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IMPROVING PAY FLEXIBILITIES IN THE FEDERAL WORKFORCE

HEARING

BEFORE THE

SUBCOMMITTEE ON
REGULATORY AFFAIRS AND FEDERAL
MANAGEMENT

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

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IMPROVING PAY FLEXIBILITIES IN THE FEDERAL WORKFORCE

THURSDAY, OCTOBER 22, 2015

U.S. SENATE,
SUBCOMMITTEE ON REGULATORY,
AFFAIRS AND FEDERAL MANAGEMENT,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:33 a.m., in room 342, Dirksen Senate Office Building, Hon. James Lankford, Chairman of the Subcommittee, presiding.

Present: Senators Lankford, Ernst, Heitkamp, and Peters.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Good morning, everyone. I want to welcome you to today's Subcommittee hearing, which will focus on the topic of pay flexibilities in the Federal workforce. I appreciate everyone being here.

We all want a Federal Government that runs efficiently and effectively for the American people. It is a bipartisan goal to find Federal employees who are dedicated to serve our fellow citizens with excellence. Why would anyone want to have Federal public servants that are not skilled and competent for the task? Attracting and keeping the best employees to serve in Washington, D.C. and around the country is an effort worthy of the Subcommittee's time and attention.

The Federal workforce stretches across our Nation, with a different set of opportunities and challenges at each location. Some unique considerations within the Federal workforce are longstanding and clear. The challenges posed can be as simple as the differences in climate and location. Imagine how different it is to attract a skilled Federal worker to a post in a rural northern town in Alaska than it is to Miami, Florida or Tulsa, Oklahoma.

However, we have also encountered Federal workforce challenges that are not foreseeable or are challenging due to varying economic circumstances. A prime example of this was the unexpected and dramatic 2006 discovery of large amounts of oil in Eastern Montana and North Dakota. Since 2006, the oil boom in North Dakota has seen an incredible increase in the economic activity, such as housing, infrastructure demands, to name only just a few. With these demands came an inevitable tug of war between the private sector and government to see who could hire the best workers.

I commend Ranking Member Heitkamp for her leadership in addressing the very real challenges that face her State and the Bakken region and for her work on Federal workforce and pay flexibility. I hope that with today's hearing, we can help make sure the Federal Government and the private sector have enough skilled workers to meet both of their demands.

We have with us today two panels of witnesses who are prepared to share their own perspectives on these issues. In our first panel, we have Brenda Roberts, Deputy Associate Director of Employee Services, Pay and Leave, from the Office of Personnel Management (OPM).

We have Linda Jacksta, Assistant Commissioner, Office of Human Resources Management, from U.S. Customs and Border Protection (CBP).

And, finally, Debra Warner, who is Director of Civilian Workforce Management, Deputy Chief of Staff for Manpower, Personnel, and Services from the U.S. Air Force.

On our second panel, we will hear testimony from William Dougan, who is the President of the National Federation of Federal Employees (NFFE), and Mr. Anthony Reardon, President of the National Treasury Employees Union (NTEU).

We thank each of you for being here this morning. I look forward to an informative discussion with our witnesses.

With that, I recognize Ranking Member Heitkamp for her opening statement.

OPENING STATEMENT OF SENATOR HEITKAMP

Senator HEITKAMP. Thank you, Chairman Lankford.

I am so pleased that today we are going to focus on a topic that is so important to my home State of North Dakota, the businesses that operate there, the tribes that operate there, and we heard that yesterday as Senator Lankford and I sat through a hearing on the failure of the Department of Interior (DOI) to move leasing applications and applications for rights-of-way along, costing, really, tribes millions of dollars in lost revenue because their resources have not been accessible to the private sector. And one of the issues has been, for us, this issue of flexibility and recruitment of a Federal workforce.

As many of you know, I have been fighting to address these challenges that have been faced by the Federal workforce in the Bakken region of Western North Dakota and Eastern Montana since taking office in 2013, so this is a topic that I am well familiar with. I think it is the reason why we are here, because of the frustrations that we had listening to some of the obstacles. Even though intentions for both the agencies and for people in your roles in personnel is to do what is fair and equitable, the rules somehow get in the way.

So, I think the Bakken region, although unique in our State, serves as a prime example of the drastic impact that unique economic situations can have on local and regional employment markets. The energy boom has brought new jobs and opportunity, but it has also seen a spike in the cost of living, in fact, some would say skyrocketing. I like to say, at the peak of the boom, the rent

rates in Williston, North Dakota, would make a New York landlord blush.

The pay system just was not flexible enough to accommodate and remain competitive with the private sector. We would see public employees being hired, only to be transitioned off—especially petroleum engineers, especially people who have expertise in managing land and rights-of-way. Very difficult for them to hang on. Even if they had a desire to stay in the Federal system, what we saw was the inability to do that and still feed their families.

Working in close conjunction with the Office of Personnel Management, special pay rates became the most effective path forward for Federal agencies in the Bakken. We were able to bring the Director of the Office of Personnel Management to North Dakota, and I am pleased to say that nearly 500 Federal employees across North Dakota were helped with special rate increases.

That is a tribute, and I want to do a shout out to the Department of Defense (DOD). I think both the Air Force and the Department of Defense saw the unique situation, and when we were in a room with civilian employees and I asked how many of them were veterans, over half raised their hand. And, that is really the message of the civilian employees probably at every air base or every military base across the country. They are still in the mission. They may not be putting on the uniform every day, but they want to participate and to contribute to keeping this country safe. But, they should not have to pay an economic price to do that.

I think there is a lot more work that can be done. I think there is a lot bigger discussion about flexibility, and that is what we hope to get at today, not rehash what we did, but talk about where we could have achieved more flexibility.

One of the great concerns that I have, Ms. Jacksta, is obviously staffing the Northern border. The remoteness along with the inability to recruit workforce, I think, suggests that we may not be doing everything that we can to keep all of our border safe.

And, so, I am looking forward to a productive dialogue this morning on the best ways for the Federal workforce to address the unique economic challenges, how we can improve the current pay flexibility system, and what we can do to make sure that our Federal agencies have all the necessary tools at their disposal to keep the Federal workforce as vibrant as possible.

We have had long discussions here about the future of the Federal workforce and what that means in terms of the millennials. I think the lack of flexibility, putting a very dynamic workforce into a very static environment where there is not a lot of flexibility, is not a formula for success and recruiting the best and brightest. So, this is clearly another issue that goes to the future of the Federal workforce.

And, I want to thank my Chairman, Chairman Lankford, for agreeing to do this hearing and for working with us to address these Federal workforce issues. Thank you, Mr. Chairman.

Senator LANKFORD. I am glad to be a part of this.

At this time, we will proceed with testimony from our first panel, and the witnesses on the panel, I have already introduced. Brenda Roberts, Debra Warner, and Linda Jacksta, I appreciate you all being here, as well.

I would ask you, as is the tradition of this Committee, to stand and raise your right hand, and be sworn in.

Do you swear the testimony you are about to give before the Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. ROBERTS. I do.

Ms. WARNER. I do.

Ms. JACKSTA. I do.

Senator LANKFORD. Thank you. You may be seated. Let the record reflect the witnesses answered in the affirmative.

I do appreciate again you being here today and I would like to ask you to begin with your opening statement, beginning with Ms. Roberts.

TESTIMONY OF BRENDA ROBERTS,[1] DEPUTY ASSOCIATE DIRECTOR FOR PAY AND LEAVE, U.S. OFFICE OF PERSONNEL MANAGEMENT

Ms. ROBERTS. Thank you. Chairman Lankford, Ranking Member Heitkamp, and Members of the Subcommittee, thank you for the opportunity to discuss the role of Federal pay policies in recruiting and retaining an effective Federal workforce. I appreciate the opportunity to have this discussion.

As part of our core function, OPM provides a key role in regulating, overseeing, and administering the authorities on compensation policies, including available pay flexibilities, to help agencies recruit and retain their most valuable resource, which is their employees.

As with any compensation system, there are special challenges. It is important to remember that each agency's mission and needs are different, and Congress has established many complex arrangements to accommodate these agencies' needs. During this time of tighter agency budgets and sequestration, Federal agencies are being very careful in how they allocate their human capital resources.

In light of the current climate, it is extremely important for agencies to strategically use pay flexibilities to attract desirable applicants and support the retention of good employees. In addition, it is just as important for agencies to consider non-pay flexibilities that we refer to as workplace flexibilities.

I know the topic of Federal employee compensation has a real implication for some of the residents in your State, Senator Heitkamp. I am pleased I had the opportunity to join you in North Dakota last year and hear directly from your constituents about the challenges that they are facing as a result of the rapidly increasing cost of living in the Bakken area due to the dramatic increase in oil and gas production.

Agencies have autonomy to determine the appropriate and cost effective use of pay flexibilities under Title 5 of the U.S. Code. These flexibilities include short-and long-term tools that can be used to attract and keep a Federal workforce in place. OPM provides guidance to agencies on the various flexibilities available and encourages agency headquarters' human resources staff to reach

[1] The prepared statement of Ms. Roberts appears in the Appendix on page 37.

out to OPM for advice when determining which of the many pay, leave and other workplace flexibilities may be best suited to resolve the agency's recruitment and retention problems.

I would like to mention a few of the pay flexibilities that the Federal Government has to offer to help with recruitment and retention problems. First, I would like to mention our 3Rs program, which comprises recruitment, retention, and relocation incentives.

Agencies can also choose to participate in the student loan repayment program, under which agencies can repay federally insured student loans for candidates and current employees of the agency.

Other alternatives include superior qualification and speed needs pay-setting authority that allow agencies to set pay at a higher rate for a newly appointed General Schedule (GS) employee if the employee has superior qualifications or would address a special need of that agency.

There are also specific pay flexibilities that may be used to address long-term staffing difficulties where OPM plays a more active role because of the need to ensure agencies operate on a level playing field. This can be accomplished with special rates when agencies identify a business need to offer higher rates of pay for groups or categories of General Schedule positions in one or more geographic areas. Special rates may be appropriate when there is a need to address significant hardships in recruiting and retaining a well qualified workforce.

Agencies can also seek to offer critical position pay. At an agency's request, OPM, in consultation with the Office of Management and Budget (OMB), can grant and fix a rate of pay for one or more positions at a higher rate than would otherwise be payable. The position under consideration must require an extremely high level of expertise in a scientific, technical, professional, or administrative field that is critical to the successful accomplishment of an important agency mission.

In addition to the various pay flexibilities, the President has directed OPM to build on our leadership through the increased awareness and availability of workplace flexibilities and Work-Life Programs to help agencies with recruitment and retention problems. These efforts have been fueled in part by the President's belief that all employers, including the Federal Government, should support parents to ensure they contribute fully to the workplace while meeting the needs of their families.

This has led OPM to issue two handbooks in the past year emphasizing the importance of workplace flexibilities. OPM's guidance will allow agencies to be in a better position to assist and educate employees in using these workplace flexibilities.

So, in summary, OPM stands ready to assist agency headquarters with the various pay and workplace flexibilities available to help ensure the recruitment and retention of the strongest employees that this country has to offer.

Thank you for the opportunity to testify today, and I look forward to taking your questions.

Senator LANKFORD. Thank you. Ms. Warner.

TESTIMONY OF DEBRA A. WARNER,[1] DIRECTOR OF CIVILIAN FORCE MANAGEMENT, DEPUTY CHIEF OF STAFF FOR MANPOWER, PERSONNEL, AND SERVICES, HEADQUARTERS, U.S. AIR FORCE

Ms. WARNER. Good morning, Chairman Lankford, Ranking Member Heitkamp, and distinguished Members of the Subcommittee. On behalf of the Secretary of the Air Force, Deborah Lee James, I appreciate the opportunity to appear before you to discuss pay flexibilities in the Federal workforce.

When any of our Air Force bases experience severe challenges to recruit and retain civilian employees to execute its mission, it becomes a concern. But when the base is host to two components of our country's nuclear triad, it becomes even more alarming and takes on a significantly higher level of concern.

Such was the case at Minot Air Force Base in North Dakota, home of the 5th Bomb Wing, Guardians of the Upper Realm, and the Rough Riders of the 91st Missile Wing when the economic boom from oil and gas exploration in the Bakken region, which began in approximately 2006, obtained traction and skyrocketed. The usual economic indicators quickly showed that the Bakken region and the State's unemployment at incredible lows as jobs directly and indirectly related to oil and gas industries, along with related businesses, were plentiful.

Along with the bonanza of employment opportunities and the accompanying higher wages and rates of pay came an increase in the basic cost of living. Housing became more expensive and difficult to obtain, not only for the sudden influx of workers seeking jobs in the energy sector, but for the Air Force's active duty members and civilian employees, as well.

