Foreign Service and Director of Human Resources on performance bonuses and pay adjustment amounts and distributions for that cycle. While a senior State human resources official said that the PRB was made aware of a variety of organizational performance assessments that could be readily accessible, if needed, the PRB members did not receive any specific assessments of organizational performance.

Making Meaningful Distinctions in Senior Executive Performance

Effective performance management systems make meaningful distinctions between acceptable and outstanding performance of individuals and appropriately reward those who perform at the highest level. In order to receive certification of their SES systems from OPM with OMB concurrence, agencies are to design and administer performance appraisal systems that make meaningful distinctions based on relative performance through performance rating and resulting performance payouts (e.g., bonuses and pay adjustments). Specifically, agencies are to use multiple rating levels—four or five levels—and reward the highest-performing executives with the highest ratings and largest pay adjustments and bonuses, among other things.

Several of the agencies designed their appraisal systems to help allow for differentiations when assessing and rewarding executive performance by establishing tier structures or prescribed performance payout ranges based on the resulting performance rating. For example, NRC uses three tiers called position groups to differentiate its senior executives' basic pay and the resulting bonus amounts based on ratings received at the end of the appraisal cycle. NRC divides its executives into three groups (A, B, and C) based on difficulty of assignment and scope of responsibilities of the positions and annually sets basic pay ceilings for each of the groups tied to the levels of the Executive Schedule (EX), as shown in table 1. Pay ceilings within each group allow NRC to reserve pay above EX-III for executives who demonstrate the highest levels of performance, including the greatest contribution to organizational performance as determined through the appraisal system.

NRC uses the position groups and resulting performance ratings as the basis for its bonus structure to help ensure that executives in the higher position groups with the higher performance ratings receive the larger bonuses. For example, for fiscal year 2007, an executive in the highest position group (A) that received an outstanding rating was to receive $30,000, while an executive in the lowest group (C) with the same rating was to receive a $20,000 bonus. According to an NRC official, the bonus range for executives in group C with excellent ratings was intended to help allow for meaningful distinctions in performance to be made within that group, as well as to give the agency flexibility in the amount of bonuses to be awarded.

Table 1: NRC's SES Position Groups with Basic Pay Ceilings and Resulting Bonus Amounts Based on Position Group and Performance Ratings for the Fiscal Year 2007 Appraisal Cycle

		Resulting bonus amount based on performance rating received		
Examples of SES positions by group	**Basic pay ceiling (comparable to EX pay)**	**Outstanding**	**Excellent**	**Meets expectations**
A: Executive Director for Operations, Chief Financial Officer, General Counsel, major program office directors (e.g., Director of the Office of Nuclear Reactor Regulation)	$172,200 (EX-II)	$30,000	$25,000	$0
B: Support and small program office directors (e.g., Directors of the Offices of Administration and Human Resources), Deputy Directors of the Offices of the General Counsel and the Chief Financial Officer	165,350 (Midpoint between EX-II and III)	25,000	20,000	0
C: All other SES members	158,500 (EX-III)	20,000	6,000 – 13,600	0

Source: NRC.

Notes: NRC has a five-level appraisal system, but senior executives in the two lowest rating categories—unsatisfactory and needs improvement—are not eligible to receive bonuses based on their performance ratings. The governmentwide basic pay cap for SES under certified performance appraisal systems is EX-II.

State also uses a structure with six tiers to help differentiate executive performance based on the ratings and bonuses and allocate pay adjustment amounts for its senior executives, with executives who are placed in the highest tier (I) receiving a larger percentage pay adjustment than executives in a lower tier (V) who received the annual percentage adjustment to the EX pay schedule, which was 2.5 percent in 2008.

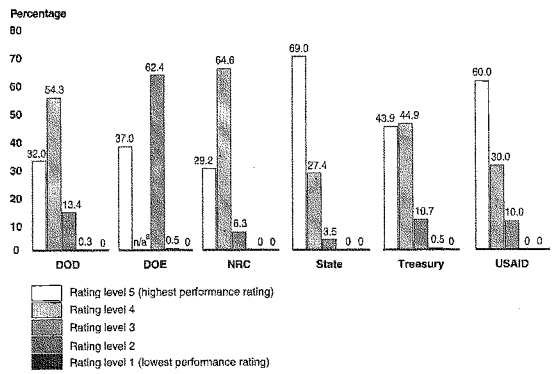
DOE sets prescribed ranges tied to performance ratings prior to finalizing ratings to help create a greater distinction between bonus amounts for the top and middle performers and differentiate pay adjustment caps. Specifically, for fiscal year 2007, DOE required that all executives receiving an outstanding rating receive a bonus of 12 to 20 percent of base pay, while executives receiving a meets expectations rating were eligible to receive a bonus of 5 to 9 percent, but at management's discretion. For pay adjustments, executives were eligible to receive a discretionary increase of up to 5 or 7 percent of basic pay if rated at meets expectations or outstanding, respectively. Executives who receive the other two rating levels—needs improvement or unsatisfactory—cannot receive any bonuses or pay increases.[6]

We have reported that using multiple rating levels provides a useful framework for making distinctions in performance by allowing an agency to differentiate among individuals' performance.[7] All of the selected agencies have four or five rating levels in place for assessing senior executive performance. While the selected agencies designed their appraisal and pay systems to help make meaningful distinctions in performance through ratings, our analysis shows that the senior executives were concentrated at the top two rating levels for the most recently completed appraisal cycle, as shown in figure 1. At State and USAID, about 69 percent and 60 percent of senior executives, respectively, received the top performance rating. At the other four agencies, the largest percentage of executives received the second highest rating—ranging from about 65 percent at NRC to 45 percent at Treasury. Conversely, less than 1 percent of senior executives across the selected agencies received a rating below fully successful (level 3). As a point of comparison, about 43 percent of career SES governmentwide received the top performance rating for fiscal year 2006, the most recent governmentwide data available as reported by OPM. Similar to the selected agencies, less than 1 percent of career SES governmentwide received a rating below fully successful in fiscal year 2006.

[6]DOE uses a four-level appraisal system with no rating level between outstanding and meets expectations.

[7]GAO, *Financial Regulators: Agencies Have Implemented Key Performance Management Practices, but Opportunities for Improvement Exist*, GAO-07-678 (Washington, D.C.: June 18, 2007).

Figure 1: Percentage of Senior Executives by Rating Level at the Selected Agencies for the Fiscal Year 2007 Appraisal Cycle



Source: GAO analysis of agency data.

Note: The percentages may not total 100 percent due to rounding.

[a]DOE uses a four-level appraisal system with no rating level between outstanding (rating level 5) and meets expectations (rating level 3).

According to State's Deputy Assistant Secretary for the Bureau of Human Resources, historically, the vast majority of senior executives have received the highest rating of outstanding, including for fiscal year 2007. Since the implementation of performance-based pay, this official said State has struggled with changing the culture and general perception among senior executives that any rating less than outstanding is a failure. DOD is communicating the message that a fully successful or equivalent rating is a valued and quality rating to help change its culture and make more meaningful distinctions in ratings. Part of this communication is developing common benchmark descriptors for the performance elements at the five, four, and three rating levels. The Principal Deputy Under Secretary of Defense for Civilian Personnel Policy said she hopes that developing common definitions for the performance elements at all three levels will aid the development of a common understanding and in turn make more meaningful distinctions in ratings. The agency official recognizes that this shift to giving fully successful ratings is a significant cultural change and it will take some time to fully transform the culture.

The percentage of eligible executives that received bonuses or pay adjustments varied across the selected agencies for fiscal year 2007, as shown in table 2. The percentage of eligible senior executives that received bonuses ranged from about 92 percent at DOD to about 30 percent at USAID, with the average dollar amount ranging from $11,034 at State to about $17,917 at NRC. For pay adjustments, all eligible executives at State received pay adjustments, while about 88 percent of eligible executives at DOE received adjustments, with the average dollar amount ranging from about $5,414 at NRC to about $6,243 at DOE. As a point of comparison, about 67 percent of career SES members received bonuses with an average dollar amount of $13,292 for fiscal year 2006, according to governmentwide data reported by OPM. The governmentwide percentage of career SES receiving pay adjustments and average dollar amount of the adjustments in the aggregate are not available from OPM's governmentwide data report for fiscal year 2006.

The selected agencies have policies in place where only senior executives who receive a rating of fully successful (level 3) or higher are eligible to receive bonuses or pay increases. Also affecting executives' bonus eligibility are the agencies' policies on awarding bonuses to executives who also received Presidential Rank Awards that year, which varied among the selected agencies.[8] NRC, State, and Treasury do not allow executives to receive both awards in the same year, while DOD, DOE, and USAID allow the practice.

[8] Agencies can nominate senior executives for Presidential Rank Awards, which recognize career senior executives who have demonstrated exceptional performance over an extended period of time. The OPM Director reviews agency nominations and recommends candidates to the President. These awards are either 20 percent or 35 percent of the recipient's base pay.

Table 2: Percentage of Eligible Senior Executives Who Received Bonuses or Pay Adjustments and the Average Amounts at the Selected Agencies for the Fiscal Year 2007 Appraisal Cycle

	Bonuses		Pay adjustments	
Agency	Percentage who received bonuses	Average amount	Percentage who received pay adjustments	Average amount
DOD	92	$13,934	95	$5,739
DOE	82	14,116	88	6,243
NRC	87	17,917	95	5,414
State	55	11,034	100	6,148
Treasury	77	16,074	93	6,120
USAID	30	11,083	90	6,227

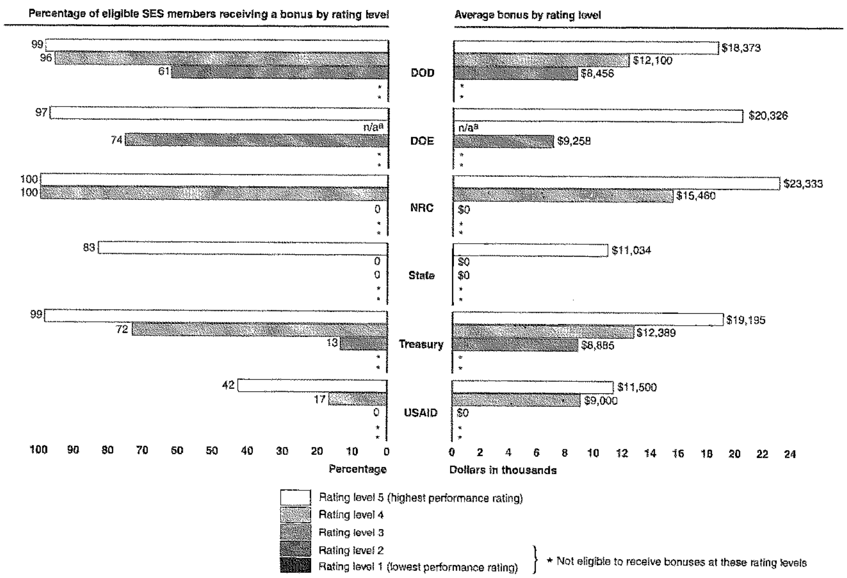
Source: GAO analysis of agency data.

Notes: In calculating the percentage of eligible senior executives who received bonuses or pay adjustments and average amounts, we excluded executives who received a rating less than fully successful since those executives are not eligible to receive bonuses or pay increases, according to the selected agencies' policies. We also excluded SES members at NRC, State, and Treasury who received Presidential Rank Awards because according to the agencies' policies, those individuals were not considered for bonuses. For all agencies, we included senior executives who were rated but left their positions—because of retirement, attrition, or assignment to a lower grade—prior to performance payouts being made.

According to OPM regulations, agencies are to reward the highest-performing executives with the highest ratings and largest bonuses and pay adjustments.[9] At almost all of the agencies, the highest-performing executives (rated at level 5) made up the greatest percentage of eligible executives receiving bonuses, with the exception of NRC where all the eligible executives rated at the top two levels received a bonus. Similarly, the executives rated at the highest level received the largest bonuses on average—about $23,333 at NRC compared to about $11,034 at State. State only awarded bonuses to executives receiving the top rating of outstanding for fiscal year 2007. In addition, senior executives at NRC and USAID rated at fully successful (level 3) did not receive bonuses. (See fig. 2.)

[9] 5 CFR § 430.404(a)(9).

Figure 2: Percentage of Eligible Senior Executives Who Received Bonuses and the Average Bonus Amounts by Rating Level at the Selected Agencies for the Fiscal Year 2007 Appraisal Cycle



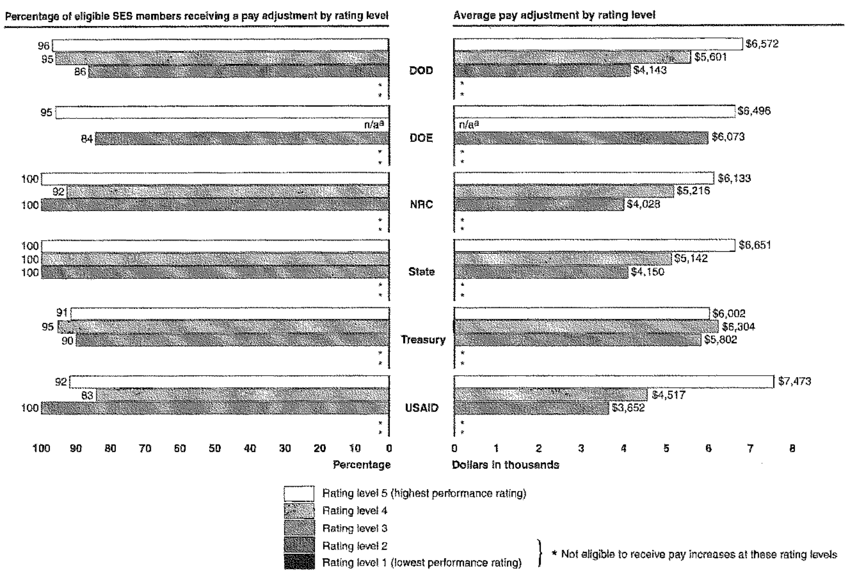
Source: GAO analysis of agency data.

Notes: In calculating the percentage of eligible senior executives who received bonuses and average amounts, we excluded executives who received a rating less than fully successful since those executives are not eligible to receive bonuses, according to the selected agencies' policies. We also excluded SES members at NRC, State, and Treasury who received Presidential Rank Awards because according to the agencies' policies, those individuals were not considered for bonuses. For all agencies, we included senior executives who were rated but left their positions—because of retirement, attrition, or assignment to a lower grade—prior to performance payouts being made.

[a]DOE uses a four-level appraisal system with no rating level between outstanding (rating level 5) and meets expectations (rating level 3).

In a memo to agencies on the certification process, OPM stated that senior executives who receive a fully successful or higher rating and are paid at a level consistent with their current responsibilities should receive a pay increase. According to an OPM official, agencies are not required to give these executives pay increases, but OPM considers fully successful to be a good rating and encourages agencies to recognize and reward executives performing at this rating level. At the selected agencies, the majority of eligible senior executives rated at fully successful received pay adjustments for fiscal year 2007, as shown in figure 3. Unlike the bonus distributions by rating level, at some of the agencies, the highest-performing executives who received a rating of level 5 did not make up the greatest percentage of executives receiving pay adjustments with the largest increases on average. For example, at USAID, all eligible executives who received a level 3 rating received a pay adjustment, while about 92 percent of eligible executives rated at level 5 received an adjustment. For all the agencies except Treasury, the executives rated at the highest level received the largest pay adjustments on average—about $7,473 at USAID compared to about $6,133 at NRC. At Treasury, executives rated at levels five, four, and three on average received about the same pay adjustment amounts primarily due to pay cap issues.

Figure 3: Percentage of Eligible Senior Executives Who Received Pay Adjustments and the Average Pay Adjustment Amount by Rating Level at the Selected Agencies for the Fiscal Year 2007 Appraisal Cycle



Source: GAO analysis of agency data.

Notes: In calculating the percentage of eligible senior executives who received pay adjustments and average amounts, we excluded executives who received a rating less than fully successful since those executives are not eligible to receive pay increases, according to the selected agencies' policies. For all agencies, we included senior executives who were rated but left their positions—because of retirement, attrition, or assignment to a lower grade—prior to performance payouts being made.

[a]DOE uses a four-level appraisal system with no rating level between outstanding (rating level 5) and meets expectations (rating level 3).

The governmentwide results of the 2008 OPM SES survey show that the majority of senior executives responded that their bonus or salary increase was linked to their performance rating to a very great or great extent. However, less than a third of senior executives strongly agreed or agreed that bonus amounts or pay distinctions were meaningfully different among the executives. These results show that making meaningful distinctions in bonuses and pay can be a challenge.

Building Safeguards into Senior Executive Performance Appraisal and Pay Systems

We have reported that agencies need to have modern, effective, credible, and, as appropriate, validated performance management systems in place with adequate safeguards to ensure fairness and prevent politicization and abuse.[10] All of the selected agencies have built safeguards into their senior executive performance appraisal and pay systems—such as predecisional checks of performance appraisal recommendations through higher-level reviews and PRBs as well as transparency in communicating the aggregate results—to help enhance the credibility, fairness, and transparency of their systems, although they varied in how the safeguards have been implemented. Our preliminary results show that there are opportunities for improvement in the communication of aggregate appraisal results to all senior executives.

By law, as part of their SES appraisal systems, all agencies must provide their senior executives with an opportunity to view their appraisals and ratings and to request a review of the recommended performance ratings by higher-level officials, before the ratings become final.[11] The higher-level reviewer cannot change the initial summary rating given by the supervisor, but may recommend a different rating in writing to the PRB that is shared with the senior executive and the supervisor. For example, according to State's policy, an executive may request a higher-level review of the initial rating in writing prior to the PRB convening at which time the initial summary rating, the executive's request, and the higher-level reviewing official's written findings and recommendations are considered. The PRB is to provide a written recommendation on the executive's summary rating to State's Director General of the Foreign Service and Director of Human Resources, who makes the final appraisal decisions.

Further, all agencies must establish one or more PRBs to help ensure that performance appraisals reflect both individual and organizational

[10] GAO-05-832SP. For more information including the complete list of safeguards, see GAO, *Defense Transformation: Preliminary Observation's on DOD's Proposed Civilian Personnel Reforms*, GAO-03-717T (Washington, D.C.: Apr. 29, 2003).

[11] 5 USC § 4312(b)(3).

performance and that rating, bonus, and pay adjustment recommendations are consistently made. The PRB is to review senior executives' initial summary performance ratings and other relevant documents and make written recommendations on the performance of the senior executives to the agency head or appointing authority.

The selected agencies varied in their PRB structures and in who provided the final approval of the appraisal decisions. For example, given its small number of senior executives, USAID has one PRB that is responsible for making recommendations to the Administrator for his/her final approval on all rated career executives for their annual summary ratings, bonuses, performance-based pay adjustments, and Presidential Rank Award nominations. On the other hand, DOD has multiple PRBs within and across its components and agencies with separate authorizing officials who give the final approval of rating and performance payout recommendations. According to a DOD official, there is not a central PRB that oversees all the PRBs within the department responsible for recommending approval of the final appraisal decisions for all senior executives. To help ensure consistency in appraisal recommendations across the department and between the various authorizing officials, the components are to provide their final rating and performance payout distributions to the Under Secretary of Defense for Personnel and Readiness to be validated prior to executives receiving the bonuses and pay adjustments. As part of the validation process, the Under Secretary of Defense for Personnel and Readiness checks to ensure that meaningful distinctions were made and ratings, bonuses, and pay adjustments reflect organizational and individual performance, among other things, before performance bonuses and pay increases are made effective.

To help enhance the transparency of the system, agencies can communicate the overall aggregate results of the performance appraisal decisions—ratings, bonuses, and pay adjustment distributions—to senior executives while protecting individual confidentiality, and as a result, let executives know where they stand in the organization. Further, OPM has recognized the importance of communicating the overall rating distributions and performance payout averages through its guidance for certifying agencies' SES systems, and factors it into certification decisions. OPM asks agencies to brief their SES members on the results of the completed appraisal process to make sure that the dynamics of the general distribution of ratings and accompanying rewards are fully understood. The results of the OPM survey of senior executives show that the communication of overall performance appraisal results is not widely practiced throughout the government. Specifically, 65 percent of respondents said that they were not given a summary of their agency's SES performance ratings, bonuses, and pay adjustments.

The selected agencies communicated the aggregate results in varying ways. For example, Treasury and DOD posted the aggregate rating, bonus, and pay adjustment distributions for senior executives on their Web sites with comparison of data across previous fiscal years. In communicating the results of the most recent appraisal cycle, NRC sent an e-mail to all senior executives sharing the percentage of executives at each rating level and the percentages receiving bonuses and pay adjustments as well as the average dollar amounts. According to an NRC official, the agency periodically holds agencywide "all hands" SES meetings where the results of the appraisal cycle, among other topics, are communicated to executives.

Similarly, the Deputy Secretary of DOE provides a memo to all senior executives summarizing the percentage of executives at the top two rating levels and the average bonus and pay adjustment amounts. DOE also includes governmentwide results as reported by OPM as a point of comparison. Further, in that memo, the Deputy Secretary stated his concern with the negligible difference in bonuses and pay adjustments among executives receiving the top two rating levels and stressed the importance of making meaningful distinctions in the allocation of compensation tied to performance ratings in the upcoming appraisal cycle.

While USAID shares an individual's appraisal results with that executive, agency officials said that they do not communicate aggregate results to all senior executives. Communicating an executive's individual rating conveys information about how well the executive has performed against the expectations in the performance plan, but is not sufficient to provide a clear picture of how the executive's performance compares with that of other executives in the agency. Further, USAID communicated to all SES members the pay adjustment distributions in ranges by rating level, but not the aggregate results showing the percentage of executives receiving the pay adjustments in total or by rating level. There are opportunities for further refinements in how the aggregate appraisal results are communicated to all senior executives.

Mr. Chairman, Senator Voinovich, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you may have.

Contacts and Acknowledgments

For further information regarding this statement, please contact J. Christopher Mihm, Managing Director, Strategic Issues, at (202) 512-6806 or mihmj@gao.gov or Robert N. Goldenkoff, Director, Strategic Issues, at (202) 512-6806 or goldenkoffr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Individuals making key contributions to this statement include Belva Martin, Assistant Director; Amber Edwards; Janice Latimer; Meredith Moore; Mary Robison; Sabrina Streagle; and Greg Wilmoth.

Appendix I: Background on the Senior Executive Performance-Based Pay System and Certification Criteria

In November 2003, Congress authorized a new performance-based pay system for members of the Senior Executive Service (SES).[1] With the performance-based pay system, senior executives are to no longer receive annual across-the-board or locality pay adjustments. Agencies are to base pay adjustments for senior executives on individual performance and contributions to the agency's performance by considering the individual's accomplishments and such things as unique skills, qualifications, or competencies of the individual and the individual's significance to the agency's mission and performance, as well as the individual's current responsibilities. The system, which took effect in January 2004, also replaced the six SES pay levels with a single, open-range pay band and raised the cap on base pay and total compensation. For 2008, the caps are $158,500 for base pay (Level III of the Executive Schedule) with a senior executive's total compensation not to exceed $191,300 (Level I of the Executive Schedule). If an agency's senior executive performance appraisal system is certified by the Office of Personnel Management (OPM) and the Office of Management and Budget (OMB) concurs, the caps are increased to $172,200 for base pay (Level II of the Executive Schedule) and $221,100 for total compensation (the total annual compensation payable to the Vice President).

To qualify for senior executive pay flexibilities, agencies' performance appraisal systems are evaluated against nine certification criteria and any additional information that OPM and OMB may require to make determinations regarding certification. As shown in table 3, the certification criteria jointly developed by OPM and OMB are broad principles that position agencies to use their pay systems strategically to support the development of a stronger performance culture and the attainment of the agency's mission, goals, and objectives.

[1] National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, November 24, 2003; 5 USC § 5382.

Table 3: Senior Executive Performance Appraisal System Certification Criteria

Criterion	Description
Alignment	Individual performance expectations must be linked to or derived from the agency's mission, strategic goals, program/policy objectives, or annual performance plan.
Consultation	Individual performance expectations are developed with senior employee involvement and must be communicated at the beginning of the appraisal cycle.
Results	Individual expectations describe performance that is measurable, demonstrable, or observable, focusing on organizational outputs and outcomes, policy/program objectives, milestones, and so forth.
Balance	Individual performance expectations must include measures of results, employee and customer/stakeholder satisfaction, or competencies or behaviors that contribute to outstanding performance.
Assessments and guidelines	The agency head or a designee provides assessments of the performance of the agency overall, as well as each of its major program and functional areas, such as reports of agency's goals and other program performance measures and indicators, and evaluation guidelines based, in part, upon those assessments to senior employees and appropriate senior employee rating and reviewing officials. The guidance provided may not take the form of quantitative limitations on the number of ratings at any given rating level.
Oversight	The agency head or designee must certify that (1) the appraisal process makes meaningful distinctions based on relative performance; (2) results take into account, as appropriate, the agency's performance; and (3) pay adjustments and awards recognize individual/organizational performance.
Accountability	Senior employee ratings (as well as subordinate employees' performance expectations and ratings for those with supervisor responsibilities) appropriately reflect employees' performance expectations, relevant program performance measures, and other relevant factors.
Performance differentiation	Among other provisions, the agency must provide for at least one rating level above fully successful (must include an outstanding level of performance), and in the application of those ratings, must make meaningful distinctions among executives based on their relative performance.
Pay differentiation	The agency should be able to demonstrate that the largest pay adjustments, highest pay levels (base and performance awards), or both are provided to its highest performers, and that overall the distribution of pay rates in the SES rate range and pay adjustments reflects meaningful distinctions among executives based on their relative performance.

Source: GAO.

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820 First Street N.E., Suite 700 • Washington, D.C. 20002 • (202) 927-7000 • Fax (202) 927-5192 • www.seniorexecs.org

TESTIMONY

of

CAROL A. BONOSARO

President

SENIOR EXECUTIVES ASSOCIATION

Before the

SENATE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

"IMPROVING PERFORMANCE: A REVIEW OF PAY-FOR-PERFORMANCE SYSTEMS IN THE FEDERAL GOVERNMENT."

July 22, 2008

Chairman Akaka and Distinguished Members of the Subcommittee:

The Senior Executives Association (SEA) is pleased to testify before this Subcommittee concerning the state of the Senior Executive Service pay and performance management system, the only pay for performance system with government-wide applicability. SEA is a professional association that for the past 28 years has represented the interests of career federal executives in government, including those in Senior Executive Service (SES) and equivalent positions, such as Senior Level (SL) and Scientific and Professional (ST) positions.

The current SES pay and performance management system has been in place for three full years of performance ratings and pay adjustments, with the fourth to be completed this fall. There has now been sufficient time and experience to examine how well the system works. Congress now has the opportunity to review the SES system, identify problems and implement solutions. We believe the system needs to be fine tuned and modified to ensure that quality applicants will aspire to the SES and that those who are in the SES will want to stay. The large number of Senior Executives eligible to retire makes a review of the SES system even more imperative. Such a review will also yield valuable lessons learned which should inform your consideration of other pay for performance systems which are proliferating in the Federal government.

The Next Generation of Senior Executives

SEA and its members are strong stakeholders in the long-term viability of the SES. Our goal is to ensure that the SES is a premier corps composed of highly qualified individuals able to provide the career leadership necessary to the effective operation of our government. Given concerns that were reported to SEA when the current pay system was first implemented, many of which remain today, there is a perception among an increasing number of federal managers that the SES is not a particularly desirable career goal.

This is not just an issue of pay. Senior Executives are not motivated primarily by pay, but willingly take on their responsibilities to fulfill a call to public service. Nonetheless, Senior Executives take on more duties and work longer hours, yet they receive no compensatory time, no locality pay, and no guaranteed annual comparability pay raises, all of which are a part of the compensation system for General Schedule (GS) employees. They also have far fewer job rights than GS employees. Thus, many qualified potential SES candidates do not perceive the benefits of joining the SES, in spite of the fact that it represents the pinnacle of the Federal career service and an opportunity to make a significant contribution to their agencies' missions. Those who do join the ranks find that the pay and performance management system does not work as intended. What is clear after three cycles is that a system that was meant to relieve pay compression, to be transparent and flexible, and to reward performance, has instead become a disincentive for many of the best employees who might otherwise desire to serve in the highest ranks of the career civil service.

In May 2008, OPM released the results of its SES pay survey, a survey that had been completed by 65% of the Senior Executive corps. The OPM survey was preceded by an SEA survey in 2006 that also covered concerns and opinions about the SES pay system, albeit in far greater detail. In a number of ways the two surveys complement each other and show that Senior

Executives feel good about their jobs, but the results are more mixed when addressing the pay system.

When SEA surveyed Senior Executives in 2006, one of the most telling findings was that 47% of those that responded believed that GS-14 and GS-15 employees were losing interest in aspiring to SES positions. The 2008 OPM survey reported that only 50% of Senior Executives believed that the current SES pay and performance management system was helpful in recruiting qualified applicants for SES positions. This OPM finding reinforces the earlier SEA finding about GS-14 and 15's losing interest in aspiring to SES positions. This is a disturbing trend that is regularly reported to SEA and confirmed now by two survey results.

The Impact of SES Pay Rates

In our opinion, there are several reasons for this unfortunate situation. First, SES annual pay increases have not kept up with GS increases over the past several years. Second, in addition to the lack of locality-based pay adjustments, SES annual pay increases are entirely discretionary, creating the accurate perception that a new Senior Executive cannot rely on the receipt of annual comparability increases upon entry to the SES. Third, GS and alternate pay systems have become more generous with the result that today many GS-15 or equivalent employees make more than the Senior Executives they work for, particularly if the Senior Executive is new.

For example, under its partially implemented National Security Personnel System (NSPS), the Department of Defense has increased the ceiling for prior GS-15 step 10 managers by 5 percent. When combined with locality pay, the top GS pay overlaps SES pay. Also under NSPS, GS employees can now receive substantial bonuses, formerly a unique feature of the SES. Other departments and agencies have also taken steps to increase GS-15 managers' pay even though these managers have fewer responsibilities and more rights than members of the Senior Executive Service. According to the February 4, 2008 edition of the Federal Times, the average raise for NSPS-covered employees was 7.6 percent, more than twice the 3.5 percent average raise that most other federal employees received, and more than three times the 2.5 percent allowable increase in rate range afforded to the Senior Executive Service in 2008.

Critics point to the respectable salary cap of $172,200 for Senior Executives in agencies with certified performance management systems and say this should suffice. Although most Senior Executives would earn much more in the private sector, they have been willing to accept pay that was not comparable because of their desire to do the most important work in the nation. The fact is, however, that most Senior Executives do not earn the maximum available pay. Further, the current pay for performance system is structured in such a way that many of those who work at levels below the Senior Executive Service are reaching well into the SES pay band.

A comparison of General Schedule pay versus Executive Level pay is instructive. General Schedule pay is increasingly overlapping SES pay and, in fact, pay levels for political appointees. For example, in the Washington, D.C. locality area, pay for GS-15, step 10 now equals Executive Schedule IV ($149,000), which is the pay rate for Assistant Secretaries, as well as the presidentially-appointed members of such agencies as the National Labor Relations Board and other commissions; this alone is a disincentive for potential political appointees, much less Senior Executives.

Further, the SES pay ceiling has not kept pace with General Schedule pay adjustments, that is, adjustments for the pay of employees these executives supervise. If the Executive Schedule had kept pace with the national comparability increases provided the General Schedule since 1994, EL II (the cap for SES pay in certified agencies) would be $ 226,859, not $172,200.

Finally, following the abolition of the six pay ranks in the earlier system and in an apparent desire to create a surrogate for those ranks, some departments (including notably, Defense and Veterans Affairs) have created and placed Senior Executives into pay tiers. These tiers, at worst, threaten to create pay compression anew as executives reach the caps for their tiers, and, at best, require clarity and transparency with regard to the criteria for placement within a tier and for "promotion" to the next tier.

Quotas

Another problem highlighted by SEA's 2006 survey was the perception that quotas played a role in lowering SES performance ratings. While the OPM survey unfortunately did not include any questions regarding quotas, it appears that the problem of quotas may still exist.

SEA continues to receive anecdotal evidence of quotas from its members. For example, in 2007, a Senior Executive at HHS was recommended for the highest rating by her supervisor, but a higher level of review downgraded her without either her knowledge or that of her supervisor. This is not unusual, and, because frequently no explanation is given, the impression is left that there is a de facto quota system followed by higher-level reviewers. The supervisor of a Senior Executive at the Department of Energy informed the executive that he was told by his supervisor to lower the executive's evaluation from "outstanding" to "meets expectations" because of an implied quota. In this connection, and in all likelihood a causative factor, Energy Deputy Secretary Sell had circulated a memorandum on September 28, 2006 stating that demonstrations of "exemplary leadership and management skills, personal integrity, and a commitment to the highest ideals of public service" are deserving of only a "meets expectation" rating; an "exceeds expectations" rating was reserved for the top performers of the Department. When this is coupled with an unexplained down-grade in a higher level rating, the appearance of a quota is inevitable.

Inconsistent Implementation of the Pay System

SEA has also been concerned with the consistency by which the SES pay system is being implemented. The OPM survey also found significant inconsistency in implementation among federal agencies. For example, OPM reported that the executives' responses by agency differed by more than 30 points on the questions of whether executives were provided a summary of overall results and whether they received training or a briefing on the performance management system. Communication of this information varied greatly from agency to agency, ranging from 88.5 percent of Nuclear Regulatory Commission executives and 87.3 percent of Air Force executives saying they had received the summaries, to 79.6 percent of Homeland Security executives and 80 percent of Small Business Administration executives saying they had not. Inadequate communication is of particular concern because of the recent emphasis by OPM, as part of the recertification process, on the need for agencies to communicate such information to Senior Executives.

For the most part, however, inconsistency arises from the inherent total discretion that agencies have in managing their SES pay systems. Since SEA testified in 2006 in the Senate on this issue, we have had reports of the following actions by agencies in exercising discretion in the administration of the SES system. Each of these adds to the perception of arbitrariness that also fuels the views of GS-14 and 15's concerning their interest in aspiring to the SES.

On October 16, 2006, the Office of the Secretary of Defense lowered the pool for SES raises and performance awards from 15% to 10% of payroll, ostensibly because the prior year "a significant portion of the performance budget was not spent." It is likely, however, that the unspent portion of the budget occurred because the Defense Department failed to receive OPM certification of its executive pay and performance management system in time for that round of awards.

On the other side of that coin, some of the inconsistency can be caused by budgetary constraints, particularly since all pay adjustments and performance awards are discretionary. On November 14, 2007 the Department of Energy announced that it would defer "performance based awards and discretionary pay adjustments" because of the "terms of the Continuing Resolution…and the uncertain funding situation for Fiscal Year 2007. (Secretary Bodman discontinued that policy in February of this year.)

USAID's Administrator failed to finalize the agency's 2006 performance appraisal determinations during calendar year 2006, and, as a consequence, OPM would not permit AID to make pay adjustments above the old cap in January 2007, based on the 2006 appraisal determinations. Similarly, NLRB's Senior Executives expressed the realization in 2008 that "this year, of course, we expect no bonus program," because of budget considerations.

In January 2008, Treasury in its discretion declined to raise any of its SES to the higher Executive Schedule levels authorized for 2008 because it said their ratings were based on their 2007 performance. This is at odds with the government's treatment of GS employees who are automatically raised to the following year's cap, based on their grade and step, and also appears at odds with how other agencies deal with SES pay adjustments.

Relationship between Performance and Pay

Many Senior Executives also express concerns about a distinct disconnect between ratings, pay adjustments and performance awards. The SEA survey found that many executives believe the connection between their performance ratings and pay adjustments were based on administrative decisions and budgetary constraints, not actual performance. Further, there was no connection between increased responsibilities and pay; of the 233 executives reporting increased responsibilities since the implementation of the new pay system, 191 (82%) received no salary increase. We have been informally advised by OPM that F.Y. 2007 data for SES pay adjustments and performance awards, while not yet released, will show great variations among agencies in compensation and ratings results.

Over the past few years, SEA has heard the following from its members:

A Senior Executive in the Department of the Treasury received an "Exceeds Expectations" rating at the end of 2006, but no pay adjustment increase based on that rating. Similarly, an executive at the Department of Commerce was rated "Commendable" (above "Fully Successful") in 2006, but received no pay adjustment. When he tried to obtain an explanation, none was forthcoming.