For the civilians at Minot Air Force Base who faithfully support a highly visible national defense strategy, the allure of higher wages and signing bonuses in the private sector was difficult to resist. The cost of basic needs, such as food, housing, and transportation, reached levels that pushed many Air Force civilians to make a difficult choice between remaining a part of the Minot Air Force Base team and pursuing more lucrative employment opportunities outside the gate.

It quickly became apparent this challenge was not one with a quick fix. It was a chronic challenge, requiring both short-and long-term solutions. The feasibility of establishing a separate locality pay area for the Bakken region was carefully considered. However, with locality pay measuring the cost of labor, not the cost of living, and only applying to the General Schedule population, it was recognized this option would not be a complete solution. Ultimately, a decision was made that the Air Force should use existing pay flexibilities, such as Special Salary Rates and recruitment and retention incentives, to help tackle this very difficult problem.

The effort began in earnest in the summer of 2014 and was greatly enhanced with a collaboration between the entire Minot Air Force Base team, the Air Force Global Strike Command (AFGSC), and the Civilian Workforce Management Directorate at Headquarters Air Force. Data was gathered by the Minot Air Force civil-

[1] The prepared statement of Ms. Warner appears in the Appendix on page 42.

ian-based population, analyzed to support the Special Salary Rate request by depicting the employment situation and what dire straits we were in.

Simultaneously, the Headquarters Air Force Civilian Policy Office engaged with our colleagues at the Defense Civilian Personnel Advisory Service (DCPAS), to advise them of this effort and to obtain guidance in assembling the request packages in an effort to expedite the review and, subsequently, the final review by the Office of Personnel Management.

The first two Special Salary Rate packages of 25 percent for both General Schedule and Federal Wage targeted positions was submitted in late September 2014, and the third, with a 35 percent increase for specific non-appropriated funds (NAF) positions, being sent in October 2014.

The NAF request, which covered five different occupations, was approved and became effective in early December 2014. The Federal Wage Special Salary package, which included 17 specific occupations, was approved in March 2015, and approval for the General Schedule Special Salary Rate request covering 15 targeted positions was received in April 2015.

In addition to the Special Salary Rate pursuant, local officials also approved a payment of 10 percent incentive for employees who occupied non-Special Salary Rate-covered positions, and that continues today.

The use of other incentives, such as relocation and recruitment, are also used in order to attract new employees to fill the vacant positions at Minot Air Force Base.

The flexibilities available to Federal agencies are beneficial in managing these unique recruitment and retention circumstances, especially for our Air Force installations located in remote or isolated locations.

In the final analysis, the Air Force civilian employees consider it an honor and a privilege to work shoulder-to-shoulder with the active duty, Guard, and Reserve airmen supporting the warfighter. It is vital that the Federal service be afforded avenues to obtain, sustain, and maintain an effective, stable civilian workforce.

Thank you for the opportunity to testify today, and pending your questions, this concludes my remarks.

Senator LANKFORD. Thank you. Ms. Jacksta.

TESTIMONY OF LINDA JACKSTA,[1] ASSISTANT COMMISSIONER, OFFICE OF HUMAN RESOURCES MANAGEMENT, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Ms. JACKSTA. Chairman Lankford, Ranking Member Heitkamp, distinguished Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss CBP's efforts to utilize pay and compensation flexibilities to recruit, hire, and retain our most prized asset, our people.

I come from a family that has deep roots with the U.S. Customs Service and CBP. I share that with you because I have a profound sense of commitment and dedication to this organization and its

[1] The prepared statement of Ms. Jacksta appears in the Appendix on page 51.

mission. Throughout my own 30 years of service with CBP and the former U.S. Customs Service, working in both operational and support positions, I have seen firsthand the impact that CBP employees have in fostering our Nation's security and economic prosperity.

I also want you to know that CBP recognizes and values our importance to the local communities we support. As our workload volumes continue to increase, open border crossings become a vital link to supporting the local and national economies, as well as our service to local citizens in these areas. We value this service and we recognize its importance to you and your constituents.

Since taking office as the Assistant Commissioner, Office of Human Resources Management, in August of this year, one of my top priorities has been working to recruit, hire, and retain the agency personnel needed to accomplish CBP's border security mission. Throughout my first 60 days, I have begun to strategically assess how to most effectively provide the flexibilities we need to ensure that every port, sector, branch, and office is staffed commensurate with mission needs.

Due to the varying nature of CBP's workforce along the northern and southern borders, many of our areas of responsibility are remote. These locations are often accompanied by challenging environmental factors, inaccessible medical facilities, limited employment or educational opportunities for families, and higher prices for consumer goods and services. In addition, these areas are sometimes associated with a higher cost of living, as well. Staffing those locations with both new hires and experienced existing personnel is critical to meeting the operational requirements involved for securing the Nation's border against a variety of dynamic threats and adversaries.

Historically, CBP has used some pay flexibilities, to include relocation, recruitment, and retention incentives. For example, from 2011 to 2014, CBP issued over 100 incentives to attract and retain a highly skilled and qualified workforce.

We are taking a holistic approach going forward to look strategically at incentives and other pay and non-pay options to identify the best approach to address our recruitment and retention challenges. In particular, we will explore the use of Special Salary Rates in order to provide employees with an increase to their basic rate of pay, particularly in areas where there is a higher cost of living, and to give CBP an added tool in remaining competitive in attracting and retaining a highly skilled workforce. The Special Salary Rate is also important as a retention tool, as the pay increase is added to an employee's retirement calculation.

CBP recognizes the impact the Special Salary Rate could have on retaining critical personnel. We are already pursuing a Special Salary Rate for our polygraph examiners, a severely limited resource that plays an imperative role in hiring our front-line employees.

In addition to traditional pay incentives, CBP is also looking at alternative non-pay flexibilities geared toward enhancing work life balance and professional growth opportunities. We are also considering rotational assignments, alternative work schedules, and other mobility options in order to support the needs of our workforce.

We recognize that while these pay and non-pay flexibilities can help with recruitment and retention, we also understand that they

are typically associated with financial implications which need to be carefully balanced with the other needs of CBP.

CBP's greatest asset are the dedicated men and women who pursue our mission every day as they safeguard and manage the United States air, land, and maritime borders with vigilance, selfless service, and unyielding integrity.

Chairman Lankford, Ranking Member Heitkamp, distinguished Members of the Subcommittee, thank you for holding this important hearing, and I am happy to answer your questions.

Senator LANKFORD. Thank you.

I am going to defer to the Ranking Member to do initial questions.

Senator HEITKAMP. Thank you so much, Mr. Chairman.

I was just jotting down here who are these folks in North Dakota, and you look at them. They are obviously the civilian workforce at the air bases, both Minot and Grand Forks, Border Patrol, Customs and Border Protection. We have a number of crossings, some of which have huge staffing challenges.

USDA Farm Service Agency—think about them. I cannot tell you, as we were implementing the farm bill, how critical that workforce and that relationship was to helping farmers navigate a very complicated piece of legislation and help them make the best decision for their production.

The Federal Bureau of Investigation (FBI) the Drug Enforcement Administration (DEA), and the U.S. Bureaus of Alcohol, Tobacco, Firearms, and Explosives (ATF)—at a time when we are really challenged with opiate abuse, challenged with more and more cybercrime, challenged with the need to have that special expertise in States. Brenda, I am going to get to you on FBI, because I think we have some very serious challenges in staffing in North Dakota.

Air traffic control, the Transportation Security Administration (TSA), all people who not only serve, wear the mantle of public servant and public employee, but are essential to the economy of my State.

And, so, I think sometimes we look at them as an add-on or an adjunct, but these—whether it is people at DOI who are out reviewing grassland plans at Forest Service or DOI managing their right-of-way portfolio, these are people who try and integrate with the community. We have great relationships, certainly in law enforcement. I knew that from when I was Attorney General.

With that said, I think it is important we always put this in the context of why it is so vital to our economies that we have a vibrant and available and flexible Federal workforce.

So, with that said, Brenda, I am going to give you a problem and you tell me how you think you can solve it. We have horrible cases of abuse and drug crimes on Indian reservations. We do not have one FBI agent which is located in Indian Country. We do not have one DEA agent. We do not have one ATF. And, so, there is no cop on the beat for major crimes in my State.

So, what they would say is, look, we just cannot get someone to live in New Town. We cannot get someone to live in Belcourt. So, what would you say to the FBI as they are looking at recruiting in terms of the tools that they could use to really provide some very

high level incentives to relocate to a remote location, a less desirable location?

Ms. ROBERTS. The first thing I would consider would be recruitment incentives to try to get them in the door. If they had folks there, I would recommend retention incentives, also——

Senator HEITKAMP. They have no one there.

Ms. ROBERTS. So, superior qualifications pay setting in order to get them on board. I would probably want to talk with the FBI and discuss with them a little bit more about what they have been doing and try to help them through the process.

Senator HEITKAMP. I mean, I think the fact that there is not, here, plug it in, this is the need, let us make sure that this happens. I mean, we hear this all the time.

And Ms. Jacksta, obviously, I am greatly concerned about the problems—not because you are not a great organization, obviously. I think a lot of people who work for Customs and Border Protection and Border Patrol tend to come from the Southern border. The Northern border is a little intimidating, especially in remote places like Portal.

We are going to continue to beat this drum. Senator Ayotte and I have a bill that talks about looking at the Northern border and the unique challenges. What would you suggest could be done or whether we could, in fact, have OPM be more responsive to some of the concerns?

Ms. JACKSTA. Thank you, Senator. I recognize that concern that you have with respect to recruiting and retaining employees in these remote areas. From a CBP perspective, I am not sure that it is a one-size-fits-all approach, and I will give you a good example. With respect to North Dakota in particular, we have challenges staffing both Portal and Pembina.

Senator HEITKAMP. Right.

Ms. JACKSTA. The greater challenge of the two is Portal. So, if we were to implement——

Senator HEITKAMP. For people who do not know, Portal is much more remote. I mean, Pembina may sound remote to you. That is, like, urban compared to Portal. [Laughter.]

Ms. JACKSTA. Thank you, Senator. So, if we were to employ the same incentive-type program for both locations, Portal would lose out every time.

Senator HEITKAMP. Yes.

Ms. JACKSTA. And, so, for us, we need to take a more surgical, precise, and thoughtful approach to each of these ports, sectors, stations, and branches to see what other ports are in the other areas, what is the workforce composition of those different locations, because if we want new folks, that might be a recruiting incentive. If you want experienced folks, it might be something else, maybe a relocation incentive.

So, I share that with you because I do not know that it is a one-size-fits-all, but it might be a combination of a couple of different incentives.

Senator HEITKAMP. So, at your level of managing this are you looking strategically at each one of these border crossing locations' staffing and then creating a unique and surgical plan for increasing staffing and providing incentives for people to locate there?

Ms. JACKSTA. Senator, that is the plan that we are committing to take on in fiscal year (FY) 2016. I think, historically, we have had some limited funding for incentives. Candidly, before sequestration, we were spending more money on incentives. We are revamping that approach right now, and I really want to take a more strategic approach and look at all of the different occupations, law enforcement and non-law enforcement alike.

Senator HEITKAMP. What is the average length of stay for a Border Patrol agent in a place like Portal?

Ms. JACKSTA. I do not have the specific details on Portal. However, I can come back to you and I can take that for the record. I will say that when people go into the remote locations, they typically do not want to stay there for an extended period of time. So, one of the things we want to put on the table is really looking at rotational assignments and not to exceed.

Senator HEITKAMP. And, I would say, be a little careful with that, because so much of their ability to do their job is that relationship that they have with the county sheriff, the relationship that they have with the nearest chief of police, perhaps with, in our case, the Bureau of Criminal Investigation, which is managed by the Office of Attorney General. And, so, those relationships can really enhance the mission of Border Patrol. But if you simply always rotate someone in and out, those relationships do not get as solid.

So, incentives to actually stay would be a recommendation that I would have. As you said, rotate them in and out, but also understand that there is a real value to those ongoing relationships, especially when you are serving in a law enforcement capacity in a remote location.

Ms. JACKSTA. Yes, Senator.

Senator HEITKAMP. You have to rely on each other.

Ms. JACKSTA. Yes, Senator, and I do recognize that we enjoy a high degree of camaraderie with the local law enforcement in your State and we often do support them, particularly on the air and marine side, as well.

Senator HEITKAMP. Yes.

Ms. JACKSTA. They do a lot of reconnaissance and work to support the local efforts there.

Senator HEITKAMP. Yes.

Ms. JACKSTA. We do value those——

Senator HEITKAMP. This is in no way—I do not want anyone to take this—this is in no way a complaint about the people who are there. We just do not have enough people.

Border protection is a little like a balloon. If you squeeze it in one place, the pressure is going to go to another place, and if people know, look, there are these remote locations, there is no staffing there, this is a way to basically come into the country for nefarious reasons, we are only as good as the weakest link, right?

Ms. JACKSTA. Mm-hmm.

Senator HEITKAMP. And, so, that is, I think, a real challenge for us.

Deb, I guess the only thing I want to say is you guys were great to work with and I think it worked well with OPM because you stepped up. That has not been our experience with all the other

agencies, and I know part of that was driven by our last discussion here. But, what advice would you give to other agencies, given what you have been able to do from a DOD standpoint, from an Air Force standpoint, just helping them kind of navigate that challenge?

Ms. WARNER. Yes, Senator. Thank you. And I think the catalyst, as you mentioned, when you met with the OPM Director and got the ball rolling, and then aggressively getting at it, dissecting it, as Ms. Jacksta has stated, what they plan to do, not a one-size-fits-all.

One of the things that I appreciated about this opportunity was the opportunity to visit with these two folks on my right and left, that we can share lessons learned and how can we get at this. We were behind with Minot. Obviously, we were. And we now have a tool kit that we can use and we have many remote locations. We have locations overseas that provide additional challenges.

What I would say is, do not take a one-size-fits-all necessarily. Partner with—the labor unions in the local area were a huge help. The DCPAS community was a help, OPM. It is almost like they struggle out there and they do not want to elevate it because they think they can resolve it, and then the next thing they know, they have 150 vacancies on a 500-population location. We need to get at it sooner rather than later.

So, those are lessons learned, and I do not want these folks to have to go through that, and I think I know OPM, the handbooks that they have prepared. But, we definitely are using this, not only at Minot, but other remote locations, as well.

Senator HEITKAMP. Well, I just want to thank the Department of Defense and the Secretary of the Air Force and, really, the command on the uniform side of the Air Force who really stepped up and said, we cannot operate the air base under these conditions. And, so, I think it really, like you said, it ended up almost being in crisis before we got there, but certainly, things moved very fast and very aggressively, by no small measure thanks to the help of the Office of Personnel Management.

Ms. WARNER. And if I could add, as well, not only, and you mentioned, Ms. Jacksta, not only the Special Salary Rate and how we pursue that for specific occupations that we know we are losing, but also, as you said, the leadership took a step out and said, how about for the non-Special Salary Rate we have a 10-percent that we can add into. How about looking at the 3Rs, relocation and the retention that we needed, the retention and the recruitment incentives. And I think all of those things in the tool kit are what we had to apply.

And, I can tell you, since that approval in the mid-summer timeframe, and earlier for the non-appropriated, we have seen a 2 to 3 percent increase in our staffing, our ramping up. We have over 100 actions in the pipeline right now that we are pursuing, and I think we are going to see significant improvement over the next 6 months, ma'am. Thank you.

Senator HEITKAMP. Thank you so much. And, if I can just make one point, this whole problem, it seems to me, transitions to our broader issue, which is how do we recruit the next generation of Federal workforce, and we know that is a different animal than, we

are here for a career. We are going to stay the rest. And the incentives that you may think you are offering that would drive the certainty or whatever it is, the retirement plan, whatever is going to drive the next generation, that may not be what they are looking at. And, so, I think we can take the lessons and the cooperation that we see between OPM and the agencies here and maybe take that one step further and think about the new Federal workforce.

So, this is a good little exercise of meeting the next challenge, which to me will be—even in places where people want to live—recruiting a Federal workforce.

Thank you, Mr. Chairman.

Senator LANKFORD. Absolutely. Senator Ernst.

OPENING STATEMENT OF SENATOR ERNST

Senator ERNST. Thank you, Mr. Chairman.

Thank you, ladies, for being with us today. And hopefully, through this discussion, we can find some valid solutions to some of these issues. So, I think this is a very important topic.

Ms. Jacksta, I will start with you. You mentioned in your testimony that Federal agencies are only allowed to offer those retention incentives to those employees that are likely to leave Federal service. And you also made note that it is because of these circumstances that CBP is unable to offer retention incentives to those Federal employees who do not want to leave Federal service, but want to move to another desirable location. Can you explain maybe what the rationale for that policy is?

Ms. JACKSTA. Thank you, Senator. For the specific policy guidance, I will defer to OPM. However, I would like to characterize some of the workforce challenges that we have and why this issue is important to us.

For example, we have a lot of lateral movement between occupations, particularly between the CBP officer and Border Patrol agent occupations, and some of those are due to mobility. The different segments of the workforce want different options to be more mobile. So, in the Office of Field Operations with the CBP officer occupation, they might be in more metropolitan areas. And the Border Patrol, with the Border Patrol agent occupation, they might be in more remote areas. That is not to say we do not have remote areas in both, but generally speaking, that is what we see.

And, so, if we know that Border Patrol agents are looking for other mobility options and are looking to go to a different field altogether, the CBP officer occupation, and we want to keep them there and offer them a retention incentive, because they are not leaving Federal service but they are leaving the occupation, we are somewhat constrained. And, so, then, what is the solution to address that issue?

Senator ERNST. Right.

Ms. JACKSTA. And, so, that is where we get into, do we need to look at a Special Salary Rate? Do we need to look at other options in mobility, whether they are temporary assignments or other options that will allow us to meet the needs of the mission while also meeting the needs of this workforce.

Senator ERNST. OK. And, Ms. Roberts, would you like to add on to that?

Ms. ROBERTS. It is a requirement in the regulations. Why CBP is actually doing this is the regulations are written in such a way that they have to be likely to leave Federal service. However, I would like to be able to work with CBP to see if there is something that we can do in order to address the problem that they are having with the Border Patrol.

Senator ERNST. Good. No, that was my next question, too, was is it possible to go back and revisit this policy so that we can find a way to make it work between these agencies.

Ms. ROBERTS. I would like to take a look at that.

Senator ERNST. Yes. Very good.

And, again, I think that we need to look for those solutions here so we can actually solve these problems. So, I appreciate the dialogue that you have, and if you would be able to share that with our Committee, as well, in the future.

And then, also, Ms. Roberts, for you, in May, this Subcommittee had a hearing that was entitled, "21st Century Ideas for the 20th Century Federal Civil Service." Much of the discussion during that hearing focused on what is needed to recruit and retain the best workforce and how we needed to modernize the system that we are using.

One of the things I touched on was the user frustration of the USAJOBS website, and I know we are all familiar with that, and how it has actually discouraged people or applicants from applying due to its really cumbersome process. And, it has been very hard to attract especially those young millennials that we would like to see coming into government service.

Can you maybe update me on where OPM is in the process of revamping the USAJOBS.gov website?

Ms. ROBERTS. As part of the President's Management Agenda, they are looking into what they call untying the knots on a number of different things. I am not per se the expert on the hiring flexibilities. There is another area in OPM that deals with that, but I would be happy to take that question back and get back with you.

Senator ERNST. Yes. That would be very helpful. I appreciate that very much.

I am going to go ahead and, again, Ms. Roberts, you hopefully have all the answers today here.

Ms. ROBERTS. I am not sure. [Laughter.]

Senator ERNST. There are several articles out there, and we have seen them, about the huge demand for work in the Bakken region. I mean, it is all over. People in Iowa talk about this a lot. And, I believe their unemployment rate is down between—somewhere around 1 to 2 percent, I believe. And, so, you have to not want to work in that area to be unemployed.

So, one of the articles I saw, it mentioned that a gentleman moved to the region and had a job within one hour of getting there. And, I understand the salary difference is an issue that is specific to this region, but there are also other reasons why the Federal workforce is challenged to find those quality workers, and one of those reasons is the cumbersome and timely hiring process. I do hear from a number of folks that when they submit to USAJOBS, it is like their resume went down a black hole. That is one phrase I have heard before. And 6 months later, they get some sort of ac-

knowledgment or recognition that their application was received. So, we can see there is definitely a problem with USAJOBS.

And then, again, going back to just different ideas, are there ways that we can streamline? Of course, if the other ladies would like to interject, as well. We really would like to have more of a private sector approach to hiring, if at all possible. Do you think that is something that can be done and are there efforts that we could really push to make that happen?

Ms. ROBERTS. Again, I am not the hiring person, I am sorry to say.

Senator ERNST. That is OK.

Ms. ROBERTS. But I would be happy to get those answers for you. I know OPM has a lot that we are doing with respect to hiring and trying to resolve a lot of the issues agencies are coming in about, and we are meeting with agencies on a regular basis. So, any questions you have on hiring, I would be happy to take them and get back with you.

Senator ERNST. OK, and we will submit those questions to you. I thank you.

Any other input on the hiring process and maybe what would be good to streamline it?

Ms. WARNER. Senator Ernst, thank you again for the opportunity to speak to this. I do have the opportunity, representing the Air Force, to sit on some DOD committees, the Civilian Personnel Policy Council, for one, and we are really exploring all of these. The same stories you are hearing, the application goes into the black hole, USAJOBS, we have to have a better solution. Obviously, we need to fill jobs faster than 90, 120 days, how we can get at that.

I can tell you, as far as from a DOD perspective, the working groups that I am sitting on, they are aggressively getting at the USAJOBS and adding features under the New Beginnings, which was the umbrella after the repeal of the National Security Personnel System back in 2010. They established what they call New Beginnings, and New Beginnings is everything from a new DOD performance system for the Department as well as getting at the hiring process, the tools that are being used.

And one of those that is part of the New Beginnings is with regard to more interaction with the applicant. I do not want to submit my resume today and 6 months goes. I have no idea if I am a candidate, if I am being looked at——

Senator ERNST. Right.

Ms. WARNER. So, they give them periodic updates throughout the process, and they are working—they have done some improvements and they are still on a journey.

And, I can tell you, with Mr. Dougan here with us, he has been a part of that working group for New Beginnings and helping us. We work and partner with our labor teams, the national labor unions here in the local area. How can we make this experience better?

So, for Department of Defense and specifically the Air Force, I would like to say, we are actually taking the entire hiring process, from the time we anticipate—someone says, I am going to retire in 2 months—until the time we put someone in the chair, we have analyzed that and breaking it into chunks and leaning it, if you

will, improving the business process. So, the Air Force is really taking that on because we realize and recognize we cannot afford to have the Department of Defense and the Air Force positions with critical missions going vacant 90, 120 days.

So, we are getting at that, and the Air Force is seeing some improvement in our hiring process. It is just taking us a little bit of time to turn the Titanic, but we are getting there, ma'am.

Senator ERNST. Very good. That is encouraging to hear. How long have you been utilizing this New Beginnings program?

Ms. WARNER. Well, actually the New Beginnings 2010 was when we started the journey on the performance piece and it is continuing to roll out. I think we are anticipating a Secretary of Defense memo—and I do not want to get ahead of what DOD is going to push out—but sometime in November, late October, maybe, which will speak to the New Beginnings and all that that entails, everything that we are trying to do to improve the experience and the process of hiring and the tools for our employees, for our managers.

They actually put out a hiring managers tool kit. It is already posted out on the Department of Defense for us to use which guides—when we start talking personnel, we have managers—we are speaking a foreign language. How about a tool kit that can help walk them through that? So, that is actually being published and the Secretary of Defense is going to push something out to speak to that and talk to——

Senator ERNST. That is very good. Like I said, it is encouraging to hear that, and as you see things that are really working very well within DOD, if that is something that we can share with the rest of our hiring managers across the board in Federal Government, I think that would be extremely helpful to all of us, so thank you very much.

Ms. WARNER. Thank you.

Senator ERNST. Thank you. Thank you, Mr. Chairman.

Senator LANKFORD. Absolutely.

All right. Let me pile on, because I have multiple military installations in my State, including Tinker Air Force base, which is obviously a very significant sustainment depot. They have the same issue. They want to hire somebody, but in a great workforce location like Oklahoma is right now, people get snapped up. And, so, someone comes in, whether it is McAlester and the Army Ammunition Depot, or whether it is Tinker Air Force Base and the very large, very well qualified, excellent civilian workforce that is there. They have an opening. They come through the application process, and 4 months later, they hear back. Well, they are not going to wait 4 months. In Oklahoma, they are going to get snapped up in another job, in another place. And when they get the call, yes, you are hired, they are going to be saying, "Great. I have already started and been working at a different place for the last 3 months."

Ms. WARNER. Mm-hmm.

Senator LANKFORD. Now, they have to decide if they are going to leave that place to be able to come back and work for the Air Force.

Ms. WARNER. Mm-hmm.

Senator LANKFORD. This is an issue we have to solve, and it is more than just, "We are going to call you occasionally," because now we are stringing someone along. It has to be an efficient process.

What I heard you say was, we are getting better at 2 months in advance to make sure there is not an opening out there, but to get qualified people, we have also got to have an efficient process. What can be done so that person is not strung along for 3 or 4 months in the hiring process, to be able to fix that part of it? So, we have a qualified person who meets the minimum criteria. We put them in place and start the task.