One SES at Energy has received no pay increase for several years, despite receiving "Fully Successful" ratings. Largely because of this, he has voluntarily resigned his position in the SES to enter Energy's "EJ" Excepted service. As a result, he has received the 4.49% pay increase given to GS employees, which includes the locality adjustment which SES members no longer receive.

Perhaps one of the most arbitrary actions we have heard concerns a Department of Justice Senior Executive who was told by an agency official that he was going to receive a raise and a performance award based on his high performance rating. However, the same official later called the executive back to say that neither the raise nor the award was approved because the executive planned to retire. When we reported this to an official at OPM, he said this was bad practice, but he thought OPM would not take action because the agency has delegated administration of the SES performance system to agencies – except that it was required that "agencies follow their own procedures." This is another example of a problem caused by the completely discretionary nature of all SES members' compensation, and either the inability or unwillingness of OPM to interfere in individual cases.

OPM Certification

Another issue that compounds pay and performance management concerns is the OPM certification process. Due to the burden of the process, many small agencies do not even apply for certification and therefore cannot pay higher salaries. Further, should an agency neglect to apply for certification on time, SES salary increases and performance awards will be held back until the process is complete. Many Senior Executives are unfairly punished due to the lack of standardization across agencies or a streamlined process, while GS employees face no such barriers.

* * * * * * *

Given the concerns addressed above, it is no wonder that there is a lack of confidence in the Senior Executive Service pay and performance management system. Frequently, the rewards far outweigh the risks for federal employees who might otherwise aspire to join the SES. Currently, the risk to reward ratio is tipping in the wrong direction. Almost lost among the issues surrounding the system is the ostensible reason for having adopted it in the first place. Only 43% of the executives responding to the OPM survey believed pay for performance promoted better organizational performance in their agencies. There was significant variation among agencies on that issue, from a low of 11% among OMB executives responding to a high of 68% for OPM.

Congress must examine this system if we are to ensure that the SES remains the highly qualified and effective career leadership corps it was meant to be.

Proposals for Reform

To that end, SEA has several legislative remedies to propose. These are common sense solutions that directly address the concerns of Senior Executives and potential SES members.

When the Senior Executive Service was created by the Civil Service Reform Act of 1978, the corps was designed to provide a careful balance of increased risk and increased rewards to the GS 16's, 17's and 18's who were to be asked to convert to the Service. Over time, that balance has been eroded. The centerpiece of our proposal consists of two provisions that would restore the balance of risk and reward so that the SES will be attractive to potential Senior Executives.

First, we recommend that all Senior Executives at the "Fully Successful" or better performance level receive at least some annual increase. In an October 31, 2006 memorandum regarding Certification of Performance Appraisal Systems for Senior Employees for Calendar Year 2007, OPM Director Linda Springer expressed OPM's expectation that "senior employees who are at a pay level consistent with their current level of responsibilities and who receive an acceptable ("fully successful" or better) rating should receive a pay increase." Agency discretion (as noted above), however, interferes with this outcome. In January 2007, Senior Executives rated "Fully Successful" in F.Y. 2006 received an average 2.0% pay increase; contrast this with a GS employee in the Washington DC locality pay area, who received a 2.64% adjustment without regard to his or her performance rating. An annual guaranteed increase for executives who have performed successfully should be at least as much as the increase in the Executive Schedule plus the increase in locality pay for the geographic area in which the executive works. That would still most years be below what GS employees get.

Second, performance awards should be included in a Senior Executive's "high three" in calculating his or her retirement annuity. We believe that this second provision would make the SES an attractive career goal for the best applicants and will help assure a high quality future SES. Also, it recognizes the reality that performance awards have become an integral part of the SES compensation system.

Attached to this testimony is a draft bill with explanation that outlines SEA's full set of recommendations to improve the pay system. These recommendations also include reforming the OPM certification process, increasing transparency of ratings, rankings and pay for the SES, and prohibiting quotas. Each of these will make the SES more attractive to potential Senior Executives and improve both the morale and retention of existing SES employees.

The Senior Executive Service is a critical component in ensuring the daily operational success of the federal government. Congressional action will guarantee that it fulfills its original intent and adequately meets the needs of SES members.

We look forward to working with the Subcommittee to develop legislative reforms to assure that the future career leadership of the civil service is the best it can be.

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820 First Street N.E., Suite 700 • Washington, D.C. 20002 • (202) 927-7000 • Fax (202) 927-5192 • www.seniorexecs.org

Updated: July 17, 2008

Legislative Narrative

The Senior Executive Service Pay and Performance Management Improvement Act

Section 1, Findings & Table of Contents – This section provides the congressional findings on which the legislation is based and the table of contents for the legislation.

Section 2, Mandatory Minimum Market Adjustment for Senior Executives Rated at the Fully Successful or Higher Level – This section provides that all Senior Executives who receive a rating of "fully successful" or higher are to receive mandatory market-based adjustments to their salaries. This adjustment will be a formula-based percentage of the executive's salary equal to the increase in the Executive Schedule plus any increase in locality pay in the geographic area in which the Senior Executive is stationed. It will also ensure that this adjustment is applied when providing lump-sum payment for accumulated and accrued annual leave on separation.

Section 3, Inclusion of Executive Performance Awards in "High-3" Average Salary Calculations – This section requires that performance awards and retention allowances given to career Senior Executives be included in "High-3" average salary calculations for retirement. Performance awards and retention allowances are provided consistently to high performers, accounting for a significant amount of the high-performing Senior Executive's salary over the course of his or her career. By excluding these awards and allowances from credit for retirement annuities, we deprive good Senior Executives of retirement packages that reflect their true earned compensation.

Section 4, Calendar Year Amendment and Certification Extension – This section would change the way agencies' performance systems for Senior Executives are now certified by OPM. Agency certification currently lasts one or two calendar years in duration and can be rescinded at any time. Agencies find this process of continuous re-applying wasteful and time consuming. It is also inelegant as the calendar year aspect generally lends itself to a gap between acceptance and implementation of certification. This section would make all certifications last for 60 months (5 years) from the date of approval, while maintaining the ability for OPM to rescind certification. This section also requires OPM to provide the agency "clear and consistent advice" on how to comply with requirements of certification for six months before recertifying or decertifying an agency.

Section 5, Transparency of Ratings for SES Officials – This section ensures that a Senior Executive receive notification and feedback regarding his or her individual performance rating level and specific reasons for the rating level in a reasonable period of time (within 90 days). It also ensures that overall data is supplied on how an agency's Senior Executives are rated, the range of salary adjustments they receive for each rating level, and the amount and percentages of performance awards. Finally, this section requires that all documents related to the SES pay and performance rating system and compensation determination be made public via agency websites.

Section 6, Transparency of SES Rankings and Pay – This section provides for a biennial survey administered by the Merit Systems Protection Board, with consultation from the organization representing the largest number of Senior Executives. The survey should track the experience and views of career Senior Executives on the Senior Executive pay and performance management system. The survey must ask opinions regarding transparency, perceived use of quotas or forced distribution and other irregularities, as well as other questions perceived as necessary by the Merit Systems Protection Board.

Section 7, Assured Increase for New Senior Executives – This section assures a minimum salary increase over his or her current General Schedule salary of at least 5 percent for any person who is promoted to the career SES.

Section 8, Prohibiting Quotas and Forced Distribution – This section explicitly writes in statute the illegality of utilizing quotas or forced distributions in rating Senior Executives.

Section 9, Assured Funding of SES Pay – This section requires that Senior Executives' pay is funded in such a manner to ensure reasonable salary adjustments occur.

Section 10, Reasons for Rating Reductions - This section requires agencies to provide a Senior Executive with a reason when a rating is lowered from that originally recommended by a higher level supervisor. Thus, the Senior Executive will have the opportunity to understand his or her rating and in turn, gain new insight and clarity into his or her job functions and responsibilities, as well as the supervisor's expectations. Apart from providing a greater understanding to the executive, the requirement will also provide insight into the type of development activities that are of value by clarifying organizational goals so they can be more readily accepted and executed. Finally, the section also serves as a check against lowering ratings simply to force a de facto quota.

Section 11, Requirements related to Pay Tiers of Senior Executives - This section is only applicable if an agency decides to implement a tier or rank system for Senior Executive positions. It requires provision of a justification and an explanation of the boundaries of each tier. Consequently, this section makes certain that Senior Executives understand the criteria used to place SES positions in tiers, what their respective agencies mandate for upward mobility, and the path which must be followed in order to advance in the defined tiers.

A proposal of the Senior Executives Association

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TITLE; TABLE OF CONTENTS AND FINDINGS

(a) TITLE – This Act shall be known as the "Senior Executive Service Pay and Performance Management Improvement Act."

(b) HAVING FOUND-

(1) That 90 percent of career SES are eligible for retirement in the next decade, leading to the threat of a leadership vacuum at the top of the civil service if steps are not taken to reform the current SES system, make it more appealing to highly successful General Schedule employees and applicants from outside the Federal Service.

(2) The Senior Executive Service performance management and pay system has been applied inconsistently and without full adherence to rules concerning quotas, transparency and performance feedback.

(3) That the lack of assured pay adjustments including increases related to differences in local job markets, and the prevailing practice of consistently awarding annual salary increases to many members of the career SES that are lower than increases received by other federal employees, demoralize the current ranks and deter capable General Schedule employees from seeking to join the Senior Executive Service.

(4) That performance awards and retention allowances provided to the SES constitute a significant portion of their compensation and should be included in retirement calculations.

(5) That members of the public, Executive Branch officials and Congress have insufficient information on certification standards and methodology surrounding the SES pay for performance system.

(c) TABLE OF CONTENTS. – The table of contents for this Act is as follows:

SECTION 2. MANDATORY MARKET ADJUSTMENT FOR SENIOR EXECUTIVES AND OTHER SENIOR EMPLOYEES AT THE FULLY SUCCESSFUL LEVEL OR HIGHER.

(a) In Chapter 53 of Title 5

(1) With consideration of amendments made by section 12 of this Act, amend section 5376 by adding after subsection (b),

"(c) Every employee in a position whose last performance appraisal rating is the equivalent of 'fully successful' or higher will receive an annual increase in base pay that is no less than the rate of increase, if any, for the Executive Schedule and the increase in the locality-based comparability payments for the area in which the employee's official duty station is located, if any, as authorized by the President under section 5304 of this title. This increase will be awarded the first pay period of January each year and is in addition to any increase awarded under subsection (b) of this section. This subsection will conform to salary requirements established under section 5376(b) (1) of this title."

(2) adding after Section 5383(d),

"(e) Notwithstanding the requirements of subsection (c) of this section, every career appointee whose last performance appraisal rating is the equivalent of 'fully successful' or higher will receive an annual increase in base pay that is no less than the rate of increase, if any, for the Executive Schedule and the increase in the locality-based comparability payments for the area in which the employee's official duty station is located, if any, as authorized by the President under section 5304 of this title. This increase will be awarded the first pay period of January each year and is in addition to any increase awarded under subsection (a) of this section. This subsection will conform to all salary requirements established under section 5382 of this title."

and redesignate subsection (e) and as (f).

(b) In Chapter 55 of Title 5, amend Section 5551 by adding, "(d) Any lump-sum payment made under this section must take into account any pay adjustment under to section 5376 or 5383 of this title."

SECTION 3. INCLUSION OF EXECUTIVE PERFORMANCE AWARDS IN HIGH-3 AVERAGE SALARY

(a) Amend Title V, Section 8331 by inserting after Sec. 8331(3) (H) the following:

(I) with respect to a member of the Senior Executive Service, performance awards under section 5384 of this title;

(J) with respect to a senior career employee (classified above GS-15 pursuant to section 5108 of this title), agency awards under section 4503, and performance-based cashed awards under section 4505a;

(K) with respect to a career appointee as defined in section 3132 (a) of this title and a senior career employee (classified above GS-15 pursuant to section 5108 of this title) agency allowances under section 5754 of this title.

SECTION 4. CALENDAR YEAR AMENDMENT AND CERTIFICATION EXTENTION

(a) In Title 5, section 5307, subsection (d) (3) (B), strike all through "either or both of," and insert:

"An agency's certification under this subsection shall be for a period of 60 months beginning on the date of certification, unless extended by the Office of Personnel Management for up to 6 additional months, except that such certification may be terminated at any time;"

(b) In Title 5, section 5307; amend subsection (d) (3) by adding,

"(D) The termination of certification or the failure to recertify an agency shall be preceded by,

(i) clear and consistent advice from the Office of Personnel Management to an agency about what the agency must do to continue its certification or to renew existing certification; and,

(ii) a period of at least six months following the clear and consistent advice referred to in paragraph (i) from the Office of Personnel Management."

SECTION 5. TRANSPARENCY OF RATINGS FOR SES OFFICIALS

"(a) Add after Title 5, Section 4314(c) (3),

> (4) Each agency shall provide members of the Senior Executive Service with notification of their individual rating level and comments of record supporting the rating level determination within 60 days of the final determination of the rating."

and redesignating subsections (4) and (5) as (5) and (6), respectively; and

(b) amend 4314(c), as redesignated, by adding,

> "(7) Each agency shall annually publish the overall number of ratings awarded to members of the Senior Executive Service at each performance rating level, and shall include the average overall salary adjustment at each level, the minimum and maximum adjustment at each level, the percentage of senior executives at each rating level who received the minimum and maximum salary adjustment and the number of senior executives who received performance awards under § 5384, as well as the average amount of those awards. Rating levels and salary adjustment information shall be provided separately for career and non-career Senior Executives. The agency shall also publish its Senior Executive Service Performance Management Plan and any other internal plan which describes a system for determining Senior Executive Service salary and bonus amounts. The information required by this subsection shall be published on an agency's internet website within 90 days of the final decision by the head of the agency concerning SES rating levels and pay adjustments for an annual rating cycle, except that the performance management and other internal plans shall be published as soon as those plans are effective."

SECTION 6. TRANSPARENCY OF SES RANKINGS AND PAY

In Title 5, Chapter 43, Subchapter II, insert after section 4314, § 4315. Transparency of Senior Executive Service Rankings and Pay.

"In consultation with the organization representing the largest number of senior executives (as defined by section 3132 of this title), the Merit Systems Protection Board shall biennially conduct and publish the results of a survey of career senior executives regarding

(a) the level of transparency and availability of agency performance management plans and compensation policies to career SES;

(b) the use or perceived use of quotas or forced distribution in the application of the agency's performance appraisal system;

(c) any actual or perceived irregularities with the administration of the SES performance management system; and,

(d) such other factors as the Merit Systems Protection Board shall determine are necessary and appropriate."

and redesignate section 4315 as section 4316.

SECTION 7. ASSURED INCREASE FOR NEW SENIOR EXECUTIVES

In Title 5, Chapter 53, Subchapter VIII, amend 5383 subpart (e) (2) (A), by striking after "may not be less than," and inserting

"five percent greater than the combined rate of basic pay and other payment provided to that individual under section 5304 last payable to that individual immediately before being so appointed."

SECTION 8. PROHIBITING QUOTAS AND FORCED DISTRIBUTION

In Title 5, Chapter 53, Subchapter VIII, amend 5383 subpart (a), by adding

"Any such determination will be made without the use of quotas or forced distribution of ratings."

SECTION 9. ASSURED FUNDING OF SENIOR EXECUTIVE SERVICE PAY

In Title 5, Chapter 53, Subchapter VIII, amend 5383 subpart (c), by adding

"In making such adjustments, the average percentage adjustment received by members of the Senior Executive Service may not be less than the average salary adjustment in the General Schedule under section 5303."

SECTION 10. REASONS FOR RATING REDUCTIONS

In Title 5, Chapter 43, Subchapter II, amend section 4313 (c), by adding (4) –

In the event that the initial rating by HR supervisory official of a senior executive is lowered, the senior excutive shall be provided with a written explanation of why the rating was lowered.

SECTION 11. REQUIREMENTS RELATED TO PAY TIERS OF SENIOR EXECUTIVES

In Title 5, Chapter 53, Subchapter VIII amend section 5382 by adding –

(d) An Agency has the discretion to place its senior executive in different tiers or levels based upon level of responsibility and such other factors as the Agency deems appropriate. If an agency adopts a tier or level classification for its senior executives, it must also provide information explaining why a position is in a specified tier or level and what an executive must do to attain a higher tier or level. No Senior Executive Service tier or level may have a pay ceiling of less than Level III of the Executive Schedule. Notwithstanding the foregoing, no senior executive may be denied the increase required by subsection (e) of section 5383 of this section, merely because of that senior executive's placement in a designated tier or level.

SECTION 12. EFFECTIVE DATES

(a) Sections 4 shall take effect on the date of enactment of this Act.

(b) Sections 2 and 3 and 5 through 11, shall take effect 180 days or the following pay period after the date of enactment of this Act, whichever is greater.

STATEMENT OF

JOHN GAGE
NATIONAL PRESIDENT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF
GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND
THE DISTRICT OF COLUMBIA

SENATE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

ON

IMPROVING PERFORMANCE?
A REVIEW OF PAY-FOR-PERFORMANCE SYSTEMS
IN THE FEDERAL GOVERNMENT

JULY 22, 2008

Mr. Chairman and Subcommittee Members,

My name is John Gage. I am the National President of the American Federation of Government Employees, AFL-CIO, which represents 600,000 federal workers in 65 agencies across the nation and around the world, including employees in the Department of Defense (DoD) and the Transportation Security Administration (TSA).

I appreciate the opportunity to testify today on the subject of "pay for performance." While to date only a few AFGE members participating in small demonstration projects have been taken out of the General Schedule (GS) and placed under a so-called pay for performance system, the Department of Defense has the authority to apply its National Security Personnel System (NSPS) pay program to the employees in our bargaining units and is beginning to do so. In addition, Transportation Security Officers have never been in the General Schedule, but are covered by the agency's intentionally vague and indecipherable Performance Accountability and Standards System (PASS).

Department of Defense: National Security Personnel System

We are grateful, Mr. Chairman, for your support and assistance in the FY 2008 Defense Authorization Act (NDAA 2008) deliberations, that placed some limitations on DoD's ability to impose its new personnel system on employees. It is a tremendous relief to wage grade (blue collar) workers laboring long hours at military installations across our nation to support our warfighters, that they will no longer be subject to NSPS.

Another very important change brought about by the law is the revocation of the Secretary of Defense's authority to create a new labor relations system and the restoration of full collective bargaining rights and obligations under 5 U.S.C. Chapter 71. In passing that law, Congress intended to negate the travesty of a labor-management relations system that DoD had created in its regulations and ensure that DoD employees have the full protections of Chapter 71 rights.

It appears clear to us, however, that a primary goal of DoD has been and continues to be to limit as much as possible its obligation to bargain with the exclusive representatives chosen by its employees. On May 22, 2008, DoD published proposed revised regulations for NSPS. These regulations cynically and purposely attempt to evade Congress' mandate for bargaining in two important ways.

First, the NDAA 2008, in section 1106 (b), speaks about the ways that the system, as amended by the law, can be implemented. It may be implemented, "...through rules promulgated jointly by the Secretary of Defense and the Director of the Office of Personnel Management after notice and opportunity for public comment or through Department of Defense rules or internal agency implementing issuances." The law goes on to say that rules jointly promulgated by OPM and DoD shall be treated as major rules for the purpose of section 801 of title 5, United States Code, and, if they are uniformly applicable to all organizational or functional units included in NSPS, they shall be treated in the same manner as government-wide rules for the purpose of collective bargaining. Bargaining regarding government-wide rules is severely limited compared with bargaining regarding an agency rule under 5 U.S.C. Chapter 71.

In its earlier regulations, DoD put in very few details about the new personnel system. Instead, it saved those details for internal Implementing Issuances, which it deemed to be non-negotiable and to override existing collective bargaining agreements in its NSPS labor relations system. The revised proposed regulations are filled with the same kind of details found in those implementing issuances and in supplemental Issuances issued by the Army, Air Force, Navy and the Defense Agencies.

Apparently, the desire to limit bargaining is so strong that DoD would rather deal with the more rigid, and inflexible system resulting from detailed regulations published in the *Federal Register*, now that Congress has removed the power of issuances to bar bargaining. In order to make this switch, DoD has also had to remove flexibilities previously given to its Components and managers in favor of centralized control. This will set up a situation in which DoD will have to waste precious time, resources and employee morale just policing its organizations to make sure that all the rules are uniformly applicable to all organizational or functional units included in NSPS so that what normally would be an agency rule can qualify as a government-wide rule. This will cause activities at all levels of the Department to have to try to squeeze into "one-size-fits-all" rules.

By putting most of NSPS into a government-wide rule that limits bargaining, DoD is attempting to thwart Congress' express intent that it bargain with the exclusive representatives of its civilian employees to the full extent of the law. We do not believe that Congress intended for most of NSPS to be implemented under the major rule provision, but that this would be used sparingly and only when necessary.

The second way that the proposed regulations are a deliberate attempt by DoD to avoid its bargaining obligations under the 2008 National Defense Authorization Act comes in its definition and description of a "rate of pay." § 9902(e)(9) of the NDAA 2008 clearly says, "Any rate of pay established or adjusted in accordance with the requirements of this section shall be non-negotiable, but shall be subject to procedures and appropriate arrangements of paragraphs (2) and (3) of section 7106(b)..."

In its proposed regulations, DoD has defined "rate of pay" as:

> (a) The term "rate of pay" in 5 U.S.C. 9902(e)(9) means—

> (1) An individual employee's base salary rate, local market supplement rate, and overtime and other premium pay rates (including compensatory time off);
>
> (2) The rates comprising the structure of the pay system that govern the setting and adjusting of the individual employee rates identified in paragraph (a)(1) of this section, including the amount of each rate in the pay structure (expressed as a dollar amount or a percentage) and the conditions defining applicability of each rate...

By adding the phrase "and the conditions defining applicability of each rate" to the definition of "rate of pay," DoD is trying to broaden the definition, and thus narrow the scope of bargaining. "Conditions defining applicability of each rate" could easily be interpreted to include the very procedures and arrangements Congress intended DoD to bargain. It is an act of cynicism and defiance on DoD's part to think it can define itself out of its statutory obligation. The phrase "conditions defining applicability of each rate" should be removed and DoD should carry out its legal requirement to bargain procedures and appropriate arrangements related to rates of pay.

This is no small matter. DoD has used "rate of pay" to describe numerous aspects of NSPS and we believe Congress intended DoD to bargain over the procedures it will use and appropriate arrangements for employees adversely affected by these very actions.

For example:

We currently bargain over procedures and arrangements for determining fair distribution of overtime work, including rotations, seniority, or other methods for selecting employees. Management always has the right to determine the qualifications needed for that overtime work and whether or not specific employees meet those qualifications. Once that is done, however, we have negotiated processes in place to make sure that desirable assignments aren't given out based on favoritism or discrimination and that undesirable assignments aren't given based on reprisal.

The proposed regulations include in the definition of "rate of pay," for the purpose of asserting non-negotiability under 5 U.S.C. 9902(e)(9): "The value of various types of premium pay rates and the applicability conditions defining the type of work or other requirements that must be met to qualify for each type and level of premium pay;..."

We have no argument with the non-negotiability of the value of the rate or management's right to determine the type of work needed on overtime. We fear that "other requirements that must be met to qualify..." will be used to preclude bargaining over seniority or other systems to distribute overtime fairly.

Also included in the "rate of pay" definition is the amount of various adjustments in an employee's base salary rate such as performance pay increases, reassignment increases and decreases, promotion increases, etc. Once again, we don't expect to bargain over the amount of the adjusted rate of pay. We do, however, believe that Congress meant for us to bargain over such procedures and arrangements as the rules that pay pools will follow to ensure fairness, transparency, and accuracy.

Under NSPS, supervisors can reassign employees within a pay band or to a comparable pay band. Unlike the non-NSPS understanding of the meaning of "reassignment," however, NSPS reassignments may carry with them an unlimited number of pay increases of up to 5% each. There is no requirement in NSPS, however, that other employees be given a chance to compete for the increases, or even that they be notified that such opportunities exist. We believe we should be able to bargain over notices, competitive processes, and other procedures to ensure fairness and transparency, but fear these will be precluded by DoD's interpretation of "applicability conditions." These non-competitive pay raises are separate from and in addition to the "pay-for-performance" part of NSPS. Without the safeguards we would expect to negotiate in our bargaining units, this will be a fertile breeding ground for discrimination, favoritism and abuse. I will have more to say on these "reassignments" later in this statement.

In addition to restoring collective bargaining (which DoD has tried to evade through its regulations), the 2008 NDAA ensures that any GS employee at DoD placed under NSPS will be guaranteed 60% of the nationwide pay adjustment, and 100% of the locality adjustment granted every year to GS workers, provided that employee is rated above "unacceptable." This is an important improvement for civilian DoD workers. As we have already seen, DoD was prepared to give only 50% of the pay adjustment to employees in 2008 and NONE of it as an annual adjustment in 2009 – the whole amount was to be put into the pay pools to be given as performance payouts. And, even there, DoD might not have paid all of it out as base pay increases, but could have given cash bonuses instead. The new law ensures that the full amount of the nationwide pay adjustment go for base pay increases.

But simply paying out the full amount of the nationwide pay adjustment and 100% of the locality adjustment as base pay increases to employees is not enough to ensure the viability of the DoD pay system. DoD must be required to adjust its pay bands by the full amount of the nationwide pay adjustment just as grades in the GS system are adjusted annually. Currently, in its proposed regulations, DoD has retained for the Secretary of Defense the authority to adjust different pay bands by different amounts and the minimum and maximum rates of each pay band by different amounts. We believe this is because DoD wants to be able to suppress wages over time. The pay bands must keep up with the general pay increases given to the rest of the Federal government or wage suppression will, in fact, be the result.

Earlier this year, press reports of the January 2008 "payout" for employees under NSPS were very misleading. There are many questions about the methodology used in implementation, which I will discuss later in this statement. We strongly urge the subcommittee to request data from DoD to explain how the system has been applied, because the data that DoD has provided to date are insufficient for an effective evaluation of the system. We have asked for this information before and to date have not received it. I have attached an appendix to this statement listing the data needed to conduct such an evaluation.

This information is especially important because it appears that DoD is not routinely capturing it. In April of this year, DoD gave us a briefing on its NSPS Evaluation Program. In response to our questions, DoD said that it had no information on individual pay pools, such as the funding of the pools, the demographic make-up of different pay pools, the value of shares in different pay pools, the distribution of shares in the pay pools, etc. It was only collecting and evaluating broad data at the highest level. Again, in response to our questions, DoD said it was not requiring its Components to gather and analyze such data. As a result, DoD had no way of knowing if performance money was being given in disproportionally greater amounts to higher paid employees in or near the Pentagon, or in disproportionally lower amounts to minorities, women, or employees working in smaller activities in remote areas of the country.

The Bush Administration likes to claim, falsely, that NSPS is designed to adhere to the merit system principle of "equal pay for substantially equal work". Employees who have had the misfortune of working under "pay for performance" systems know otherwise. When surveyed, federal workers express skepticism about their chances to excel in the workforce because their opportunities and evaluations depend so much upon expectations that are frequently arbitrary, subjective and unclear. Stanford University Business School Professor, Jeffrey Pfeffer, understands employee apprehension about individualized pay systems, noting that "supervisors in charge of judging employees have a natural tendency to favor people like themselves." These proclivities tend to result in adverse effects on women, minorities, and sometimes older workers, who are underrepresented in the ranks of management. Indeed, women and minorities have been most likely to report dissatisfaction with pay for performance demonstration projects, arguing that pay raise decisions reflected bias rather than objective assessments of a worker's performance.

This kind of subjectivity and bias pervades the NSPS pay system. Unlike the NSPS, the GS system and the pay adjustment process contained in the Federal Employees Pay Comparability Act (FEPCA) were established upon the pay principles of neutrality and "market sensitivity" or comparability with the private sector. Salaries are set on the basis of job responsibilities, and annual adjustments reflect both the performance and experience of the job holder, and market data from the Employment Cost Index (ECI) and locality surveys.

Reports from senior managers in DoD administering the NSPS pay plan for those not in bargaining units have described its implementation as even more problematic than its model. We are told that different pay pools have different rules for distribution, and that supervisors have been ordered to reveal to their subordinates only their "narrative" ratings, not their numerical ratings. The latter go as recommendations to the pay pool panel, which can change them, and determine different performance pay than the supervisor believed was warranted.

In many cases, the pay pool panel that first considers the supervisors' recommendations is only a sub-pay pool panel. The recommendations of various sub-pay pool panels then go to the over-arching pay pool for final determination of employees' ratings, shares and payouts. As a result, the direct connection between performance and the employee's compensation is lost. Without the direct feedback, the premise of pay-for-performance is undermined. Surely it violates the principle of transparency if an employee cannot see the supervisor's rating, and the final rating and payout are the result of a bureaucratic process that goes on behind closed doors.

Because it is DoD's intention that NSPS pay not exceed the cost of the GS system, the "pay for performance" system is required to fit performance ratings into a so-called "normal" distribution, or bell curve. In practice this means that numerical ratings can be changed not because of failure to reach performance objectives, but to align with pre-set ceilings on the number of 5's, 4's, 3's, 2's, and 1's that are necessary to assure adequate funding for pay pool distributions.

Far too many managers have told us that they had carefully rated their subordinates as objectively as possible, only to be told when they went to the pay pool meeting with other supervisors that their ratings must be lowered in order to get to the bell curve. But it gets much more complicated than that.

Employees in the same pool who were rated "3", for example, might not get the same number of shares.* That number varies on the basis of:

1. the component/activity/workplace
2. the pay band (individual workplaces gave out different numbers of shares to professionals vs. technicians vs. supervisors/managers.)
3. the location of the workplace
4. the pay pool manager's opinion of how an employee rated relative to other "3s" submitted by other supervisors
5. how crucial the employee's job is judged to be relative to the Pentagon's strategic military objectives.

* The little data DoD has released indicates that of the employees rated as a "3", about 30% received one share, and 70% received two shares.

Further, the money put into shares varied enormously. In some places, a share was worth 1% of salary, in others it was worth 1.5% and in others it was worth 2%. Again, these could vary among and within components and all the way down to individual workplaces and individual employees. In some workplaces, an employee who got a 3 could get more than someone elsewhere who got a 4 or even a 5. Also, as mentioned above, some pay pools made distinctions among 3s, 4s, and 5s giving individuals who got the same ratings different numbers of shares. In other words, there is no consistency whatsoever.

Just to make matters even more complex, the pay pool managers have flexibility in deciding how much of a share should be put into an employee's salary increase versus cash bonus. Obviously, the more compensation placed in bonuses as opposed to salary increases has profound implications for the employee's standard of living not only in subsequent years while he or she is still working, but also into retirement. Once he or she retires, both the defined benefit portion of the pension (based on a formula using the high-3 years of salary) as well as the agency's contribution to the Thrift Savings Plan (TSP) (based on a percentage of salary) will be reduced commensurate with reduction or stagnation of salaries.

The "forced distribution" model is evident in the way DoD established "performance" pay with its non-union NSPS employees in 2008. Fifty-seven percent were rated "3" or average; 36 percent got a "4" rating, and just five percent received the highest rating of "5." Two percent were rated either "1" or "2" and thus received little or no raise. And despite triumphant headlines touting "average" raises of 7.6%, the ugly fact is that not all those rated in the middle level "3" got the same percentage raise. In fact, among the 62,700 "valued" employees, DoD decided that 5,425 were of so little value that they got raises smaller than their GS counterparts, or less than 3.5%.

We are greatly concerned that if it is true that this first relatively small number of employees got raises whose average was higher than GS employees, this was a ploy to put additional money in the system to make it look good. There is no way that DoD could continue to pay average increases higher than the GS increase when hundreds of thousands of employees are added to NSPS without greatly increasing its payroll costs.

Senior DoD managers have also explained how the work of employees in the lower grades, which cannot be linked directly to the strategic military objectives of the Pentagon, is also systematically undervalued in the NSPS pay system. For those employees, it is not enough to perform extra work or exceed their written objectives. The accomplishments of subordinates are written into the accomplishments of their superiors, even if these higher-graded people were entirely uninvolved in the work. Sometimes lower-level employees are even assigned to write up their bosses' accomplishments, and told to describe their own work as having been done by others.

In addition, there appears to be a profound bias in favor of employees who work higher up the chain of command or closer to the Pentagon as compared to those who do not. Apparently, the assumption is that no matter how significant one's assignment might be to national security, the simple fact of working further from the Pentagon is evidence that that position is not as valuable. There may also be hierarchies of this bias; we are told that while it is best to work in the Pentagon, second best is a regional command, and yet further down the ladder are those working at military installations. (I would think Members of Congress would be particularly interested in what is so obviously an inside-the-beltway bias.)

Although NSPS calls itself a "pay-for-performance" system, the reality is anything but. An employee can end up in a pay pool that is funded proportionally lower than other pay pools for reasons that have nothing to do with his or her performance. An employee can have his or her rating and payout determined by managers several levels up in the chain of command who may know nothing about that employee's work. An employee can be in a job or in a job location considered by upper management to be too far away from the Pentagon to be doing anything important enough to deserve a level 5 no matter how much the employee exceeds the job objectives. An employee's rating may be lowered to fit the bell curve tacitly required in the pay pool. And, we hear that many times it is more about an employee's or supervisor's ability to write than about that employee's actual performance. Employees can have their recommended rating lowered because the pay pool panel thinks the supervisor wrote poor job objectives, although the employee worked in good faith to exceed those objectives. And, employees who are skilled at writing their self-assessments, blowing their own horns and tying everything they did to the mission of the agency, may get better ratings than employees whose actual performance was better.

In many, many ways DoD's proposed regulations violate the clear mandate of the NDAA 2008 for the system to be transparent. Under the system DoD proposes employees will not know how pay pool money is distributed, if they are in a pay pool that has been funded below the amount that would have been available to them had they not converted to NSPS, and how and why such decisions are made. Employees will not know what rating their supervisor recommended, and who, in the hierarchy of managers in the pay pool process actually determined their rating and payout and why. Unlike the GS system, in which employees know the grade and step of their fellow employees, NSPS workers will not know who is getting what in their workplace. Without this information, managers can manipulate workers and keep them from being able to evaluate the equity of their own compensation. DoD should not be allowed to keep everything behind closed doors, require managers to sign "non-disclosure" agreements, and hide the facts about the distribution of pay. Employees should be able to get reports of how the money is distributed to pay pools, who got what in the work place, and how and by whom their own rating and payout were determined.

By contrast, the General Schedule is transparent, easy for employees to understand, and easy for agencies to administer. The complexity of the NSPS can be used to hide the suppression of future wage adjustments for the rank and file. Lower pay increases and the replacement of salary increases with cash bonuses will necessarily lower the standard of living for many good performers during their work years and into retirement.

In addition to concerns about loss of salary, and corresponding reductions in pensions and thrift savings plans, AFGE is also very concerned about the elimination of merit promotion and violations of the merit principles required by law that were recently reinforced by the NDAA 2008. Under the General Schedule, an employee's ability to get promoted is clear from the position description. If the job is based on a career ladder (say, it starts as a GS-5 but goes to a GS-7 then a GS-9), employees know what is expected of them and they can look forward to those promotions (and the corresponding salary increases) until they reach the full performance level of their jobs - in my example, GS-9. After that, employees who want further advancement can check for job openings, which are routinely posted for a requisite notice period, and have the opportunity to apply, and compete for the job.

Under NSPS, promotions are very rare. Employees might be given additional duties by their supervisor in order to advance inside the pay band – what NSPS calls "reassignments," but there will be no clear pathway to that advancement, nor is there a requirement that a job at the higher pay level be open to competition or even that other employees know about the opportunity. The merit promotion system under NSPS will be all but dead. Bias and favoritism are inevitable, along with an erosion of the merit principles so important to the quality of the Civil Service.

Outside the context of union representation, DoD employees are reluctant to utilize the formal process set up to challenge their numerical performance rating, as it is widely viewed as career suicide to do so. Bargaining unit employees with exclusive representatives will be able to use a negotiated grievance and arbitration process to challenge their performance ratings. In its revised proposed regulations, however, DoD has unilaterally determined the scope of that grievance procedure, something normally negotiated by the parties. Under its proposed regulations, the Arbitrator can change an employee's rating but then must remand the rating back to the same pay pool manager whose decision was challenged, to come up with the actual shares and payout. Once again DoD is using its regulations to try to avoid carrying out its full collective bargaining obligations. The NSPS system, so far, has violated even its own alleged principles of rewarding individual performance. If it is allowed to spread, the damage to the merit system will be incalculable.