Ms. WARNER. OK. Senator, thank you. Your timing is absolutely perfect.

Senator LANKFORD. Good. I like to hear that.

Ms. WARNER. Absolutely. At Tinker, well aware of the challenges that we are having in that area, working with the Air Force Materiel Command (AFMC). And, I believe last week, and it may have been the week prior, we actually sent a team to Tinker to peel this back. I understand they want to hire 1,000 employees, and I do not have the occupations handy with me, but they want to hire 1,000 and they want to do it in 30 days. How are we going to get at it?

So, we have recruiters. We actually sent folks from the Air Force Personnel Center to Tinker to start getting a working group in order, and we have been in conversation with AFMC for quite some time, trying to streamline everything from the security process. The front end of hiring, we seem to have it. We are basically projecting. We have provided tools. Do not wait until the day that you have someone leaving to start recruitment——

Senator LANKFORD. Right.

Ms. WARNER [continuing]. Because if it takes 120 days, you are behind the curve. So, we have provided workforce guides, trying to help them get at, if you lose 10 contract specialists a year, then probably you need to overshoot your target and do not wait until they are vacant. So, we are providing those tools.

But, nonetheless, what we need to do is Human Resource (HR) needs to be more hands on with management, and as you know, we have centralized at the Air Force Personnel Center, much like our sister services. And there are times we need to go on the road, and we did that. We sent a team out there——

Senator LANKFORD. So, give me a good length of time. If someone applies——

Ms. WARNER. Mm-hmm.

Senator LANKFORD [continuing]. For a job, there is a job opening and someone applies for it outside—now, if they are inside the workforce, I understand it is a different dynamic.

Ms. WARNER. Correct.

Senator LANKFORD. They will be transferred to different places.

Ms. WARNER. Correct.

Senator LANKFORD. Outside——

Ms. WARNER. All right.

Senator LANKFORD. New people in this situation. How long is a reasonable amount of time that it should take before application—and they are qualified, let us just start there——

Ms. WARNER. Right.

Senator LANKFORD. This is a qualified individual and they are hired.

Ms. WARNER. OK. Obviously, the Office of Personnel Management goal is our 80 days from the time that we begin the recruitment action until we have an entrance on duty. The long pole in the tent, the area that takes the longest—and we are tracking, 15 days for a manager to take a selection. If they had to set up the interviews, it takes a little longer. The process to issue a certificate to a manager, we have that built, like, within 10 days from the time you receive it, you need to have that certificate.

The area that we have to get at is the back—what I call the onboarding—security clearance, physical exam, drug testing. The employee getting released from their employer does not take that long. The part that takes so long is what we call the pre-employment process, and that could take and is taking upwards of 60 days for that piece.

The front end, we have it pretty well through. It is the tail end that we have to get at, and we are trying to think of ways that we can do this. Obviously, we do not want to risk security at our locations by saying, we will bring you on with waivers——

Senator LANKFORD. Right, and we will check you later.

Ms. WARNER. But they are doing some of that, where they can bring folks on and then be pursuing the security clearances. Obviously, there is a lot going on with OPM with the security area that we are trying to get through, as well.

Senator LANKFORD. So, can I ask the nice person next to you why it takes 60 days to be able to do security clearances? Ms. Roberts, what do you think, and why are we stuck at this point?

Ms. ROBERTS. I am sorry. I cannot speak to that question. That is not my area of expertise.

Senator LANKFORD. We need to find a way to be able to resolve this because this is repeated not only for the United States Air Force, but all across the Federal workforce. The length of time that it takes to do onboard, we are losing out on some good people that want to be able to serve their fellow citizens in Federal service. They have come. They pursued it. They are interested in it. But they are also going to feed their family, and 2 months into this, they are going to give up and they are going to go somewhere else. They are a qualified person that later a manager is going to say, that is the person I wanted and I cannot get. Now the manager is frustrated they cannot get the person they want. That person is saying, I really wanted to take that job, but I took a different one. We have to figure out how to fix this. So, how do we get out of this cycle?

Ms. ROBERTS. I understand your concerns and I will take that back.

Senator LANKFORD. That would be great.

Ms. WARNER. And, Senator, if I could add, the folks at Tinker, the human resource community, the management community, the labor community, have really helped us, and they have stepped up. Over a year, we have had a working group, what we call Rapid Improvement Advance, to try to take chunks, the entire spectrum, and break it apart. So, we appreciate that they are really—because

the Air Force Materiel Command is about 48 percent of our Air Force civilian population.

Senator LANKFORD. Yes. No, it is——

Ms. WARNER. So, they have a vested interest in it.

Senator LANKFORD. I have to say, it is a phenomenal team at Tinker.

Ms. WARNER. They are.

Senator LANKFORD. Team Tinker is really an amazing group of leaders up there, from General Levy all the way through the process, through our civilian, our union folks. They cooperate very well together. But this issue is also repeated at McAlester. It is repeated all over multiple bases and issues and it is across our workforce. I am sure CBP deals with some of the same issues of length of time on that.

Let me ask a question, as well. One of the things you talked about—and I am going to move to other people, as well, so I am not picking on you today. But, you talked about when we deal with North Dakota and that the boom started in 2006, and then working through the process of deciding locality pay or special salary packages and working through that process.

Ms. WARNER. Mm-hmm.

Senator LANKFORD. The difficult thing for me to hear is the boom starts in 2006. The transition in jobs is well on its way in 2007.

Ms. WARNER. Mm-hmm.

Senator LANKFORD. And special salary packages were approved in March and April 2015.

Ms. WARNER. Mm-hmm.

Senator LANKFORD. That is a long 9 years of trying to fight for employees. How do we get more agile in making decisions across our structure, whether it is United States Air Force or any of our other areas, to be able to see this trend, because that trend goes down, as well. I mean, there will be a time, as it has been in Oklahoma, where I serve, and it will be in North Dakota some day a long time from now, when the oil boom goes down and suddenly that pressure is not there.

Ms. WARNER. Right.

Senator LANKFORD. How do we become more agile, that it does not take 9 years to move from boom to we are going to adjust pay?

Ms. WARNER. Right. In taking a look at the history that I tried to do for this, and exactly what you are saying. In 2006, what is going on? And it gets me back to the position I had said earlier. Do they think they want to try to figure it out on their own and then they get in so deep that they are so far behind the curve that now it is a crisis? That could have happened.

What we do know is back in 2012, we tried to pursue—they thought locality pay, let us get at that. Whether or not we had individuals who talked about Special Salary Rate, whether they wanted to come to the air staff, but what I see on the record is around 2012, they came to the air staff policy——

Senator LANKFORD. Let me just ask, is the locality pay an easier trigger, an easier hurdle in that, or——

Ms. WARNER. No, sir——

Senator LANKFORD. Tell me, when they are making the decision, how are they going to decide between the two, because I understand all those options are on the table. You have the 3Rs.

Ms. WARNER. Right.

Senator LANKFORD. You have locality pay. You have the special packages.

Ms. WARNER. Mm-hmm.

Senator LANKFORD. How do you make the decision?

Ms. WARNER. And that is what I think, as an Air Force, what we have done is try to educate the community on what the tools are in the tool kit. And I know that OPM can speak to locality pay, but I will offer up what I have on that.

The locality pay gets more at wages in the local area versus cost of living in the local area, and that was pursued. I think the Federal Salary Council, there was a package that went forward. It was disapproved and then we started the process in 2013. They tried another reattack from the installation. The leadership said, let us go forward, let us give it another shot, and it did not make it through DCPAS.

And then, at some point, someone said, well, we have other tools in our tool kit, and I think OPM even offered up, hey, why are you not using the tools that you currently have aggressively? Let us put together a working group.

So, I think, again, sir, they did not get ahead of it where we should have, and right now for the Air Force, we have provided the tools at every location, and if there are any locations who are struggling, what we want them to do is not be afraid to raise your hand and come to the air staff and say, I cannot figure this out, or why do you not help me? I am overwhelmed.

Senator LANKFORD. OK.

Ms. WARNER. Because a lot of our installations, we may be one and two deep in expertise.

Senator LANKFORD. Sure.

Ms. WARNER. So, thank you, sir.

Senator LANKFORD. So, Ms. Roberts, help me out with this. How does that information get out? I know you released these different documents, these workbooks on it. You have the tool kits that are out there. Do you feel like the agencies now have the understanding of the things that are in their tool kit so they can be more agile in these moments? Because it obviously left North Dakota in a lurch in a lot of ways, in a very difficult situation across multiple entities.

So, that will happen again in other places. How do we address this?

Ms. ROBERTS. I would say, to feed off of what Ms. Warner has stated, we did not realize a lot of the problems that were happening in 2006. It was not brought to our attention at that point. And, I think agencies were trying to fix the problem on their own at that point.

So, when 2011, 2012, and 2013 came about, that was the time of the pay freeze. No special rates were approved during that time. They were frozen. So, there was nothing that they could really address.

Senator LANKFORD. OK.

Ms. ROBERTS. So, then comes 2014, 2015. You have your little bit of an increase, so you start getting some relief. So, we have started seeing the requests come in now. We approved three special rate requests in 2014. I think there were five in 2015.

To address the locality pay issue, individuals in the Bakken region started out wanting locality pay, which was not a viable solution. Locality pay is not a pay flexibility. It is something that is governed by law and regulation. The Federal Salary Council makes the recommendations to the President's Pay Agent, that is made up of OMB, OPM, and Department of Labor (DOL).

Senator LANKFORD. That is the type of thing—they started chasing something——

Ms. ROBERTS. That is right.

Senator LANKFORD [continuing]. Doing the paperwork, doing the process on something that——

Ms. ROBERTS. Absolutely.

Senator LANKFORD [continuing]. OPM already knew it was going to be a dead end at that point, so——

Ms. ROBERTS. And we——

Senator LANKFORD. That is what I am trying to talk about, is how do we actually make sure in the bureaucracy and of all the different options they are chasing——

Ms. ROBERTS. I think education, sir. I think that is the answer. And I think——

Senator LANKFORD. Do you feel like that is happening from OPM now, with the new books that are coming out?

Ms. ROBERTS. Absolutely. I was very happy to have the opportunity to go to Bakken, because that identified a lot of the problem for me. When we arrived at Bakken, they thought there was only one solution, locality pay. And we did mention that there were other pay flexibilities available, but I do not think they were educated on that process, because there were 3 years of no one using any flexibilities at all. So, I think we had to go and reeducate the Federal community on what was actually available to them.

Senator HEITKAMP. I just want to mention something in this context——

Ms. ROBERTS. Sure.

Senator HEITKAMP [continuing]. Because I think it goes to what you were saying. People on the ground get in over their head. They are not dealing with people in Washington, D.C., who actually make the decision. They are assuming, look, this is what—I mean, the Federal work group that was put together, led by Department of Interior, really, I think, did not know what all those tools were——

Ms. ROBERTS. Right.

Senator HEITKAMP [continuing]. Because of the diversity represented, whether it was USDA or whether it was DOI or even looking at some of the other agencies. I think they just muddled through it until you showed up. But, it does point out that when you have an engaged agency, like DOD and the Air Force, it is a lot easier to get this done.

Ms. ROBERTS. Absolutely.

Senator HEITKAMP. And, so, one of the challenges that you have is OPM is not going to know what the challenges are out there if

the agencies do not bring it to them, and a lot of times—in North Dakota, we do not have a large Federal workforce, so it is the tail wagging the dog. It is not something that got a lot of attention until we forced it to get attention.

And, so, I think to Senator Lankford, Chairman Lankford's point, how do we get more agencies to get ahead of it and then make this a priority as they are looking at the workforce?

Senator LANKFORD. Those are good points. Let me go ahead. You can make a comment on that, as well.

Ms. ROBERTS. To comment on that, I would say we are trying our best to get the information out to the Chief Human Capital Officers (CHCO). Like, for example, with the Science, Technology, Engineering, and Math (STEM) occupations, we are taking a very close look at the STEM occupations now. We are communicating with that community in various conferences. And we are just trying to get the message out. And if there are any other ideas that you may have, we are more than happy to consider them.

Senator LANKFORD. OK. Let me make two quick comments, and then we need to move to our second panel. I will see if there are any other questions the Ranking Member wants to have on this, as well.

Ms. Jacksta, just as a comment on this, I heard several times about trying to move people to remote areas. Oklahoma State University has done a very good job in their medical school of actually reaching out and recruiting people in rural areas to consider medical school, because they found that rural hospitals were having a difficult time hiring doctors because they were trying to hire a doctor that grew up in an urban place to move to a rural spot. And, so, they flipped it and started recruiting people in rural areas to consider medical school and incenting them back to rural hospitals. It has been a great project. Oklahoma State has been very good at it and it has been a quality thing.

Is that mindset also in place, or is it a sense of we just open it up for CBP hiring and then we may end up sending someone that grew up in Chicago to try to end up in North Dakota and they say it is just not a fit? I would tell you, rural folks love going to rural areas. It feels like home to them. But sending someone from an urban area to a rural area is a big stretch. So, tell me where you are in the recruiting for that.

Ms. JACKSTA. Thank you, Senator. So, I would say, over the last 6 months, we took a very different approach to our recruiting and we established a National Front Line Recruiting Command Construct. So, we brought in our operational elements where we had the biggest challenge in filling positions, both in the Office of Field Operations and the United States Border Patrol and also air marine, and we used data. We actually gathered data over a 5-year period by zip code. We identified, where have we been successful as an organization in recruiting and retaining Border Patrol agents, CBP officers, air marine staff, and that data was very telling.

And, to your point, Senator, what we had learned is a lot of different behaviors of where people live versus where they want to apply and work, and there is a lot of commonality there.

We also were able to pinpoint with some degree of precision which zip codes we should go to, which colleges and universities we should go to. We looked at the unemployment index of those locations, thinking if we could actually make a bigger difference, not just satisfying our own need, but making a difference in these local communities where the unemployment index might even be higher, if we can fix that paradigm, that would be a win-win for everybody.

So, that paradigm has been formulated over the last 6 months. We issued targets to every field office and every sector and every branch to go out and do that recruiting. And thanks to the reprogramming request that was approved, we were able to have some additional monies allocated so that we can build that base and build that recruiting effort.

Senator LANKFORD. OK. Wonderful. Let us know on the progress on that, because that will be key for actually recruiting people to be able to go and stay, and it may be a consideration to find people that have a love of working in rural areas, to not have to move them as rapidly, to develop these relationships, because that will be a key.

And I understand that is some flexibility, as well. Multiple different agencies, especially in law enforcement, like to move everyone every 2 or 3 years. There may be an issue to say, this person enjoys this particular assignment. Let us leave them longer——

Ms. JACKSTA. Mm-hmm.

Senator LANKFORD [continuing]. And allow them to be able to do that.

One last thing and then we need to be able to switch to the second panel on this.

Ms. Roberts, there is the flip side of this, as well. I was on the U.S. House Committee on Oversight and Government Reform (OGR) panel when we actually questioned a gentleman named John Beale, who worked for the U.S. Environmental Protection Agency (EPA), who had for years received extra retention pay, additional pay over and over again to be able to keep him because he is such a valuable employee. And then the word came out that he had actually claimed that he was a CIA agent and he really was not showing up for the EPA and it became this huge scandal that over years he had continued to receive retention pay as a valued employee, but actually he was scamming the EPA for years, lying to them that he is a secret CIA agent. And, so, he would leave and be gone for months at a time, saying, I am on a secret assignment. Really, he was skipping out from work.

He ended up having a retirement party in 2011, but he actually did not retire until 2013. So, for 2 years, he did not show up for work and everyone at work assumed he was retired. He was actually still getting his paycheck. It was just a fiasco.

So, on the flip side of retention pay is the accountability of those that use it. Understand, it is really being used for those folks that we really want to keep, not someone who is scamming the system. Now, I understand Mr. Beale is an extreme example of that. I get that. That is not the norm. But, my encouragement to you is not to be able to—you do not have to tell me all that. I just bring to you again, that is a good tool for us to have. We need to have that

tool, but we need to also maintain the oversight of how it is used so we do not have someone scamming the system. Is that fair?

Ms. ROBERTS. Absolutely. Agencies should be reviewing their 3Rs every year and making sure that they are paying them adequately.

Senator LANKFORD. Well, he got his retention pay every year, and that was not reviewed.

Ms. ROBERTS. That is a terrible example.

Senator LANKFORD. Well, to say the least.

So, any other questions, thoughts you have for this panel?

Senator HEITKAMP. No. Thank you.

Senator LANKFORD. OK. Thank you very much.

We are going to take just a moment to break to be able to switch the panel.

[Pause.]

Gentlemen, thank you. We are going to swear in the witnesses.

Our second panel is William Dougan, who is the President of the National Federation of Federal Employees, and Anthony Reardon, President of the National Treasury Employees Union.

Gentlemen, thank you both for being here. As you know, the tradition of this Committee, we swear in all witnesses. Would you please raise your right hand.

Do you swear the testimony you are about to give before the Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. REARDON. I do.

Mr. DOUGAN. I do.

Senator LANKFORD. Thank you. You may be seated. Let the record reflect the witnesses have answered in the affirmative.

Mr. Reardon, due to your position at the table, you get to go first on this one, and then Mr. Dougan we will receive your testimony, then we will have some brief questions, as well.

TESTIMONY OF ANTHONY M. REARDON,[1] NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Mr. REARDON. Thank you. Chairman Lankford, Ranking Member Heitkamp, and Members of the Subcommittee, thank you for inviting me to testify today on pay issues affecting the Federal workforce.

As you know, beginning in 2011 and continuing for three straight years, Federal employees were subjected to a pay freeze. In both 2014 and 2015, Federal employees received pay increases of one percent, which were below the amount called for under the law. According to Department of Labor data, private sector wages have increased 8.3 percent over the last 5 years, while Federal wages have increased by a total of 2 percent. No employer can expect to recruit and retain a professional and skilled workforce while failing to keep up with general pay trends.

NTEU worked closely with Senators Schatz and Cardin, and Representative Gerry Connolly on legislation to provide a 3.8 percent across-the-board pay raise for 2016. Passing that legislation would be a good first step in getting Federal pay back on track.

[1] The prepared statement of Mr. Reardon appears in the Appendix on page 58.

NTEU believes that the General Schedule, or pay system is capable of meeting the needs of both agencies and employees if agencies utilize the existing pay flexibilities available to them. Within the GS system, agencies are provided with a substantial variety of human resource flexibilities and authorities, including pay.

NTEU strongly advocates that agencies should utilize the H.R. tools they have been given to reward high-performing employees by, for example, providing meaningful performance-based cash awards and quality step increases. Agencies should also use retention and recruitment bonuses to address staffing shortages.

It is simply a myth that the GS system does not allow agencies to reward high performance or respond to a changing recruitment and retention environment, but these H.R. pay tools are just not being used enough, and the primary reason for that is a lack of funding.

A competitive employer must be able to reward excellent performance and recruit and retain skilled employees. NTEU is concerned that the calls for limits to or the total elimination of performance-based awards would turn off the GS system's most useful performance management features.

I want to be clear that agency management should have both a justification for and a documentation process for the use of these authorities, and Congress certainly has the right to scrutinize Executive Branch decisions. But managers need to be able to perform their core duties. That is, in the course of supervising their employees, they evaluate their employees' work and reward for high performance.

NTEU has the honor of representing over 25,000 Customs and Border Protection officers, trade enforcement and agriculture specialists stationed at 328 land, sea, and air ports of entry. Senator Heitkamp, I know you have been heavily engaged in Federal workforce issues in the Bakken region, including addressing serious pay gaps that have developed from the recent oil and gas boom there. I would like to thank you for your interest in CBP issues on the Northern border, where the remoteness of these duty stations can at times create unique recruitment and retention challenges.

Currently, there are approximately 300 front-line CBP employees at the land ports of entry from Pembina to Portal on the North Dakota border with Canada. We greatly appreciate your willingness to explore with us ways to make these regions more competitive, including the potential use of either special pay rates or recruitment and retention bonuses. I look forward to our continued work on this issue.

In closing, while NTEU believes that Federal pay increases have been totally inadequate over the last several years, we do not believe the problem is the GS system, but the lack of agency use of existing pay flexibilities. Agencies must receive proper levels of funding to be able to use these flexibilities, or they merely exist on paper. If agencies are not adequately funded, they simply will be unable to recruit and retain talented personnel, which ultimately will only serve to harm the American people.

Thank you, and I would be happy to answer any questions.

Senator LANKFORD. Thank you. Mr. Dougan.

TESTIMONY OF WILLIAM R. DOUGAN,[1] NATIONAL PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. DOUGAN. Thank you, Chairman Lankford, Ranking Member Heitkamp, and Members of the Subcommittee, for inviting me to testify. Our union represents 110,000 Federal workers across the country working in 35 different Federal agencies and departments. Prior to being elected to national office at NFFE, I spent 31 years working for the Federal Government. I worked primarily in the U.S. Forest Service and spent 22 years fighting wildfires.

The question is, does the Federal pay system have the flexibility it needs? I think the answer is, yes, it does. All the necessary tools are there for Federal agencies to recruit and retain the talented workforce needed to do the business of the American people.

However, does that mean the Federal pay system is working well? No, it absolutely does not, and the primary reason the system is not working well these days is that the system is so completely starved of resources, there is no room for the appropriate flexibilities that have been built into the system to have their desired effect.

For example, the GS pay system has locality pay areas clustered in metropolitan areas where non-Federal workers earn higher salaries and wages so that Federal agencies can compete for talent in those areas. This flexibility is necessary and it is essential to maintaining the Federal workforce in places like New York and San Francisco, but also in places like Dayton, Milwaukee, Phoenix, and Raleigh-Durham.

The problem is that because Federal workers have not been given an adequate pay adjustment in over 5 years—Federal workers got one percent adjustments the past 2 years and frozen pay the 3-years prior to that—there has not been any locality pay adjustment of any kind for over half a decade. Instead of the GS system working as designed, with each locality pay area having its pay scale fluctuate from year to year based on market factors, all locality pay areas have been treated the same, regardless of whether the wage gap in each of those areas has been growing or shrinking. Because of the pay freezes and woefully inadequate pay adjustments, nearly all the market-driven flexibility that was built into the GS pay system has ground to a halt.

A similar problem occurs for hourly wage grade employees. Their pay is supposed to be based on prevailing wages, what private industry is paying for comparable work in an area. There are 131 such wage areas spread out across the country. A great deal of effort is taken to survey private employers in these areas so that prevailing wages can be determined. Here is how the problem occurs.

Adjustments to the wage grade pay scales are capped at the level of adjustment that GS employees in a given area receive. As I mentioned, in the last 5 years, Federal employees have seen nothing but frozen pay or one percent adjustments and no locality pay adjustments of any kind. That means that for blue collar Federal workers, frozen pay or a one-percent adjustment served as the maximum pay adjustment possible, even if the true prevailing wage in the area far exceeded that amount.

[1] The prepared statement of Mr. Dougan appears in the Appendix on page 64.

Is it really a prevailing wage when these artificial caps severely constrain any upward movement in the pay scale? I would argue that it is not truly a prevailing wage at that point. Again, nearly all the market-driven flexibility that was built into the wage grade pay system has been stopped into its tracks.

For GS and wage grade employees, the Federal pay system works if it is used as designed, but it cannot work well when being funded so inadequately.

I greatly appreciate this hearing's focus on flexibility and I agree it is a very important topic, but you cannot discuss issues related to recruitment and retention in proper context without addressing the real elephant in the room, the diminishing prospects of being Federal employees in this political and economic environment.

Here is the bottom line. It will not matter what pay flexibility exists when people do not want to work for the Federal Government any more. There will be no right balance of flexibility to strike or combination of tools to give managers when people no longer believe a Federal Government job is a good job, and that is where we are headed.

Consider these grim statistics. Federal employees have endured $159 billion in targeted cuts over the last 5 years, and every year, billions of new cuts are proposed. Federal workers are now making an average of 35 percent less than workers doing the same jobs in the private sector, and every year that Congress gives workers an inadequate adjustment, that gap grows larger.

This has to change. These are the people caring for our veterans, keeping our military ready, guarding our borders, keeping our communities safe from wildfire and other disasters, and performing countless other duties essential to the American people. We cannot keep shortchanging these dedicated Americans and disrespecting their service and expect it not to have seriously negative consequences. Federal employees need a raise and they need and deserve the respect of every man and woman serving in Congress.

I thank the Subcommittee for holding this hearing and would be happy to answer any questions you might have.

Senator LANKFORD. I defer to the Ranking Member for opening questions.

Senator HEITKAMP. Thank you so much, Mr. Chairman, and I thank you so much for your testimony. I think we hear it loud and clear, which is the discussion point that we are trying to get at in this hearing is, is there flexibility? Are there tools? Do we know what those tools are? Do agencies engage and use those tools to address workforce shortages and discrepancies in terms of market? What you are saying is, everybody knows what these tools are. There is flexibility. But there are not the resources to basically deploy that flexibility because the restrictions in pay, basically lock you out.

So, I mean, that is a tough issue for us here, and I think as we look forward and we think about what it is that Federal employees do—and let us take Customs and Border Protection or Border Patrol. To you, Mr. Reardon, when you look at the challenges of bringing people to the border, do you hear much about pay, or do you hear about remoteness? What are the reasons why employees

give on why they do not want to work in Portal as opposed to down in McAllen?