Mr. Chairman and Subcommittee Members, what AFGE has been told by senior managers at DoD is that there are many problems with the NSPS pay system and we have no reason to doubt them. They are not obligated to discuss any of these matters with us at this time. The proposed regulations will not correct these problems. They fail to meet the requirements of § 9902(b) of the 2008 National Defense Authorization Act. Among other things, the system they describe is not flexible or contemporary; is subject to abuse and discrimination; does not adequately ensure collective bargaining; does not contain a fair, credible, and transparent employee performance appraisal system; nor does it have effective safeguards to ensure fairness.

It is crucial in any evaluation of a system with this much complexity and variables, that the results be exposed to a great deal of sunshine. With your advocacy and the compliance of the Department, the fairness, transparency and accountability promised by NSPS can be better evaluated using the numbers. We urge the committee to acquire the data listed in the appendix annually, and to share it with the representatives of the employees in the department who may be placed under NSPS in the future. It is also important that this information be publicly available on the website. If the system is any good, it will withstand the scrutiny. If it is not, AFGE and other unions will negotiate for its improvement, and continue to advocate for legislative correction.

Transportation Security Officers

Despite the public's call for a federalized, well-trained and well-compensated screener workforce following the tragedy of 9-11, TSOs continue to be drastically underpaid for the extraordinarily difficult and important job they perform every day. According to TSA, TSOs make on average $30,000 a year, far less than other federal employees in law enforcement and security positions, and the meager PASS increases and bonuses by no means provide pay parity with other federal workers, including those in the DHS, performing similar work. This pay is approximately equal to that of a GS-5 under the General Schedule. Other law enforcement officers at the Department of Homeland Security (DHS) who perform duties similar to TSOs, such as Immigration and Customs Enforcement (ICE) Detention and Removal Officers, are classified between a GS-7 and GS-11.

In addition to low base salaries that have not increased for over four years, TSOs are subject to the unaccountable and highly subjective performance-based pay system known as the Performance Accountability and Standards System (PASS). Despite its protestations to the contrary, TSA has created a mostly opaque pay-for-performance system that changes constantly. (As with NSPS, AFGE urges the Congress to require the agency to provide data which would allow for an evaluation of the system.) While understandably confused about the details, employees tell us that PASS is based on favoritism, not merit. Transparency is completely lacking. Practically every component of PASS—ranging from duty assignment to test results—is unfair to TSOs, yet they lack the ability of other federal workers to seek relief before an objective third party like the MSPB. TSA created PASS out of whole cloth without specific guidance from Congress or adhering to the practices recommended by the MSPB for reasonable and effective federal government pay for performance programs. Since December 2008, TSA has made a number of changes to the PASS program that in large part has had a detrimental effect on TSOs, further eroding the devastatingly low morale of the men and women who serve as our country's first line of defense against aviation terrorism.

In a move that only the Grinch could appreciate, shortly before the holidays TSA announced that TSOs would receive a smaller pay raise in 2008 than in 2007 even if they received the same performance rating as the previous year. Perhaps this was an effort by TSA to cover up the fact that there is no guaranteed funding for PASS bonuses and raises. The President's FY 2009 budget request included a proposal to give the TSA Administrator authority to deny TSOs the annual government-wide pay raise. We believe that TSA management would like to divert the funding for annual raises to pay for PASS raises and bonuses.

In March 25, 2008, TSA Administrator Hawley sent a memo to all TSOs informing them of changes to PASS due to complaints that it had become "too complicated". Among the changes was a moratorium on the image test, finally recognizing what AFGE has reported on behalf of its TSO members for years: they are "trained and tested on different standards, and that these standards do not reflect how" TSO do their jobs. By May of this year TSA reimplemented the image test and in a stroke of astounding contradiction, continued to hold previous failures of the admittedly flawed previous test against TSOs. To make matters worse, TSOs reported that they still had limited access to image test training, the new training software was not available at all airports and in some cases simply did not work, and that trainers gave wrong information about identifying "threat" objects during the test which directly led to some TSOs failing the new test. TSOs with excellent work histories and commendations were told they would lose their jobs. Rather than simply scrapping the image test until the agency could properly train and test TSOs, TSA came up with another new policy that continued to hold failures under the previous flawed testing against TSOs, but allowed management the discretion to "retain and retrain" whomever they wanted, making the impact of the "new and improved" image testing more unfair than it was before. On June 3, 2008, as National President of the union representing TSOs, I sent a letter to Administrator Hawley outlining the problems with the image test and requesting a meeting to discuss its impact on our members.

TSOs are greatly troubled by the Standards of Procedure (SOP) portion of the PASS evaluation. The Department of Homeland Security Inspector General's May 2008 report entitled "Transportation Security Administration's Efforts to Proactively Address Employee Concerns" specifically cited TSO's ongoing concerns about the "inconsistent interpretation and implementation of TSA policies and procedures" such as operating procedures. TSOs have reported to AFGE that different supervisors use different interpretations of SOP, and that they do not know which procedure to use during the SOP test. Although TSA has suspended the SOP test for the balance of the year, it is quite clear the agency intends to resume the program in 2009. Additionally, TSOs have complained that the SOP tests were administered by non-government testers—employees of the Lockheed Martin corporation. Lockheed Martin's conflict of interest arising from the firm's pursuit of TSA contracts to privatize TSO jobs was borne out by its announcement earlier this month of the awarding of a $1.2 billion contract to Lockheed Martin to develop a "fully-integrated human resources solution to support the recruiting, assessing, hiring, paying and promoting of all TSA employees". Last week AFGE filed a complaint with the Government Accountability Office that the TSA-Lockheed Martin contract is a direct conversion of federal functions that has a current and future impact on TSOs. We do not see how it is possible for an agency that is stiffing its workforce on pay, training, and technology resulting in chronic understaffing at checkpoints has this type of money to spend on a contract that does not follow procurement rules.

There is a long list of problems with the PASS system. In addition to the inability to appeal adverse PASS evaluations to an objective third party, the internal TSA grievance procedures are overly complicated and contradictory, making it unclear whether a TSO can grieve a PASS evaluation issue on anything other than procedural grounds. A substantial percentage of the TSO workforce is ineligible for a PASS rating or increase because they are on light duty due to non-work related medical conditions or leave restriction (a grossly unfair, ongoing status used to penalize TSOs for leave issues). A large portion of the PASS evaluation is based on the very subjective perceptions of TSA managers, some of whom evaluate TSOs they do not supervise. TSOs report that TSA management is badly trained in administering PASS evaluations. There is no standard training and testing of TSOs. The type of training and frequency of testing vary from airport to airport. Even when TSOs receive a raise and/or bonus under PASS, they have to wait up to four months before they receive the bonus or see the raise in their paychecks. Although TSOs can earn additional points on their PASS evaluation performance rating by performing "collateral" duties such as clerking, equipment maintenance and records management, assignment of those duties is discretionary to TSA management and is usually awarded to TSOs based on favoritism and denied in retaliation unlike the fair bidding process included in collective bargaining agreements. Most TSOs will never be assigned to these duties and will not have the opportunity to achieve a higher rating for the evaluation period. Simply put, nothing in the current TSA pay for performance system is effective as an award for a job well done or incentive to improve performance. PASS fails in every aspect.

In its current form PASS leaves a permanent scar on the present and future income of TSOs. PASS bonuses do not figure into the base for future pay increases. PASS bonuses do not figure into the formula for pensions. TSOs are losing stable pay raises for unpredictable, temporary bonuses that are subject to nonrenewal at any time instead of continuing wage increases that are reflected in promised retirement benefits. Perhaps most damaging to both wages and careers of TSOs and the flying public is the fact that the PASS system does not reward longevity and provides no incentive for TSOs to make the job a career. This fact directly contradicts the demand of both Congress and the public for a well-trained, highly compensated, well-trained and professional screening workforce following the terrible events of September 11, 2001.

TSOs express a strong desire to move to the General Schedule so that in return for doing their jobs, they can be assured of at least a stable standard of living. AFGE would support an employee recognition system to supplement the General Schedule, but the employees' basic compensation and standard of living should not be subject to the whims of individual managers – too many of whom are incompetent.

Mr. Chairman, TSA constantly ranks at the bottom of any survey of employee morale in the federal government. The 2007 DHS Annual Employee Survey found that well over half of TSOs did not believe that their pay raises depend on how well they perform their jobs, while only a third of TSOs believe their performance appraisal is a fair reflection of their performance. Close to half of TSOs do not believe they received awards based on how well they perform their jobs. These are issues directly relating to the flawed PASS system and the rampant unfairness and TSA's lack of accountability to the TSO workforce. The first and most important thing Congress can do to resolve these and other TSA workplace issues is to pass legislation granting TSOs the same collective bargaining rights and workplace protections that apply to other federal workers, including those in DHS. Many PASS issues could be addressed through union negotiations about the impact and fairness of any pay for performance system and application of the General Schedule would eliminate the type of blatant inequality currently pervasive in the TSA pay banding and PASS system. The TSO workforce is too important to be treated so callously. The flexibility given to TSA under the Air Transportation Security Act has been abused to the point of absurdity. It's time to provide a rational pay system for these workers before the incredibly high attrition rate of 21% climbs any higher.

That concludes my statement. I will be happy to try to address any questions.

APPENDIX

In order to evaluate the NSPS pay system in terms of whether it has adhered to its legal obligation to the merit system principles, specifically the requirement of "equal pay for substantially equal work," it is necessary to have access to data that describes the distribution of pay adjustments. Data similar to what are requested here are widely available for all other federal pay systems, including the General Schedule and the Federal Wage System. As those pay systems cover close to 1.8 million federal employees, publication of similar data sets for a pay system covering just 110,000 federal employees is a modest request.

Specifically to evaluate the January 2008 payout for NSPS, the following data are needed:

1. A list of each separate pay pool, identified by service, component, activity, and geographic location.

2. For each pay pool, the following information:
    - Number of employees to be paid from pay pool.
    - Funding of pay pool as a percentage of aggregate salaries subject to that pay pool.
    - Age distribution of employees subject to each pay pool.
    - Gender distribution of employees subject to each pay pool.
    - Race distribution of employees subject to each pay pool.
    - Salary range of employees subject to each pay pool.
    - Occupations included in each band subject to the pay pool.
    - Number of 1s, 2s, 3s, 4s, and 5s awarded in each pay pool.
    - Value of shares awarded in each pay pool.
    - Number of employees awarded a 3 who received one share, for each pay pool, by race, age, and gender.
    - Number of employees awarded a 3 who received two shares, for each pay pool, by race, age, and gender.
    - Number of employees awarded a 4 who received three shares, for each pay pool, by race, age, and gender.
    - Number of employees awarded a 4 who received four shares, for each pay pool, by race, age, and gender.
    - Number of employees awarded a 5 who received five shares, for each pay pool, by race, age, and gender.
    - Number of employees awarded a 5 who received six shares, for each pay pool, by race, age, and gender.
    - By pay pool, the percentage of money given as salary increases and the percentage given as cash bonuses.

NTEU
The National Treasury Employees Union

Testimony of

Colleen M. Kelley

National President
National Treasury Employees Union

Before the

Subcommittee of Government Management, the Federal Workforce, and the District of Columbia

Committee on Homeland Security and Governmental Affairs

U.S. Senate

on

Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government

July 22, 2008

Chairman Akaka, Ranking Member Voinovich, and members of the Subcommittee, I appreciate the opportunity to appear again before this distinguished subcommittee to discuss the important subject of federal pay systems. As you know, the National Treasury Employees Union represents more than 150,000 federal employees in over 30 different agencies and departments throughout the government.

Today the subcommittee will hear today from a number of witnesses representing the Administration, managers and senior level personnel, and distinguished analysts and experts. I am here to present the viewpoint of the tens of thousands of dedicated public servants who are currently on the ground working in government. These federal employees are the potential recipients of the various pay-for-performance systems being advocated by this administration. They are the ones who help administer our government systems; defend our homeland; process and administer our programs such as social security; support our states and cities; and help regulate and inspect everything from our food supply and our imports to our financial institutions. These federal employees want what every other employee wants, a system that offers fair compensation for a fair day of quality work.

The shortcomings of the Administration's so-called pay for performance systems are as distinct today as they were when I testified before this subcommittee in 2005. Unfortunately, despite the growing evidence that these systems lack credibility, the Administration continues its attempts to dismantle the current General Schedule (GS) system and replace it with various performance management systems. The President's FY 2009 budget submission to Congress reaffirmed its commitment to pay-for-performance alternative systems to "replace the current General Schedule pay system with a modern classification, pay, and performance management system that is both results-driven and market-based." *(p. 1097 FY 2009 Budget Appendix)*

Back in 2005, I questioned the lack of success stories to justify putting pay-for-performance systems in place government-wide under the administration's proposal, formerly called the "Working for America Act." The idea was that an alternative pay system would motivate the workforce to increase productivity and better accomplish the mission of critical agencies while attracting new talented people to government. Sadly, three years later, we still lack success stories, but instead we see a litany of failed experiments, widespread employee dissatisfaction, inequitable distribution of resources, abuse in rating systems, and rampant employee confusion over expectations. Pay experiments at DHS, especially at the Transportation Security Administration (TSA), IRS, DOD, FDIC, and SEC, to name just a few, have fallen short of accomplishing those goals. Where are the anticipated success stories?

NTEU has always taken the position that in order for a pay system to be credible and effective it must either be set in statute like the GS system so that everyone knows what the rules are and what the consequences of actions are, or there must be collective bargaining so that the employees through their union can have a role in the design of the pay system and can take action to remedy any unfairness.

General Schedule (GS Pay System)

Before I discuss NTEU's involvement with various pay-for-performance systems, I would like to address the current GS system. There is quite a bit of confusion among critics about it, and criticisms are usually vague and exaggerated. However, some suggest it needs to be replaced with a market based system, like one of these pay-for-performance experiments. Let me be clear. The GS system *is* market-based. It has the goal of achieving comparability with the private sector through 32 different locality pay areas. And employees receive raises based on merit, which is synonymous with performance and achieving results. As the distinguished professor and witness today, Dr. Charles Fay has pointed out in the past, the Bureau of Labor Statistics uses "impeccable methodology" to gather and evaluate statistically valid data for the GS system. *(May 22, 2007, House testimony).*

The General Schedule is a structured system. It has rules, standards and evaluations which must be written. It has both merit and market components—with grade and career ladder promotions subject to merit standards. There is limited ability for favoritism, discrimination or other non-merit determinations to come into play.

But there is also flexibility. Non-performers can be denied merit pay increases and outstanding performers can be given many rewards, including quality step increases, annual leave, retention (and recruitment) bonuses that are available. Yet we see a pattern of managers' inability to follow the rules and work within the GS system. If managers currently have trouble with the GS system, it does not make sense to go to a *more subjective* system. That will not solve anything. My testimony will point to several failed cases of alternative pay systems demonstrating their overall lack of success.

No Success Stories

I am a big believer in setting meaningful goals and then figuring out how best to reach those goals. I have participated in numerous Congressional hearings and Hill and Agency meetings on pay-for-performance and I have to say the goals are very often glossed with statements like, "we want flexibility," or, "it needs to be more modern." It seems to me that a pay system should have a couple of major goals: 1) Does it help recruit and retain the best people for the jobs? And, 2) Does it help motivate employees to better achieve the agency mission? And this is the area where I believe both the pay-for-performance systems that are in place and those that have been proposed through the administration's proposals have the most problems.

I don't know of a single so-called pay-for-performance system that is getting good reviews from the employees who are working under it.

OPM Report: Alternative Personnel Systems

Early in the year, OPM released its report entitled *Alternative Personnel Systems in the Federal Government: A Status Report on Demonstration Projects and Other Performance-based pay Systems (December 2007).* While OPM proudly touted this report as evidence of success, a close reading shows a patchwork of pay systems across government that cannot collectively, or individually, be characterized as successful. If anything, the report demonstrates how inconsistent, arbitrary and problematic the differing pay systems are throughout the government.

While the report lists a hodgepodge of systems at various stages of their development, and includes a number of surveys, it lacks hard data on the parameters of the surveys and the numbers of people who participated in them. Simply stating percentage of employee satisfaction or non-satisfaction, without the necessary information on the numbers of people polled, and the exact questions asked, makes the conclusions questionable. NTEU has extensive front line experience with alternative pay systems at many of the agencies in the OPM report and that experience is characterized by a slew of grievances, arbitrations, litigation, high attrition rates and rock-bottom employee morale.

I want to emphasize that nothing in this OPM report, or any other government study I have found, indicates that the General Schedule system should be modified along pay-for-performance lines. Until we see actual success stories, NTEU will continue to oppose the expansion of alternative pay experiments. The GS system is not based on longevity but on the successful performance of employees. This is a performance-based system that works.

And for those who argue that raises are automatic within the GS system and say the only thing that counts is *being there,* I take issue. An employee's supervisor must certify that the employee is performing the job up to standard. If not, the employee's step increase can be withheld and disciplinary action can follow. If there's a problem here, it's that the supervisor is not doing his or her job. Can we expect them to do a better job with a much greater task, the kind of task that is involved in each and every one of the pay-for-performance systems presently in the government? It took a very long time to build a non-partisan, professional civil service that is envied around the world. There has been no evidence so far that it needs to be changed.

DHS and TSA

Pervasive problems at the Department of Homeland Security (DHS) continue to exist despite the many worthwhile congressional actions and the work of dedicated frontline employees. Today I'll not focus on department-wide issues except to point out that 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 with an alternative personnel and pay system. Thankfully, the agency has not been provided the funding to do so.

I would like to focus on the alternative pay system for Transportation Security Officers (TSOs)—the airport screeners—at the Transportation Security Administration (TSA). This pay-for-performance system is called the Performance Accountability and Standards System (PASS) and is a complicated system that relies heavily on bonuses rather than increases in base pay. It is an example of the "worst of all worlds" kind of system– not a statutorily set system like the GS one, and no collective bargaining over pay, nor over anything. And has this pay-for-performance system aided in recruitment and retention or motivation? It absolutely has not. It is a major contributor to the fact that TSA has the highest turnover rate in the federal government. Has it motivated employees to better achieve the agency mission? Certainly not. Employees at TSA are struggling to make ends meet with an average annual salary of $30,000, uncertain work conditions and no knowledge as to whether they will receive a pay raise, or even what the expectations are to get one, under the current system. While they do a remarkable job with insufficient training, it is hard for them to focus on the larger mission goals.

PASS is in disarray. Problems with PASS are so numerous, it's hard to list them all – employees are constantly tested, but if they fail, they're not told what they did wrong. The training is minimal. A majority of screeners have not been provided with the information they need to get a pay raise. In the last cycle, the pay raises were adjusted so that more people would get some amount of a raise. Unfortunately, since there's only so much money to go around, many of the top performers from last year find that their rating is the same, but the pay raise is smaller.

In its December report, OPM hails this system as a "key element in the long-term professional development" of the screeners. Nothing could be further from the truth. Supervisors need to keep a small booklet of ratings on each employee. Some forms don't get filled out, some get lost. Retraining is difficult, because there are no materials, and no time to review the materials if there are any. It's a system easily abused.

To add insult to injury, TSA just decided to award a $1.2 billion contract to Lockheed Martin to perform its human resource activities. While airport screeners in charge of vital security needs are receiving an average $30,000 a year in salary, a contractor will receive $1.2 billion to administer systems, including the much maligned and inept PASS system. And I don't need to remind this committee of all wasted federal money resulting from contractor horror stories like those at IRS, DOD, VA and OPM that we regularly read about.

Scarcely a month goes by without a TSA debacle. In April, DHS released a survey showing that 93 percent of TSA employees believe their work is important, but only 21 percent believe promotions are based on merit. Fewer than one in four – 23.6 percent believe their pay raises depend on how well they perform their duties. Fewer than a quarter believed their leaders generated high levels of motivation and commitment in the workforce. In May, the DHS Inspector General released a report *(OIG-08-62)* that found TSA has not provided sufficient tools and guidance in the structures, authorities, and oversight responsibilities of their initiatives to improve declining morale problems, and that it faced challenges in communicating the details to the workface.

With roughly 8,000 of the approximately 40,000 member TSA workforce leaving their jobs each year, TSA is incurring astronomical and unnecessary costs of training, recruiting and hiring, and lost productivity. This critical workforce is in flux and I see no advantage to experimenting further with their pay. The PASS system is not fair, credible or transparent. It is not achieving the success to justify it, and it is a major contributing factor to the agency's double-digit attrition.

The TSA PASS system should be eliminated and TSA screeners should be put under the General Schedule pay system. They also should be afforded collective bargaining rights without delay to enable employees some leverage to address rampant and unfair workplace injustices. NTEU supports H.R. 3212, legislation introduced in the House by Rep. Nita Lowey, to provide collective bargaining rights to TSA screeners, and hopefully before long these well-deserving employees will be afforded these rights.

NTEU and Alternative Pay Systems

While NTEU stands ready to contribute to measures leading to a more effective and efficient federal government, my concern is that the Administration has moved forward on pay alternatives without first demonstrating that a problem exists. It has not brought forth the kind of comprehensive impartial data-based research explaining why it finds the GS system I described as inadequate. Nor has it required agencies to use the many authorities and flexibilities already available to them to offer alternative pay and benefits which I will also address in this testimony.

I would like to comment specifically about several alternative pay systems that NTEU has been involved with or has knowledge of, including the Federal Deposit Insurance Corporation (FDIC) system, the Securities and Exchange Commission (SEC), and the IRS' paybanding system that currently covers only managers.

Let me point out that alternative pay and personnel systems have a very small, if not negligible, impact on recruiting, retaining and maximizing the performance of federal employees. 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 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 so-called pay-for-performance projects as proposed by this Administration. Let me bring to the subcommittee's attention the following examples of alternative compensation systems that have all encountered problems.

FDIC

As I mentioned, NTEU strongly believes that in the absence of a statutorily defined pay system, like the GS system, pay should be subject to collective bargaining, as it is in the private sector. NTEU's ability to bargain at the Federal Deposit Insurance Corporation (FDIC) had the benefit of bringing employee concerns about the flawed pay system to the forefront.

Earlier this year, NTEU and the FDIC agreed to suspend the FDIC's pay for performance system covering employees for the 2007 performance cycle. The system had generated a great deal of resentment among FDIC employees and did little to actually motivate people or foster teamwork. Recognizing the low level of morale at this important federal financial regulatory agency, which was highlighted in an extensive survey of all FDIC employees by the respected, independent organization (the Hay Group), FDIC Chair Sheila Bair, held a series of discussions with NTEU and, to her credit, agreed to the suspension. Parties will now review options for a more transparent, credible and fair pay system going forward.

Based on a comprehensive survey of all employees (which itself was prompted by disappointing results under the OPM Human Capital Survey) a report from the Hay Group *(FDIC 2007 Employee Engagement Initiative, Dec 21, 2007)* found only 12 percent of FDIC employees said they found the pay-for-performance system to be a fair program for rewarding employees' performance and contributions. Fewer than one in three said they believed the pay-for-performance group assignments – which were key to determining pay—were an accurate reflection of performance and contributions.

This was not a surprise to NTEU. NTEU has been at odds with FDIC's system to determine performance-based pay for some time. Several years ago, the FDIC divorced its pay system from its performance management system, and established a separate set of "corporate contribution" factors to determine employee annual pay increases. Although multi-level performance scores had recently been reintroduced as a factor in pay determinations, pay increases were still based primarily on the "corporate contribution" criteria, which are highly subjective, and not grade or job-specific. Furthermore, although pay increases are purportedly based on merit, the FDIC used a forced distribution system in determining employee pay increases: employees in each organizational component needed to be "ranked," and the top level pay increases were limited to the top 25% of employees.

This system of forced rankings and pay distributions had demoralized and angered FDIC employees. Our members report that the system was divisive and discouraged teamwork. It was discouraging employees from taking risks, and sending the message that three quarters of them could never be considered to be top performers, regardless of how well they perform. The forced ranking system, under which employees from different work units with different supervisors were ranked against one another, smacks of a "star chamber" approach to pay-for-performance.

With the heavy reliance on vague and subjective "corporate contribution" factors, employees did not clearly understand what they must do to be evaluated at the highest level. And the forced ranking system prevented them from ever knowing how this might translate into a pay increase, so that the pay system does little to actually motivate performance. The system, therefore, lacked transparency and credibility, and has caused employees to question its fairness. Hundreds of individual grievances have been filed alleging unfair pay determinations, as well as mass grievances alleging discriminatory impact based on age and race.

As noted in the Hay report, there is a need for a fundamental change in the FDIC culture, to support employee creativity, innovation, and the exercise of professional judgment, so the FDIC can fully utilize the talents, ideas, and expertise of its employees. NTEU is now working with Chairman Bair and the FDIC on identifying and implementing changes to the FDIC culture to foster effective leadership, implement transparent communications and promote employee empowerment and teamwork. We are also working together with the FDIC to create a more credible, transparent and fair pay-for-performance system. We recently reached agreement on some interim changes for the 2008 performance year, in which pay distinctions will once again be tied to scores on employee performance ratings; a new component of the interim system will tie a portion of pay increases for all employees to achievement of agency-wide "stretch objectives." NTEU and the FDIC are also working with the Hay Group to establish a system with more significant improvements to both the performance management and associated linkage to pay, for implementation sometime next year.

SEC

In addition to meeting the success test for recruiting, retention, and motivating employees, NTEU believes any alternative pay system must be fair, credible and transparent. And employees must know what their work expectations are, and what they need to do to improve. Over the years, the Securities and Exchange Commission (SEC) has failed to meet these basic requirements with its merit pay system, but NTEU and the SEC are now working to try to address these problems.

Congress authorized SEC to establish a pay system outside of the General Schedule and NTEU has negotiated with the Commission over this since 2002. Its pay-for-performance system was not based on a forced ranking system like FDIC's but rather on a forced *distribution* system with merit step increases designed to fit within an identified budget. Over time, the pay-for-performance budget shrank, and became too low to provide meaning recognition for high performance. Furthermore, the agency used vague, subjective and generic criteria unrelated to positions to make determinations about raises. The SEC also broke the GS- 10 step pay scale into 31 steps with each step being worth a smaller percentage of salary. As you can imagine this was all very confusing to employees.

But much more troubling was a pattern of discrimination in pay at the agency under this system. NTEU took the agency to task and filed grievances against the distribution of merit pay increases each year under this "pay-for-performance" system, charging that they discriminated against groups of employees protected under federal anti-discrimination statutes. In September, 2007, we won the first important legal battle when an arbitrator ruled for the union that SEC's implementation of its 2003 pay-for-performance system was illegal. This faulty system was found to be discriminatory against African American employees above Grade 8 and employees aged 40 and older.

The arbitrator found that African-American employees above grade 8 and older employees received significantly fewer pay increases than would be expected given their representation in the pool of eligible employees. He ruled that since the SEC's subjective system for awarding pay increases was not valid or even reasonable, the pay-for-performance program violated Title VII of the Civil Rights Act as well as the Age Discrimination in Employment Act.

Among the multiple issues with the SEC system is that it used a set of vague and subjective 'agency success factors' to determine whether and how much of a merit increase an employee would receive. The generic factors were not linked to employees' job duties and applied to every position within the SEC, from administrative staff to IT staff and to attorneys, accountants and other professionals.

They were based on undefined general criteria such as whether employees "focus on achieving results while adapting to changing priorities" or "present information accurately" or "gather and evaluate information to develop effective solutions" or "collaborate with others." Managers were required to make judgments about pay increases on these criteria, yet the agency gave them little or no training on how to do so. This resulted in subjective and arbitrary determinations about who met the criteria and who received the merit increases.

It is no surprise, therefore, that the SEC's implementation of this program was a failure. NTEU warned the SEC that employees would not know how to satisfy these vague standards, that arbitrary treatment would occur, and that grievances would undoubtedly follow. The September ruling was the result of the first of five pending grievances NTEU has filed challenging the use of the system for each subsequent year, including the 2007 performance period. Those grievances also allege that the system violates federal law, the NTEU compensation agreement and the NTEU-SEC collective bargaining agreement. We are now moving forward with our 2004 grievance and the parties are currently exploring the possibility of settling all these cases. But the possibility of further litigation, and escalating damage payments, looms large.

Meanwhile, while these grievances are pending, NTEU is working with the SEC to try to develop a more effective pay-for-performance system. The SEC, to its credit, has finally come to recognize that a credible and transparent performance management system is a necessary foundation for a fair pay-for-performance system. The agency's efforts to date have focused on developing the new system for its executives and managers, so little has been done thus far on developing new performance standards for bargaining unit employees. Fortunately, the SEC has agreed to cease use of the old, flawed merit pay system while the new system is being designed.

IRS

The Internal Revenue Service (IRS) has a pay banding performance based compensation system. While bargaining unit employees represented by NTEU are not covered by this alternative system, managers participate in it. I do not want to speak for the managers but I think it is safe to say they have not embraced the system.

In their June 18, 2007, public comments on OPM's proposed regulations to revise the criteria for IRS broadbanding systems *(Federal Register April 17, 2007)* the Federal Managers Association highlighted several problems with their pay banding system. The theme that ran through their comments is the notion that under the administration's pay banding proposed regulations, pay is not necessarily dependent upon the *performance* rating. And isn't that the alleged purpose of these alternative pay systems? I'd like to quote from the managers' June 18th comments on the Administration's broadbanding proposals:

> Any reform of the current system must eliminate the current service-wide performance ratings caps. For the IRS personnel system to be truly pay-for-performance, there cannot be arbitrary caps on the number of higher ratings. Managers must receive the ratings their performance dictates and they should not be harmed by a *capricious ceiling*. For any personnel system to be fair and effective, evaluative ratings and performance awards must be based on merit, not *forced quotas*." *(June 18, 2007 public comments (emphasis added))*

The Managers' comments also spoke to how the current award pools fail to adequately reward managers for performance and for the compensation risk they believe they face.

After these comments came out, on July 3, 2007, the Treasury Inspector General for Tax Administration (TIGTA) released a report (2007-10-106) titled, *"The Internal Revenue Pay-for-Performance System May Not Support Initiatives to Recruit, Retain, and Motivate Future Leaders."* The TIGTA report found a number of serious deficiencies in the pay for performance system at the IRS. Most alarming to me, Mr. Chairman was the sentence on page 1 of the report under "Impact on the Taxpayer" and I quote:

"In addition, the new System was not adequately communicated to the managers before it was implemented, causing opposition and decreasing morale. As a result, the IRS risks reducing its ability *to provide quality service to taxpayers* because the Internal Revenue Pay-for-Performance System potentially hinders the IRS' ability to recruit, retain, and motivate highly skilled leaders." *(Emphasis added)*

I believe we cannot ignore the bottom line mission of the agency in these pay experiments. If these alternative pay systems are jeopardizing the achievement of an agency's core mission – in this case to provide quality service to taxpayers—how can we justify more experiments with these systems that have questionable successes?

In its report, TIGTA found: 1) the system discouraged both managers and non-managers from applying for managerial positions; 2) performance based pay increases were not necessarily commensurate with a manager's performance; and 3) the Human Capital Office (HCO) did not adequately communicate with affected managers, which increased opposition and decreased morale. I need not remind you, Mr. Chairman, that the point of this pay experiment was to attract quality talent to offset an expected dearth of government managers when nearly 90 percent of high level government managers will become eligible to retire in the near future. These dismal findings hardly confirm the predictions of success.

Finally, shortly after the TIGTA report was issued the Federal Managers Association (FMA) revealed its own misgivings about the direction of the system in its newsletter to FMA members. Most revealing was its internal survey which showed that 92 percent of respondents answered "no" when asked if the current performance management system accurately identifies the truly 'outstanding' managers. *(FMA newsletter 2007-11, July 10, 2007)* Further, FMA agreed with TIGTA that communication with employees needs to be more "open and timely" with respect to pay before changes to pay and benefits can be made.

We understand at one point the IRS planned to hire a *contractor* to assess this program. I cannot imagine where the logic of this lies and I urge the subcommittee to look into hiring so-called outside experts by using taxpayers' money to assess a failing pay system.

Despite dismal results of these systems, they continue to be showcased as models for moving the whole federal government to pay-for-performance systems. 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 (GAO-04-291) 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.

I would also note that GAO, began a pay-for-performance system for its own employees two years ago, and last year, for the first time, the employees voted for representation by a union.

Alternatives to Pay-for-Performance

Mr. Chairman, we are all aware that a surge in federal retirements could occur in the next several years. The Council for Excellence in Government & Gallup Organization has reported that 60 percent of the federal government's General Schedule employees and 90 percent of the Senior Executive Service will be eligible to retire in the next ten years.

While no one knows for sure whether all of those eligible to retire will actually do so at the rates predicted, I do know that the federal government had better be prepared to compete for the best and brightest of the young new workers. Just as importantly, however, it must be prepared to use its many existing authorities and flexibilities to *retain* the hundreds of thousands of talented public servants who have the knowledge and expertise to continue contributing to the federal workforce. The failure to pay competitive salaries, the constant focus on downsizing and outsourcing and the bashing of federal bureaucrats have put the federal government at a disadvantage when it comes not only to hiring the best new college graduates, but also to retaining its current employees.

Unfortunately, many federal agencies have been lax in utilizing their existing authorities and administrative personnel rules to retain the thousands of dedicated public servants who are currently working in our federal agencies. I contend that we should not plunge forward with untested pay experiments until we require OPM and the agencies to use existing flexibilities and provide them with the resources to do so.

During the debate over the Bush Administration's ill-conceived proposal to change the GS pay system, I pointed out that there are a host of provisions on the books that allow the federal government to reward high performers, including recruitment and retention bonuses, quality step increases and paid time off awards. These options are often not used because agencies are not given the resources to fund them, or agencies find it cumbersome to ask OPM for authorization.

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 include time off awards and flexible work schedules that allow employees to better balance the demands of career and family life. These flexibilities need to be used more broadly.

Unfortunately, OPM has not focused extensively on advertising existing authorities and 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 retention allowances; 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 retain their federal employees.

These flexibilities are really alternatives to replacing a tested pay system with a patchwork of untested ones. The following are just a few flexibilities that are already on the books that can help recruit and retain quality employees.

Bonuses and awards. I was recently shocked to read that the government's bonuses now account for one-tenth of 1 percent, or $95.1 million of the $82.8 billion spent on salaries for core federal workers in 2007. *(Fed Times June 23, 2008)* That is a drop from the level of eight-tenths of 1 percent from the previous administration. The median award for about 106,000 employees out of the 1.2 million workforce was only $566. Even good managers and talented higher level workers received far less than their counterparts in the private sector. Bonuses are a simple way to reward performance, and they should be used in the federal sector as they are in the private work force.

And as I mentioned earlier, other awards can be provided to employees in difficult to fill positions. Agencies can pay a retention bonus to retain an employee they deem essential. They can also provide relocation assistance.

Telecommuting. Agencies can now offer telecommuting, also known as telework, or programs that allow employees to work at home or another approved location away from the regular office. The House just passed legislation (H.R. 4106) to expand the telework program and, thanks to you, Mr. Chairman, and other supporters on this Committee, the Senate bill (S. 1000) is awaiting floor action. NTEU fully supports legislation to require agencies to offer telework to all eligible employees. While agencies do have authority to offer telework now, many do not do so. With current skyrocketing gas prices, this is a "no brainer" to employee satisfaction.

Student Loan Repayments. This benefit could be critical to recruiting top notch qualified public servants. Under this existing authority, agencies may repay federally insured student loans as an incentive for attracting candidates. An agency may pay up to $10,000 per employee in any calendar year or a total of $60,000 per employee.

Conclusion

NTEU believes, first and foremost, that no hard evidence exists that the current pay system for federal employees needs to be replaced. Second, NTEU supports a moratorium on new pay-for-performance systems and a congressional review of those in place to see whether they are *successful* in accomplishing their goals. Those that are failing should be cancelled. Third, NTEU strongly believes that collective bargaining over pay must be provided to employees of agencies that administer alternative pay systems to provide employees a voice in pay determinations. And fourth, agencies must use existing flexibilities to attract and keep talented employees.

A federal performance management system must be fair, credible and transparent. It should involve employees in decision making and in soliciting and using the knowledge and creativity that they have. Combined with responsible leadership, that is the only way we will have a successful system that will keep our talented workers and advance the missions of our important federal agencies.

Statement of

Jonathan D. Breul
Executive Director
IBM Center for The Business of Government

before the

United States Senate
Committee on Homeland Security and Governmental Affairs

Subcommittee on the Oversight of Government Management, the Federal Workforce, and the District of Columbia

July 22, 2008

Chairman Akaka and Ranking Member Voinovich: thank you for the opportunity to discuss "Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government."

I am Executive Director of the IBM Center for The Business of Government. We operate as a "think tank" that connects public management research with practice. Since 1998, the IBM Center has helped public sector executives improve the effectiveness of government with practical ideas and original thinking. We sponsor independent research by top minds in academe and the nonprofit sector, and we create opportunities for dialogue on a broad range of public management topics. The Center is one of the ways that IBM seeks to advance knowledge on how to improve public sector effectiveness. The IBM Center focuses on the future of the operation and management of government.

The question of how to compensate civil servants remains a thorny issue. Public sector positions no longer necessarily offer a job for life and federal departments and agencies are increasingly in competition with the private sector to recruit and retain top performers. One solution – widely used in some parts of the private sector – is to replace or complement the traditional civil service system of automatic salary increases based on length of service with financial reward for good performance or performance-related pay. Performance-related pay refers to the variable part of pay, awarded on an individual or a team or group basis – depending on performance.

In order to gain a better understanding of the challenges and issues related to performance pay, the IBM Center has sponsored and published three research reports by several public management experts. These, as well as all of our over other 200 reports, are available at no charge on the Center website at www.businessofgovernment.org.

Pay banding

The first report, *Designing and Implementing Performance-Oriented Payband Systems*, is by James R. Thompson, Associate Professor, University of Chicago, Graduate Program in Public Administration. According to Professor Thompson, there is widespread agreement among those who have examined compensation practices in the federal government that the approach embodied by the traditional General Schedule is obsolete. A common complaint is that the system is too rigid and that the 15-grade structure induces excessive attention to minor distinctions in duties and responsibilities. Another concern is that pay increases are granted largely on the basis of longevity rather than performance.

Paybanding is not a new concept to the public sector. The essential concept is that for the purpose of salary determination, positions are placed within broad bands instead of narrow grades. The cumulative number of federal employees working within payband systems as of late 2006 was under 250,000. According to Thompson, the preponderance of data shows that these systems have achieved high levels of employee acceptance. However, the degree of success seems to vary, depending on how the systems were designed and implemented.

Thompson's report describes nine different performance-oriented payband systems that have been in operation in the federal government - in some cases for more than two decades. He makes the case that successful designs are those that: (1) achieve a balance between efficiency, equity, and employee acceptance; (2) acknowledge the importance of "soft" as well as hard design features; and (3) fit the organization's context.

Performance Management

A second IBM Center report is *Managing for Better Performance: Enhancing Federal Performance Management Practices* by Howard Risher, Consultant, and Charles H. Fay, Professor of Human Resources and Labor Relations, Rutgers University School of Management and Labor Relations. Their report reviews the history of performance management efforts within the federal government and discusses the successes, challenges, and failures over the years. In addition, the report offers insights from other performance management experiences in both public and private sector organizations. The authors describe differences between private and public sector performance management practices, as well as present a comparative analysis of corporate and non-corporate use of good management practices. Finally, the authors - with over 50 years of experience between them - offer advice on immediate and long-term steps the federal government might undertake to improve performance management practices.

The authors report that performance management is recognized worldwide as a critical success factor in helping individuals and organizations achieve their goals. When done correctly, performance management becomes a powerful and effective tool to drive individual and organizational performance. When done poorly it can create an atmosphere of distrust between managers and employees – ultimately limiting performance and the organization's ability to achieve its full potential.

For this reason, Risher and Fay argue that the responsibility for effective management of employee performance rests squarely on the shoulders of executives and frontline managers. They emphasize that the management of people needs to be a core responsibility of every manager. In view of this, it is critical that managers understand and effectively practice the fundamentals of performance management – planning, monitoring, developing, appraising, and rewarding employee performance.

Performance Pay

The third report is *Pay for Performance: A Guide for Federal Managers*, by Howard Risher. Risher insists that research over the years confirms that organizations benefit when they recognize and reward employee and group performance. His thought-provoking guide provides advice to federal managers involved in the planning and implementation of pay-for-performance systems. He examines arguments for and against pay for performance, reviews various approaches to pay for performance, and discusses the challenges of implementing such systems. The report provides a framework for developing and evaluating specific pay-for-performance policies and management practices. Risher concludes with a comprehensive set of recommendations for the future: building support and "ownership" for the policy change, defining goals, preparing and supporting managers in their new role, enhancing employee understanding, assessing performance management system considerations, anticipating problems, and managing incentive bonus awards and non-cash awards.

Risher explains that for the new system to succeed, managers need to be comfortable with their new role in overseeing such systems. This makes it essential for them to play a role in planning and implementation of a new system. He argues that pay for performance, including the reward system, must be an integral part of an organization's overall strategy to create a performance culture. Further, he contends that federal agencies will have to overcome barriers of cynicism and distrust among federal employees, and that because there will be "bumps and detours," agencies should expect to adjust their plans with experience. He concludes that in the end, the new policy can be expected to contribute to improved agency performance.

Risher warns, however, that the transition will not be easy: "This may well prove to be the most difficult change any organization has ever attempted." But in the end, he believes it will better serve the needs of the federal government than the current General Schedule salary system.

Conclusion

The question of how to compensate public employees remains a thorny one. Performance pay is an appealing idea, but research indicates that implementation as well as improving government performance remains complex and deceptively difficult – both technically and politically. The IBM Center plans to continue to document changes underway and provide government executives with practical insight and actionable recommendations on the transformation of government underway in the United States and around the globe.

Thank you, again, Chairman Akaka, Ranking Member Voinovich and other Members of the subcommittee for holding this important hearing and for remaining engaged on the important issue of improving the management and performance of government.

Testimony of Charles H. Fay
Pay-for-Performance in the Federal Government
US Senate
Homeland Security and Governmental Affairs Committee
Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
Tuesday, July 22nd, 2008

Witness Background

I am Charles Fay. I am professor of human resource management at the Rutgers University School of Management and Labor Relations, where I have specialized in the fields of compensation and performance management. These areas draw on the pure disciplines of economics, psychology, business strategy and human resource management, and courses covering both topics are offered in most business schools and all schools focusing on management and labor relations.

I have taught undergraduate, masters' level and doctoral classes in compensation and performance management since 1979. Most of my research since 1979 has focused on compensation (particularly performance driven pay) and the results have been published in a variety of scholarly and professional journals. One area of compensation that is my specialty is incentive pay, which is the intersection of performance management and compensation. I co-authored a leading text in compensation, titled *Compensation: Theory and Practice*, which has been widely used by colleges and universities as well as human resource managers in business and government. I have co-edited, and written major chapters for *The Executive Handbook on Compensation* and *New Strategies for Public Pay*. I have chaired the Research Committee of the American Compensation Association (now WorldatWork), and served as a member of that organization's Certification Program, where I taught several courses on compensation, HRIS and performance management. I was a member of the first Federal Salary Council and chaired the technical working group of the Council. I have also served as a consultant to the Bureau of Labor Statistics on several projects concerning the National Compensation Survey.

I have also served as a consultant to private and public sector organizations on the creation, evaluation and revision of compensation programs and in that capacity have conducted and critiqued job evaluation processes and labor market surveys. I have also consulted on the creation, implementation and evaluation of performance management systems for private and public sector organizations.

Given my background it should be obvious that I have a bias favoring strong performance management systems and pay-for-performance in general. When well designed and well implemented, these systems can and do increase employee understanding of what is required of them, their performance, and organizational outcomes. Flawed programs can and do decrease productivity and employee job satisfaction.

Introduction and Outline of Testimony

I have been asked to testify on the implementation and effectiveness of pay-for-performance systems in the private sector and the federal government. I will first speak to what research has shown us about performance management systems and then what research has told us about pay-for-performance systems. I will conclude with some comments on current Federal pay-for-performance systems.

Pay-For-Performance: What We Know

Pay-for-Performance has two parts: performance and consequent related pay actions. Both performance management systems and incentive systems must be working well if pay-for-performance is to motivate appropriate performance.

Requirements for Performance Management

If performance management is to be successful, the system must meet a number of criteria in the areas of planning, monitoring, developing and rating. These "best practice" criteria are shown below: (These best practices have been taken from a study done by the author and a colleague (Howard Risher) for a study sponsored by the IBM Center for the Business of Government, and published as Managing for Better Performance: Enhancing Federal Performance Management Practices. The entire report is available from the Center online at http://www.businessofgovernment.org/publications/grant_reports/details/index.asp?GID=298.)

Planning

At the beginning of the year, managers are responsible for determining what they think their direct reports need to accomplish, based on the organization plan and assigned job duties. This is usually a good occasion to update job descriptions. Outcomes and deliverables are the preferred performance measures or criteria, but for many jobs, outcome measures that really capture performance are not available. For these, behaviors that are believed to lead to desired outcomes can be used as proxies.

Standards of performance for each of these performance criteria must be set. For any given outcome or behavior, what performance level should be the standard? What performance level would be considered as excellent or outstanding? What performance level would be considered unsatisfactory? The basis for measurement or verification should also be documented. It takes time, but defining three levels of performance tells the employee what he or she needs to accomplish to realize their aspirations and makes it much easier for the manager to defend year-end performance ratings.

Performance expectations are best set in consultation with the direct report, but however set, managers must make sure that their staff understands what they are expected to accomplish. Anytime an incumbent does not fully understand the criteria that will be used to assess his or her performance, it should be seen as a management failure. That undermines a primary purpose of performance management.

Understanding performance criteria and standards is not enough. The direct report needs to have goals for each criterion. Goals represent a commitment by the individual. The idea of "stretch" goals is widely used in industry. Research has repeatedly established that a person selling high, specific goals (or who agrees to high, specific goals suggested by others) reaches a higher level of performance than one who does not set goals. At the time goals are discussed, direct reports should be encouraged to note any anticipated impediments, and managers should commit to providing support within the budget to overcome problems.

One problem that can occur in the use of goals is the confusion between performance and goal achievement. The notion behind a stretch goal is that it is difficult to meet. The "stretch" comes from having a goal that goes beyond the normally expected performance. High performance -- that is, performance that exceeds the standard - should be celebrated and rewarded even if the goal is not achieved.

The performance plan developed by a manager and a direct report becomes a performance "contract." As with all performance plans, changing circumstances may trigger a need to change expectations. Both manager and direct report need to agree on the nature of the changes that might prompt them to modify performance factors and agreed-upon goals.

Different managers may be much tougher than others in defining performance criteria and setting performance standards, especially when a performance management system is first implemented. Senior managers need to see that the managers reporting to them directly and indirectly use appropriate performance criteria and set similar performance standards. Calibration committees of managers who have similar jobs reporting to them can also be used to make sure that performance criteria and performance standards across the organization converge.

Monitoring and Measuring

With the beginning of the performance period, the manager must be in a position to observe performance or, when that is not feasible, obtain feedback from others who have a reason to observe an employee's performance. This can be anyone Impacted by the employer's performance. The individuals who are asked to provide feedback should have direct knowledge.

Whenever verifiable performance information is available, there should be a tracking system to document progress.

"Managing' performance comes about through feedback either to correct poor performance or reinforce good performance. Coaching and mentoring focus on increasing performance levels, overcoming obstacles, and choosing among alternatives Inadequate performance should be handled as a problem to be solved rather than recognition of a personal flaw or inadequacy.

Positive feedback is important in managing performance. The performance contract and goals set should be the basis for the feedback so that it is not merely cheerleading but contains specific content about what was observed and how and why it is good performance. The traditional "atta boy" is frequently just confusing, but effective coaching leads to higher levels of performance.

Observation and feedback as the performance period unfolds makes it possible to provide "real time" coaching. Advice and feedback when a problem or impediment arises makes an incident a learning opportunity

Better managers schedule multiple mini-appraisals at regular times, when problems are encountered, or when projects are completed. Then the feedback *can* be handled as coaching, and more specific to recent events. Regular feedback means there will be no surprises at year-end.

Developing

The transition from over-the-shoulder, close supervision to more of an empowerment style of management changes the role of the supervisor. That makes it important when occasions arise to provide coaching advice and career guidance The performance management process should identify the knowledge, skills, and abilities that an employee needs to develop for continued career success and that provides a good framework tor discussions.

The coaching should include guidance toward job assignments and special projects to help the employee develop or enhance important competencies. Managers should be able to look to their human resources/ human capital (HR/HC) specialists for help with development planning.

Managers and direct reports have to recognize that high performance on the current job does not necessarily translate into high performance on the next level job. Organizations are filled with poor managers who were great individual contributors. In counseling a direct report on career development, a manager should discuss hos, current performance would translate on *the* higher-level lob What may be a minor issue On the current job may become a major flaw on the higher job, and developmental plans should address fixing these flaws now rather than later

Nearly all managers would benefit from training to develop their coaching and mentoring skills. Those skills have become more important as organizations move away from close, over-the-shoulder supervision.

Rating

Shortly before the final ratings are due, managers should solicit input from individuals who have had reasons to observe and interact with the employee. The employee should be asked for a list of the people who should be contacted, the list of relevant others. This feedback should follow a standardized format so that it can be assembled and evaluated easily.

While self appraisals are useful, managers should not ask direct reports to fill out their own appraisal form. Instead, a manager should fill out a "draft" appraisal and share it with the direct report, asking the direct report to consider its completeness and accuracy before the formal appraisal feedback. This gives the direct report a chance to consider the appraisal in a low-pressure environment and bring errors or omissions to the attention of the manager. It also removes pressure from the direct report: he or she can think about the ratings, consider which are not (in their view) accurate, and supporting data for changes can be collected and accompany the revisions.

Toward the end of the performance period, a summary appraisal is made. While this is superficially very similar to the traditional appraisal. it is a much lower-key event. Feedback throughout the performance period gives both manager and direct report a good picture of performance levels relative to goals and expectations. There should be no surprises.

If ratings are high or low, the manager should describe the reasons for the ratings. Ratings at both extremes warrant special plans for the employee, and it is quite possible that the manager will be asked to justify and defend the ratings.

When the rating is linked to a salary increase or other human resource decision, it is important for all consequences of the performance level achieved to be discussed at the same time. People are interested first and foremost in "what's in it for me," and until the "what" is discussed, any other performance or development issues will take a backseat.

Since promotions and advancement are important outcomes of performance, it is important to discuss what kind of developmental efforts are needed in that context. For the employee, development alone is irrelevant—the critical issue is development to prepare for what. This is an appropriate time to discuss the employee's career goals and possible advancement opportunities.

Performance ratings should be based on agreed-upon criteria and verifiable information whenever possible. The performance plan should provide the criteria and observation of the manager and relevant others should provide the verifiable information.

Before ratings are communicated with an employee, they should be reviewed and approved by at least one level of management. The best practice would also have at least the high and low ratings reviewed by a "calibration committee" of managers. The committee's role is to review the validity of ratings.

The summary appraisal meeting is the time for an initial discussion for next year's performance planning. To the extent that the organization plan and organizational goals have changed, these changes will need to be factored into a new performance contract.

Requirements for Pay-for-Performance

If pay-for-performance is to be successful, the system must meet a number of criteria in the areas of program type, design and administration. These "best practice" criteria are shown below:

Program Type

For any pay-for-performance to work there must be a performance management system in place with performance measures that are accepted by employees as valid and managers making ratings who are trusted by their direct reports. A valid, reliable, unbiased performance management is a necessary (but not sufficient) condition for an effective pay-for-performance program.

If a general bonus is to be the incentive program, there must be a single performance rating that is equivalent for all employees in the plan. That is, a "Meets Standards secretary must be equivalent (in terms of goodness of performance) to a "Meets Standards" engineer. This calibration is much more difficult than commonly thought.

Market adjustments must be separated from the pay-for-performance program. Employees expect their salary to be held at least constant against market as long as they meet standards. When pay-for-performance is used in lieu of market adjustments employees feel management is trying to put one over on them.

Targeted bonuses (e.g., safety bonuses, productivity increase bonuses, etc. that are driven by specific measures) are much more effective and more favorably viewed by employees than are general performance bonuses.

Bonuses really need to be "at risk" to be effective. Merit pay lost its effectiveness because everyone expected to get it and the differences in amounts received did not map on performance differentials. Every employee felt entitled to merit pay increases every year.

Ideally, bonuses will be self-funded – that is, the money going to the bonus pool will be generated by the increased performance of employees in the pool. (In the case of government this might be an issue of cost savings or increased productivity – handling a greater case load, for example, while not reducing service effectiveness.) This requires excellent planning and organization outcome measures, and accounting systems that capture appropriate costs and revenues.

Bonuses that are driven by individual performance will work against teaming and cooperation when work outcomes are a product of group effort. Since most work today is a group effort, having individual performance bonuses is likely to engender harmful competition and bad feelings. This is particularly the case when performance/bonus outcomes are forced to some predesignated distribution.

The nature of a group incentive program is a function of the kind of group involved. Clearly a permanent functionally-matrixed cross-organizational team will require a different incentive scheme than will a short-term within-department team.

Pay-For-Performance Design Issues

When multiple performance criteria are used, weighting becomes an issue. Different human resource decisions may require different weightings. An individual contributor might be a great producer although not very good interpersonally (think computer technician) and deserve the highest bonus possible; if performance were to be used to select a computer technician supervisor this employee might be the last choice. It is important to remember "Performance for what?"

Bonus differentials between "Meets Standards" and "Greatly Exceeds Standards" need to be meaningful and noticeable to employees. A problem in many pay-for-performance systems is that the great employee sees the mediocre employee make nearly as much and begins to ask whether the extra effort spent is worth it.

The bonus structure itself is critical. Is there a floor? Are there caps? If so, these had better be explained and justified to employees from the beginning.

Bonus pools need to be carefully thought out. If each bonus pool is assigned a dollar level based on the prorated salaries of the pool members no allowance has been made for differences in performance across pools. In job class breakout pools (all clericals, for example) this may not present a problem. When the pool is based on geographic or organizational boundaries it is almost certain to present a problem. Employees generally know which parts of an organization are contributing and which are not; if two units with very different performance levels both get pools prorated against aggregated salaries there will not be the difference needed between highly successful and mediocre employees.

Pay-for-performance based on too many criteria becomes confusing.

When goal setting is used in the performance management process (and it should be) it is critical to remember that performance should be measured against standards and that bonuses should be paid out on performance against standards rather than goal achievement. Goals setting theory states that people with high specific accepted goals will perform better, not that they will make their goals. If high performance that does not achieve a difficult goal goes unrewarded while average performance that surpasses an easy goal is rewarded, no one will set difficult goals.

Many incentive systems seem to work best with groups of 500 or less. In larger groups many employees don't see that their effort will be recognized or rewarded, and don't really understand how what they do contributes to the organization.

Even in smaller units it is difficult for some employees to achieve line of sight, that is, to see how what they do is connected to organizational success.

The simpler and more consistent the program is the more likely it is to be a success.

The rating of "Meets Standards" should be the norm. Given the grade inflation in many organizations this may be nearly impossible to achieve.

Administration

The performance management and pay-for-performance system must be owned by management rather than by HR.

Two key criteria in managers' appraisals should be how well they do performance management and how well they do pay-for-performance. These two criteria should be weighted about as heavily as any other criterion. Alternatively, these criteria can be hurdles. A manager should at least meet standards in these two areas to be bonus-eligible.

Communication to eligible employees is critical – they need to understand the upside potential for outstanding performance.

Employees have to trust managers to be fair and impartial when rating performance and when recommending performance based increases.

Calibration committees are useful to look at a larger set of ratings and pay bonus decisions and check for consistency. However, if these become negotiating sessions then bonuses will depend on negotiating skills of managers rather than performance of employees. If employees see gaming and favoritism they will be demotivated.

Unions are generally opposed to performance management and incentive pay. One way to help resolve the opposition is to have union representation on design committees and on calibration committees.

The system must have some basis for dealing with externalities that boost organizational outcomes but had nothing to do with actual employee performance. It must also have some way of dealing with externalities that depress organizational performance but were unrelated to employee performance. This is generally known as the windfall/typhoon problem.

When introducing any new incentive system, managers must treat it (and publicize it to affected employees) as an experiment. If it works it will be extended but if it is problematic it can be changed.

Pay-for-performance systems need to be rigorously evaluated, using input from all employee categories impacted by the system.

Federal Government and Pay-For-Performance

I think it is appropriate for the government to institute pay-for-performance systems. It is clear that agencies have done their homework in studying the large literature on private sector performance management and pay-for-performance systems. That said, I see many of the same problems in the various systems implemented by government agencies that plague similar systems in the private sector.

- The programs seem overly ambitious, trying to do too much too fast for too many. The programs I have seen that seem to work best introduce performance management first, work the problems out of it, and then (and only then) introduce performance bonuses based on performance management system results. Doing both at once entails an organizational change that is too much for many to handle, either in terms of managers running the system as designed or employees accepting the results as fair and equitable.

- The culture that makes “Meets Standards” performance failure needs to be changed. Most employees should be at the “Meets Standards” level. Managers rating employees above or below that should have to justify it in two ways. First, it should be justified in terms of the performance criteria and standards set for the job. Second, it should be justified in terms of unit performance. It does not make sense that a unit that is floundering would have a large percentage of high performance employees.

- Managers need to be held accountable for performance management and pay-for-performance. This is not an issue of submitting forms on time (although some organizations hold up paying out any increases or bonuses until everyone has submitted all recommendations; managers who were “too busy” to comply suddenly find the time when their peers complain). More importantly, it is a key managerial function to manage performance of direct reports and reward them accordingly. Managers who don’t do this well (including giving everyone high ratings when the unit is not performing, or giving low ratings when the unit is performing well) have earned poor ratings and no performance increase or bonus.

- The programs confuse market adjustments and performance bonuses. Employees expect to be kept whole against market, and it is clear from union and employee complaints that they know the difference between market adjustments and performance bonuses. Some organizations separate market adjustments and performance payments into two different systems that impact employees at different times of the year (e.g., market adjustment to salary January 1, performance adjustments and bonuses in March) to emphasize the difference.

- The market adjustment issue is particularly important to government workers because they generally make less than equivalent private sector workers, especially from about GS 8 or 9 upwards. While FEPCA was supposed to reduce this private/public pay differential it has not. In spite of the views of many cynics, I believe most US Government workers are competent and hard-working, and could compete successfully in the private sector if they chose to. Many of those I have worked with do in fact have a commitment to public service, and are willing to accept lower pay in order to do something they think is important.

- For a variety of reasons government employees are much more heavily unionized than private sector employees. You can't simply port private sector programs into government and expect them to work well. Unions in general are opposed to performance management and pay-for-performance systems because employees and employee representatives lose partial control of terms and conditions. Managers can (and do) show favoritism and bias in measuring performance and rewarding employees. This situation requires two things to occur if performance management and pay-for-performance systems are to be accepted: system design teams and calibration/bonus pool committees have to include employees and/or employee representatives (and pay attention to what they have to say) and there has to be a legitimate appeal system in place so that employees who feel they have been treated arbitrarily or in a biased fashion feel they have adequate voice.

- Having bonus pools where ratings and bonuses are calibrated is one of the better design approaches in these systems. However, calculating the size of a bonus pool solely as a function of the salaries of the members of the pool is inappropriate. It rests on the assumptions that the aggregate performance of employees making up each pool is equal across pools and that the employees of each pool are equally strategic to the agency or department. Neither of these assumptions is likely to be accurate. If pools are based on organizational units, it would be appropriate to rate unit performance and strategic value and adjust the bonus pool to reflect these.

- Calibration committees should not be negotiating ratings or awards. When bonuses appear to employees to be a function of the negotiating skill of their manager, or when there is a drive for some specific distribution of ratings, the whole system loses any value in motivating those employees.

- At the same time, there should be an effort to standardize rewarded share numbers across pools. A "Meets Standard" employee should receive the same number of shares regardless of the pool to which he or she is assigned. Similarly, the range of share measures that each performance level can be assigned is problematic. Performance differentials should be developed in the performance management system, not the pay-for-performance system. Employees and employee representatives alike have remarked on the mischief that can be done in the share process. This process will be "black box" to most employees, and dilutes the performance pay linkage that is critical to the success of any pay-for-performance program.

- Performance management systems and pay-for-performance systems for employees who work as parts of groups or teams need to have "team citizenship" into account as part of their performance. Otherwise, they will be motivated to maximize individual performance even at the expense of suboptimizing group performance.

- It is not clear what evaluation systems have been built into the various pay-for-performance systems. The 2007 Annual Employee Survey Results of the Department of the Treasury notes that only 27% of employees "believe pay raises are determined on how well employees perform their jobs." Only 32% of employees note "they typically receive formal or informal feedback from their supervisor." Those are signs of a broken system, or one that never worked in the first place.

I will be happy to answer any questions.

2008 Revised Scoring

A new scoring system will be developed that **Rates and Ranks** employees based on thresholds established by the TSA Administrator (e.g., top 10%, next 20%, next 30%, etc.), using the categories and weightings below:

TSO and LTSO	STSO	[illegible]
Technical Proficiency – 50% 5 – DFO and PAX (1 Image plus 4 PSE) 4 – BAG (2 PSO plus 2 PSE)	Technical Proficiency/Supervisory Accountability – 50% 5 – DFO and PAX (1 Image plus 4 PSE) 4 – BAG (2 PSO plus 2 PSE) 3 – Supervisory Acct. Ratings	Technical Proficiency/Management Proficiency – 50% 3 – Supervisory Acct. Ratings 4 – Management Proficiency Ratings
Competencies – 30% 3 Competencies	Competencies – 30% 5 Competencies	Competencies – 30% 6 Competencies
Training – 10%	Training – 10%	Training – 10%
Readiness for Duty – 10% Dependability Professional Presence	Readiness for Duty – 10% Dependability Professional Presence	Readiness for Duty – 10% Dependability
Collateral Duty – Max. 3 pts Career Plan – Max. 2 pts	Collateral Duty – Max. 3 pts Career Plan – Max. 2 pts	Collateral Duty – Max. 3 pts Career Plan – Max. 2 pts

Transportation Security Administration

TSA Office of Human Capital

BACKGROUND
IMPROVING PERFORMANCE: A REVIEW OF PAY-FOR-PERFORMANCE SYSTEMS IN THE FEDERAL GOVERNMENT
July 22, 2008

BACKGROUND

In August 2001, President Bush launched the "President's Management Agenda" (PMA) as a strategy for improving the management and performance of the federal government. The PMA stated that while the Administration will be seeking "targeted civil service reforms, agencies must make better use of the flexibilities currently in place to acquire and develop talent and leadership....The Administration will assess agencies' use of existing authorities as well as outcomes achieved under demonstration projects. This assessment will help us determine what statutory changes are needed to enhance management flexibility, permit more performance-oriented compensation, correct skills imbalances, and provide other tools to recruit, retain, and reward a high-quality workforce."

Since 2001, the Administration has sought, and Congress has agreed, to support agency efforts to implement pay-for-performance. Advocates for implementing pay-for-performance systems have asserted that federal agencies should have "modern, effective, credible, and, as appropriate, validated performance management systems in place with adequate safeguards, including reasonable transparency and appropriate accountability mechanisms, to ensure fairness and prevent politicization and abuse."[1] Some of the safeguards recommended by the Government Accountability Office (GAO) include a performance management system that makes meaningful distinctions in individual employee performance; involves employees and stakeholders in designing the system; and achieves consistency, equity and nondiscrimination.[2]

Performance management focuses on planned performance and improvement over time. It applies to both organizations and individuals. Performance management systems also give the employee a basis for assessing his or her personal strengths and weaknesses, and provide a basis for individual development planning. Since the evaluation is specific to planned accomplishments, when ratings are used in personnel decisions – such as pay increases, promotions, and terminations – they should satisfy legal requirements and they should be defensible.[3]

1 U.S. General Accounting Office, *Defense Transformation: DOD's Proposed Civilian Personnel System and Government wide Human Capital Reform;* Statement of David M. Walker, Comptroller General of the United States (May 1, 2003) (GAO/03-741T).
2 Id.
3 Howard Risher and Charles H. Fay, *Managing for Better Performance: Enhancing Federal Performance Management Practices*, IBM Center for The Business of Government, 6 (2007).

Pay increases, or the lack thereof, depend on performance evaluation ratings which suggest that effective performance management practices should be put in place before implementing pay for performance systems.[4] A successful merit pay system depends upon the implementation of a detailed, transparent and carefully designed performance management system. Furthermore, agencies must have sufficient funding to provide training and desirable performance awards.

According to the Partnership for Public Service, public sector agencies must grapple with three unique challenges when implementing pay for performance: 1) performance metrics can be harder to develop and measure for organizations with a public mission, as compared to companies focused on maximizing profits, 2) workers may be less motivated by cash rewards and more by the ability to make a difference, which can lessen the impact of monetary incentives, and 3) the greater power and flexibility given to managers can complicate civil service protections against inappropriate political interference.[5]

Federal employee unions and associations have expressed concern with the design and implementation of pay-for-performance systems within the federal government. The concerns include confusion over how agencies are making meaningful distinctions in performance, transparency in performance evaluations, and, in some cases, diminished employee morale.

I. INTERNAL REVENUE SERVICE

As one of the first agencies to receive explicit pay banding authority within Title 5, the Internal Revenue Service Restructuring and Reform Act of 1998 (the Act) (P.L. 105-206) authorized the Secretary of the Treasury to establish one or more pay banding systems covering all or any portion of the Internal Revenue Service (IRS) workforce under the General Schedule (GS) pay system, subject to guidance to be issued by the Office of Personnel Management (OPM). Pay banding is a system for grouping positions for the purposes of pay and job evaluations. Under the requirements of the Act, IRS was required to stay within the boundaries of the GS system and could not drop below or exceed the GS levels. IRS combined GS grades and related ranges of rates of pay in one or more occupational series. Occupations are assigned to one or more related job series and the grades are grouped into bands that reflect the career paths associated with the occupational job series. In December 2000, OPM prescribed criteria for IRS pay banding systems that followed certain principles specified in the Act.

The Act was based on the report of the National Commission on Restructuring the IRS, which recommended that the IRS and the Department of Treasury be given more flexibility to hire qualified personnel needed to implement modernization. The House Ways and Means Committee report (House Report 105-364), in discussing the need for personnel flexibilities, stated that the existing personnel rules and procedures on hiring, evaluating, promoting, and firing employees were subject to extensive regulation. Further, according to the Committee, the

4 *Id.* at 7.
5 Partnership for Public Service, *Pay for Performance* (March 4, 2005) (Issue Brief PPS-05-01).

risk adverse nature of the IRS provided minimal incentive for managers or frontline employees to achieve the agency's mission, and stifled creativity, innovation and quick problem resolution. The Committee stated its intention that the personnel flexibilities lead to increased accountability by IRS managers and employees and to an increased focused on IRS mission, goals, and objectives.

The IRS pay system, which at the moment only applies to managers, has three primary components: a performance-based salary increase commensurate with a manager's annual job-evaluation rating, the opportunity for a performance-based bonus, and a locality pay adjustment tied to average private-sector wage increases in the area where the manager works.

The Treasury Inspector General for the Tax Administration (TIGTA) audited IRS' pay-for-performance system for its managers and issued its report on July 3, 2007. The purpose of the report was to determine whether the IRS system effectively linked compensation to individual performance. The report entitled, "The Internal Revenue Pay-For-Performance System May Not Support Initiatives to Recruit, and Motivate Future Leaders," found that:

- Although the IRS used the IRS Restructuring and Reform Act of 1998 authority to proceed with the implementation of the Internal Revenue Pay-For-Performance System, it does not appear the System implements all of the Act's provisions, which were designed to help facilitate pay and classification adjustments necessary to restructure the IRS. For example, the Frontline Manager Pay band did not improve the IRS' existing manager classification system, which was considered to be especially problematic.

- In addition, the Human Capital Office (HCO) did not establish pay policies and procedures that ensured managers are compensated comparably with IRS employees in the GS Pay System or that the performance-based increases are commensurate with the manager's performance. This is important given that, at the discretion of the IRS Commissioner each year, the IRS may withhold from its managers the annual across-the-board pay adjustment that is provided to all other IRS employees and all other Federal government employees compensated under the GS pay system. If this happens, managers compensated under the Internal Revenue Pay-for-Performance System in future years may not be paid comparably with other IRS employees under the GS pay system, who automatically receives the annual across-the-board pay adjustment.

- Finally, the HCO did not sufficiently communicate the details of the Internal Revenue Pay-for-Performance System to the affected managers, which decreased morale and increased opposition to some of the provisions of the system.

TIGTA recommended that the Chief Human Capital Officer (CHCO):

- Reconsider the structure of the system for the Frontline Manager Pay band by streamlining job classification to be more broadly based on the nature of the work performed and competencies.

- Reinstate the policy of providing managers who receive a satisfactory (Met) or higher rating with the annual across-the-board pay adjustment that is provided to the IRS employees in the GS pay system.

- Consider alternate sources of funding for the performance-based salary pools and ensure the amounts dedicated for increases are sufficient to both reward top performers and compensate other managers equitably, based on their performance.

IRS management agreed with three of the four recommendations but disagreed with the recommendation to reinstate the policy of providing managers who receives a satisfactory or higher rating with the annual across-the-board pay adjustment that is provided to IRS employees in the GS Pay System. The authority to provide managers with the annual across-the-board pay adjustment rests with the IRS Commissioner, who will consider exercising this discretion in the future. To date, the Commissioner has granted these managers a minimum increase equivalent to the GS pay system across-the-board-adjustment. IRS management stated that instituting a mandatory minimum increase in policy is not fiscally practicable at this time due to budgetary implications and restraints.

II. TRANSPORTATION SECURITY ADMINISTRATION

In the aftermath of the September 11, 2001, terrorist attacks on the World Trade Center buildings and the Pentagon, Congress enacted the Aviation and Transportation Security Act (P.L. 107-71) on November 19, 2001. The legislation created the Transportation Security Administration (TSA) to be responsible for security functions at U.S. airports, which includes screening of passengers and deployment of Federal air marshals. In creating a new agency with its own workforce, Congress granted broad personnel flexibilities and allowed the new Under Secretary of Transportation for Security to establish hiring, firings, pay, evaluation, and other benefits notwithstanding any other provision of law. While TSA is exempt from most provisions of title 5 governing employment practices, veterans' preference was not waiveable under the Act.

According to the Conference Report (107-296), "The Conferees recognize that, in order to ensure that Federal screeners are able to provide the best security possible, the Secretary must be given wide latitude to determine the terms of employment of screeners. The Conference Committee expects that, in fixing the terms and conditions of employment the Secretary shall establish benefits and conditions of employment. The Conference Committee also recognizes that, in order to hire and retain screeners, the Secretary should also ensure that screeners have access to Federal health, life insurance, and retirement benefits, as well as workers' compensation benefits. The Committee believes that screening personnel must also be given whistleblower protections so that screeners may report security conditions without fear of reprisal."

Since the enactment of the Aviation and Transportation Security Act, TSA developed and has been implementing a pay-for-performance system for Transportation Security Officers

(TSO) entitled the Performance Accountability and Standards System (PASS). As of April 11, 2008, the system applies to TSOs, Lead TSOs, Supervisory TSOs, and Security Managers. By law, employees must continue to meet all qualifications and standards required to perform a screening function; have a satisfactory record of performance and attention to duty; and demonstrate the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

According to a Committee briefing by TSA on April 11, 2008, employees are evaluated on an annual basis with quarterly performance discussions between supervisors and directly reporting employees. The system is supposed to provide for open communication between the employee and supervisor as well as provide regular training on performance standards with accountability built in for both the supervisor and direct report. All employees are evaluated annually based on five categories and 12 subcategories, and supervisors are evaluated based on an additional two categories and seven subcategories. Each category has a certain weight it is given in the overall evaluation. Below are the list of categories and subcategories used to evaluate employees along with the given percentage weighted toward the overall score:

- Technical Proficiency – 50 percent
    1. Image Detection Proficiency
    2. Practical Skills, Evaluations and Observations
    3. Supervisory Accountability
        - Training and Development
        - Readiness for Duty
        - Promoting a Performance Based Culture
- Management Proficiency
    1. Resource Planning and Accountability
    2. Program and Policy Compliance and Accountability
    3. Critical Incident Management and Reporting
    4. SOP Compliance
- Competencies – 30 percent
    1. Customer Service
    2. Decision Making
    3. Oral Communication
    4. Conflict Management
    5. Team Building
- Collateral Duties – Max 3 points
    1. Bonus Points based on quality, frequency, and importance
- Training and Development – 10 percent
    1. Mandatory Training
    2. Career Plan and Skills Development – Max 2 points
- Readiness for Duty – 10 percent
    1. Dependability
    2. Professional Presence

Employees receive their annual adjustments to base pay and any bonuses based on their performance evaluation relative to their fellow employees. The new system established five levels of performance evaluation: Does Not Meet Standards; Achieves Standards; Achieves Plus; Exceeds Standards; and Role Model of Excellence.