Mr. REARDON. Well, I think, Senator, to respond to the question, I think what we primarily hear from our CBP officers and those who work for CBP is really about staffing shortages. And I think that creates a real dilemma for people, because with those staffing shortages come a wide variety of other workplace problems.

Senator HEITKAMP. Challenges.

Mr. REARDON. If I could, I did want to sort of touch on something, though, that you had just said about whether or not everybody is familiar with all of the flexibilities. I think, generally speaking, people are aware of the flexibilities. Unfortunately, I think even what we heard from the first panel a little bit is that not all of the H.R. executives, I think, are fully conversant all the time about the various scenarios where it might make sense to use the various flexibilities.

And, so, one of the things that I would urge and that NTEU fully supports is that—I hear loud and clear that OPM is doing some work on trying to make sure that H.R. folks are educated. But I also think it is very important that they also provide some real life scenarios so that these H.R. folks are not worrying about how do I solve this on my own. They actually have some tools in front of them so that they can see some real life workplace scenarios that they will know up front that, hey, there are flexibilities that I can use in this situation.

Senator HEITKAMP. Can I just expand on something you said, which is kind of a self-fulfilling prophecy, which is, look, what you do hear from them is because of staffing shortages, they do not want to go where they are the only one or where they are expected to do the work of two, three people. So, that is kind of a self-fulfilling prophecy. We cannot recruit because we do not have enough personnel.

Mr. REARDON. Well, that is absolutely correct. And, I think when you look at CBP, their workplace staffing model that they have for CBP officers right now suggests that there are on the order of 2,700 additional CBP officers that are needed nationwide.

And, so, I would really underscore for this Subcommittee that not only is that a problem in terms of the staffing shortages we have already talked about, but it is also a very important security issue for this country and it is an important economic issue in terms of the ability for this country to get the goods and services that we bring into the country. I think that is important.

Senator HEITKAMP. I think in my opening comments I mentioned the critical economic impact of not having people at the borders, basically long lines, inaccessibility in terms of trade.

But, I want to get to something especially as it relates to Customs and Border Protection and Border Patrol. Because of this massive influx of new positions, taking a look at building greater border security, one of the things we heard in the earlier panel is the length of time that it takes to do background checks. Do you have any input on background checks, the kinds of things, security checks, how we can speed that process up, because I know that there is a great deal of concern about hiring people and then doing

background checks later on, especially in a law enforcement capacity, so——

Mr. REARDON. Senator, thank you. Let me just first say that NTEU and I completely agree that employees that are hired into CBP and into other Federal agencies, it is important that their backgrounds are checked, because we do not want to have the front page news stories that sometimes we end up having in these situations.

In terms of, things that I would suggest that we could do to speed up the process, I can honestly tell you that I am certainly not an expert in the Federal hiring processes, and so how long it should take to go through the process, I am just probably not the best person to ask that question of. But, I will tell you this, that I will take that back and I will think about it and talk to my folks and see if we can come up with some suggestions and I would get those to you.

Senator HEITKAMP. Well, I really believe that what you said is exactly right. You do not want to go where you are all alone, so no one applies for those positions, no one wants to be there, and we end up just spiraling downward in terms of getting staffing. And, a lot of that is related to the difficulty. I mean, if you have a job with the local chief of police all lined up, as Senator Lankford talked about, you are going to move to that job. You are not going to wait the 3, 4 months. And then you feel an obligation, as most people do when they take a new job, to fulfill kind of a personal commitment.

I want to turn to locality pay. Mr. Dougan, I saw you, as we were talking about locality pay—this has been an awareness that I have built working through these problems in North Dakota, the difficulty of locality pay. Even if people pursue it, then we have problems funding it. But, in North Dakota, it seems to me that we should have been able to make a case for locality pay. When your rents are equal to New York City rents, you ought to be able to make the case for locality pay.

I realize, as Senator Lankford said, these things will come up and down and that flexibility. But, can you comment on or expound on the difficulties of locality pay in a rural setting like Oklahoma, where they have experienced the same kind of oil boom that we have in North Dakota?

Mr. DOUGAN. I think there are a couple challenges. One, locality pay, as I mentioned in my testimony, primarily centers—or has centered, at least historically, to this point in time, has centered around metropolitan areas where the pay rates between the private sector and the Federal Government essentially are great enough that it demands that we make some sort of a pay adjustment for the Federal sector in order for the government to be able to be effective in recruiting and retaining a workforce.

But, the principles are the same and should apply in a rural setting, as well, because, really, when you boil it all down, the fact of the matter is that if the costs of goods and services in living in communities in a rural area versus a metropolitan area are such that you cannot afford to live there because of the salary that you are making, then that condition should—make it possible to consider having a locality pay there.

Senator HEITKAMP. Why do you think there is such hesitancy from the Federal Salary Council to actually look at broadening locality pay adjustments?

Mr. DOUGAN. Well, the process at the Federal Salary Council—I was a member of the Federal Salary Council for the first years of my term as President, and I have to tell you that it is a very cumbersome process. It takes a long time. There are a lot of hoops that have to be jumped through on the part of both the State and the local communities and metropolitan areas. You have to get the local government engaged. You have to get the State government engaged. They make presentations. They collect data. And, it is very cumbersome and it can take, like, 2 or 3 years to even reach the point where they are going to make a decision.

Senator HEITKAMP. From my standpoint, we ended up doing a work around, what I would call a work around in terms of special pay rates when we did not really address the real issue, which is we have a locality pay problem in the entire Federal workforce. And as a result, when you look at it, what happened to us is we have to go around to each one of these agencies and get them fully engaged as opposed to, say, across the board the Federal workforce is stressed in the Bakken and we need to make pay adjustments. And, so, it was just so disappointing, I think, for me to realize that. I could make an intellectual case for a locality pay adjustment, but there just was not the ease in the system of getting this done.

And, I would be really interested in your further thoughts on how we, having served on the Federal Salary Council, how we could streamline that process or make it more available so that people do not knee-jerk. Really? Williston, North Dakota? And, we got that. I mean, it is not New York. And I am, like, well, then rent an apartment for under $2,500 in Williston, North Dakota, which was the going rate. And we are still, for a two-bedroom apartment in Williston—I talked to the mayor yesterday—it is $1,500.

So, even though we have seen oil prices decline and activity ebb somewhat, we still have a huge need to treat—and as a result, when we looked at this yesterday in Indian Affairs, not having that Federal workforce—we have a great story to tell with DOD stepping up—but not having the Federal workforce has cost the tribes millions of dollars, has caused million of dollars' worth of headaches for the drilling industry, and these are jobs that are critical to continuing this effort to produce oil in our country and become energy secure.

So, I am curious about how we can improve the Federal Salary Council process on locality pay.

Mr. DOUGAN. I think there are opportunities to look at expediting the data collection part that has to happen on the front end before a proposal ends up in front of the Federal Salary Council. There is a lot of data in terms of costs of goods and services and wages that takes place in order for that locality area to make its case before the Federal Salary Council.

Senator HEITKAMP. Have you ever seen any of these locality pay decisions come on and off? Is that part of the resistance, that it is, like, if you give a locality pay adjustment, it seems more permanent rather than doing a look-back and adjusting it on and off?

Mr. DOUGAN. Well, I think—again, I go back to my testimony. I mean, the basic principle of a locality pay, it is a market-based system——

Senator HEITKAMP. Yes.

Mr. DOUGAN [continuing]. So we understand that when the economics are such in a locality area that the cost of living is high, then the locality pay is going to reflect that. You are going to have a higher locality pay. When and if, to use your example in North Dakota, when and if the oil dries up and the prices of goods and services shrink, then there would be, or should be, a corresponding shrinkage in the amount of locality pay that would be paid.

So, for me, I think there is a certain hesitancy on the part of the Federal Salary Council, but even more than the Federal Salary Council, the President's Pay Agents and the others that make the decision on whether the locality pay is actually going to be instituted or not, there is this notion that once it is there, you never get rid of it. Well, there is really no need to get rid of it if it is market driven, because the pay adjustments will go up and down based on what is happening in terms of the costs of goods and services within that area.

Senator HEITKAMP. I think it is one of the problems that we have with the Federal Government across the board, which is one-size-fits-all, and we come from very diverse kinds of backgrounds, and if you take a look at the VA, staffing the VA with surgeons in Fargo may be much more difficult than staffing the VA with surgeons in Minneapolis, at their VA. And, so, we have to—that is a real concern for me, that it really takes a United States Senator to pound the table a little bit so that we can get opportunities to keep a workforce in Minot. It should not be that way. There should be something within the system that treats Federal employees a little differently. So, we will continue to think about this.

Thank you very much, Mr. Chairman.

Senator LANKFORD. Gentlemen, thank you for your advocacy and for standing up and getting a chance to speak out for folks. You are speaking out for millions of folks that are serving our Nation every single day, and I want you to know I appreciate that very much.

All these are hard decisions, as Senator Heitkamp had mentioned, as we deal with $430 billion worth of deficit this year and all the realities that face our Nation with $18.5 trillion in total debt. These are very real areas that affect all of our families, but especially the Federal families. So, we understand full well the difficulty of these decisions, whether it is the President's recommendation to raise Federal salaries by one percent or whether it is Congress working through it or different members making recommendations, we all get the dynamics. But, there are some unique challenges.

I would love to be able to sit and visit for a while. I am getting word that at 11, which was 4 minutes ago, they are calling votes. I am listening for the bells here at this point, but I understand it is coming at us in a hurry.

I do want to make a quick statement here. Both of you have mentioned the GS schedule and that you think the GS schedule is adequate. It is just the funding behind it in the different agencies

to be able to give the different managers the ability to be able to do some merit increases and such within the GS structure. Are there any recommendations that you would make to the GS structure or at this point, are both of you content to say, it is fine, we just need to add funds behind it?

Mr. REARDON. Mr. Chairman, thank you. I would say that I do believe the GS system— the system, not just the General Schedule, but including all of the flexibilities—I think it is a system that is very good and works for the American people and for Federal employees. But, I do believe that we have to ensure that there is available funding for these flexibilities, because if we do not really use all of the flexibilities that are available in concert with the GS schedule itself, then I think we run into the problems that we have seen. So, yes, I do think as long as we use the workplace flexibilities, I do believe it will work.

Senator LANKFORD. OK. Thank you. Mr. Dougan.

Mr. DOUGAN. I would echo what Mr. Reardon said. I believe the system works. I think the system is fine. The challenge that we have is twofold. No. 1, we have to ensure that when pay adjustments are given to Federal employees that we actually have the money to make good on those, so that we can allow the locality pay marketplace fluctuations to occur and to fund that system so that it works properly.

With respect to the other flexibilities that we have, like recruitment, retention, relocation, I think that those are good tools. I think the tools work. The main problem that we have there, again, is one that in times where budgets are tough and lean for Federal agencies, often, we will see the first things—if you have to start looking for places to cut, these types of incentives are often looked at first by agencies to either reduce or to do away with altogether, because they have to ensure that they continue to have to pay the workforce and anything over and above that, in some cases, in a very lean budget, is looked at as a luxury.

Senator LANKFORD. Gentlemen, thank you for being here and for your testimony, your written testimony and your preparation, as well.

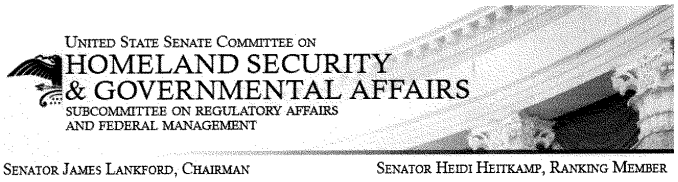
Before we adjourn, I would like to announce the Subcommittee will hold a joint hearing with the House Subcommittee on Oversight and Government Management on the protection of sensitive personal information on government databases Tuesday, October 27. That is next week.

That concludes today's hearing. I would like to thank our witnesses for their testimony. The hearing record will remain open for 15 days for the submission of statements and questions for the record.

With that, this hearing is adjourned.

[Whereupon, at 11:08 a.m., the Subcommittee was adjourned.]

APPENDIX



SENATOR JAMES LANKFORD, CHAIRMAN SENATOR HEIDI HEITKAMP, RANKING MEMBER

October 22, 2015

Opening Statement of Senator James Lankford

Homeland Security and Governmental Affairs Subcommittee on Regulatory Affairs and Federal Management Hearing titled:

"Improving Pay Flexibilities in the Federal Workforce"

Good morning. I want to welcome everyone to today's Subcommittee hearing which will focus upon the topic of pay flexibilities in the federal workforce. We all want a federal government that runs efficiently and effectively for the American people. It is a bipartisan goal to find federal employees who are dedicated and serve our fellow citizens with excellence. Why would anyone want to have federal public servants that are not skilled and competent for the task? Attracting and keeping the best employees to serve in Washington D.C. and around the country is an effort worthy of the Subcommittee's time and attention.