According to TSA, every year since the implementation of PASS employees who received above a Does Not Meet Standards rating received at least the same pay raise as their GS counterparts. Because TSA has broad authority with their pay system, they do not have to adhere to the same stringent requirements that prohibit quotas and forced distributions. As a result, during an April briefing to Committee staff, TSA acknowledged that they use a quota system for rating and pay distribution primarily for cost reasons.

A provision in the Fiscal Year 2008 Consolidated Appropriations Act (P.L. 110-161) requested that a report be submitted to Congress that included:

- The number of employees who achieved each level of performance;
- A comparison between managers and non-managers relating to performance and pay increases;
- The type and amount of all pay increases that have taken effect for each level of performance; and
- The attrition of employees covered by the PASS.

According to the report, the attrition rate for PASS-covered employees was 21.2 percent, 0.3 percent over fiscal year 2006 and 2.5 percent decrease from fiscal year 2005. TSA provided the following tables with the payout and distribution of performance ratings for employees in FY2008 for their performance in FY2007.

Rating	Concept	Number Rated in FY07	FY08 Payout
Does Not Meet Standards	No increase	<1%	CEI only
Achieves Standards	Small bonus	14%	CEI + $500 bonus
Achieves Standards (at Achieves Plus payout level)	Small increase	28%	CEI + 1% increase + bonus
Exceeds Standards	Fairly substantial increase	44%	CEI + 2% increase + $1,000 bonus
Role Model of Excellence	Very substantial increase	13%	CEI + 3.5% increase + $2,000 bonus

Citing low morale and a high attrition rate, the Department of Homeland Security Office of the Inspector General (OIG) issued a report in May 2008 entitled, "Transportation Security Administration's Efforts to Proactively Address Employee Concerns" (OIG-08-62). The scope of the report was 320 employees at eight airports. The report focused on three initiatives of

TSA's to address employee concerns: the Office of the Ombudsman, the Integrated Conflict Management System, and the National Advisory Council. According to the report, "more than half of the employees [the OIG] interviewed described the agency's efforts to educate them on the various initiatives available to address their workplace concerns as 'inadequate.'" The report further concluded that improved communication could be improved at TSA to help alleviate employee dissatisfaction.

In response, TSA expressed concern with the OIG's methodology and commented that the report did not focus on the wide range of options available to employees to address grievances. TSA further faulted the OIG for not recognizing the scale, depth, and leading edge quality of what TSA has undertaken to bring the new agency together.

III. SENIOR EXECUTIVE SERVICE

The Senior Executive Service (SES) was established by Title IV of the Civil Service Reform Act of 1978, P.L. 95-454, and encompasses managerial, supervisory, and policy positions above the GS-15 level that are not filled by presidential appointment with Senate confirmation. The SES includes nearly 7,000 federal employees. Of those, approximately 6,000 are career appointed executives. SES career appointments do not have time limitations, whereas non-career SES are limited in their promotion potential and time in service. Career SES are provided more job protections and advancement potential than non-career SES, such as adherence to merit system principles and whistleblower rights. The SES do not have appeal rights and collective bargaining rights afforded to some categories of federal employees.

The Fiscal Year 2004 National Defense Authorization Act granted OPM the authority to redesign the pay and performance management system for senior executives. The changes were driven in part by pay compression, which has been a long-standing problem for senior executives. The previous pay system had six pay levels, and pay compression resulted in senior executives at the top three SES pay levels receiving the same amount of base pay in a given year.

The President's FY2004 budget request proposed eliminating the current pay structure for senior executives and increasing their pay ceiling. In developing the statutory construct for the new system, an agreement was reached under which senior executives would no longer receive annual-across-the board or locality pay adjustments. Beginning in 2004, pay adjustments for senior executives are based on individual performance and contributions to agency performance through an evaluation of their skills, qualifications and responsibilities.

To qualify for these pay flexibilities, OPM must certify and the Office of Management and Budget (OMB) must concur that an agency's senior executive performance appraisal system meets certification criteria jointly developed by OPM and OMB. Two levels of certification are available to agencies: full and provisional. To receive full certification, which lasts two calendar years, the design of agency systems must meet nine certification criteria and agencies must provide documentation or prior performance ratings to demonstrate compliance with the criteria.

Agencies can receive provisional certification, which lasts one calendar year, if they have designed but not yet fully implemented a senior executive performance appraisal system, or do not have a history of performance ratings that meet the certification criteria.

In 2007, the Senior Executives Association began raising concerns about pay compression and attracting senior General Schedule employees into the SES. Carol Bonosaro, President of the Senior Executives Association (SEA), submitted testimony for the record at a July 31, 2007, House Subcommittee on Federal Workforce, the Postal Service, and the District of Columbia hearing on Federal Pay Policies and Administration. She stated:

> At the end of this year, GS-15 employees working for this Senior Executive will receive a rightly reserved annual salary and locality adjustment, probably amounting to more than a 3.5 percent increase in their take home pay. Even if the SES receives a top rating for his job, he is historically unlikely to receive a salary adjustment even close to that of the GS employees, especially with current budget concerns. Many Senior Executive rated fully successful receive salary increases around one percent, and some receive no increases at all. ...With these facts on the table, why would a GS-15, particularly those at the higher step levels, join the Senior Executive Service? When addressing groups of Senior Executives and candidates for the SES, I regularly hear reports of talented, experienced GS-15's who have no interest in competing for promotion to the Senior Executive Service, to earn salaries of as little as $120,000 a year in high-cost areas, work long hours, receive no comp time, and have no assurance that they will not be moved to a new geographical area at the discretion of their agency.

Ms. Bonosaro concluded her testimony by recommending Congress require agencies to provide a yearly minimum, market-based pay adjustment to all Senior Executives rated fully successful or better and include performance awards in "high-3" retirement calculations for Senior Executives.

In May 2008, the Office of Personnel Management released the results of a survey of senior executives that included information on the new pay for performance system. There were a number of positive indicators such as members of the SES are proud to be apart of the SES (97 percent), feel a sense of accomplishment about their work (95 percent), and feel that their talents are being used (87 percent). However, the report also found that many SES did not believe there are meaningful distinctions in their performance (26 percent) and were dissatisfied with their performance rating (20 percent). OPM did not consult with SEA in the development of OPM's survey and believes that important questions were left out of the survey that needed to be asked.

IV. OFFICE OF THE DIRECTOR OF THE NATIONAL INTELLIGENCE

The U.S. Intelligence Community (IC) consists of the Office of the Director of National Intelligence (DNI), the Central Intelligence Agency and some fifteen other intelligence agencies as designated in the National Security Act.6 The workforce of intelligence agencies includes civil servants, military personnel, Foreign Service Officers, and contractors. The Intelligence Reform and Terrorism Protections Act of 2004 (P.L. 104-458) established the position of the DNI and gave him the authority to prescribe personnel polices and programs applicable to the intelligence community "to encourage the recruitment and retention by the intelligence community of highly qualified individuals for the effective conduct of intelligence activities." The DNI is also required to "ensure that the personnel of the intelligence community are sufficiently diverse for purposes of the collection and analysis of intelligence through the recruitment and training of women, minorities, and individuals with diverse ethnic, cultural, and linguistic backgrounds."

Pursuant to this Act, the DNI has personnel management authorities that extend to intelligence agencies within the Defense Department, the Justice Department, the State Department, the Department of Homeland Security, and other departments. The greatest numbers of intelligence personnel are assigned to the Central Intelligence Agency (CIA) and to Department of Defense (DoD) agencies, the Defense Intelligence Agency (DIA), the National Security Agency (NSA), the National Reconnaissance Office (NRO), and the National Geospatial-Intelligence Agency (NGA). Personnel policies promulgated by the DNI do not replace personnel polices that are established by heads of other departments, but are prepared in coordination with them. The Intelligence Reform Act sought to ensure that personnel policies for intelligence personnel throughout the Federal Government were sufficiently consistent to facilitate the rotation of personnel among intelligence agencies and "facilitate the widest possible understanding by such personnel of the variety of intelligence requirements, methods, users, and capabilities."

As part of this effort the DNI has sought to establish a pay-for-performance system with broad pay bands, higher salary caps, and performance-based raises for the entire Intelligence Community, working with existing legislation that covers the various agencies. The basis for the IC-wide personnel management structure was laid in November 2007, when the DNI approved Intelligence Community Directive (ICD) 651 that established common, core policies and processes for performance management deemed essential to fostering and sustaining a strong, cohesive IC. ICD 651 states that IC employees will be evaluated on performance objectives, which are the specific results an employee is to achieve and will be unique for each employee, and performance elements, which are common for all IC employees. Performance elements include accountability for results, communication, critical thinking, engagement and collaboration, personal leadership and integrity, and technical expertise. Performance expectations are a combination of both performance objectives and performance elements. All employees are to be involved in the development of their performance expectations and these expectations are to be provided to the employee in writing before the performance evaluation period.

ICD 651 establishes a common performance rating system for all IC employees as follows: 5 for Outstanding, 4 for Excellent, 3 for Successful, 2 for Minimally Successful, and 1

6 50 USC 401a(4).

for Unacceptable. Under the ICD, management is to provide ongoing feedback to employees on their performance and conduct one formal midterm review. An employee may request reconsideration of their evaluations through formal and/or informal processes.

On April 28, 2008, the DNI issued ICD 650 and ICD 654. ICD 650 established the National Intelligence Civilian Compensation Program (NICCP) and promulgated an IC-wide framework and guiding principles that are to be incorporated into the compensation systems of those IC elements with statutory authority to do so. ICD 654 established the policies that link pay to performance. The NICCP requires that:

- Adequate aggregate funding be requested, budgeted, and allocated to design, develop, implement, and administer the compensation and performance management system, including training.
- Training be provided to managers and employees on the system.
- The performance management system involve employees.
- There be a clear link between an employee's annual performance evaluation and that employee's compensation, including pay, bonuses, and other monetary incentives and rewards.
- Employee rights are protected and appropriate avenues are provided for reconsideration.

The FY 2008 intelligence authorization bill (H.R. 2082) that was approved by the Conference Committee included a provision that would prohibit pay-for-performance compensation reform until 45 days after the DNI had submitted a detailed plan for the implementation of the compensation plan for each element of the intelligence community affected.[7] On April 22, 2008, the DNI submitted its report on IC pay modernization to Congress.

David E. Frick, a retiree from the Army and currently a senior management analyst for the DNI, wrote the following commentary on November 12, 2007, in Federal Times:

> Pay-for-performance has been anointed as a best practice that must be adopted to make government more responsive and effective...I disagree.
>
> - The first false assumption is that what is best for business must be best for government. In many instances, commonly accepted business practices are not most effective for government – business and government have different goals.
> - The second false assumption is that pay-for-performance will be effective for the entirety of a work force as diverse as the civil service. Even in business, pay-for-performance is not universally appropriate....
>
> If the goal of the reward system is to influence future performance ... Contemporary budgets do not allow for sufficiently large bonuses.

7 Section 308

V. DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM

Citing the need for greater flexibility in the Department of Defense workforce to address national security priorities, in April 2003 the Pentagon sent a legislative proposal to Congress seeking broad workforce flexibilities and exemptions from Title 5 requirements to implement a pay for performance system within the Department. A provision giving the Department the flexibility it sought was included in the National Defense Authorization Act for fiscal year 2004 (P.L. 108-316).

On November 1, 2004, DoD and OPM published the final regulations for NSPS in the *Federal Register*, as authorized by P.L. 108-316, the National Defense Authorization Act (NDAA) for FY2004. The new personnel system made changes to DoD's hiring, classification, pay, performance management, labor management, and appeals systems. Similar to the IRS, the Department, under Secretary England, gave employees the same average annual pay raise given to GS employees. As of May 15, 2008, there were 180,993 non-bargaining unit employees covered by NSPS and expect to covert approximately 20,000 employees through the end of calendar year 2008. DoD has indicated that the earliest possible conversion date for bargaining unit employees would be Fall 2009.

Following a series of hearings and the court's decision in *AFGE v. Rumsfeld,* Congress modified DoD's authority under NSPS in the FY 2008 NDAA, P.L. 110-136. The FY 2008 NDAA reinstated chapters 71 and 77 of title 5, United States Code, relating to labor management and appeals, and excluded wage grade employees from NSPS. The Act also sought to preserve the NSPS pay for performance system. The Act guaranteed that all employees who receive individual performance ratings of "meets expectations" or higher will receive 60 percent of the annual across the board pay increase and a local market supplement at least equal to the locality pay provided to GS employees.

Regarding the scope of bargaining, the Act stated that any rate of pay established or adjusted under NSPS shall be non-negotiable, unless employees were allowed to bargain over pay before enactment of the FY 2004 NDAA. Moreover, any regulations issued jointly by DoD and OPM and published in the *Federal Register* would be treated as government-wide rules, subject only to impact and implementation bargaining. All other rules or implementing issuance would be subject to collective bargaining as provided in chapter 71 of title 5.

On May 22, 2008, DoD and OPM issued a proposed rule to implement the new NSPS. Approximately 520 public comments were submitted. DoD and OPM estimate issuing a final rule in early October 2008.

Under NSPS, employee pay will consist of three components: basic pay, a local market supplement, and performance-based pay. Salary increases will not be provided to unacceptable performers. An employee's performance is based on written individual performance goals, which can be amplified orally, communicated to the employee prior to holding them accountable for them and expectations that are aligned with the Department's mission. NSPS employees will receive annual performance evaluations in writing. Employees are rated from Level 1 to 5 with 5 being the highest. While DoD is required to make meaningful distinctions in performance, forced distributions or quotas are prohibited. Based on the rating, an employee will receive a certain number of shares that will be assigned a value and turned into their performance pay. Employees rated Level 1 (unacceptable) and Level 2 (Fair) will not receive a share. Employees will receive either 1 or 2 shares if they are rated Level 3 (Valued Performer) and will receive either 3 or 4 shares if they are Level 4 (Exceeds Expectations). For those who are rated Level 5 (Role Model), an employee may receive either 5 or 6 shares. These shares may take the form of a pay increase, a cash bonus, or a combination of both. Supervisors and managers will decide who gets more performance pay and the form of the pay increase based on certain specified factors, including the labor market and retention problems.

Comments submitted by various employee unions have expressed concern over the proposed regulations. Primarily, unions are concerned about the level of detail in the regulations compared to the regulations issued in 2004. By increasing the detail, employee unions believe DoD and OPM are making NSPS less flexible and are restricting the scope of bargaining. A key example of the level of detail is the definition of "rate of pay," which, under the regulations, is defined as base salary, local market supplements, overtime and premium pay, and the conditions defining applicability of each rate. Employee unions argue that by adding the phrase "conditions defining applicability of each rate" is too broad and limits employee bargaining. Despite the level of detail, unions continue to express concern over the lack of transparency in the pay pool and pay decisions. They claim that the system is vulnerable to cronyism and personal biases.

ADDITIONAL INFORMATION

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Federal
Managers
Association

Testimony for the Record
Before the U.S. Senate
Committee on Homeland Security and Governmental Affairs
Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia
July 22, 2008

Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government

Mixed Views Continue to Plague Pay-for-Performance Systems

Statement Submitted for the Record by
The Federal Managers Association

1641 Prince Street ▪ Alexandria VA 22314-2818 ▪ Tel: (703) 683-8700 ▪ Fax: (703) 683-8707
▪ E-mail: info@fedmanagers.org ▪ Web: www.fedmanagers.org

Chairman Akaka, Ranking Member Voinovich and Members of the Senate Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia:

On behalf of the 200,000 managers, supervisors, and executives in the federal government whose interests are represented by the Federal Managers Association (FMA), I would like to thank you for allowing us to express our views regarding pay-for-performance systems across the federal government.

Established in 1913, FMA is the largest and oldest Association of managers and supervisors in the federal government. FMA originally organized within the Department of Defense (DOD) to represent the interests of its civil service managers and supervisors, and has since branched out to include some 35 different federal departments and agencies. We are a non-profit, professional, advocacy organization dedicated to promoting excellence in public service.

The face of America's workforce is changing. Once attractive for employing the most talented members of the workforce, by today's standards, the federal civil service system is unreflective of the expectations of new job seekers. As those who are responsible for the implementation of new personnel programs, it is our stance that changes need to take place. The overhaul of the Department of Defense personnel system has opened the door to encourage the rest of the federal government to embrace a culture of modernization.

The current General Schedule (GS) pay system and performance review methods are antiquated. However, certain fundamental principles of merit remain crucial to preserving the integrity and accountability of a new employment system. We have seen through demonstration projects and pilot programs in various agencies around the country over the past few decades that implementing human resource management structures can help improve the productivity and mission of agencies.

We believe that the hardest working employees should be rewarded with the highest rate of pay; those employees who fall below the curve on their overall performance should not be rewarded at the same rate. The link between performance and pay provides employees with the confidence that their efforts will be appropriately recognized. Where is the incentive in doing a better job than your colleague when little is done to differentiate additional efforts?

Any new personnel system must adhere to certain basic principles if the system is to succeed. The integrity of pay-for-performance will be severely hindered if all high performers are not rewarded accordingly. We believe that any personnel system should continue to allocate *at least* the annual average pay raise that is authorized and appropriated by Congress for General Schedule (GS) employees to those employees under the new system who are "fully successful" (or the equivalent rating), in addition to other merit-based rewards based on "outstanding" performance (or equivalent rating).

Recently, a large percentage of FMA's members within the Department of Defense were transitioned into the National Security Personnel System (NSPS). Additionally, FMA members at the Internal Revenue Service are also under the IRS' pay-for-performance system. We would like to focus our written comments on these two systems.

THE NATIONAL SECURITY PERSONNEL SYSTEM

We at FMA have been closely monitoring the implementation of NSPS, and have been receiving significant feedback from our members as they transition. If one thing is for certain, it is that there is no one view of the system. If you were to ask ten employees their perspectives on the system, you would undoubtedly receive ten different answers. However, several themes have emerged throughout this process. Overwhelmingly, FMA managers and supervisors at DOD believe a switch to pay-for-performance is necessary to not only compete with the private sector for talent, but also to encourage and reward high performance. A performance-driven culture can influence behavior and foster increased production. The time for rewarding employees simply for longevity has passed. Many of the hard-working federal managers entering NSPS want to be rewarded for the job they do and they are excited to finally have this opportunity.

However, as with any overhaul, the devil is in the details. Overwhelmingly, the largest complaint we have received from our members is a lack of training on the new system. Not only will managers have to learn how to evaluate their employees, they also have to be taught how to assess their own performance. Additionally, managers have reported that the implementation of NSPS at their facilities has seemed rushed, adding to the problem of inadequate and incomplete training. As a result, many managers do not feel comfortable or confident in their assessment of their employees, which potentially could have a negative impact on an employee's pay. Some workers have complained that the new rules are not fostering better communication between supervisors and employees as the system's proponents had hoped. Those who have completed their first and second rating cycles have told us they feel better prepared for the next round, but simply due to trial and error, not additional or adequate training.

The cumbersome process is also causing frustration among employees. It is not uncommon for the rating cycles to take upwards of six months and fifty percent of a manager's time. This is in addition to increased regular workloads as baby boomers flee the government for retirement. We have heard there are simply not enough hours in the day to accomplish one's day-to-day job duties as well as the performance evaluations. A streamlined process with a shorter rating period would greatly assist employees.

Along the same lines, there is a lack of concrete business rules that allow for a transparent and fair deployment of pay-for-performance. The process, as explained to our membership, creates a difficult environment for the rating officials in that a rating will not be revealed to the employee until after it passes through a review cycle. For a system designed to create better communication between the manager and employee, this inability to reveal the final rating at the close of the rating period does not promote the trust and openness necessary to ensure transparency in the system. The process should be modified to allow the rating official's ranking to be revealed to the employee and any adjustments made post-rating should be explained and justified by the panels making the adjustments.

Another cause for concern is how the pay pools will be distributed. Last year, Congress determined that all DOD employees rated above "unsuccessful" must receive no less than sixty percent of the GS raise appropriated by Congress, with the remaining forty percent going into the pay pools, and one hundred percent of the locality pay adjustment. It is our belief that any employee rated a 3 (valued performer) or above should, at a minimum, receive the congressionally approved pay raise. Issues of fairness and low morale would certainly surface if a valued performer were to receive less than the GS raise.

Several of our members have expressed their concerns with the above formula. With sixty percent guaranteed, they fear any other pay increase they receive (assuming they meet or exceed performance standards) will come in the form of a bonus which does not count towards basic pay for retirement purposes. This not only affects an employee's high three, but can also impact one's Thrift Savings Plan contributions. One manager even commented, "My retirement pay will be the same four years from now as it would be today." There is also no guarantee the pay pools will have the funds to distribute more than the 60 percent requirement. In such a situation, higher performing employees are better off under the old GS system.

The so-called bell curve distribution of raises is also of grave concern. Managers and supervisors have reported extreme pressure from higher-ups to maintain a specified distribution of funds or performance ratings within each pay pool. Managers were also told that there would not be enough money in the pool if all employees were rated 4s or 5s. Higher ratings mean less money per share in the pool, while lower ratings mean bigger shares for the performing employees. There is severe danger of ratings being deflated or inflated to accommodate a small section of the population. Forced distribution does nothing but contradict a pay-for-performance system.

THE INTERAL REVENUE SERVICE PERFORMANCE SYSTEM

Currently, IRS leadership has decided that the 8,800 managers within the Internal Revenue Service receive at least the same base pay and locality pay increases that General Schedule employees receive each year. The General Schedule increase is the cornerstone of current federal compensation policy and should not be included as part of performance-based increases. The purpose of the yearly increase is to keep government salaries competitive with the private sector in hopes of closing the growing pay gap between the two. It is the overwhelming belief of our members that the congressionally appropriated pay raise should remain an across the board increase for performing managers and supervisors in IRS. However, any change in IRS leadership could mean a change in policy in which no one is guaranteed a pay increase regardless of performance rating. We believe including the General Schedule increase in the pool of money available for performance-based increases would be out of line with pay setting practices of other federal employees, including non-management IRS employees who are excluded from the system.

Many managers at the IRS face being in the unfortunate situation of having their annual salary equal to the non-manager employees they supervise. Managers and employees operate under two different pay systems and pay bands and therefore it is not uncommon for managers and the employees they supervise to receive the same pay. As there is no additional compensation for the added workload and increased responsibility, there is an inherent disadvantage to becoming a manager.

Additionally, the IRS must take strides to eliminate the current service-wide performance ratings caps. For the IRS personnel system to be truly pay-for-performance, there cannot be arbitrary caps on the number of higher ratings. Managers must receive the ratings their performance dictates and they should not be harmed by a capricious ceiling. For any personnel system to be fair and effective, evaluative ratings and performance awards must be based on merit, not forced quotas.

Unfortunately, what is happening on the ground now is that each IRS segment is allowed to give a percentage of their managers an "outstanding" rating and "exceeded expectations" rating regardless of the actual performance of the managers in the pool. So even if all managers in the pool have exceeded their performance standards by a large measure, only a set percentage can get the highest rewards. As a result, some managers receive a rating below their performance. This negates the inherent principle behind a pay-for-performance system.

Currently, a manager's salary cannot exceed the top of the band in which he/she is placed. The top and bottom salaries of each band shift upward each year based on the GS increase appropriated by Congress. (For example - if the top of the band is $100,000 and the GS increase is 3 percent, the new top of the range is $103,000). The increase managers at IRS receive is based on a percentage of their pay. (For example – 8 percent for outstanding, 6 percent for exceeds expectations and 3 percent for meets expectations). Assume the range goes up by 3 percent and a manager receives an outstanding rating worth 8 percent. Since the manager reached the top of the band with the 3 percent increase, the additional 5 percent (8 percent minus 3 percent) is lost to the manager. However, if the manager had received a "meets expectations" rating and the IRS decided to award less than the GS raise for this rating, the performing manager is no longer at the top of his/her pay band. On one hand, a manager cannot exceed the top of the range; on the other, a performing manager can fall below the top. A policy change should be enacted to equalize this disparity to ensure managers at the top of the band continue to be recognized for their performance. We at FMA also believe an additional performance bonus should be awarded to managers whose performance ratings would have resulted in a higher increase in salary, if not for their being at the top of their band. The additional performance bonus should be equal to the amount of performance increase denied due to the salary cap.

Lastly, the current awards pools fail to adequately reward managers for performance and for the compensation risk they face. In determining the awards pools, compensation should reflect the appropriate risk aspect of pay-for-performance. Increasing the pool available for performance awards will accomplish this goal.

CONCLUSION

We are in an historic time of civil service reform. With so many varied demonstration projects and pilot personnel systems underway throughout the federal government, there is now hope that the antiquated personnel systems of the past will soon enter the history books. Nonetheless, in closing a chapter and opening a new one, we must ensure that we are all reading the same book and turning the page at the same time. A shift in the culture of any organization cannot come without an integral training process that brings together the managers responsible for implementing the new personnel system and the employees they supervise. At this point, we are unsure this is occurring at the Department of Defense. Additionally, Congress must ensure any new endeavor receives proper funding in order for the system to achieve its intended results.

It is the ongoing position of the Federal Managers Association that any employee performing at an acceptable level in a performance-based system should receive no less than the General Schedule increase each year. "Rewarding" top performers with a raise lower than their GS counterparts will heighten animosity towards a pay-for-performance system, as there would be no incentive to perform at an above average level. This policy must come from top agency leadership supplied with adequate funding from Congress.

There are many challenges ahead, but we at FMA cannot emphasize enough the need to take a cautious and deliberate path as employees continue to transition to new personnel systems. We recommend continued collaboration with management and employee groups as well as independent review and auditing by the Government Accountability Office, with the oversight of Congress. Through these checks and balances, we are hopeful that a set of guiding principles will emerge to assist other agencies in their expected personnel reform efforts.

Thank you again for the opportunity to express our views before the subcommittee. Should you need any additional feedback or questions, we would be glad to offer our assistance.

Senior Executives Association

the voice of career federal executives since 1980

820 First Street N.E., Suite 700 • Washington, D.C. 20002 • (202) 927-7000 • Fax (202) 927-5192 • www.seniorexecs.org

July 28, 2008

The Honorable Daniel Akaka
Chairman
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
SH-141 Hart Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

During the July 22 hearing before your Subcommittee, Senator Voinovich directed several questions to me regarding the reasons for agency differences in implementing the Senior Executive Service pay and performance management system. Upon further reflection, I would like to offer an additional explanation of the reasons for those differences and ask that this letter be inserted in the hearing record.

The statute and regulations governing the SES pay and performance management system provide a great deal of flexibility and discretion to agencies. For example, while all pay adjustments are to be based upon performance, the specific amounts are entirely at the discretion of the agency, which can, in fact, choose to make no pay adjustments, even to an executive receiving an outstanding performance rating.

Although agencies must submit their systems to the review of OPM and OMB to gain certification, how well those systems are implemented is another matter. Given the flexibility and discretion agencies are permitted, the critical ingredient is agency leadership and their interest in – and commitment to – achieving an equitable, transparent system.

Sincerely,

Carol A. Bonosaro

CAROL A. BONOSARO
President

cc: The Honorable George Voinovich, Ranking Member
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia

Post Hearing Questions for the Record
Submitted to Linda Springer, Director
Office of Personnel Management
From Senator Daniel K. Akaka

"Improving Performance:
A Review of Pay-for-Performance Systems in the Federal Government"
July 22, 2008

1. **Some employees believe that pay for performance systems are a way for agencies to suppress wages over time. One example used is the fact that some agencies do not increase pay bands by the full amount of the nationwide pay adjustment like the General Schedule (GS). Another is the fact that employees who meet expectations do not necessarily receive an increase to base pay at the same rate as similarly situated GS employees.**

   a. **What is your response to this concern?**

   Suppressing wages over time would be counterproductive and at odds with the purpose of adopting a pay-for-performance system in the first place. A primary reason agencies adopt pay-for-performance systems is to attract, reward, and retain high-performing employees. Agencies want pay ranges that accommodate high-performing employees, taking into account pay rates in the non-Federal labor market. It is important to understand that the labor market is not monolithic, but can be different for different occupations and grade levels. Adjusting pay ranges based on changes in the applicable labor market rates is reasonable and consistent with private sector practices. It is also consistent with the merit system principle in 5 U.S.C. 2301(b)(3), which states that pay should be set with appropriate consideration of both national and local rates paid by employees in the private sector. That same merit system principle also supports providing pay incentives for excellence in performance. Thus, providing employees with different pay increases based on individual performance is consistent with merit system principles. Making performance-based pay distinctions necessarily produces different results than under the General Schedule, which relies primarily on longevity and generally provides the same increases for all fully successful employees.

   b. **How is the Office of Personnel Management ensuring that employees in pay for performance systems who meet expectations are not losing ground to their GS counterparts?**

   OPM does not have authority over most pay-for-performance systems. Congress has generally given authority to the employing agency. OPM has had a role in the establishment of certain demonstration projects and the National Security Personnel System (NSPS) for Department of Defense (DOD) employees.

The NSPS is the largest pay-for-performance system in the Federal Government. It covers about 180,000 DOD employees. By law, the overall amount allocated for compensation of civilian employees in NSPS can be no less than if the employees had remained covered by the General Schedule, and that amount is available only for such compensation. (It is true that, under the NSPS law, the NSPS general pay increase for each employee with a performance rating above unacceptable may be as low as 60 percent of the General Schedule general increase; however, the remaining 40 percent must be placed in the performance pay pool and used in providing performance pay increases. Also, each employee with an NSPS performance rating above unacceptable shall receive locality-based comparability payments in the same manner and to the same extent as employees under the General Schedule.) NSPS pay ranges have been adjusted by the same percentage as the General Schedule. For some NSPS employees, NSPS pay ranges provide higher pay potential than that available to comparable General Schedule employees.

In OPM-approved demonstration projects, agencies are expected to spend in the aggregate no less than what they would have spent in the General Schedule (GS) pay system. The purpose of the demonstration projects is not to reduce spending on pay increases but to allocate funding for pay increases in a more performance-sensitive way. It would not be possible to guarantee that each individual employee receive no less than he or she would have under the GS pay system without increasing payroll costs. However, OPM-approved demonstration projects generally ensure that a fully successful employee will receive no less than the GS general increase. Also, the pay ranges under demonstration projects are generally linked to GS ranges.

2. **The Senior Executive Service (SES) is to be a premier corps of career leadership in an agency. However, I am concerned that we are creating a disincentive for GS 14s and 15s to join the SES. According to the Senior Executives Association (SEA), employees in the SES are taking on more duties and working longer hours, but receive no locality pay or guaranteed annual pay raises and have fewer job rights. In light of these concerns, what steps is OPM taking to improve the attractiveness of the SES?**

As Director Springer noted in her testimony, the increasing overlap between the General Schedule and the Executive Schedule under which SES members are paid is a matter of concern that needs careful, comprehensive study. That said, OPM continues to see strong evidence of interest among GS 15s in pursuing promotion to the SES through Candidate Development Programs and other means.

OPM is also taking positive steps to make the SES more attractive to applicants inside and outside of Government. In concert with several agencies, OPM is piloting two new methods for executive selection. One alternative tests what we believe will be a more streamlined and effective selection method for focusing on an individual's accomplishments to get at whether the candidate possesses the required executive competencies. The other method being tested allows candidates to apply for SES positions by providing only their resume. Both methods may attract individuals who otherwise might have been deterred from applying by what has often been a laborious application process.

Another way to make SES service more attractive is by providing executives with more opportunities for continuing development. As part of a broad policy to promote greater executive career development and mobility, OPM is taking steps to require in regulation that all SES members have an executive development plan. Also, as an incentive to further executive development, OPM now allows the "losing" agency to receive a temporary SES position allocation when an SES member participates in a developmental detail elsewhere (April 10, 2007 memo for Chief Human Capital Officers).

3. **According to the testimony of SEA President Carol Bonosaro, a member of the SES was told that he was going to receive a raise and a performance award based on his high performance rating. However, the employee was later told that he would receive neither since the SES member planned to retire. When the SEA reported this to OPM, OPM officials said that this was a bad practice, but would not take action.**

    a. **Is this true? Can an agency deny pay increases and performance awards to employees with the required performance rating for the pay increase and award?**

    See answer under 3b.

    b. **Please list the situations in which an agency may deny an employee a pay increase or performance award if they meet expectations.**

    Agencies have considerable latitude in how to design and apply their performance pay systems, and the agency head has the ultimate authority to grant any increase or award. Under the SES performance appraisal system certification process, OPM reviews their performance management systems and pay data to ensure that they are on the whole acceptable under the established criteria. However, individual pay increase or award determinations by the agency may vary based on a number of other factors in addition to performance rating, such as current rate of pay, position in the pay range, recent pay increases, etc.

Some agencies have designed pay systems that grant awards only to employees who exceed expectations. Systems that withhold pay increases from all employees who meet expectations are rare and OPM does not support them. However, the size of the increase may vary dependent on other factors, such as current rate of pay, position in the pay range, recent pay increases, etc.

4. **According to OPM's 2007 report on pay for performance, agencies with pay for performance systems do a better job of recruiting highly talented candidates.**

   a. **What allows agencies with pay for performance systems to do a better job of recruiting highly qualified candidates?**

   In most cases, agencies use some form of pay banding in combination with performance-based pay. These two changes facilitate more strategic use of compensation to recruit highly qualified candidates. Pay banding eliminates the traditional General Schedule (GS) steps and allows agencies to group the GS grades into broad bands or pay ranges based on career path and occupation. It provides increased pay flexibility. Agencies can attract better qualified candidates by offering market-sensitive starting salaries at higher levels of a pay band. By providing broader and more flexible pay ranges for setting the entry pay of new hires, pay banding is an important tool for attracting high-quality candidates. In addition, pay increases based on performance rather than longevity provides highly talented candidates a greater opportunity to affect their future pay increases.

   Additional interventions intended to attract high-quality candidates and speed up the recruiting and examining process include management having the ability to renegotiate job offers, agency-based-staffing, and local-authority for recruitment payments.

   b. **Are there metrics or reports that evaluate the quality of candidates that were recruited before and after the pay for performance systems were implemented?**

   While OPM has not developed specific reports or metrics on candidate quality, there has been quite a bit of data collected from program evaluations over time. Survey data and objective data in Commerce's Year Seven Report of its Demonstration Project showed supervisors were taking advantage of their ability to exercise flexibility with entry salaries and to re-negotiate job offers, which gave them the tools to attract and obtain competitive candidates. In survey responses, demonstration group participants indicated the quality was improving. Objective data reveal a slightly higher average performance score for employees hired during the demonstration period than more tenured employees.

In the DOD Acquisition Demonstration Project (AcqDemo), an increase in the quality of the acquisition workforce, strongly supported by the combined weight of survey results, focus groups, and objective retention data, was documented in the AcqDemo Interim Evaluation Report. Furthermore, the report stated AcqDemo led to higher retention rates of excellent contributors and higher separation rates of poor contributors.

Pay banding enabled the DOD Science and Technology Laboratory Demonstration Projects (Lab Demos) to offer higher, more competitive starting salaries than possible under the GS system. Starting salaries of scientists and engineers were higher than in non-implemented laboratories. Survey results indicated managers in the Lab Demos were significantly more satisfied with the competence of newly hired scientists and engineers, and were more likely to agree they were able to attract high-quality candidates and that newly hired candidates were a good match for the job.

In 2007, OPM collected data on performance-based pay systems and found employees in nine out of fourteen projects had a more positive perception of "my work unit is able to recruit people with the right skills" than the Government-wide average, most by more than 5 percentage points.

5. **In response to my question on how OPM defines quotas at the Subcommittee's 2006 hearing on the SES pay for performance system, you said:**

> **"If a system has a goal to have X percent of ratings at this level and Y percent at this level and another percent at each of those levels, regardless of performance, then that is a quota system because the main driver is reaching a certain distribution."**

   a. **Attached is a slide from a presentation by the Transportation Security Administration (TSA) showing their revised scoring system and stating that it rates and "ranks employees based on thresholds established by the TSA Administrator."**

b. Has OPM reviewed the TSA pay for performance system? If so, what have you found?

We have applied OPM's Performance Appraisal Assessment Tool (PAAT) to the TSA performance management system. The TSA system scored 75 out of 100 points on the PAAT. Findings include:

Overall, the TSA appraisal system provides clear alignment to organizational goals, focuses employees on achieving measurable results, makes distinctions in performance, rewards top performers with higher performance pay, requires progress reviews be given, trains employees and supervisors on the system, and involves employees in developing performance plans.

c. Do you believe this slide suggests the use of quotas at TSA? If so, what steps will you take to address the problem?

We have not found evidence that TSA is using quotas.

d. Do comments suggesting that most employees or a majority of employees should receive a rating of "3" (or place in the middle of the performance rating scale) suggest the use of a quota? Why or why not?

This type of statement does not in itself suggest the use of a quota. Quotas are set percentages or numbers of employees who can be rated at a given level regardless of their performance. The ratings Federal employees under appraisal systems covered by 5 U.S.C. 43 receive are dependent on the performance standards set in their performance plans and how well they performed against those standards. Performance standards developed for the middle range of performance should describe targets and indicators that, while providing some challenge, most employees are expected to meet. Higher-level performance standards should be developed to identify the best performers by setting targets and indicators that, while attainable, provide greater challenge and are attained by only the best.

e. If performance rankings consistently show that a majority of employees rank in the middle of the performance rating scale does it suggest the use of quotas or forced distribution of ratings?

When performance standards are developed as explained in the previous response, to allow for the identification and true differentiation of levels of performance such rating results do not suggest the use of quotas or forced distributions.

f. **Please provide examples that you have found of agencies using quotas and what steps OPM and the agencies in question took to correct the problem.**

We have not found evidence that agencies are using quotas or forced distributions.

g. **Given the number of SES employees in the 2006 SEA survey who believed that their agency used quotas, why didn't the OPM survey of the SES ask employees whether they still believed that agencies use quotas?**

OPM believes the question, "My performance appraisal is a fair reflection of my performance", is a better gauge of perceptions regarding the performance system. Not everyone would be a position to understand or have enough information to answer a question on quotas.

h. **SEA President Bonosaro testified that when she brought a Navy power point presentation showing a graph with a normal distribution curve, OPM concluded that it was not a quota, but rather a "notional system." What is a notional system and how is a notional system different from a quota or forced distribution?**

A notional system, or guidelines that specifically address rating distributions, is an informed expectation of rating distributions based on other criteria, usually organizational performance. It communicates to the raters what management, barring explanations of unexpected situations or other contributing information, expects to see when employee performance is compared to established standards and takes into consideration the success of the organization's accomplishments.

i. **In response to my question on quotas at the hearing, Mr. Spires of the Internal Revenue Service (IRS) said, "at the IRS, we have some guidelines...because we don't want to have grade inflation in the sense that you get a lot of people at the 'outstanding' level unless they deserve to be at that level. ... So we issue some guidance, ...it is not a quota system—but it is some guidance around what we would expect the distribution to look like."**

i. We have applied OPM's Performance Appraisal Assessment Tool (PAAT) to the IRS non-SES appraisal system and the agency's initial score was 66 points out of 100. We found the agency's system has clear alignment to organizational goals, makes distinctions in performance in both ratings and awards, and holds supervisors accountable for the performance management of subordinates. Points were withheld because the employee performance plans did not focus on achieving measurable results, training on the program needs to be given, and the agency could not confirm progress reviews were given. We did not find evidence that IRS is using a forced distribution.

Have you reviewed the aforementioned IRS guidance? Do you believe it suggests the use of quotas? If so, what steps will you take/have you taken to address the problem?

ii. Agencies must give broad guidance to their supervisors about expectations at the fully successful and outstanding levels. Defining the outstanding level does not constitute forced distribution, accordingly, we do not believe steps need to be taken.

Post Hearing Questions for the Record
Submitted to Mr. Richard Spires, Deputy Commissioner for Operational Support
Internal Revenue Service
From Senator Daniel K. Akaka

"Improving Performance:
A Review of Pay-for-Performance Systems in the Federal Government"
July 22, 2008

1. According to the Treasury Inspector General for Tax Administration's (TIGTA) report entitled, "The Internal Revenue Pay-for-Performance System May Not Support Initiatives to Recruit, Retain, and Motivate Future Leaders" (2007-10-106), General Schedule employees outside of the pay banding and pay for performance system could make more money than a manager. The report noted that this could be a factor in the decreased morale of the managerial workforce and a disincentive for employees to seek promotions to become a manager.

a. What has the IRS done to address this pay compression issue?

Answer: The TIGTA report raised a concern that without a guaranteed salary increase for managers rated "Met", some managers may receive a smaller increase than General Schedule (GS) employees, possibly creating "pay compression". We believe it is appropriate that the Commissioner of the IRS retains the authority to determine the level of pay increases for managers in the context of a pay for performance pay system. Since the inception of the IRS Payband System in 2001, the IRS has granted a salary increase equivalent to the GS annual across-the-board increase to managers with a "Met," or better, performance rating. Managers also receive locality pay.

TIGTA also raised a concern that performance based pay increases may be limited by the payband maximum rate and therefore, some managers may not receive the pay raise commensurate with their performance. Maximum rates are an inherent feature of any pay system with defined salary ranges, including the GS pay system. The IRS band maximum rates are directly linked to the GS grade maximum rates, so GS employees are subject to the same limitations. We believe it would be appropriate to have the flexibility to provide lump-sum payments to employees at the top of the band so that their performance is fully recognized. The June 2007 Treasury comments on OPM proposed regulations for IRS paybanding recommended adding language to provide the ability to pay a lump-sum payment for managers whose pay raise is limited by the top of the band.

b. What incentives is the IRS providing to recruit future leaders into the managerial workforce?

Answer: IRS has a variety of incentives available to recruit leaders into the managerial workforce. In the IRS Payband System employees entering a permanent managerial position for the first-time receive a 10% salary increase in recognition of additional managerial responsibilities. This one-time pay increase is about 2% higher than the normal promotion increase and is attractive to managers who generally enter at the lower end of the payband. The IRS is focusing on enhancing the role of managers and identifying, recruiting and developing leaders at all levels of the service. We are also implementing strategies to assist managers in mentoring, leading and developing subordinates and colleagues. Another incentive for managers and aspiring managers is a Service-wide tuition assistance program that provides funding to IRS employees pursuing career development opportunities in support of the mission of the IRS.

Other incentives used to entice future leaders into the IRS managerial workforce include: recruitment bonuses, relocation incentives, retention allowances or bonuses, and annual leave accrual rate enhancements. Acknowledging the need to create greater incentives for non-managers to apply for managerial positions and to retain current managers, the highest percentage rates for many incentives are reserved for managers.

c. What is the IRS doing to address the declining morale issues?

Answer: The IRS is committed to providing on-going communications on the IRS Payband System and has taken steps to improve communications and increase transparency of the program. Following recommendations of the TIGTA report, the IRS implemented a communication campaign to promote an understanding of the program, generate buy-in, and instill more broad based ownership of the IRS Payband System. Partnering with the Professional Managers Association, the Federal Managers Association, and other stakeholders, IRS Payband System documents and targeted messages have been tailored to communicate major activities, milestones and other significant events of the program. To further increase the transparency of the program, outreach sessions/presentations continue to be provided to impacted stakeholders.

As measured by the annual IRS all employee survey, job satisfaction for our managers indicates an upward trend. Job satisfaction scores for managers consistently exceed overall all employee satisfaction scores and both scores continue to trend upward.

The IRS is exploring initiatives to further enhance the role of managers, and specific areas of interest to managers have been identified. Examples include: reducing administrative burden; providing on-going managerial development; and addressing the need for greater work-life balance. IRS believes that through a sustained focus on people – managers and employees – there will be a positive impact on business performance and employee morale. The IRS is focused on establishing the Service as the best place to work in government, while ensuring a prepared workforce for the challenges of tomorrow.

Question#:	1
Topic:	IG report
Hearing:	Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Post-Hearing Questions and Answers for the Record
Submitted to Gale Rossides, Deputy Administrator,
Transportation Security Administration

Question: The May 2008 Department of Homeland Security (DHS) Inspector General (IG) report entitled "Transportation Security Administration's Efforts to Proactively Address Employee Concerns" mentioned that low morale can lead to high attrition. The fact that the Transportation Security Administration's (TSA) attrition rate is over 17 percent raises questions about employee morale. What steps is TSA taking to improve TSA recruitment, retention, and employee morale?

Response: The dedicated men and women who serve as Transportation Security Officers (TSOs) have one of the most difficult jobs in government, and their work in screening two million passengers a day is both physically and mentally demanding. These officers also are the most tested in the federal workforce. While the Transportation Security Administration's (TSA) full-time and part-time voluntary attrition have steadily declined since 2004, TSA is continually looking to improve in the areas of employee recruitment, retention, and employee morale.

Despite the challenges of the TSO position and the fact that TSA was created less than seven years ago, over 50 percent of the TSO workforce has been with TSA for four years or more. The average tenure of a TSO is 3.5 years. The highest level of attrition occurs in the first six months on the job. As of August 30, 2008, 33 percent of TSO attrition is attributable to those employees onboard less than six months as of August 30, 2008. TSOs who stay more than six months are likely to remain with TSA for the long term. As of August 30, 2008, 90 percent of active TSOs had more than six months of service, with a median tenure of 4.05 years.

With regard to recruitment, TSA has found that employees who understand the scope of the TSO position and the career path associated with it are more likely to stay with the organization long-term. As a result, extensive efforts are under way to provide candidates with information that gives them a realistic job preview prior to applying for or accepting a position. Applicants are provided detailed information via the TSA website and informational flyers distributed at on the ground recruiting efforts. In addition, current TSOs attend local job fairs in their area to speak with prospective candidates about the actual duties of a TSO, work shifts available, promotion opportunities, and benefits. These educational efforts are intended to recruit employees who are more likely to stay with TSA long-term, thereby reducing attrition.

Question#:	1
Topic:	IG report
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Employee morale is also critically important to TSA, and we work to receive and respond to employee concerns and ideas for improvement. Through the National Advisory Council (NAC), employee surveys, the IdeaFactory, and other communication tools, TSA is continuously listening to our employees and working to improve employee morale. TSA has undertaken numerous initiatives that are creating a culture that supports its employees and their ability to perform at the highest level. Among the host of initiatives at TSA are the following:

- The National Advisory Council (NAC) and the NAC Network: The NAC, composed of TSOs, lead TSOs, supervisory TSOs, transportation security managers, and assistant federal security directors, was created to permit the front line workforce to raise its concerns directly to TSA's senior leadership. The NAC continues to raise systemic issues of all kinds through quarterly, week-long meetings at headquarters, monthly conference calls with TSA leadership, and the ongoing work of subject matter committees in collaboration with headquarters program offices. The reach of the NAC is being expanded this summer by the selection of NAC Network members from all hub airports currently without a NAC member.

- TSA's Integrated Conflict Management System (ICMS): ICMS is a systems based approach to handling conflict in the workplace, promoting fairness, inclusion and transparency, communication, collaboration, employee engagement and conflict management. Most employees at all airports have received basic training in conflict management and cooperative problem solving; processes will have been created providing employees with confidential, anonymous and group employee involvement options for raising issues and concerns locally; and local leadership will have articulated support and safeguards for employees using these skills and processes by the end of the fiscal year. In this regard, ICMS principles and requirements will be built into existing processes for audits, assessment and evaluation, performance plans, competencies, hiring, promotions and rewards, and recognition. While a recent report by the Department of Homeland Security Office of the Inspector General (OIG) made recommendations as to how TSA's implementation of its ICMS could be accelerated and improved, TSA had already taken steps to implement these changes even before the OIG made their recommendations. TSA believes that its comprehensive initiative directed at the core of its culture and its demonstrated commitment to this initiative have established it as a leader among Federal agencies.

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- Peer Review: Peer review panels will be expanded to all Category X (the largest) airports this fall and are an important option in the grievance procedure. Employees filing grievances will be able to request a mediator at the second step or to request that a peer panel be convened. Specially trained panel facilitators manage hearings on grievances before a panel selected by the grievant and are composed of 3 peers of the grievant and 2 managers. Panels decide whether policies have been applied fairly and consistently, and their decision is final.

- Career progression and leadership development: As part of TSA's comprehensive, layered approach to security at airports, several security-focused specialty positions have been developed and implemented. These positions include the Behavior Detection Officer, Coordination Center Officer, and Security Training Instructor, and are open to current TSOs. The positions are part of the TSO Career Progression Program and are classified at levels equivalent to Lead and Supervisory TSO, thus providing an alternative track for promotional opportunities. The Coordination Center Office and Security Training Instructor were launched this fiscal year. Overall, for all three programs, over 3,600 TSOs have been promoted into these positions.

  With regard to leadership training, TSA has provided *Foundations of Leadership* training for over 3,300 first level supervisors. It has also developed two new courses: *Transition to Security Managers* for newly promoted Transportation Security Managers, and *Leading from the Middle* for mid-level managers.

- Diversity Advisory Council (DAC): A Diversity Advisory Council was established at TSA in September 2007. The group is comprised of 37 members representing all job categories and levels at TSA from the field and headquarters. The Council serves as an advisory unit for the "Building and Maintaining Diversity at TSA" initiative and coordinates TSA's efforts to create, develop, and retain a diverse and highly skilled workforce at all levels. In its first year the DAC has focused on plans to enhance career development, recruitment and hiring, diversity training, workforce utilization and communication, and to create an inclusive environment.

- Idea Factory: Thc IdeaFactory (IF) is an online tool designed to promote innovation at TSA. Through the IdeaFactory, employees submit ideas on all aspects of operations, comment on ideas posted by others, and promote the most favorable suggestions. Since it was started in April 2007, the IF has received

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over 6,100 ideas, 54,000 comments and 117,000 votes in favor of an idea. During the month of July 2008 alone there were over 5,500 users and close to 500 new users. More than 20 new initiatives, programs, or Standard Operating Procedural changes have been implemented as a result of employee suggestions. The IF is an incredible tool for TSOs to make a difference in improving their work environment, to communicate with each other and with management. TSA offices initiate challenges to get ideas on specific problems they wish to resolve. Employees educate each other, share knowledge and best practices, and engage in constructive input. The IF is located on TSA's Intranet where it can be accessed by all TSA employees on all TSA computers.

- Enhanced Whistleblower Protections for TSOs: In July, TSA announced the implementation of enhanced whistleblower protections for its TSO workforce. Under an agreement with the Merit Systems Protection Board (MSPB), security officers are now able to appeal whistleblower retaliation complaints to the Board. The additional protection afforded to our frontline officers enhances their ability to protect the traveling public. Giving our officers every opportunity to communicate security concerns without fear of reprisal is an important tool in maintaining a creative, engaged workforce.

In addition to the above initiatives, TSA also has created incentives targeted towards our part-time TSO workforce, which is a critical component of TSA's flexible security approach and a segment of our workforce with historically higher attrition rates than full-time employees. These same employees generally pay a higher percentage of total costs of health insurance than full-time federal employees. These higher health benefit costs become an impediment to retaining part-time employees. Consequently, to provide more affordable health care coverage and retain part-time TSOs, TSA worked with the Office of Personnel Management to permit part-time TSOs who elect Federal Employee Health Benefits coverage to pay the same lower cost for health benefits as full-time TSOs. In some cases, this workforce incentive has saved part-time TSOs up to 65 percent of the cost of health care.

Lastly, as presented in testimony before the Committee, TSA's Performance Accountability and Standards System – PASS – plays a significant role in motivating and sustaining an exceptionally talented and well-performing workforce. PASS underscores our focus on individual and organizational performance rather than on employee tenure – the higher the level of performance, the higher the level of financial reward. Over 60 percent of the PASS-covered workforce received a payout in 2008 based upon their work

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performance in 2007 that fell into the two highest performance levels. Performance in 2007 improved significantly over the previous year, suggesting that the motivation associated with pay-for-performance drives an employee to excel. And it is that striving for excellence that aids securing our homeland. In the post-9/11 environment, pay-for-performance provides our employees with the best system to ensure accountability in a fair and objective manner while promoting security in the transportation domain.

Question#:	2
Topic:	survey
Hearing:	Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: According to the 2007 DHS Employee Survey, the high voluntary attrition rate has affected nearly 60 percent of employees. Only 35 percent of employees felt that their agency management was communicating what was going on with the organization and 28 percent believed their good work was recognized. More than 66 percent of employees do not feel positive about their pay. Given these figures, do you believe that you have a successful pay for performance system? If so, why?

Response: The rating received by the Transportation Security Administration (TSA) on the 2007 Employee Survey question regarding whether employees felt their agency management communicated what was occurring in the agency was 35.9 percent favorable and was consistent with the rating received by Customs and Border Protection (36.2 percent favorable) and better than the rating received by the Immigration and Customs Enforcement (33.2 percent favorable). Although TSA's rating for employee's satisfaction with the level recognition for doing a good job is lower than those of comparable components, a total of 67 percent of TSA employees in the same survey indicated that they believe they are being held accountable for achieving results. TSA's ratings on the question of whether pay raises depend on how well an employee performs her job were higher than in the Department as a whole. These ratings, of course, should be evaluated in light of the fact that PASS was not implemented until late in 2006. PASS payouts for fiscal year 2007 were not paid until after the 2007 DHS Employee Survey was taken. It may take several years for TSA employee survey results to accurately reflect employee perceptions of pay for performance.

There are a number of components to TSA's compensation and benefits systems, and the pay for performance system is integral to effectively carrying out our security mission. As discussed by Deputy Administrator Rossides in her testimony before the committee, TSA has a strong and motivated workforce and it is important that our Transportation Security Officer (TSO) workforce remain alert to threats against our transportation systems. Therefore, it is not sufficient to reward employees based solely on their tenure with our organization. Instead, to maintain a highly motivated workforce, enhanced compensation based on our employees' performance is critical to our accomplishing the security mission.

TSA believes strongly in pay for performance, and that our pay for performance system is successful. As all of the other witnesses on the panel testified, pay for performance

Question#:	2
Topic:	survey
Hearing:	Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government
Primary:	The Honorable Daniel K. Akaka
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systems take seven to ten years to really mature in an organization, and TSA is a relatively young organization and one of the few Federal components with a functioning pay for performance system. After TSA implemented pay for performance for our TSOs, we reviewed all aspects of the system and made adjustments accordingly. As is reflected in the chart below, a substantial number of our TSOs received pay increases based on their levels of performance. Another positive aspect of our pay for performance system is that employees may be rewarded each year with pay increases, subject to the availability of financial resources, versus a within-grade increase system, such as the General Schedule, where progression is largely based on tenure and pay increases may be as far as three years apart.

2008 Payout for 2007 Performance Period

Rating	Concept	Number Rated in FY 2007	FY 2008 Payout (FY 2007 performance)
Role Model of Excellence	Very substantial increase	15.38%	Comparability-Equivalent Increase (CEI) + 3.5% increase + $2,000 bonus
Exceeds Standards	Fairly substantial increase	45.96%	CEI + 2% increase + $1,000 bonus
Achieves Plus	Small increase	26.68%	CEI + 1% increase + $1000 bonus
Achieves Standards	Small bonus	11.57%	CEI + $500 bonus
Does Not Meet Standards	No increase	<1%	CEI only

Beyond pay for performance, TSA has implemented a number of changes to enhance our compensation system, particularly for our TSOs. For example, the minimum and maximum pay rates of TSA's pay bands were adjusted by 1.0 percent in July 2007 and by another 2.5 percent in January 2008. While these changes may not result in an immediate pay increase for TSA employees, such adjustments will benefit TSA employees in the long term because earnings potential is greater.

Question#:	3
Topic:	HR services
Hearing:	Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: TSA recently contracted with Lockheed Martin for $1.2 billion for human resources services. Can you explain what you expect Lockheed Martin to do under the terms of the contract?

Response: The Transportation Security Administration's (TSA) Office of Human Capital (OHC) Integrated Hiring Operations and Personnel (IHOP) program with support from Lockheed Martin under this new contract provides TSA critical, human resource support services including workforce management and analytics, customer help desk services, and processing services for recruitment, hiring, personnel, payroll, and employee benefits. The Lockheed Martin contract replaces contracts providing similar services by three separate companies for the last four years. While TSA believes the contractor's focus and requirements to provide timely and effective processing and services will improve quality of life for our employees; they are, in fact, support services only — the contractor will not be developing or implementing policies or programs. TSA's OHC, which consists of experienced career Federal government employees, oversees this service contract and is responsible for working with management officials throughout the agency to ensure that human capital practices, policies, and procedures comport with agency policy. The Assistant Administrator for Human Capital, also a career Federal government cmployee, is ultimately responsible for the welfare of the TSA workforce and the provision of human resource services.

Question#:	4
Topic:	quotas
Hearing:	Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: In response to my question about the use of quotas at TSA, you said that TSA does not use quotas.

How do you define the terms "quota" and "forced distribution of ratings"?

Is TSA prohibited by law, rule, regulation, or agency directive from using quotas or a forced distribution of ratings in its pay for performance system? If so, please cite the appropriate authority.

What training do you give to managers on how to make meaningful distinctions in performance and not impose quotas or make a forced distribution in ratings?

How is the TSA pay for performance system funded? Is it budget neutral? If so, how does TSA ensure that it can provide sufficient incentive awards for good performance? If not, what efforts does TSA employ to control costs for its pay for performance system?

Question: How do you define the terms "quota" and "forced distribution of ratings"?

Response: A "quota" system is one in which the number of employees who can receive a specific performance rating is pre-determined and constrained.

Similarly, a "forced distribution of ratings" constrains the number of employees who can achieve a certain performance rating.

The Transportation Security Administration (TSA) does not and will not limit the number of individuals in the Performance Accountability and Standards System (PASS) who can receive a specific rating. Rating and reviewing officials are not limited in the number and types of scores they may award employees. For the PASS year 2008 (ending September 30, 2008), TSA will analyze all submitted employee scores and, based on the scoring distribution and available funds, will determine employee payout levels based on the score they received, by position and function, out of 100 points.

Question: Is TSA prohibited by law, rule, regulation, or agency directive from using quotas or a forced distribution of ratings in its pay for performance system? If so, please cite the appropriate authority.

Question#:	4
Topic:	quotas
Hearing:	Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Response: The Transportation Security Administration (TSA) is not prohibited by law, rule, regulation, or agency directive from using quotas or a forced distribution of ratings in its pay for performance system. However, TSA does not use quotas or a forced distribution. TSA uses an Analytic Scoring Distribution system which allows TSA to use actual employee performance data to drive and finalize end-of-year Final Ratings and to use the ratings and availability of funds to drive payout levels in the Performance Accountability and Standards System (PASS).

Question: What training do you give to managers on how to make meaningful distinctions in performance and not impose quotas or make a forced distribution in ratings?

Response: The Performance Accountability and Standards System (PASS) is a systematic and integrated approach to managing and improving performance. PASS operates using mostly objective performance standards in which 70 percent of each employee's final rating is based on their Technical Proficiency scores (Image Mastery Assessments and Practical Skills Evaluations), Training requirements, and Readiness for Duty requirements. The remaining 30 percent of their final rating is based on their Competency score, which is the only component of their final rating that allows any subjectivity.

Each Competency is associated with a set of behaviors/performance standards. These behaviors are what the Rating Official looks for when determining an employee's rating. The Rating Official is accountable for: assigning competency ratings fairly, consistently, and objectively; rating the employee in the Competency Behavior Group that best describes their performance demonstrated throughout the majority of the performance period; and meeting quarterly with their employees to discuss and review Competency progress and/or ratings. To promote objectivity in the Competency component, the Reviewing Official serves as a "check and balance," and he/she is accountable for ensuring that Rating Officials are assigning Competency ratings fairly, consistently, and objectively.

Employees undergo PASS Training and mandatory Online Learning Center courses which explain performance measurement within this system. Additionally, the Foundations of Leadership course is a 9-day training course for all Supervisory Transportation Security Officers (TSOs) and Transportation Security Managers, and it

Question#:	4
Topic:	quotas
Hearing:	Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

specifically addresses supervisory accountability and provides general guidance on the PASS scoring system.

In addition, leadership handbooks are distributed to Rating Officials (Supervisory TSOs, Security Managers, and Assistant Federal Security Directors for Screening) on a quarterly basis. These handbooks cover a wide range of topics that are applicable to the supervisory workforce in supervising employees and promoting fairness and objectivity, in an effort to make meaningful distinctions in performance. Furthermore, all PASS Points of Contacts from the field are invited to attend the annual PASS Conference, which addresses any newly implemented changes to the PASS program and provides clarity and training on PASS scoring policy.

Furthermore, the fact TSOs' supervisors are themselves covered by the PASS system under which TSOs are rated, and are subject to an assessment under PASS for how well they implement PASS for their own employees, promotes effective implementation of the system.

Question: How is the TSA pay for performance system funded? Is it budget neutral? If so, how does TSA ensure that it can provide sufficient incentive awards for good performance? If not, what efforts does TSA employ to control costs for its pay for performance system?

Response: The Performance Accountability and Standards System (PASS), the Transportation Security Administration's (TSA) pay-for-performance system, is funded in the Passenger and Baggage Screener Personnel, Compensation, and Benefits (PC&B) Program, Project or Activity (PPA) in the Aviation Security Appropriation. The PASS program is not budget neutral; it has been funded annually by using the pool of funds set aside for awards, promotions, and the Transportation Success Increase (TSI). Also, TSA has realized efficiencies from improved TSO scheduling and management practices and reinvested those into the workforce through PASS. To control costs, TSA sets the annual PASS payout for awards and pay raises within the context of funds available in its appropriation.

Question#:	5
Topic:	scoring system
Hearing:	Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: Attached is a slide from an April 2008 presentation by TSA to Committee staff showing your revised scoring system and stating that TSA rates and "ranks employees based on thresholds established by the TSA Administrator." What is the purpose of the rate and rating thresholds? What relation do the thresholds have on employee pay?

Response: In April 2008, Assistant Secretary Hawley directed the Office of Human Capital to simplify the Performance Accountability and Standards System (PASS) 2008 scoring policy, including a revamped scoring system which removes complex business rules. The Transportation Security Administration (TSA) will make data-driven determinations, using actual employee performance data, to determine the thresholds for ratings categories and finalize end-of-year Final Ratings and PASS Payout levels using the categories and weightings below:

- Technical Proficiency / Supervisory Accountability / Management Proficiency – 50%
- Competencies – 30%
- Training – 10%
- Readiness for Duty – 10%
- Collateral Duty – Max. 3 bonus points
- Career Plan – Max. 2 bonus points

All personnel covered by the PASS program are eligible to receive 100 points plus up to 5 bonus points. TSA's system does not try to predict end-of-year Final Ratings as this does not promote program transparency. The purpose of using a 100 point system is to allow TSA to determine end-of-year Final Rating and PASS Payout levels using actual employee performance data. Once all employee scores are available, point ranges can be established through an Analytic Scoring Distribution system for the purpose of making pay determinations.

Using an Analytic Scoring Distribution, TSA will determine End-Of-Year Final Rating and PASS Payout threshold levels using actual employee performance data. Ratings will be determined by position and function solely based on the actual distribution of employee scores captured after the end of the performance period. The TSA leadership will consult with stakeholders on the National Advisory Council to determine the most appropriate rating thresholds based upon logical breaks in the actual scores. For example, for fiscal year 2007, approximately the top 15 percent of the workforce receive the highest payout level, the next 46 percent receive the second highest payout level and the third 27 percent received the third highest payout level. The data showing employees' scores will be analyzed along with available funding to determine ratings thresholds and payout levels.

Hearing Date: 22 July 2008
Committee: HSGAC
Member: Senator Akaka
Witness: Dr. Sanders
Question: 1

Question 1: (U) In response to my question on group think, you said that collaboration does not equal consensus and that you want the sharp edges of a debate on any given intelligence topic to be exposed in the Intelligence Community (IC). As such, please describe the IC appeals process for pay and performance decisions as well as the process for claims of retaliation for whistleblowing, including who decides an employee's appeal and, under the Intelligence Community Whistleblower Protection Act, whether agency heads are required to act consistent with findings of the Inspector General in favor of the employee?

Answer: (U) In designing our system we have emphasized making sure the processes for performance and pay are merit-based, fully documented, and reviewed at the component-level prior to completion in order to provide fair and equitable treatment to all employees. Decisions on employee performance and pay are governed by related but separate processes. Intelligence Community Directive (ICD) 651 provides a process through which employees can appeal the evaluation of their performance. Those employees who are dissatisfied with their performance rating may request reconsideration of their evaluations of record through informal and/or formal processes. "In accordance with procedures..." that each IC element will develop, "employees may first request informal resolution with management officials in their rating chain. If informal processes do not resolve the issue, employees may file a formal request in accordance with departmental and/or component grievance policies and procedures. Requests for formal resolution will be made in writing, and employees will receive responses in writing." IC elements will be responsible for tracking "reconsideration requests and final resolutions to ensure proper application and enforcement of performance evaluation policies and processes in conformance with this directive and component requirements." Please note that every IC element and their parent cabinet departments (where applicable) already had existing employee appeals processes and mechanisms established pursuant to law and regulation, and ICD 651 does not modify those existing processes and mechanisms beyond what is described above.

(U) ICD 650, which provides the Guiding Principles and Framework for the National Intelligence Civilian Compensation Program (NICCP), requires each IC element to develop plans for "[t]he establishment or application of component-level internal review, oversight, and redress mechanisms (including component-specific processes and procedures) to guard against unlawful discrimination, partisan pressure, reprisal, and other non-merit factors such as cronyism and favoritism; and that provide transparency of merit-based pay and performance management decisions for employees." Additionally, ICD 650 states that organizations will take all appropriate steps to ensure that, "[e]mployee rights are protected and appropriate avenues are provided for reconsideration and redress without reprisal. Employees will be able to request reconsideration of their rating (and any resulting compensation actions). . ." ICD 654 provides that "[a]ll performance-based payout decisions will be merit-based, fully documented, and reviewed at the component-level to ensure that they adhere to established policy and process guidelines." It also states that "[p]rocesses for allocating, managing, and making performance-based payouts will be transparent; that is, all such decisions will be clearly communicated and justified. Employees will receive their individual results, as well as aggregate results for their organization." Thus we have built in clear protections for our employees, and armed them with the necessary information, should they wish to challenge the pay process.

(U) Under the Intelligence Community Whistleblower Protection Act ("Act"), the Inspector General of CIA or the Inspector General of named elements of the Intelligence Community determine whether an employee's complaint or information regarding a matter of "urgent concern" appears credible before that employee transmits her concern to the intelligence committees. The Act sets forth detailed procedures for employees and contractors of the Intelligence community to report matters of "urgent concern" to Congress. [1] Under the Act, the employee or contractor first must report his complaint to the appropriate Inspector General. If that Inspector General determines that the complaint or information appears credible, the complaint would be transmitted to the Director of the Central Intelligence Agency (D/CIA) or the head of the establishment concerned who would then forward the transmittal to the intelligence committees, together with any comments the D/CIA or the head of the establishment considers appropriate.

(U) This last provision was a matter of considerable discussion between the Executive Branch and the Congress in 1998 and 1999. The language in the Act accommodates the positions of both branches of government by balancing Congress's oversight responsibility with the President's constitutional authority to control the disclosure of classified information. The accommodation was summarized by President Clinton in his statement on signing the bill into law:

> "Finally, I am satisfied that this Act contains an acceptable whistleblower protection provision, free of the constitutional infirmities evident in the Senate-passed version of this legislation. The Act does not constrain my constitutional authority to review and, if appropriate, control disclosure of certain classified information to the Congress. I note that the Act's legislative history makes clear that the Congress, although disagreeing with

[1] Specifically, the Act sets out the following procedures:

1. The employee is first to report the complaint or information to the appropriate Inspector General or designee.
2. Not later than 7 calendar days after receiving the complaint or information, the designee is to report the complaint or information to the Inspector General.
3. Within 14 calendar days of the receipt of the complaint or information, the Inspector General shall determine whether the complaint or information appears credible. If the Inspector General determines that the complaint or information appears credible, the Inspector General shall transmit the complaint or information to the head of the establishment concerned.
4. Upon receipt of the transmittal from the Inspector General, the Act directs the head of the establishment to forward such transmittal to the intelligence committees within seven days, together with any comments the head of the establishment considers appropriate.
5. If the Inspector General does not transmit, or does not transmit in accurate form the complaint of information, the employee may submit the complaint or information directly to the intelligence committees, provided that the employee furnishes the head of the establishment, through the Inspector General, a statement or the employee's complaint or information; and obtains and follows from the head or the establishment, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

the executive branch regarding the operative constitutional principles, does not intend to foreclose the exercise of my constitutional authority in this area.

The Constitution vests the President with authority to control disclosure of information when necessary for the discharge of his constitutional responsibilities. Nothing in this Act purports to change this principle. I anticipate that this authority will be exercised only in exceptional circumstances and that when agency heads decide that they must defer, limit, or preclude the disclosure of sensitive information, they will contact the appropriate congressional committees promptly to begin the accommodation process that has traditionally been followed with respect to disclosure of sensitive information."

Hearing Date: 22 July 2008
Committee: HSGAC
Member: Senator Akaka
Witness: Dr. Sanders
Question: 2

Question 2: (U) As you know, employee representatives and Government Accountability Office (GAO) reports document employee concerns with pay for performance programs across the federal government. Since employees in the IC are not represented by a union and because GAO has limited oversight authority, I am worried that some of the problems that have come to light at other federal agencies may not be addressed within the IC pay for performance system. Please describe the internal and external accountability mechanisms to ensure fair treatment for employees under a pay for performance system in the IC.

Answer: (U) The enabling ICDs of the NICCP establish numerous policies, processes, and mechanisms that are intended to provide for the fair treatment of employees, both directly and indirectly.

(U) First, one of the guiding principles established by ICD 650 is, "[t]he department or agency provides rigorous oversight of the administration of its compensation and performance management systems, including internal review mechanisms to guard against unlawful discrimination and partisan pressures, and other non-merit factors such as cronyism and favoritism. It also provides transparency of merit-based pay and performance management decisions for employees."

(U) ICD 650 also states that "[t]he DNI will designate or establish an executive-level collaborative body to serve as an IC human capital board (HCB), with responsibility for making recommendations to the DNI and the heads of the executive departments and independent agencies . . . on the implementation and administration of the NICCP, to include setting and adjusting basic rates of pay of IC employees. The Board will also perform such other functions as may be specified in the NICCP's various enabling directives, and may address and make recommendations on other IC-wide human capital and related matters as it sees fit." The designated human capital board is responsible for reviewing the IC elements' NICCP Implementation Plans, which must be submitted to the Board prior to initial implementation of the NICCP. Until the Plan is submitted, the IC elements will provide the Board with quarterly updates which outline their progress. The Implementation Plan will describe how the element intends to address the following:

a. **(U)** Outreach: Employee communications and engagement, to include how and/or when, as applicable, the element will use such means as newsletters and Web-based communications, town hall meetings, focus groups, employee and/or managerial advisory councils, and Web and satellite broadcasts.
b. **(U)** Training: The quantity, content, estimated cost, and timing of training for executives, managers, supervisors, employees, and human resources specialists, on both the implementation and administration of the NICCP and its corresponding

performance management system, and other complementary interpersonal and managerial skills that are critical to their success.

c. **(U)** Safeguards: The establishment of internal review, oversight, and redress mechanisms (including organization-specific processes and procedures) to guard against unlawful discrimination, partisan pressure, reprisal, and other non-merit factors such as cronyism and favoritism; and that provide transparency of merit-based pay and performance management decisions for employees.
d. **(U)** Cost: A comprehensive estimate of the funding required for the implementation and administration of the NICCP and its corresponding performance management system, including the infrastructure and information technology support necessary to accomplish those activities.

(U) Second, the heads of the executive departments and independent agencies are required to evaluate their respective compensation policies and processes annually to ensure that they are in compliance with the NICCP and its enabling directives. During this annual review process, agencies will have the opportunity to identify successes and challenges, lessons learned, and potential modifications.

(U) Third, ICD 651 states that all performance management systems covering IC employees will adhere to merit systems principles, to the extent required by law. ICD 651 also requires the evaluation of supervisors and managers on "how effectively they manage the performance of employees under their supervision," their ability to establish "a work environment that promotes equal opportunity, diversity (of both persons and points of view)," as well as "recognizing and rewarding individual and team excellence."