The federal workforce stretches across our nation, with a different set of opportunities and challenges at each location. Some unique considerations within the federal workforce are longstanding and clear. The challenges posed can be as simple as the differences in climate and location. Imagine how different it is to attract a skilled federal worker to a post in a rural northern town in Alaska than it is to Miami, Florida or Tulsa, Oklahoma.

However, we have also encountered federal workforce challenges that are not foreseeable or are challenging due to varying economic circumstances. A prime example of this was the unexpected and dramatic 2006 discovery of large amounts of oil in Eastern Montana and North Dakota. Since 2006, the oil boom in North Dakota has seen an incredible increase in economic activity such as housing and infrastructure demands, to name only a few. With these demands came an inevitable tug-of-war between the private sector and the government to see who could hire the best workers.

I commend Ranking Member Heitkamp for her leadership in addressing the very real challenges that face her State and the Bakken region, and for her work on federal workforce pay flexibility. I hope that with today's hearing we can help make sure the federal government and the private sector have enough skilled workers to meet both of their demands.

We have with us today two panels of witnesses who are prepared to share their own perspectives on these issues. In our first panel, we have Ms. Brenda Roberts, Deputy Associate Director, Employee Services, Pay and Leave from the Office of Personnel Management. We have Ms. Linda Jacksta, Assistant Commissioner, Office of Human Resources Management from

U.S. Customs and Border Protection. And finally Ms. Debra Warner, who is Director of Civilian Force Management, and Deputy Chief of Staff for Manpower, Personnel, and Services from the U.S. Air Force.

In our second panel, we will hear testimony from Mr. William R. Dougan who is the President of the National Federation of Federal Employees, and Mr. Anthony Reardon, President of the National Treasury Employees Union. We thank each of you for being here this morning. I look forward to an informative discussion with our witnesses.

Senate Homeland Security & Governmental Affairs Committee Subcommittee on Regulatory Affairs and Federal Management

October 22, 2015

"Improving Pay Flexibilities in the Federal Workforce"

OPENING STATEMENT OF

RANKING MEMBER HEIDI HEITKAMP

Thank you Chairman Lankford. I am so pleased to focus today on a topic that is so important to my home state of North Dakota. As many of you know, I have been fighting to address the challenges faced by the federal workforce in the Bakken region of western North Dakota and eastern Montana since taking office in 2013. This is a topic that I care deeply about, and I greatly appreciate our witnesses' testimony on this subject.

The Bakken region is a prime example of the drastic impact that unique economic situations can have on local and regional employment markets. The energy boom has brought new jobs and opportunity to my state, but has also caused the cost of living to skyrocket in the Bakken, leading to the inability for the federal workforce to keep up with the private sector. The federal pay system just wasn't flexible enough to remain competitive with the private sector – this greatly hurt the ability of federal agencies to recruit and retain the workforce they needed.

Working in close conjunction with the Office of Personnel Management (OPM), special pay rates became the most effective path for federal agencies in the Bakken region to improve their recruitment and retention efforts. Since bringing the Director of the Office of Personnel Management (OPM) to North Dakota last year, I am pleased to say nearly 500 federal employees across North Dakota were helped through special pay rates, ensuring they are treated fairly.

But there is much more work to be done in the pay flexibility realm. The Bakken is not the last time the federal workforce will be forced to respond to such a unique situation, and it is critical that the federal workforce is adequately prepared the next time that something of a similar magnitude strikes.

I am particularly interested in exploring whether OPM and federal agencies have enough flexibility through locality pay, special pay rates, recruitment, relocation, and retention bonuses to meet unique federal workforce challenges. For example, the special pay rate process proved laborious at times for agencies in North Dakota. Can this, and other processes, become more flexible so agencies can respond quicker?

I am also interested in exploring how we can attract more federal employees to remote locations—particularly along the Northern Border. This is a different issue than what occurred in the Bakken, but it is one the Department of Homeland Security must tackle every day.

Understanding the roots of the General Schedule and Federal Wage pay systems will help us appreciate how pay flexibilities were meant to be used. It is also essential that we understand the ways that pay and locality freezes have shaped the federal workforce climate we are experiencing today.

I am looking forward to a productive dialogue this morning on the best ways for the federal workforce to address unique economic challenges, how we can improve the current pay flexibility system, and what we can do to make sure federal agencies have all of the necessary tools at their disposal to keep the federal workforce as vibrant as possible. I look forward to hearing the witnesses' testimony.

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF
BRENDA ROBERTS
DEPUTY ASSOCIATE DIRECTOR
PAY AND LEAVE
EMPLOYEE SERVICES
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGMENT
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

on

"Improving Pay Flexibilities in the Federal Workforce"

October 22, 2015

Chairman Lankford, Ranking Member Heitkamp, and members of the Subcommittee, thank you for the opportunity to discuss the role of Federal pay policies in recruiting and retaining an effective Federal workforce. I appreciate the opportunity to have this discussion.

As part of our core function, the U.S. Office of Personnel Management (OPM) provides a key role in regulating, overseeing, and administering the authorities on compensation policies, including pay flexibilities available to help agencies recruit and retain their most valuable resource — their employees. Ultimately, the decision to use discretionary pay flexibilities rests with the individual agency, which must provide a justification for using the flexibility. The decisions must be fair and equitable to ensure the Federal government remains a model employer in the 21st century.

As with any compensation system, there are special challenges. It is important to remember that each agency's mission and needs are different, and Congress has established many complex arrangements to accommodate agency needs. During

this time of tighter agency budgets and sequestration, Federal agencies are being very careful in how they allocate their human and capital resources. Reductions in budgets have meant reductions in employee investment, including limiting pay adjustments for Federal workers. An example of this is the 3-year freeze on annual pay adjustments Federal employees experienced in 2011 through 2013.

In light of the current climate, it is extremely important for agencies to strategically use pay flexibilities (e.g., recruitment, relocation and retention incentives, special rates, student loan repayments) to attract desirable applicants and support the retention of good employees. In addition, it is just as important for agencies to consider non-pay flexibilities that we refer to as workplace flexibilities. These flexibilities include alternative work schedules, telework, and discretionary leave benefits. Generally, these flexibilities do not have a direct budget impact, but are just as valuable to agency employees to help balance their work and family needs.

I know the topic of Federal employee compensation has had personal implications for some residents of your state, Senator Heitkamp. I was pleased to have the opportunity to join you in North Dakota last year to hear directly from your constituents about the challenges they are facing as the result of rapidly increasing living costs in the Bakken, North Dakota region due to the dramatic increase in oil and gas production. The issues surrounding Federal employee compensation in the Bakken area are a prime example of how agencies can strategically use pay flexibilities to assist agencies with a critical problem. While compensation under the General Schedule gives the appearance of being inflexible, it is important for agencies to recognize the full suite of options available outside of the traditional confines of the base General Schedule and locality pay.

Agencies have autonomy to determine the appropriate and cost effective use of pay flexibilities at their disposal under title 5 of the United States Code. These flexibilities include short-and long-term tools that can be used to attract and keep a Federal workforce in place. OPM provides guidance to agencies on the various flexibilities available and encourages agency headquarters human resources staff to reach out to OPM for advice when determining which of the many pay, leave and other workplace flexibilities may be best suited to resolve an agency's recruitment or retention problems.

To provide insight to the Subcommittee, I would like to mention a few of the pay flexibilities the Federal government has to offer agencies to help with recruitment and retention problems. First, I'd like to mention our 3Rs program. The 3Rs stand

for "recruitment, retention, and relocation" incentives. Recruitment and relocation incentives may be used to address immediate, short-term needs in recruiting employees or if an agency determines a position is likely to be difficult to fill absent an incentive. Retention incentives can be used to help retain individual or groups of employees likely to leave Federal service. These incentives are largely within the discretion of individual agencies, and in most instances, do not require OPM clearance in order to be granted.

Agencies can also choose to participate in the Federal student loan repayment program, under which agencies can repay Federally-insured student loans for candidates or current employees of the agency. Agencies may pay a lifetime maximum of up to $60,000 for any one employee in exchange for a minimum 3-year service agreement.

Other alternatives include superior qualification appointments that allow an agency to set pay for a newly hired General Schedule employee at a rate above the normal step 1 starting rate—if the new employee has superior qualifications or would address a special need of the agency. An agency may also elect to use the maximum payable rate rule to set pay for a current General Schedule employee at a rate above the rate that would be established using normal rules (up to step 10), based on a higher rate of pay the employee previously received in another Federal job.

There are also specific pay flexibilities that may be used to address long-term staffing difficulties where OPM plays a more active role because of the need to ensure that agencies operate on a level playing field. This can be accomplished with special rates when agencies identify a business need to offer higher rates of basic pay for a group or category of General Schedule positions in one or more geographic areas. Special rates may be appropriate when there is a need to address significant hardships in recruiting or retaining a well-qualified workforce. Agencies must first decide there is a need for special rates and examine whether their budgets will allow them to afford higher rates of pay. OPM encourages agencies to reach out to my staff for advice while analyzing their potential need to request special rates. After completing their internal evaluation, agency headquarters should continue to work with my staff to document their need for special rates and submit their request for OPM's review. Before deciding whether to approve an agency's request, OPM coordinates with other agencies that employ people in similar occupations or in the same geographic area to ensure that

increasing pay for one group of employees will not create competition among agencies with similarly situated workforces.

Agencies can also seek to offer critical position pay. At an agency's request, OPM may, in consultation with the Office of Management and Budget, grant authority to fix the rate of basic pay for one or more positions at a higher rate than would otherwise be payable for the position. The position under consideration must require an extremely high level of expertise in a scientific, technical, professional, or administrative field that is critical to the successful accomplishment of an important agency mission. Up to 800 positions may be covered Government-wide.

In addition to the various pay flexibilities, the President has directed OPM to build on our record of leadership through the increased awareness and availability of workplace flexibilities and work-life programs to help agencies with recruitment and retention problems.

On June 23, 2014, the President issued a memorandum entitled: "Enhancing Workplace Flexibilities and Work-Life Programs" that directed OPM to provide better education and training on these programs. The memorandum makes employees aware that they have a right to request work schedule flexibilities, including telework, part-time employment, or job sharing, and directs that agency heads ensure that workplace flexibilities are available to employees, to the maximum extent practicable, in accordance with the laws and regulations governing these programs and consistent with mission needs. The policy promotes a culture in which managers and employees understand the workplace flexibilities and work-life programs available to them and how these measures can improve agency productivity and employee engagement.

On January 15, 2015, the President issued another memorandum entitled "Modernizing Federal Leave Policies for Childbirth, Adoption and Foster Care to Recruit and Retain Talent and Improve Productivity." In his January 20, 2015, State of the Union address, the President mentioned this memorandum and his belief that all employers, including the Federal Government, should support parents to ensure that they can contribute fully in the workplace while also meeting the needs of their families. As part of his effort to ensure all employees have paid time off available for childbirth, adoption and foster care, the President has directed all Federal agencies, to the extent permitted by law, to ensure discretionary benefits are used to the maximum extent practicable, including advancement of sick or annual leave, donated annual leave under the voluntary

leave transfer and leave bank programs, and leave without pay. Further, to the extent permitted by law, the President has directed all Federal agencies to (1) offer 240 hours of advanced sick leave, at the request of an employee and in appropriate circumstances, in connection with the birth or adoption of a child or for other sick leave eligible uses, and (2) offer the maximum amount of advanced annual leave, at the request of an employee, for foster care placement in their home or bonding with a healthy newborn or newly adopted child.

As a result of these two memoranda, OPM issued two handbooks in the past year to emphasize the importance of workplace flexibilities. These two handbooks — (1) the Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption and Foster Care and (2) the Handbook on Workplace Flexibilities and Work-Life Programs for Elder Care — that will allow agencies to be in a better position to assist and educate employees in using these workplace flexibilities.

In summary, OPM stands ready to assist agency headquarters with the various pay and workplace flexibilities available to help ensure the recruitment and retention of the strongest employees this country has to offer. Thank you for the opportunity to testify today, and I look forward to answering any questions you may have.