(U) Fourth, ICD 651 requires all employee evaluations of record to be subject to review and oversight. Specifically, "The reviewer, a management official at a higher level than the rater, will review and approve the evaluation to ensure consistency between and among raters." and " Each IC component will provide for an oversight process to prevent unlawful discrimination, ensure component-wide rating rigor and consistency, as well as compliance with this Directive, prior to the use of such ratings for personnel decisions."

(U) Fifth, as ICD 651 provides a process through which employees can appeal the evaluation of their performance. Those employees who are dissatisfied with their performance rating may request reconsideration of their evaluations of record through informal and/or formal processes. "In accordance with procedures..." that each IC element will develop, "employees may first request informal resolution with management officials in their rating chain. If informal processes do not resolve the issue, employees may file a formal request in accordance with departmental and/or component grievance policies and procedures. Requests for formal resolution will be made in writing, and employees will receive responses in writing." IC elements will be responsible for tracking "reconsideration requests and final resolutions to ensure proper application and enforcement of performance evaluation policies and processes in conformance with this directive and component requirements."

(U) Sixth, ICD 654 establishes pay policies which provide for the fair treatment of all employees. Similar to the process established in ICD 651 for performance evaluations, ICD 654 requires oversight of the performance payout process: "[p]ay pool managers and panels will manage pay pools and make decisions on performance-based payouts. Those decisions will be subject to senior level review, as determined by the IC component and specified in the IC component's implementing instructions, to ensure merit and component-wide consistency, and to prevent unlawful discrimination." Furthermore, if a decision is made by the pay pool manager/panel to increase or decrease an individual employee's performance-based payout from the recommended amount calculated using "the standard IC mathematical formula," then "the basis for any such adjustment will be fully documented and provided to the employee."

(U) Seventh, pursuant to the policy in ICD 650 to establish reporting requirements for the purpose of oversight, the DNI intends to request and track certain types of information and establish multiple programmatic measures, including, but not necessarily limited to:

a. Equal Employment Opportunity (EEO) Statistics: All IC elements will be asked to collect and analyze statistics on the impact of the performance management and performance pay processes on women, minorities, veterans, and persons with disabilities. In particular, final results of the performance management cycle will be reviewed prior to proceeding with the pay pool deliberations. Any irregularities that warrant corrective action must be either addressed immediately or as part of a more comprehensive employee training and intervention plan. If the IC element is part of a department, then it may also be subject to an additional senior level review and remediation efforts. The results of these reviews and associated trend data will be shared with the designated human capital board.
b. **(U)** Climate Survey Data: Since 2005, the DNI has conducted annual IC-wide employee climate surveys. Those surveys gauge the quality of our work environment and the morale of our workforce. All future annual climate surveys will include questions specific to employee feedback about the NICCP.
c. **(U)** Exit Survey Data: In addition, the IC has developed and implemented a standard exit survey for all IC employees to help managers and supervisors learn about their employees' experience in the IC and to understand their reasons for leaving. Future exit surveys will ask employees for their views on the NICCP.
d. **(U)** NICCP Summary Data: The DNI will collect annual NICCP data, by IC element, to determine the effect this program is having on:
    (1) **(U)** Ratings distributions (aggregate for workforce and by group)
    (2) **(U)** Payouts and salary distribution
    (3) **(U)** Bonuses
    (4) **(U)** Promotion data
    (5) **(U)** Workforce structure (i.e. distribution of employees among bands)
    (6) **(U)** Attrition rates
    (7) **(U)** Discrimination complaints and appeals

(U) Eighth, there are additional actions planned, which are not included in the enabling Directives, but are considered essential to the proper conduct of any performance management system:

a. (U) IC Performance Appraisal Assessment Tool: The overall effectiveness of the IC element performance management system will be evaluated by a standard assessment tool prior to conversion to a pay system that complies with the NICCP. This assessment tool will be used annually thereafter to collect trend information on determine the effectiveness of the performance management system.
b. (U) EEO Training: All NICCP training will include one or more EEO modules to mitigate the risk that the program will have an adverse impact on any protected classes. This training will be developed in coordination with the Diversity Senior Advisory Panel for the IC and the Community Diversity Issues Board to ensure that issues and vulnerabilities specific to pay modernization are adequately addressed. Moreover, courses such as Pay Pool Training for Members and Advisors will specifically include a section on EEO standards and guidelines and will be mandatory training before a manager or supervisor may participate in pay pool deliberations. These types of courses may be required annually to maintain manager and supervisor proficiency.

(U) Finally, within the ODNI, several senior officers are charged with the responsibility for overseeing the implementation and operations of the NICCP: the ADNI/HC will conduct oversight of the system generally; the ADNI/Chief Financial Officer will track the financial management of the NICCP; and the Chief, Office of Equal Employment Opportunity and Diversity will monitor NICCP impacts on diversity and protected classes of employees.

<u>Question</u>: (U) How will the Office of the Director of National Intelligence (ODNI) ensure employee buy-in of the pay for performance system?

<u>Answer</u>: (U) The ODNI is working closely with the IC elements to make sure that all IC employees are knowledgeable of the NICCP and aware of the changes that are underway in the IC. One of the guiding principles established by ICD 650 is that "[e]mployees are informed and educated on the details of the NICCP, as well as their department or agency's compensation and performance management systems. They are given the opportunity to provide feedback on the content of those systems and their implementation, and their feedback is considered when those systems are developed, implemented, and administered."

(U) Thus, ICD 650 requires that each IC element develop its own employee engagement strategy. As part of that strategy, each individual IC element will determine the potential role and purpose for an employee advisory group or council to help guide the implementation of the NICCP. The National Geospatial-Intelligence Agency, for example, has an employee council, but performance and compensation issues are only part of its purview. The Central Intelligence Agency, on the other hand, has formed a Pay Modernization Committee that meets periodically to discuss concerns and advise management on issues and plans. The DNI encourages, but does not require, IC elements to consider similar arrangements. In addition, as noted above, the ODNI intends to conduct climate surveys annually that will address the policies and implementation of the NICCP.

(U) Finally, IC leadership engaged employee focus groups to learn their views and concerns with pay reform before the design of the NICCP was initiated. During these sessions, employees recommended that IC elements develop their plans fully before re-engaging with employees. Their message was that element leaders needed to be able to comprehensively address the broad range of questions that would inevitably be raised by an initiative such as the NICCP. Employees did not want to be presented with mere concepts or outlines that would leave them with more uncertainty and questions than answers. Rather, they wanted as much detail as possible so that they could make informed judgments on the proposed changes. In response, the IC leadership reviewed the best practices of other US government organizations that have based pay decisions on performance results, and constructed a family of policies that we believe will optimize our chances for success. Now that the IC has developed the NICCP in sufficient detail and its core policies are finalized, each IC element has reached out to its employees through a variety of means to describe the new system to them and to receive their views on the NICCP.

<u>Question</u>: (U) What are some of the lessons learned from the National Security Personnel System (NSPS) pay for performance system and how are those lessons being implemented in the ODNI system? In particular, please list concerns raised by employees and their representatives with the NSPS pay for performance system and how the ODNI system is different.

<u>Answer</u>: (U) The ODNI and the IC elements thoroughly examined NSPS, its statutory basis, underlying policies, and its implementation when designing the NICCP. However, one should not draw the conclusion that the IC simply copied the NSPS when it designed the NICCP. The NICCP was designed from the ground up specifically for our Nation's intelligence workforce. In designing the NICCP, the IC relied heavily on guidance from the Government Accountability Office and the Office of Personnel Management, which is reflected in our guiding principles established by ICD 650. But the NICCP is also based substantially on the National Geospatial-Intelligence Agency's (NGA) performance-based pay system, which predates the authorization of NSPS by several years and which has been operating successfully for a decade. As we studied best practices in performance-based pay systems across the US government, we found that NGA's experience and the views of its employees were by far the most relevant to our deliberations and implementation of the NICCP.

(U) With respect to NSPS, we found that the Department of Defense had developed some outstanding training materials focused on performance management and pay panel processes, and so we have borrowed heavily from their materials. But we also found some areas that they themselves recognized as problematic, and suggested we not follow their lead. For example, NSPS put a portion of the yearly government pay increase (GPI) and locality adjustment as approved by Congress and the President at risk in their pay process, causing a great deal of concern among employees and members of Congress. NGA did not follow this approach, because they found that the majority of employees perceived these yearly increases as necessary to keep pace with inflation. Any decision to put these funds at risk was seen as potentially undermining government employee pay comparability in the marketplace. Some employees also told us they viewed this as "the government balancing its budget at their employees' expense." As a result, IC leadership decided that the NICCP will guarantee that every employee rated at or above the Successful level will receive the full GPI and locality adjustment. Performance pay will come from funds reserved for quality step increases and performance bonuses under the old system.

(U) In another example, NSPS is based on four career groups and fifteen pay schedules. Each pay schedule has between one and four pay bands, and the pay band minimum and maximum vary based on the assigned pay schedule. NGA, on the other hand, was designed around a single pay schedule and five common pay bands. Recognizing the importance of clarity in our efforts to achieve employee "buy-in," IC leadership chose to adopt a single NICCP pay schedule with five common broad pay bands, which we believe is less confusing than the NSPS. From a change management perspective, we expect this will make it easier to create employee understanding and positively influence employee acceptance of the NICCP. Moreover, upon conversion to pay bands, all employees who would have been eligible for a within-grade increase under the General Schedule will receive an increase in base pay equivalent to the pro rata share completed toward the next scheduled within grade increase; this was another step taken to ensure that employee's felt fairly treated as we transition to the new system.

(U) There were some other key lessons learned from NGA's system that are included in the NICCP, such as the use of a standard mathematical formula to calculate the initial performance pay-out recommendation for employees, based on such objective factors as the employee's performance rating and current salary, the ratings distribution in the performance pay pool, and the funds allocated to that pool. This uniform approach is intended to directly address employee concerns about transparency in the pay process, and it alleviates employee concerns that pay decisions are left solely to the discretion of managers and supervisors. The pay pool panel can recommend upward or downward adjustments to the initial recommendation, but only with a documented justification that must be approved by higher authority and provided to the employee. NGA experience demonstrated that this type of process cuts down on inconsistencies between pay panel results (an employee concern), streamlines the pay panel deliberation process (a management concern), and improves employee trust in process results (an employee and management concern). NSPS does not use this type of predictable and transparent decision process in its pay panel deliberations.

Hearing Date: 22 July 2008
Committee: HSGAC
Member: Senator Akaka
Witness: Dr. Sanders
Question: 3

Question 3: (U) A senior management analyst with DIA wrote in a November 12, 2007, commentary for the Federal Times that pay for performance suffers from two false assumptions. The first is that what is best for business must be best for government. The second is that pay for performance will be effective for the entirety of a workforce as diverse as the civil service. What are your views on the analyst's assessment? What steps, if any, are you taking to address the concerns raised in the article?

Answer: (U) We respectfully disagree with this individual's assessment. We believe that the concept of paying for performance is far more consistent with the taxpayer's desire for an effective and efficient government. It is certainly more relevant than the General Schedule, which is designed around paying employees for longevity and not performance or contribution to mission. Pay for performance is also more relevant for a government predominantly populated by a knowledge-based workforce, such as we find in today's IC. The General Schedule was introduced nearly sixty years ago, back when the government was predominantly populated by low level clerks.

(U) We are not seeking to implement a modern, performance-based compensation system in the IC because it is the practice of some businesses. We seek to implement it because the complex national security challenges of the 21st century underscore the need for an IC workforce that is second to none. Outmoded civilian personnel policies and practices, especially those dealing with pay and performance management, are an impediment to excellence. The NICCP will establish a 21st century pay and performance management framework for the U.S. that is more performance-based than the General Schedule. Simultaneously it will transcend for the first time departmental and agency boundaries to better integrate, unify, and ultimately transform the IC.

(U) First, and most importantly, the NICCP is designed to transform the IC. That is the mandate given the DNI, and this effort may be one of the most powerful levers. The NICCP will serve as a unifying force, helping to bind the Community together. The NICCP includes a set of IC-wide (that is, inter-departmental) performance management principles and policies that, among other things, require that IC employees be evaluated on transformational behaviors such as personal leadership and integrity, collaboration, and critical thinking. Likewise, their managers will be assessed on how well they promote and enable these behaviors in their employees. These "performance elements" are at the heart of intelligence reform, and when they are linked to performance and pay, they will help instill a new, more integrated and collaborative IC culture.

(U) Second, the NICCP will, to the extent permitted by law, assure a "level playing field" among the 17 elements that comprise the IC. The importance of this cannot be overstated. Over the years Congress has authorized a variety of exceptions to the General Schedule system for most IC agencies. For example, the Central Intelligence Agency and the Office of the Director of National Intelligence could each establish their own personnel systems under their Title 50 authority. The Department of Defense intelligence agencies have a separate personnel authority under Title 10 (which is separate from NSPS). The *Homeland Security Act of 2002* gave separate personnel authorities to both the Department of Homeland Security and the Federal Bureau of Investigation, the latter for its intelligence analysts. This means that, including the intelligence agencies with employees still covered by title 5, there are no fewer than six separate personnel systems in place for employees funded by the National Intelligence Program. If each IC element were to exercise its own separate personnel authorities without regard to Community interests (which the law would allow), particularly those that may give one a competitive advantage over others, it would negatively impact our efforts to unify and integrate the Community. Indeed, the implementation of other critical strategic human capital initiatives, such as the IC's Civilian Joint Duty Program, would be substantially impaired. We have managed to create an overarching, IC-wide compensation framework that cuts across the lines of six cabinet departments and two independent agencies that will bind the IC closer together.

(U) Finally, the NICCP will enable the IC to better reward excellence and expertise, a critical consideration when you have set about to build a workforce expected to know something about everything. The General Schedule is obsolete in that regard; it is largely tenure-based and treats performance almost as an afterthought. Salary progression under the NICCP will be determined strictly by performance, not time in grade. This approach will improve our ability to "win the war for talent" – a victory that is essential to meeting our Nation's national security challenges.

(U) In designing and implementing the NICCP for the IC, we have not asserted that a system that more closely links pay to performance would be appropriate for the entire civil service, nor are we advocating that a system similar to the NICCP may be appropriate for any other part of the executive branch. What we have found in designing the NICCP, however, is that designing and implementing compensation systems tailored to the specific roles and missions of different parts of the executive branch may be appropriate.

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Committee: HSGAC
Member: Senator Akaka
Witness: Dr. Sanders
Question: 4

Question 4: (U) According to the Report on IC Pay Modernization, the performance management system proposed in ICD 651 is not a one size fits all approach for the IC. This is important for agencies such as the Departments of State and Energy who are still under title 5. How are the State Department and other agencies planning to implement the National Intelligence Civilian Compensation Program (NICCP) under their current legislative authority?

Answer: (U) Those IC elements whose employees are covered by title 5, USC, (with the exception of the IC elements of the Department of Homeland Security) cannot unilaterally implement the NICCP absent a change in the law. However, OPM can authorize a deviation from title 5 that would allow these IC elements to conduct a personnel demonstration project for their employees. We are currently in the preliminary stages of discussions with those IC elements and OPM on the possibility of one or more of them becoming a pay demonstration project based on the policies established under the NICCP.

Question: (U) What specific guidelines are in the NICCP that were based on comments/ concerns raised by employees in the Title 5 agencies?

Answer: (U) As a general matter, the comments and concerns raised by representatives of the title 5 IC elements were similar to those raised by representatives of the rest of the IC, and had to do with issues such as integration of the NICCP with the policies of parent cabinet departments, system conversion, implementation resources, timelines, and training, and outreach to employees. Furthermore, the development of the NICCP was truly a community-wide effort involving hundreds of individuals working in a collaborative manner over the course of two years. As such, it is difficult to identify specific policies in the NICCP which are attributable to the title 5 IC elements.

Question: (U) You testified that focus groups were held to facilitate employee input for the new personnel system. How many State Department employees were involved in focus groups and at what level (how many GS-14s, GS-9s, etc)?

Answer: (U) The focus groups were held at the largest IC elements; State's Office of Intelligence and Research, which is relatively small, was not among them. In addition, focus groups were informal in nature, in part to protect employee privacy. Specific information on employees, such as name, position, General Schedule grade, etc., was not collected.

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Committee: HSGAC
Member: Senator Akaka
Witness: Dr. Sanders
Question: 5

Question 5: (U) A major issue with pay for performance is whether agencies provide sufficient funding to the programs to adequately reward performance. The fact that most government pay for performance programs are budget neutral leads to concerns over and allegations of the use of quotas or a forced distribution of ratings, despite the fact that they are prohibited. Will the pay for performance systems in the IC be budget neutral or is the IC contributing additional funds to pay for performance awards?

Answer: (U) First, it should be noted that inadequately funding the IC Civilian Pay Account would ultimately be self-defeating because it would undermine many of the other critically important goals of the community. For example, it would interfere with our ability to retain our highly qualified and skilled workforce, undermine the recruitment of top talent, and potentially reduce the effectiveness of the departments and agencies with national security missions by creating vacancies in key positions. For these reasons, we plan to adequately fund the pay of our civilian workforce.

(U) ICD 650 establishes the guiding principle that "to the maximum extent practicable, the overall amount allocated for the compensation of IC employees is not less than the relative amount that would otherwise have been allocated for the compensation of such employees if they had remained under the General Schedule."

(U) ICD 653 implements this principle as follows: "To the maximum extent practicable, the overall amount allocated for compensation of IC employees will not be less than the relative amount that would have otherwise been allocated for compensation of such employees if they had remained under the General Schedule or equivalent system. This includes amounts equivalent to the funds that would have been expended for periodic within grade increases and additional quality or equivalent step increases, as well as the estimated average amount that otherwise would have been spent on promotions had such employees remained in their previous pay schedule."

(U) ICD 653 also states that, "The DNI, in consultation with the executive departments and independent agencies with IC employees, will provide the method for calculating the overall amount to be budgeted for the compensation of IC employees funded by the National Intelligence Program. The method shall ensure that, in the aggregate, those IC employees are not disadvantaged in terms of the overall amount of pay available as a result of conversion, while providing flexibility to accommodate changes in the functions of the IC components, changes in the mix of employees performing those functions, and other changed circumstances that might impact pay levels."

(U) Furthermore, the IC human capital board established by ICD 650 will play a critical role in the NICCP, serving to ensure that the NICCP is addressed during the IC's annual budget planning cycle and that adequate funding is programmed in the National Intelligence Program and Military Intelligence Program budgets each year.

(U) Finally the Civilian Pay Account is part of the annual budget submission, which is overseen within the administration by OMB, and evaluated by their models. Congress has the ultimate say over the IC budget, including the Civilian Pay Account, and we will ask Congress to adequately fund this account each year.

Question: (U) How is the IC avoiding the use of or the perception that it is using quotas or a forced distribution of ratings?

Answer: (U) ICD 651 prohibits the use of quotas or forced distribution of ratings. Specifically it states that IC elements "will not impose fixed numeric percentage limitations on the assignment of any rating level or levels." This fact and other aspects of the NICCP that are intended to provide for the fair treatment of employees are being communicated as part of each IC element's roll-out and implementation process.

(U) We have chosen to focus our efforts on providing better and more detailed definitions of the competencies and behaviors that are expected, and providing clear delineation to supervisors and employees of what constitutes Successful and Outstanding performance. An Outstanding rating will require truly an "extraordinary accomplishment" by the employee.

(U) We expect that the leadership in each IC element will have to monitor the performance management results during each cycle to make certain that the evaluations accurately represent the accomplishments of their employees and that no employee group is treated unfairly during the process. Accordingly, we are working closely with each IC element to ensure that the appropriate training is provided and that the DNI has insight into and oversight of the process throughout the year.

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Senate Committee on Governmental Affairs
Hearing Date: July 22, 2008
Subject: A Review of Pay-for-Performance Systems in the Federal Government
Witness: Mr. Bunn
Senator: Senator Akaka
Question: #1

NSPS Attrition Rates

Question. Congress granted the Department of Defense (DoD) the authority to create a new personnel system that was modern and flexible. When DoD first issued regulations implementing the National Security Personnel System (NSPS), many argued that the regulations did not provide enough details. Employees lacked a clear understanding of how the process, particularly pay for performance, would work. At that time, DoD argued that the regulations were issued that way because it needed flexibility to change the system. The latest regulations, however, have a lot more detail. Please describe how you believe the latest NSPS regulations help DoD have a flexible personnel system. According to the 2007 Federal Acquisition Workforce Report, DoD acquisition workforce had an 11 percent attrition rate and 65 percent of employees who changed agencies were from DoD. Have you noticed a higher voluntary attrition rate among NSPS employees who are meeting expectations or better versus employees who have not been converted into NSPS? Have you noticed whether this population is transferring to other agencies or non-NSPS positions in DoD? If so, to what do you attribute this (these) trend(s)?

Answer: Flexibility remains a key statutory requirement for NSPS. In addition, DoD needs a human resources system that is transparent, and can be implemented uniformly and consistently across the Department. Therefore, the proposed revised regulations include more specificity than the original regulations to accomplish these key goals: (1) transparency – to ensure that stakeholders and the public understand how DoD intends to implement title 5, United States Code, section 9902; and (2) the uniform and consistent application of core features of NSPS. The benefits of transparency are evident. Less obvious may be the benefits of a level of uniformity and consistency across NSPS. Maintaining a certain level of uniformity and consistency is necessary to ensure equitable treatment of all covered employees; facilitate movement of employees across components and organizations; and achieve efficiencies in support systems (e.g., automated performance and pay pool management tools and training). Two years of operational experience under NSPS has enabled DoD to capture practices that have proven effective for these purposes. Careful consideration was given to achieving a balance between flexibility and uniformity and consistency to tailor human resource solutions to the specific markets, missions, and organizations to which they apply. The proposed regulations are intended to reinforce this objective by providing a human resources system that promotes the professional growth of all employees and improves management's ability to respond to the Department's national security mission and manage its workforce. Although we have codified key system provisions for the reasons previously stated, discretion is permitted in how they are applied in support of mission: the system, though more structured by the proposed regulations, is flexible.

The data indicate that, for the first two years, there is not any unusual flow out of NSPS. There is good, two-directional flow between NSPS and other DoD personnel systems. The rates below are for permanent employees who left NSPS or related white collar systems since January 2007, when the first NSPS ratings were given.

Loss/Change Rates for Permanent Employees Whose Current Annual Rating Met Expectations or Was Equivalent

Loss/Change Year	Personnel System from Which Departed	Total Losses from DoD	Subsets: Voluntary Losses from DoD / % to Other Agencies	Moved to the Other System (NSPS to non-NSPS or vice versa)
2007	NSPS	6.6%	6.0% / 1.4%	2.0%
	Not NSPS	7.4%	6.5% / 0.7%	2.7%
2008 (partial year)	NSPS	3.3%	2.8% / 0.3%	1.6%
	Not NSPS	3.4%	2.7% / 0.3%	1.9%

CHARRTS No.: SG-09-002
Senate Committee on Governmental Affairs
Hearing Date: July 22, 2008
Subject: A Review of Pay-for-Performance Systems in the Federal Government
Witness: Mr. Bunn
Senator: Senator Akaka
Question: #2

NSPS Control Points

Question. I am interested in how DoD is planning to use control points. It appears that they are used to identify the control point or approximate salary point within a pay band for a given occupation that represents the top of the salary for that occupation even if the maximum rate of the pay band is much higher. Is that correct? If not, please describe the purpose and use of control points. NSPS is a new and complicated system, requiring extensive training for everyone involved. Not counting on-line, computer based programs, or other self-teaching type systems, how many hours of instructor-based hands-on training is DoD providing to each managers and supervisor and each non supervisory employee under the system?

Answer. Use of control points is flexibility under NSPS. When used, they are a tool to help manage compensation and pay progression through the pay band. Their use must be consistent with merit system principles, and control points must be applied consistently to similar positions in the same career group and pay band within a pay pool. An employee's salary may be advanced beyond a control point. That decision is a deliberate one, typically based on benchmarks against duties, responsibilities, and performance. Our proposed regulations require that only the following factors may be considered in developing control points: mission requirements, labor market conditions, and benchmarks against duties, responsibilities, competencies, qualifications, and performance.

DoD is committed to providing comprehensive training on NSPS in a variety of formats. The Program Executive Officer (PEO) instructor-based, hands-on training core curriculum covers the NSPS human resources (HR) elements and the NSPS performance management system. Employees receive 4 hours of instruction on the HR elements and 8 hours of instruction on the performance management system. Supervisors and managers receive a total of 20 hours of classroom instruction: 4 hours covering the HR elements and 16 on the performance management system. In addition, supervisors and managers who serve on the pay pool panel receive 20 hours of instructor-led pay pool management training. Two companion courses that complement the above hands-on training are web-based: *NSPS 101* covers the NSPS core elements and serves as a recommended prerequisite for the classroom sessions; and *iSuccess* guides employees through the writing process of developing effective job objectives and writing self-assessments. These course offerings are supplemented by a variety of informational materials and learning activities developed by the PEO and the DoD component activities to support the learning needs of DoD employees and gain their awareness and understanding of NSPS.

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Senate Committee on Governmental Affairs
Hearing Date: July 22, 2008
Subject: A Review of Pay-for-Performance Systems in the Federal Government
Witness: Mr. Bunn
Senator: Senator Akaka
Question: #3

SEC Discrimination Case

Question. Ms. Colleen Kelley, President of the National Treasury Employees Union testified that in September 2007, an arbitrator ruled that the pay for performance system at the Securities and Exchange Commission (SEC) discriminated against African American employees. What steps is DoD taking to prevent this outcome from happening under NSPS?

Answer. The Department is committed to fair and equitable performance management decisions without regard to an employee's protected status. NSPS does not alter merit system principles, anti-discrimination laws, or the law concerning prohibited personnel practices. We established numerous safeguards in NSPS to ensure we carry out this commitment.

- Standard rating criteria guide pay pool panels and supervisors who are involved in ratings, and inform employees about standards for meeting and exceeding expectations. Criteria are geared to the work (technical/support, supervisory/managerial, professional/analytic) at the different pay band levels. This approach helps rating officials and panels achieve consistency among similar jobs in their pay pool.
- There is extensive training for employees, supervisors, and other officials: introductory classroom and web-based training, an NSPS performance management course, supplemental courses on writing objectives and assessments, component "soft skills" training strengthen skills in areas like supervisor-employee communication and feedback; and pay pool courses for panel members and for employees and supervisors. DoD components also include NSPS performance management in their ongoing training for new supervisors and employees. NSPS training focuses on evaluating employees based only on their performance.
- Pay pool managers publish information about the panel membership, the covered workforce, payout funding, and general operational processes for employees; and either they or the performance review authority (PRA) are expected to share summary results with the affected workforce.
- Employees who disagree with their final rating can request reconsideration by the pay pool manager, and, if still not satisfied, the PRA. Employees also may file a discrimination complaint if they believe they are victims of illegal discrimination.
- The Department performs a general analysis of annual rating and payout results to see if there are indications of any systemic differences that warrant further reviews.
- DoD components and their subordinate organizations conduct assessments of their annual rating results and operational practices down to the pay pool level where the performance decisions are made.

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Hearing Date: July 22, 2008
Subject: A Review of Pay-for-Performance Systems in the Federal Government
Witness: Mr. Bunn
Senator: Senator Akaka
Question: #4

GS and NSPS Pay Increases

Question. As you know, salaries under the General Schedule (GS) are increased by 100 percent of the across the board pay increase each year. The law governing NSPS requires that federal employees who at least meet expectations receive at least 60 percent of the across the board pay increase. Do the new NSPS regulations provide for the entry rate and the maximum rate of each pay band to be raised by 100 percent of the GS and locality raises to ensure that NSPS employees do not fall behind their GS counterparts?

Answer. The proposed NSPS regulations require the maximum rate of the pay band to be raised by 100 percent of the NSPS general salary increase. There is no requirement to raise the minimum of the band. However, the proposed regulation provides that if the adjustment of the minimum rate of the pay band causes the base salary of an employee with a rating of record above unacceptable to fall below the minimum rate, the employee's salary will be set at the pay band minimum rate. Consistent with title 5, United States Code (U.S.C.), section 9902(e)(7), the proposed regulations require that NSPS employees who have a current rating above unacceptable will receive a base salary increase of no less than 60 percent of the general salary increase and a local market supplement increase equal to GS locality-based payments under title 5, U.S.C., sections 5304 and 5304a. Section 9902(e)(7) of title 5 and the proposed regulations also require that the remaining portion of the GS salary increase will be included in pay pool funding for the purpose of increasing rates of pay based on employee performance and contributions during the rating cycle. Under the current and proposed regulations, employees with a final rating of Valued Performer (Level 3) or higher for the current appraisal period are eligible to receive a performance-based payout for that cycle.

NSPS is a pay for performance system, and progression through the pay bands is based on duties, responsibilities, and performance; whereas, progression through the grades under GS is based primarily on longevity. Notwithstanding, there are links between compensation under NSPS and GS. By law, the overall amount allocated for compensation of civilian employees in NSPS can be no less than if the employees had remained covered by GS, and that amount is available only for such compensation.

CHARRTS No.: SG-09-005
Senate Committee on Governmental Affairs
Hearing Date: July 22, 2008
Subject: A Review of Pay-for-Performance Systems in the Federal Government
Witness: Mr. Bunn
Senator: Senator Akaka
Question: #5

Intra-Payband Movement

Question. In the GS system, when a position becomes vacant, it is generally posted for employees in an open and transparent way. The applications are generally reviewed and candidates are ranked by an independent panel to assure merit principles are protected. Moreover, a supervisor is limited to selecting from among highly ranked candidates in order to prevent favoritism and politicization, among other things. It is my understanding that under NSPS the pay band consists of many occupations covering many grades in each pay band and that the regulations no longer require the traditional and more transparent process for moving employees from one position to another as long as the movement occurs within the confines of a band. As such, many merit promotions are now called reassignments with the manager having full authority to select and assign anyone of their own choosing to another position with new duties with additional pay without a public posting process, without an public application process, and without a formal process for employees who would have liked to apply and be considered. Is this description correct? If so, how is DoD ensuring that the reassignment process is transparent and based on merit?

Answer. NSPS allows the Department to establish a job classification system and a compensation system that are different from the GS classification and pay systems. As with other alternative personnel systems, NSPS broad pay bands replace the 15 grade levels comprising the GS. A pay band is a work level. Work that would be classified into several GS grades under the GS classification system may be grouped into a single pay band under NSPS, based on application of the NSPS classification structure. As such, the pay bands under NSPS result in fewer levels of work than the 15 levels of work under the GS system.

Under NSPS, a reassignment occurs when an employee moves from one position to a different position in the same or in a comparable pay band. Under the GS, a reassignment occurs when an employee moves from one position to another position at the same grade level. In both GS and NSPS, employees may be reassigned competitively (i.e., following an announcement and application process) or noncompetitively (i.e., without the vacant position being advertised). The proposed NSPS regulation provides authority for a limited increase in salary upon reassignment. This flexibility may be used to encourage employees to accept assignments in a different geographic area, to take on new or additional responsibility, and/or to fill hard-to-fill positions. The increase for a reassignment under NSPS (no more than 5 percent) is less than the increase in pay for a promotion under either the GS or NSPS (generally between 6 and 20 percent). Limiting the potential pay increase for reassignments preserves the concept of having performance as the primary means of progression within a pay band.

By law, personnel actions under NSPS must adhere to merit system principles and be free from favoritism or personal bias and not involve a prohibited personnel practice. Additionally, by law NSPS employees are assured the rights and remedies available to any employee or applicant for employment in the Federal Service.

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Senate Committee on Governmental Affairs
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Subject: A Review of Pay-for-Performance Systems in the Federal Government
Witness: Mr. Bunn
Senator: Senator Akaka
Question: #6

January 2008 NSPS Payout Statistics

Question. To help evaluate the NSPS pay for performance system, please provide the following information on the January 2008 payout for NSPS:A list of each separate pay pool, identified by service, component, activity, and geographic location.For each pay pool, the following information:a. Number of employees to be paid from pay pool.b. Funding of pay pool as a percentage of aggregate salaries subject to that pay pool.c. Age distribution of employees subject to each pay pool.d. Gender distribution of employees subject to each pay pool.e. Race distribution of employees subject to each pay pool.f. Salary range of employees subject to each pay pool.g. Occupations included in each band subject to the pay pool.h. Number of 1s, 2s, 3s, 4s, and 5s awarded in each pay pool.i. Value of shares awarded in each pay pool.j. Number of employees awarded a 3 who received one share, for each pay pool, by race, age, and gender.k. Number of employees awarded a 3 who received two shares, for each pay pool, by race, age, and gender.l. Number of employees awarded a 4 who received three shares, for each pay pool, by race, age, and gender.m. Number of employees awarded a 4 who received four shares, for each pay pool, by race, age, and gender.n. Number of employees awarded a 5 who received five shares, for each pay pool, by race, age, and gender.o. Number of employees awarded a 5 who received six shares, for each pay pool, by race, age, and gender.p. By pay pool, the percentage of money given as salary increases and the percentage given as cash bonuses.

Answer. We appreciate your interest in this detailed information. There are significant personal privacy concerns if we were to provide the data as requested. The Privacy Act, title 5, United States Code, section 552a, precludes our releasing personal information from agency records except as provided for in law; and, performance appraisals are specifically exempt from disclosure in accordance with title 5, Code of Federal Regulations, section 293.311. Even performance elements and standards (or work expectations) may be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal. Providing the detailed employee data you ask for could result in identification of individual employees with their performance rating, even without names or identification numbers. This would violate the individual's personal privacy interest in their performance appraisal.

As an alternative, we are providing you the data we produced in response to a Freedom of Information Act request concerning employees evaluated during the cycle that culminated in January 2008 (compact disc attached).

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Senate Committee on Governmental Affairs
Hearing Date: July 22, 2008
Subject: A Review of Pay-for-Performance Systems in the Federal Government
Witness: Mr. Bunn
Senator: Senator Akaka
Question: #7

Transparency

Question. One of the arguments against pay for performance systems is that they are not transparent. According to comments from the International Federation of Professional and Technical Engineers on the recently proposed regulations for NSPS, "employees may not know what their supervisors recommended for them, but will only be told their evaluations and shares after the ratings are either approved or changed by the Pay Pool Manager."a. Please explain how DoD ensures that the performance evaluation and pay process is transparent for the employees being reviewed.b. Please detail when employees are notified of their performance rating from their manager. Are they informed before the ratings are reviewed by the pay pool manager? If not, why?c. If an employee's rating or payout is lowered by the pay pool manager from what was recommended by the manager, is the employee given a detailed justification for the change? If not, please explain why.d. How are the employee's performance expectations modified to reflect what the employee is expected to do in order to get a more desirable rating from the pay pool manager?e. For employees who receive the same performance rating, but receive different amounts of performance pay, is the justification clearly explained to the employees? If not, why?

Answer a.: The Department designed appropriate and effective safeguards in the NSPS to ensure that the performance management process is fair, equitable, and transparent. NSPS uses a pay pool concept to assign ratings and to manage, control, and distribute performance-based pay. The pay pool process is an integral and integrated part of the performance management cycle and ensures that performance decisions are made in a careful, deliberative environment that uses a consistent approach to decisions regarding performance ratings and shares that drive employee performance payouts. The following overview of the performance evaluation and pay process addresses the transparency of the system.

At the end of the appraisal cycle, employees are given the opportunity to provide a self-assessment of their accomplishment for the year. While the self-assessment is not required, employees are encouraged to provide the self-assessment so that their supervisor and the pay pool panel have the benefit of the employee's view on his or her accomplishments. Supervisors complete a recommended rating, recommended share assignment, and recommended distribution of performance payout (between bonus and salary increase) for each employee under their cognizance. The recommended rating includes a narrative assessment of performance using the employee's input (if the employee chooses to provide a self-assessment), the rating official's observation of employee performance, and input from other appropriate sources (e.g., customer feedback). The rating official's recommended rating, share assignment, and distribution of performance payout are reviewed by a higher level official and by a panel of management officials (the pay pool panel) to ensure consistency and fairness across the pay pool. Larger pay pools may also have recommended ratings reviewed by sub-pay pools. In instances where the panel does not agree with the rating official's recommendation, the rating official is given an opportunity to present additional information that the rating official believes clarifies or justifies his or her recommendation(s). In the end, the pay pool manager approves the final rating. In all cases, the rating is based on the employee's performance against standard benchmark criteria.

The pay pool manager is the approval authority for all ratings and performance-based payout determinations for employees within the pay pool. The performance review authority (PRA) is a higher management official or group of officials that provides oversight of several pay pools and addresses the consistency of performance management policies within a component, major command, field activity, or other organization. If the employee is dissatisfied with the final rating, he or she has the right to challenge the rating under the administrative reconsideration process. The PRA is the final decision maker in the process if an employee requests reconsideration of his or her appraisal. For employees represented by a union, they may use the negotiated grievance procedure. The equal employment opportunity complaints process is also available to employees, if they believe they are the victims of illegal discrimination.

There are a number of requirements in NSPS that help preserve transparency outside of the pay pool deliberation process. NSPS requires notice to employees of pay pool information as to the identity of and the roles and responsibilities of the pay pool manager, pay pool panel members, and PRA, the composition of the pay pool to which an employee belongs, factors that may be considered in making specific share assignments, allocations between base salary and bonus, and general pay pool policies. Additionally, standard (NSPS-wide) performance indicators and benchmarks are available to all employees, supervisors, and management officials as well as the number of rating levels, rounding rules for raw performance scores, share value and payout formulas, minimum criteria for eligibility for a performance payout, and procedures for performance payouts for specially situated employees. The performance indicators and benchmarks are used to gauge employee performance and contributions throughout the appraisal cycle, and are the basis for the pay pool's assessment of consistency of ratings across the pay pool. Additionally, employees are provided eight hours of training on the NSPS performance management system so that they may further understand how performance is evaluated under NSPS.

NSPS regulations require that decisions made throughout the performance management and pay pool processes are consistent with merit system principles and free from personal bias or favoritism and that they not involve a prohibited personnel practice. The forced distribution of ratings (i.e., the setting of pre-established limits, targets, or goals for the percentage or number of ratings that may be assigned at any level) is strictly forbidden under NSPS.

The policies summarized above, the multi-level reviews in the rating and pay pool processes, and the employee's right to challenge his or her final rating ensure fair ratings as well as fair compensation and rewards under NSPS.

Answer b.: After the completion of the pay pool process described in answer a., above, the supervisors inform employees of their final rating, performance shares, and performance payout. The rating official's and higher level reviewer's recommendations to the panel are pre-decisional, not final, and, therefore, part of the internal management deliberation process described above.

Answer c.: Ratings reviewed by pay pool managers are recommended ratings of record as opposed to actual ratings of record. There is no requirement under NSPS to provide the employee a detailed justification for changes to recommended ratings and payouts that are made during the pay pool process. As noted in answer a., above, prior to the pay pool panel making a change to a recommended rating, the supervisor must be given the opportunity to present additional information to the panel to justify the recommendation. The recommendations to the panel from the rating official and higher level reviewer are pre-decisional and part of the internal management deliberative process.

Answer d.: While supervisors have final authority over employee expectations, employees are strongly encouraged to participate in the establishment of and modifications to their job objectives and performance expectations for the appraisal cycle. Communication between employees and their supervisors, and supervisors and the pay pool panel, the standard performance benchmarks, and the pay pool process are all designed to create a common understanding of expectations at each performance level.

Answer e.: Individual performance payouts are a function of several factors: pay pool funding, the total number of shares awarded within the pay pool for that appraisal period, the final rating earned by the employee, the number of shares assigned to the individual employee, and the employee's base salary on the last day of the appraisal period. The mechanics of pay pool payouts are available in the NSPS regulations and training materials. Pay pool members are also informed before the end of the appraisal period of general pay pool policies and factors that may be considered in making share assignments and allocations between base salary and bonus. Supervisors are responsible for explaining the rating and performance payout decisions made for each employee under their supervision.

Post-Hearing Questions and Answers for the Record Submitted to J. Christopher Mihm, Managing Director of Strategic Issues, U.S. Government Accountability Office

GAO
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United States Government Accountability Office
Washington, DC 20548

September 16, 2008

The Honorable Daniel K. Akaka
Chairman
Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate

Subject: *Post-Hearing Questions Related to July 22, 2008, Hearing on Pay for Performance*

Dear Mr. Chairman:

On July 22, 2008, I testified before your Subcommittee at a hearing entitled, "Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government."[1] This letter responds to your request that I provide answers to post-hearing questions. The questions, along with my responses, follow.

1. **One of the main concerns I hear from employees about pay for performance is that their agency uses quotas or a forced distribution of ratings in order to save money. As you know, the use of quotas is prohibited for most agencies.**

    a. **Do comments suggesting that most employees or a majority of employees should receive a rating of "3" (or place in the middle of the performance rating scale) suggest the use of a quota? Why or why not?**
    b. **If performance rankings consistently show that a majority of employees rank in the middle of the performance rating scale does it suggest the use of quotas or forced distribution of ratings?**

In developing a robust and credible performance management system, agencies should define performance associated with each rating level. While officials should not predetermine rating distributions in their guidance to rating officials, it is appropriate for agencies to define and communicate that a "fully successful" (or level

[1]GAO, *Human Capital: Selected Agencies Have Implemented Key Features of Their Senior Executive Performance-Based Pay Systems, but Refinements Are Needed*, GAO-08-1019T (Washington, D.C.: July 22, 2008).

3) performance rating is a good rating and the expectation that employees who are strong performers and make contributions to the agency's mission and organizational goals would achieve this rating. To the extent that the agency's rating distribution results in the majority of individuals receiving a fully successful rating, it does not necessarily suggest the use of a forced distribution or quotas but rather could signal that the majority of the agency's employees are performing at the expected level.

c. **How would you rate the effectiveness of the guidance and training provided by the Office of Personnel Management (OPM) on how to make meaningful distinctions in performance and not use quotas or a forced distribution?**

At your request and that of Senators Voinovich and Dorgan, we are reviewing OPM's and the Office of Management and Budget's (OMB) oversight of the Senior Executive Service (SES) performance-based pay system and certification process. To help address senior executives' perceptions that agencies are using quotas or forced distribution to determine ratings, OPM revised its certification guidance to agencies for calendar year 2007 by requiring that the features and results of agency SES performance management systems be communicated to senior executives and that appropriate training be provided to those responsible for operating the system. As part of their certification submissions for 2007, agency officials were to provide narrative statements describing the relevant briefings, other communications, and training provided to executives and other individuals involved in the appraisal process both in preparation for and after the appraisal cycle.

OPM stated in this guidance that its regulations prohibit forced distributions and agencies must avoid any policies or practices that would lead to predetermined ratings. In addition, OPM officials said they have used their Executive Resources Forums to emphasize to agency officials the need for additional communication and training on how their systems work. While OPM has found that agencies have generally met the certification requirement for communication and training in 2007, OPM stated that this requirement will continue to play a significant role in future certification determinations.

d. **Attached is a slide from an April 2008 presentation by the Transportation Security Administration (TSA) to Committee staff showing its revised scoring system and stating that TSA rates and "ranks employees based on thresholds established by the TSA Administrator." What is your understanding as to the purpose of the rate and rating thresholds? What relation do the thresholds have on employee pay?**

We have not done any work analyzing TSA's pay-for-performance system. Through our work reviewing other agencies' pay-for-performance systems, we found that a few agencies, such as the National Credit Union Administration and Farm Credit Administration, allowed differing weights to be assigned to specific competencies when determining overall summary performance ratings for individuals.[2] Using

[2]GAO, *Financial Regulators: Agencies Have Implemented Key Performance Management Practices, but Opportunities for Improvement Exist*, GAO-07-678 (Washington, D.C.: June 18, 2007).

weights enables the organization to place more emphasis on selected competencies that it deems to be more important in assessing the overall performance of individuals in particular positions. Regarding the TSA slide provided, it is unclear how TSA is using the weights to rate employees, as well as the overall purpose of the rank and rating thresholds and the effect on employee pay.

e. In response to my question on quotas at the hearing, Mr. Spires of the Internal Revenue Service (IRS) said, "at the IRS, we have some guidelines...because we don't want to have grade inflation in the sense that you get a lot of people at the 'outstanding' level unless they deserve to be at that level. ... So we issue some guidance ...it is not a quota system—but it is some guidance around what we would expect the distribution to look like."

i. Has GAO reviewed the IRS pay for performance system? If so, what have you found?

We reviewed aspects of IRS's and other agencies' performance management systems for senior executives in 2002, but have not done any additional work. At that time, IRS recognized that it was still working at implementing an effective performance management system that makes meaningful distinctions in senior executive performance.[3] We found that for fiscal year 2001, IRS had assigned senior executives to one of three bonus levels depending on the executives' scope of their work and its impact on IRS's overall mission and goals and established performance bonus ranges by performance rating for each of the three levels.

ii. Have you reviewed the aforementioned IRS guidance? Do you believe it suggests the use of quotas?

When we reviewed IRS's performance management system for senior executives in 2002, we did not find any guidance, such as the guidance referenced above, on the performance ratings distribution. We have not reviewed the current IRS guidance. By itself, broad guidance stating that not all employees should receive the top rating does not necessarily suggest quotas are being used; rather, it depends on how the guidance is communicated and shared with rating officials and other employees. As mentioned above, defining and communicating performance at all rating levels and communicating that individuals who receive a fully successful performance rating are strong performers who make contributions to the agency's mission and organizational goals is acceptable in order to help rating officials make meaningful distinctions in performance.

[3]GAO, *Results-Oriented Cultures: Using Balanced Expectations to Manage Senior Executive Performance*, GAO-02-966 (Washington, D.C.: Sept. 27, 2002).

Post-Hearing Questions and Answers for the Record
Submitted to Carol Bonosaro, President,
Senior Executives Association

Senior Executives Association

the voice of career federal executives since 1980

820 First Street N.E., Suite 700 • Washington, D.C. 20002 • (202) 927-7000 • Fax (202) 927-5192 • www.seniorexecs.org

September 9, 2008

The Honorable Daniel Akaka
Chairman
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
SH-141 Hart Senate Office Building
Washington, DC 20510

Dear Senator Akaka:

On behalf of the Senior Executives Association I would like to thank you again for exploring the issues surrounding the SES pay and performance management system. The following responses are submitted to address your follow-up questions to my testimony at the hearing.

Question #1: When the pay for performance systems were developed, management and employee groups identified training as critical to the development and implementation of such systems. Have you found in your evaluation of these pay systems that there has been sufficient training?

Response:

SEA does not have sufficient data on this question to satisfactorily address the issue of training. According to the 2008 OPM SES survey, however, there appears to be significant inconsistency in implementation among the agencies. Sixty-three percent of the Senior Executives responded that they received some training on their agency's performance management system. Thus, 37% answered that they did not receive any training.

When the pay system was first implemented, there was a very limited period of time between issuance of the OPM regulations and the date agencies were required to submit their applications for certification of their SES pay and performance management systems. In addition, there was a fair amount of uncertainty on the part of agencies regarding what was required by OPM in order to receive certification. Because certification came late and agencies were moving quickly to implement the system, this leads me to believe that training essentially fell by the wayside and was not adequately undertaken at these agencies.

OPM, however, is the best source for this information, including requirements regarding the degree and content of training and whether OPM tracks implementation of the requirements.

Question #2: I am very concerned about the upcoming administration transition. In less than six months, a new administration will take office with their own priorities and focus on pay issues. What would your top three recommendations be for the next administration on pay issues?

Response:

The following policy recommendations speak specifically to issues faced by Senior Executives in regard to the pay for performance system.

After three full pay cycles of the pay for performance system, there are significant issues that must be addressed. What is clear after three cycles is that a system that was meant to relieve pay compression, to be transparent and flexible, and to reward performance, has instead become a disincentive for many of the best employees who might otherwise desire to serve in the highest ranks of the career civil service. In order to address these issues, SEA recommends three policy changes to the current pay system.

First, SEA recommends that there be a ***Mandatory Minimum Annual Pay Adjustment, Including Locality Pay, for Senior Executives Rated at the Fully Successful or Higher Level.*** This adjustment would be a formula-based percentage of salary equal to the increase in the Executive Schedule plus any increase in locality pay in the region the Senior Executive is stationed. Such a requirement should also ensure that this adjustment is applied when providing lump-sum payment for accumulated and accrued leave on separation. Given the strong emphasis by OPM and OMB on providing performance-based measures and on limiting outstanding ratings, a Fully Successful rating (as former OPM Director Linda Springer has pointed out) is – and should be seen as – an indication of having fulfilled one's performance requirements very well.

Second, SEA recommends the ***Inclusion of Executive Performance Awards in High-3 Average Salary Calculations for Retirement.*** Performance awards and retention allowances are consistently provided to high performers, accounting for a significant amount of a Senior Executive's salary over the course of his or her career. By excluding these awards and allowances from credit for retirement annuities, good Senior Executives are deprived of a retirement package that reflects their true earned compensation.

Finally, SEA recommends ***Assured Funding of SES Pay*** to ensure that Senior Executives' pay is funded in such a manner to ensure reasonable annual salary adjustments occur. Specifically, the average percentage adjustment received by members of the Senior Executive Service should not be less than the average salary adjustment received by General Schedule employees. At present, agencies have complete flexibility with regard to pay adjustments; it is, indeed, possible to withhold any pay adjustment even if an executive has been rated Outstanding, and it is possible to permit budgetary decisions which allow for no SES pay adjustments. This recommendation would limit such flexibility and assure Senior Executives that pay is, indeed, part of the "pay for performance" system.

The transition is a good time for a new administration to implement these changes to show support for Senior Executives, who are especially important to supporting a new administration in ensuring a smooth transition and in meeting its goals. With the potential loss of a substantial number of Senior Executives through retirement over the next several years, it is equally important that steps are taken immediately to restore the balance of risk and reward to the SES. Doing so will ensure that the pay system is attractive to qualified GS-14s and 15s, thus that the SES attracts top candidates to replace those retiring, as well as retains accomplished and experienced current Senior Executives.

Post Hearting Questions for the Record
Submitted to John Gage, National President
American Federation of Government Employees
From Senator Daniel K. Akaka

Improving Performance:
A Review of Pay-for-Performance Systems in the Federal Government"
July 22, 2008

1. When pay for performance systems were developed at federal agencies, management and employee groups identified training as critical to the development and implementation of such systems. Have you found in your evaluation of these pay systems that there has been sufficient training?

Answer: Our members have very rarely participated in pay for performance systems outside of the General Schedule, which includes a strong performance component. Of the new pay for performance/pay banding systems that come in the form of demonstration project ideas, AFGE members have generally voted not to trade in the GS for the subjectivity of supervisors. In the one pay for performance demo that AFGE has participated in at Ft. Monmouth, NJ that was somewhat successful, members report that that there was sufficient training. However, they **do not** attribute the success to training. They attribute it to the fact that the system received *ample funding* so that everyone who was judged to be successful earned at least as much as they would have under the GS system, that the system was subject to the checks and balances of a *collective bargaining agreement* and an active union local able to enforce the terms of the contract, and the fact that the workers involved were almost all highly educated, highly trained scientists and engineers whose work was well-understood and appreciated by management.

2. Why do you think pay for performance systems have not worked in federal agencies?

Answer: The main reason pay for performance systems have not worked in federal agencies is that the mission of federal agencies and the specific jobs in question are not appropriate to "pay for performance." There is no objective criterion like profitability to decide whether the financial incentives have "worked." In addition, federal work is so often collaborative that it is inappropriate to have an individualized pay system. The early data coming out of NSPS also shows patterns of racial and gender discrimination in the distribution of performance pay awards. Finally, and most important, is the fact that the only pay for performance systems that "work" are those that increase overall funding so that the new distribution of salary adjustment dollars doesn't rob one worker to improve pay for another.

3. One of the arguments made in support of pay for performance systems is that the GS does not reward performance. Furthermore, there is an assumption that performance is the only criterion that should be used to increase the pay of employees. How would you respond to this argument?

Answer: Just because people make the argument that the General Schedule doesn't reward performance doesn't make it true. The GS has numerous performance-based components, and those who deny this are either being dishonest or showing ignorance of federal pay systems. Federal employees in the GS system become eligible for periodic "step increases" that are entirely a function of performance. When people argue that step increases are awarded for the "passage of time," they are merely displaying their ignorance. Of course, time must pass between step increases. A good employee is not going to receive a step increase every day, and neither would s/he receive a raise in a pay for performance system every day. Time passes between moments of eligibility. GS employees can receive "quality step increases" in addition to those that they may receive during their regularly scheduled times of review for eligibility. If anyone believes that step increases are "automatic" and given routinely without regard to the performance of the worker, they are saying that federal managers are not doing the jobs taxpayers pay them for. That is a management problem, not a pay system problem.

4. Attached is a slide from an April 2008 presentation by the Transportation Security Administration (TSA) to Committee staff showing its revised scoring system and stating that TSA rates and "ranks employees based on thresholds established by the TSA Administrator." What is your understanding as to the purpose of the rate and rating thresholds? What relation do the thresholds have on employee pay?

Although the American Federation of Government Employees (AFGE) has represented thousands of Transportation Security Officers (TSOs) at our nation's airports since the creation of TSA in 2001, TSA management has refused to recognize AFGE as the exclusive representative of TSOs, and has refused to bargain collectively with our union. As a result, AFGE is denied information federal agencies routinely provide federal employee unions, such as the composition of rate and rating thresholds. TSA has never discussed this methodology with the union. However, based on our TSO member reports, I can give you information about the appearances and effects of the rate and rating thresholds.

The 2008 Revised Scoring chart appears to be a breakdown of the various components for the Performance Accountability and Standards Systems (PASS) for TSOs, Lead TSOs, Supervisory TSOs and Screening Managers. Apparently, the thresholds and ratings represent the importance of the various components to the successful execution of job duties. In practice, our TSO members report that the various components of the PASS evaluation often have a disproportionate negative impact on their final PASS rating and devalue the importance of other components. For example, a portion of the PASS rating is based on quarterly evaluations called "competencies". The TSA PASS 2007 User's Guidance and Metrics for General Competencies defines competencies as measures of "an employee's performance on the competencies most critical to the employee's job". The competencies are based on "behaviorally anchored performance standards" in such areas as customer service, interpersonal skills, decisiveness, and flexibility and are subjectively determined by managers. Contrary to the assertions of proponents that pay-for-performance systems provide incentives for workers to constantly improve their work performance in pursuit of increased compensation, the PASS General Competencies quarterly evaluations may result in a final rating of "Does Not Meet Standards" for the entire year (and therefore, no PASS bonus) if the TSO receives a "Does Not Meet Standards" in a manager's evaluation of as few as one of the several competencies in a single quarter. In other words, because of the punitive use of the General Competencies evaluation, TSOs face a disincentive to improve their work performance over the course of the year because there is nothing they can do to improve their final PASS rating.

It appears as though rate and ratings thresholds are a means to categorize and pay TSOs based on management evaluation of the performance of their duties.

5. At the hearing, TSA Deputy Administrator Rossides testified that TSA does not use quotas. Do you have any evidence to the contrary?

The clearest evidence AFGE has of TSA's use of quotas is their administration of the rollout of the last PASS raises and bonuses in December 2007. Although TSA added one more rating level, the agency reduced the amount of raises and bonuses for each category. As a result, TSOs received a smaller pay raise in 2008 even though they received the same performance rating as 2006. Coupled with TSA's attempt to exempt TSOs from the government-wide pay increase in annual appropriations legislation, AFGE strongly believes that because there is no dedicated funding stream for PASS, TSA is attempting to cut corners to stretch a small amount of money a long way.

In addition, there is very little difference in compensation between the new categories created by TSA in 2007. According to TSA's May 2008 report to Congress on its implementation of PASS, 46% of PASS-covered non-managers (overwhelmingly comprised of TSOs) met the "Exceeds Standards" PASS rating. However, there is very little additional monetary award for reaching this high level of skill: Both TSOs who "Exceeds Standards" and TSOs who rate "Achieves Standards at Achieves Plus Payout" received a $1000 bonus. TSOs who met "Exceeds Standards" received an additional 2% increase—only slightly higher than the additional 1% increase received by TSOs at the "Achieves Standards at Achieves Plus Payout" level.

Responses of Colleen Kelley, National President, National Treasury Employees Union

Questions from Chairman Daniel K. Akaka

"Improving Performance: A Review of Pay-for-Performance Systems in the Federal Government," July 22, 2008 hearing

1. **When pay for performance systems were developed at federal agencies, management and employee groups identified training as critical to the development and implementation of such systems. Have you found in your evaluation of these pay systems that there has been sufficient training?**

In general, there has not been sufficient training. A key issue for employees throughout the government is the necessity of receiving adequate training to carry out their position responsibilities, and to know what is expected of them within a pay-for-performance (PFP) system. After all, how can we expect stellar performance when employees are not told about the parameters of their work responsibilities? Or what they need to do to receive performance compensation?

In NTEU's experience, the implementation of new pay-for-performance systems have been accompanied by some training for both managers and front-line employees on the mechanics of the new system in agencies such as FDIC and SEC which have collective bargaining rights. However, there have frequently been failures to provide more comprehensive training to managers on how to effectively manage their subordinate employees, including how to clearly identify performance expectations, provide meaningful feedback on a regular basis, and identify superior accomplishments and areas for improvement. These failures, together with inherent defects in the design of some pay-for-performance systems, have been the most significant factors in the overall failure of these PFP systems.

In agencies without collective bargaining, it is difficult for us to ascertain what level of training, if any, has taken place within the pay-for-performance alternative systems. We can only look at the results. At agencies such as the Transportation Security Agency (TSA), which has an alternative pay system called the Performance Accountability and Standards System (PASS), training is minimal even for basic job responsibilities. The agency has the highest turnover rate in government and a majority of TSOs have not been provided with the information they need to get some amount of a raise. While employees are not privy to the training of managers within PASS, it appears that little or none has occurred or employees would know what is expected of them.

While the Department of Homeland Security (DHS) has not been provided the funds for its PFP system by Congress, it has an abysmal record on training in general. The Customs and

Border Protection Officer (CBPO) position was created by combining personnel from three different agencies – the US Customs Service, the Immigration and Naturalization Service and the Animal, Plant and Health Inspection Service (APHIS). Inadequate mentoring and on-the-job training is insufficient for CBPOs to proficiently perform essentially three very different jobs in clearing people into our ports of entry. NTEU believes going to a pay-for-performance system would only serve to make matters worse at DHS. If training is insufficient for basic jobs responsibilities, it would be unlikely to be offered in a pay-for-performance system.

2. **Why do you think pay for performance systems have not worked in federal agencies?**

As I stated in my testimony, alternative pay systems have produced a litany of failed experiments, widespread employee dissatisfaction, inequitable distribution of resources, abuse in rating systems, and rampant employee confusion leading to low morale. I don't know of one pay-for-performance system that currently gets good reviews from employees working under it. The goals of recruiting and retaining high quality employees and better accomplishing the agency mission are simply not being met by these pay systems.

A key reason is the subjectivity of these systems and limited agency resources. When someone wins, another loses because agencies receive fixed budgets from Congress. Whether intentional or not, pay-for-performance systems result in monetary quotas. In the absence of collective bargaining, pay increases lead to cronyism and favoritism, not to teamwork, which is the way problems really get solved. My comments on the TSA fiasco are a prime example of this. Do we really want TSOs pitted against one another to safeguard our security? No, we want them working together as a team. The same holds true in many areas, including science and our financial regulatory institutions.

Other reasons for PFP failures include:

- Lack of adequate performance management systems, which clearly identify the expectations and criteria for achieving various levels of performance for each position or job family;
- Failure (in many cases) to link pay determinations directly to employee performance ratings;
- Failure to hire/promote/select supervisors based on their competencies and abilities in people management – too often, employees are promoted to management as a reward for technical skills, for their willingness to buy into the current management culture, or simply as a retention tool;
- Inadequate training for supervisors on management and performance management skills

- Lack of accountability for managers to apply performance management and pay-for-performance systems in a fair and transparent manner;
- Failure of agencies to make effective performance management an organizational priority, by failing to give the supervisors the time and resources they need to effectively manage performance.

An example of the worst of both worlds would be the Office of Comptroller of the Currency (OCC). Unlike all other financial regulatory agencies where the employees are represented by NTEU, OCC management refuses to bargain over wages and benefits. Yet OCC is exempt from the GS system and imposes a pay system that employees point to as a failed example of a pay-for-performance system. Transparency is lacking, employees can understand no justification of ratings and even those determined to be fully successful at their duties see only meager pay increases. Congress would be wise to pass legislation mandating collective bargaining at OCC in order to allow a role for employees in correcting these problems.

3. **One of the arguments made in support of pay for performance systems is that the General Schedule does not reward performance. Furthermore, there is an assumption that performance is the only criteria that should be used to increase the pay of employees. How would you respond to this argument?**

The notion that the GS system does not reward performance is incorrect. The following are examples of the General Schedule's features that reward performance:

- Employees must perform at an "acceptable level of competence" to achieve a within-grade pay increase – those not performing acceptably do not receive within-grade pay increases;
- Employees must be performing at least acceptably to receive a "career ladder" promotion to a higher grade level (up to the "full performance" grade level of the position);
- Employee performance is a significant factor in competing for "merit promotions;"
- Employees whose performance exceeds expectations are eligible for performance-based awards, both cash and time-off;
- Employees who perform at an "outstanding" level are eligible for "quality-step increases," pay increases (approximately 3%) which move them through their pay grade more quickly.

The vast majority of federal employees are performing acceptably and effectively; those who are not should be identified by management and given the chance to improve. If they do not, they can be removed from their positions. But the starting point for pay raises for employees who are not covered by the General Schedule and are performing acceptably should be to provide increases that are at least equal to the increase in the cost of living and/or salaries in the relevant labor market, to ensure that employees who are do their jobs effectively do not fall behind. Then, if the agency has developed a system that clearly identifies expected levels of performance, and it selects and adequately trains supervisors that can apply these standards fairly and without bias, and gives them the time and resources to do so, then (and only then) should they implement a system that further rewards higher level of performance with appropriate additional pay increases that are tied directly to these performance ratings.

While performance is, and should be, a critically important factor in determining employee pay increases, it should not be the only factor. Other factors include reliability and accuracy of work product, team participation, leadership potential, willingness to take challenges and learn, tenacity, trouble shooting potential, training adherence, attendance, and civility. Like the private pay sector, the skill sets of responsible employees need to be comprehensive and their pay increases should consider all relevant criteria.

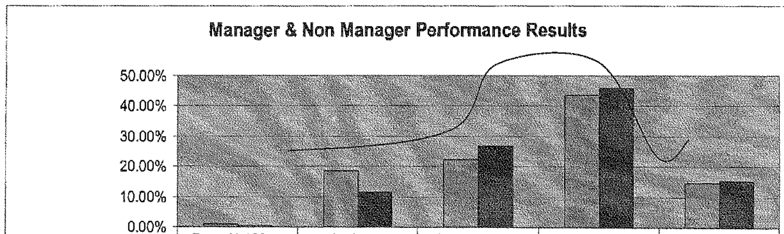
4. **Attached is a slide from an April 2008 presentation by the Transportation Security Administration (TSA) to Committee staff showing its revised scoring system and stating that TSA rates and "ranks employees based on thresholds established by the TSA Administrator." What is your understanding as to the purpose of the rate and rating thresholds? What relation do the thresholds have on employee pay?**

First, let me say that we have never seen these scoring documents from TSA management and I'm not sure how many employees affected by them have ever seen them, either. It's very difficult to get any information out of TSA concerning their pay system, especially because it changes so much. And I am not even sure how to read the slide given to Congress which is replete with percentages and points assigned to categories, within an undefined threshold. Given that, it appears that the purpose of the rate and ranking thresholds is to determine the pay amounts of the workers. It seems that the top 10% will get some amount, and then the next 20% will get a different amount, etc. creating a bell curve distribution.

I know that after these changes were implemented, I got a lot of calls from TSOs unhappy that even though they were rated the same as the previous year, the amount of the bonus was smaller because more bonuses were given out. This is really the problem with the whole notion of pay for performance in a government setting. The amount of funding for each agency is determined by Congress and the agency has that amount, and no more, to distribute.

5. **At the hearing, TSA Deputy Administrator Rossides testified that TSA does not use quotas. Do you have any evidence to the contrary?**

I, too, heard the Deputy Administrator say that TSA does not have quotas. I direct you to a chart from their report in May "Report to Congress on the Implementation of the PASS for the 2007 Performance Cycle" on page 2. I have superimposed a bell curve on the chart. I do not believe it is a coincidence that their ratings align so closely with the thresholds established by the TSA Administrator and the bell curve. Of course there are quotas.



	Does Not Meet Standards	Achieves Standards	Achieves Plus Payout	Exceeds Standards	Role Model of Excellence
Managers (912)	1.10%	18.42%	22.15%	43.75%	14.58%
Non Managers (37646)	0.40%	11.40%	26.79%	46.01%	15.40%

Post Hearing Questions for the Record
Submitted to Jonathan Breul, Executive Director
IBM Center for The Business of Government
From Senator Daniel K. Akaka

"Improving Performance:
A Review of Pay-for-Performance Systems in the Federal Government"
July 22, 2008

1. **As you know, the Intelligence Community (IC) is looking to implement a rigorous pay for performance system. What are your thoughts about extending pay for performance to the IC? Given the secretive nature of the IC, what recommendations do you have to improve the oversight and transparency of the IC pay for performance system?**

The IBM Center has not yet completed research looking specifically at the Intelligence Community (IC). The Center has, however, provided a research stipend to Professor James R. Thompson[1] and Robert Seidner at the University of Illinois at Chicago to examine "Human Resource Challenges and Solutions in the Intelligence Community." Their research will serve three purposes. First, it will inform the human resources community of the solutions that the IC has devised to common problems such a recruitment, performance management, and workforce planning. Second, because it balances a simultaneous need for customization at the agency level and standardization at the community level, the IC's approach could serve as a model for the federal government as whole. Third, the joint duty requirements for senior IC executives could serve as a precedent for the Senior Executive Service. We hope to receive a draft report later this year.

Based on their research for the IBM Center, Howard Risher and Charles H. Fay identify the issue of lack of confidentiality as one which is unique to the public sector. "In the private sector, one supervisor might use his budget differently than another, resulting in somewhat different increased for employees rated at the same level – and the employees would be unlikely to ever learn differences exist. But in government, differences in rewards can be a problem." According to Risher and Fay, "It can be avoided only if the permissible increases are tightly controlled."[2]

2. **In the attached 2007 commentary in <u>Federal Times</u>, an analyst within the IC suggested that pay for performance, as a best business practice, should not be applied as a best government practice. What are your thoughts about this employee's assertion? Are there examples of best business practices that may not apply to the federal government?**

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[1] James R. Thompson, "Designing and Implementing Performance-Oriented Payband Systems," IBM Center for The Business of Government (2007).
[2] Howard Risher and Charles H. Fay, "Managing for Better Performance: Enhancing Federal Performance Management Practices," IBM Center for The Business of Government (2007), page 19.

In their report for the IBM Center, Howard Risher and Charles H Fay conclude that "based on worldwide trends in both government and industry, the shift to a pay for performance policy is inevitable." They contend that "When performance appraisal ratings are not linked to pay and bonus decisions – and therefore have no real consequences – it is all too easy for supervisors to fall into a pattern of rating people higher than warranted. That avoids potential uncomfortable and candid assessments of performance. Managers and employees alike know this practice is common." [3]

As Howard Risher explains his IBM Center report,[4] "There is no single formula to follow. The experience in the DoD laboratory demonstrations is instructive. Each lab has a slightly different way of managing pay and performance, but the evidence shows that each one has had positive experience. A key to success has been the involvement of managers and employees in developing the policies and practices governing pay. This creates an environment with broad support and ownership for the new policy."

The November 12, 2007 commentary in Federal Times is certainly one view of the matter. On July 20, 2008, just two days prior to the Subcommittee's hearing, another commentary in the Federal Times comes to a different conclusion. Robert Kirkner cites the National Institute of Standards and Technology's 20-year system as "one of the longest running and most successful pay band and performance-based pay systems in the federal government."[5]

3. **When pay for performance systems were developed in federal agencies, management and employee groups identified training as critical to the development and implementation of such systems. Have you found in your evaluation of these pay systems that there has been sufficient training?**

Research supported by the IBM Center has not "evaluated" pay for performance systems developed in federal agencies. However, Risher and Fay's report to the IBM Center, they conclude that agencies should invest in training to develop the skills executives and frontline managers need to manage performance effectively. "The need for training has been cited frequently by the Merit Systems Protection Board, the National Academy of Public Administration, and others." [6] "The only proven strategy to gain employee buy-in or acceptance is to involve them and their managers in the planning process."[7]

In his report for the IBM Center, Howard Risher recommends that "Agencies should commit to adequate training for managers. They are like to need training – more than their counterparts in the private sector, who are accustomed to a performance culture. The training should involve opportunities to practice new skills. This subject is not suitable to lectures or videos." [8]

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[3] Risher and Fay, page 18.
[4] Howard Risher, "Pay for Performance: A Guide for Federal Managers," IBM Center for The Business of Government (2004), page 46.
[5] Robert Kirkner, "Pioneering performance pay," Commentary, Federal Times, July 20, 2008 http://www.federaltimes.com/index.php?S=3633424
[6] Risher and Fay, pages 42-43.
[7] Risher and Fay, page 47.
[8] Risher, page 37.

Post Hearing Questions for the Record
Submitted to Charles Fay, Professor
School of Management and Labor Relations
Rutgers University
From Senator Daniel K. Akaka

"Improving Performance:
A Review of Pay-for-Performance Systems in the Federal Government"
July 22, 2008

1. As you know, the Intelligence Community (IC) is looking to implement a rigorous pay for performance system. What are your thoughts about extending pay for performance to the IC? Given the secretive nature of the IC, what recommendations do you have to improve the oversight and transparency of the IC pay for performance system?

   Answer: The intelligence community might implement a rigorous pay for performance system. The issues are the same as for other performance systems – performance must be defined at the individual level in terms of organizational goals, employees must understand performance criteria and standards, managers must give positive and corrective feedback as the situation warrants, and pay increases/bonuses should reflect performance against standards. Perhaps the most important factor is the degree to which the senior line leaders of the IC are willing to champion the new system. I worked with an organization where the CEO announced that the new performance management system was one of his top three priorities. He and his executive team underwent training in the appropriate way to use the new system and training then cascaded down into the various units. He required that all managers (from first line supervisors to his VPs) have as one performance criterion how well they managed the performance of their direct reports. Bonus-eligible managers who did not receive at least a "meets standard" on this criterion receive no bonus, regardless

   The secretive nature of the IC should not present insurmountable problems for oversight and transparency of the system within the community itself. If the system set up meets performance management and pay for performance standards this should not be a problem. There should be an internal systems evaluation group, or ombudsman who has sufficient security clearance to handle complaints from employees. With respect to Congressional oversight, although the evaluation group/ombudsman could certainly testify to number of complaints, nature of complaints, disposition of complaints, etc., and also provide data on performance distributions, increase and bonus distributions, etc.

2. In the attached 2007 commentary in Federal Times, an analyst within the IC suggested that pay for performance, as a best business practice, should not be

applied as a best government practice. What are your thoughts about this employee's assertion? Are there examples of best business practices that may not apply to the federal government?

I raised this point in my original testimony. A best business practice is not necessarily a best government practice. The jury is out whether performance management and pay for performance can be successfully ported to federal government. There is lots of evidence that it can work at the sate and local level so there is nothing inherent in government that precludes it working there. I think for it to work there has to be much more involvement of employee rep[resentatives in the design and implementation process, and there probably has to be a significant change of culture in many units.

Many best practices from business may be hard to port to government. I think benchmarking is difficult for the government to do successfully because of its size, the degree of unionization, the nature of jobs, and the lack of comparable organizations to benchmark against. A friend from Motorola told me once the best thing they get out of benchmarking is what not to do. I guess I would prefer the government try to drive practice based on the unique goals, structure, human capital, and culture rather than simply adopt business practices. When working on locality pay we had a number of compensation gurus in to comment on our study. Many seemed increduluous that so many constituencies had to be involved. They were used to convincing a small group of key executives, who then made it happen. That's just not the way government works.

3. When pay for performance systems were developed in federal agencies, management and employee groups identified training as critical to the development and implementation of such systems. Have you found in your evaluation of these pay systems that there has been sufficient training?

   I know plenty of training has been done but can't speak to the quality. Employee responses in surveys indicate that the training for supervisors has not had a lot of impact on behavior with respect to defining performance, explaining expectations, or providing timely feedback. Training alone is insufficient to change behavior. Managers must see performance management and pay for performance as key parts of their management repertoire, and be rewarded/not rewarded based on how well they accomplish the related tasks.