DEPARTMENT OF THE AIR FORCE

PRESENTATION TO THE SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

SUBJECT: IMPROVING PAY FLEXIBILITIES IN THE FEDERAL WORKFORCE

STATEMENT OF: MS. DEBRA A. WARNER
DIRECTOR OF CIVILIAN FORCE MANAGEMENT
DEPUTY CHIEF OF STAFF FOR MANPOWER, PERSONNEL AND SERVICES

OCTOBER 22, 2015

NOT FOR PUBLICATION UNTIL RELEASED
BY THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

WRITTEN TESTIMONY ON IMPROVING PAY FLEXIBILITIES IN THE FEDERAL WORKFORCE

SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT

The purpose of this document is to provide the background and processes followed to develop Special Salary Rates for Air Force civilian employees assigned to Minot Air Force Base, North Dakota. It is crucial at the outset to note the importance of Minot AFB and how pay for AF civilian employees is of vital necessity to sustain a stable civilian workforce for the installation to efficiently execute its mission. Minot AFB is home to the 5th Bomb Wing (Guardians of the Upper Realm), which serves as the installation's host wing, and has two squadrons of B-52H Stratofortress bombers assigned to its mission set providing global strike and nuclear deterrence capabilities. In addition to the 5 BW, the 91st Missile Wing (Rough Riders) is one of three intercontinental ballistic missile wings in the DoD and an integral partner on the Minot complex. With both of these dynamic and strategic organizations physically located at Minot AFB, it is vital to realize it supports two components of our country's nuclear triad – a mission and responsibility that are never taken lightly.

BACKGROUND

In approximately 2006, northwest North Dakota began to experience swift economic activity based on the discovery of the Parshall Oil Field in the Bakken Region. As the energy sector began to grow and prosper, it began to have a direct impact on the cost of living, housing availability and affordability, and drove employment challenges for Federal agencies in that part

of North Dakota. Additionally, a tighter than normal labor market evolved – and continues to evolve – with historic lows of between 2-3% unemployment which is currently around half the nationwide unemployment rate. As drilling increased with oil and gas companies reaping significant profits, they were able to provide lucrative incentives and higher pay and benefits packages to fill their required staffing needs and placed stresses on the ability of Federal agencies to recruit and retain Federal employees in the local area.

The quick acceleration of living costs and how to manage it not only for Federal workers but for our Active Duty members in the Air Force was evident when the Defense Management Travel Office increased the military basic housing allowance by an average of 76%. Additionally, in fiscal year 2013, the General Services Administration increased the maximum lodging rate for Ward County (which includes Minot, North Dakota) to an average of $109/day (a 42% increase) and increased the M&IE per diem rate to $56/day (a 22% increase) as a result of increased hotel and subsistence expenses in the area.

Another contributing factor affecting Federal employees was managing the sudden rise in the cost of living without an authorized annual pay adjustments for Federal employees between 2011 and 2013. As the cost of goods and services rose, the financial ability of an employee to keep pace with the increase in local living costs was severely challenged and required drastic adjustments to their personal budgets in order to manage the rise in day-to-day family expenses. In addition, all Federal agencies were faced with the impact of sequestration and reduced appropriated funds. Some of the consequences included hiring slow-downs and/or freezes in order to stay within resulting limitations.

As a result, many employees began to consider other employment opportunities in the private sector bolstered by the energy sector's expansion and impact, both directly and indirectly, on the Bakken Region. In some cases, some of the blue-collar workforce could earn as much as $80,000 annually driving a truck, for example, while others were drawn to earnings of $20 an hour in the fast food industry. There were also instances of Minot AFB losing entry-level interns turning down $25,000 incentives to go work in the private sector.

Recruitment to fill key civilian vacancies at Minot AFB has presented challenges to the senior leadership on the installation. At the beginning of Fiscal Year 2013, there were 20 civilian vacancies and by 31 May 2014 there were 24 vacancies in key leadership positions. While that may not seem like a large number, it indicates that no progress was being made to recruit and retain civilian employees as the turnover rate adversely impacted the ability to maintain a stable civilian workforce. According to an analysis provided by the servicing Civilian Personnel Section in the summer of 2014, efforts were made to fill 16 vacancies and 21 offers were made resulting in six accepting an offer – a less than 30% acceptance rate. At the same time, 12 new vacancies occurred from resignations or deferred retirement of civilian employees with over 50% citing pay as the reason. The revolving door syndrome presented a significant challenge to Minot AFB.

PROCESS

It quickly became apparent to Minot AFB's senior military and civilian leaders, along with those from the local communities and the state's elected officials, that a concerted effort was needed to

stem the tide of turnover and low acceptance rates of civilian employment at Minot. In late 2012 and throughout 2013, base officials, in coordination with Minot AFB's major command, the Air Force Global Strike Command (AFGSC), submitted correspondence to the Air Staff requesting a new, distinct locality pay area to include all of the Bakken Region. Another proposal asked to be a part of the Minneapolis, MN locality pay area and removal from the Rest of USA locality rates. The Federal Employees Pay Comparability Act of 1990 established, among other things, separate locality pay areas which take into consideration the gap between pay for non-federal employees and Federal employee pay at various geographical locations.

While it is a useful and impactful tool in major metropolitan areas for white collar occupations, locality pay is not necessarily designed to deal with the occasional economic boom as was the case in the Bakken Region and, more specifically, Ward County. Employees at Minot AFB who are covered by the Federal Wage System do not receive General Schedule locality pay but instead have pay set based on prevailing wage levels in the North Dakota wage area. Eventually it was determined by all interested parties – Minot AFB, AFGSC, Air Staff, DoD's Defense Civilian Personnel Advisory Service, and the U.S. Office of Personnel Management – to pursue and obtain approval to establish Special Salary Rates to help lessen pay disparities and enhance recruitment and retention efforts for certain civilian positions that were and have been more severely impacted by the oil and gas bonanza.

A comprehensive analysis was launched in the summer of 2014 which included a deep-dive to determine those specific positions integral to supporting the vital mission portfolio found at Minot AFB. A collaborative effort continued to be fostered between the base and major

command, along with our office, DoD and the experts at the Office of Personnel Management (OPM). This relationship was pivotal to ensure the right data were being developed and a business case presented to adequately depict the concern facing the sustainability of the civilian workforce at Minot AFB.

The first two Special Salary Rates (SSR) packages, recommending increases of 25% for targeted positions in the Federal Wage System and General Schedule pay plans, were formally submitted to our colleagues at the Defense Civilian Personnel Advisory Service (DCPAS) in late September 2014. Seventeen Trades and Crafts positions were identified to be critical to Minot's unique mission and included such occupations as Electronics Mechanic, Electronic Industrial Controls Mechanic, High Voltage Electrician, Powered Support Systems Mechanic, Engineering Equipment Operator, Sheet Metal Mechanic (Aircraft), Heavy Mobile Equipment Mechanic, to name just a few. Additionally, fifteen General Schedule (GS) occupations were designated to receive the recommended 25% increase. Those positions, primarily Scientists and Engineers, included Safety and Occupational Health Management, Environmental Protection Specialist, Biological Scientist, Engineering Technician, Civil, Environmental, Mechanical, and Electrical Engineers. Final approval was received for the GS positions on 28 April 2015. The special rates for the Federal Wage System (FWS) positions were approved on 18 March 2015. Each became effective at the next pay period shortly after the approval dates.

In late October 2014, the third of three Special Salary Rates request packages was forwarded to DCPAS and, subsequently, to OPM. It covered the Non-Appropriated Fund civilian employees and included positions such as Cooks, Food Service Workers, Custodial Workers, and

Maintenance Workers. The package recommended a 35% increase in hourly rates for the itemized list of specific occupational series. Since 2012, the area witnessed 12 major brand hotels and 15 national food establishments coming to the area with all offering signing bonuses, expedited hiring times, and higher wages. In order to provide these essential services on the Minot complex, it was necessary to have permission to establish these higher-than-usual hourly rates. The package also took into consideration increases being made for comparable trades and crafts for Army Air Force Exchange System (AAFES) employees. The request was formally approved and established in early December 2014.

It should be noted that to augment the recruitment and retention of civilians at Minot AFB and stem the exodus of civilians in those above-mentioned occupations to the private sector, approximately $600,000 in incentives (Recruitment, Retention, and Relocation) were spent in Fiscal Year 2014 and have been renewed for Fiscal Year 2015.

One of the benefits of requesting the SSRs is the inclusion of the same occupations for other Federal agencies in the same geographical location. Not only did AF and DoD organizations like the National Guard Bureau, Army National Guard units, and Army Corps of Engineers receive the same SSR authorities, but so did non-DoD agencies in the same impacted geographical region including the Agricultural Research Service, Bureau of Reclamation, National Park Service, and the Fish and Wildlife Service.

It should also be noted that as a result of implementation of the SSRs, Minot AFB has 86% of the 5th Bomb Wing's and 91st Missile Wings' civilian positions filled – an increase of 2-3% since

the SSRs were approved. A tenant organization which has a large number of Powered Support System Mechanics has realized a 21% increase in filling positions since the SSRs have been used. At the end of FY 15, the 5th Bomb Wing had a total of 108 civilian vacancies; the 91st Missile Wing had 11, and the tenant organizations had 6.

Another major command had a similar challenge for which the use of recruitment and retention incentives proved to be very successful. The 13th Space Warning Squadron, geographically located on Clear Air Force Station (AFS), Alaska, is one of three installations comprising the Ballistic Missile Early Warning System. It is also considered to be a remote assignment and location. A decision was made about two years ago to transition from its decades-old coal-generated heat and power generator to a commercial power grid to provide the essential commodities that are the epitome of mission criticality. The power plant was staffed solely by civilian employees. Once the decision was made to make the transition, it was essential to keep and maintain a full crew of operators to keep the plant running until the new electrical source was fully functional. As expected, some employees began to pursue other means of employment and began to leave as opportunities availed themselves. Along with the appropriate entities to include HQ Air Force Command's functional experts, the 21st Space Wing and the Clear AFS commander, the decision was made to announce and fill vacant Power Plant Operator positions with a 25% recruitment incentive and to approve a 25% retention incentive for each employee that remained. The strategy included paying the incentives each payday instead of a lump sum up front. The result provided a well-staffed and experienced cadre of experts to continue operating this crucial facility and has poised the installation for a successful conversion.

LESSONS LEARNED

Because of the circumstances experienced by Minot AFB, it was natural to initially pursue a separate locality pay designation to offset the lure of jobs in the private sector and stem the tide of civilian employees exiting. However and as noted by the OPM, a locality pay area is not necessarily the first solution to pursue in these types of situations. Some of the flexibilities and tools already provided to Federal agencies include the use of the 3Rs (Retention, Relocation, Recruitment), Superior Qualifications and Special Needs Pay Setting, Student Loan Repayment Program, and Special Salary Rates (SSRs).

It also became apparent that OPM was cognizant of how the impact of establishing a SSR for those targeted positions affected other Federal agencies. The partnership between AF, DoD, and OPM was productive and proved to be very effective to ensure the proper data and rationale were articulated and explained during the process.

The competition with non-governmental entities is keen. Private sector recruitment and compensation practices are effective in targeting populations of new college graduates and experienced professionals in an array of specialties. As the Federal government attempts to keep pace with private industry, current pay flexibilities provide a degree of latitude.

In the final analysis, the Air Force civilian workforce is a committed group of individuals who are strongly motivated to support and assist our uniformed members to collectively fulfill the mission of the best Air, Space, and Cyber Space Force on the Earth.

TESTIMONY OF

LINDA JACKSTA
Assistant Commissioner
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U.S. Customs and Border Protection
Department of Homeland Security

BEFORE

Senate Committee on Homeland Security and Governmental Affairs
Subcommittee on Regulatory Affairs and Federal Management

ON

"Improving Pay Flexibilities in the Federal Workforce"

October 22, 2015
Washington, DC

Introduction

Chairman Lankford, Ranking Member Heitkamp, distinguished Members of the Subcommittee, thank you for the opportunity to appear before you today to address U.S. Customs and Border Protection's (CBP) efforts to utilize pay and compensation flexibilities to recruit, hire, and retain personnel in hard-to-fill and remote locations.

With nearly 60,000 employees, CBP is responsible for securing the Nation's borders at and between ports of entry (POEs) while facilitating the efficient movement of legitimate trade and travel. CBP's border security mission is executed by frontline personnel, such as Border Patrol agents, Air and Marine agents and officers, and CBP officers, who are responsible for managing the risks and threats along our 7,000 miles of the Northern and Southern border, 95,000 miles of shoreline, and at our 328 ports of entry.

Throughout my 30 years of service with CBP and the former U.S. Customs Service, working in both frontline and operational support positions, I have seen first-hand the impact CBP's officers and agents have in fostering the Nation's security and economic prosperity. The dedicated men and women of CBP pursue this mission every day as they safeguard and manage the United States' air, land, and maritime borders with vigilance, selfless service, and unyielding integrity.

Since taking office as Assistant Commissioner of the Office of Human Resources Management in August of this year, one of my top priorities has been working to recruit, hire, and retain the frontline personnel necessary to accomplish CBP's border security mission. Maintaining workforce levels is one of the most prominent challenges facing law enforcement organizations today. Just as attrition is making it difficult to retain experienced officers and agents, the supply of qualified and suitable candidates to fill vacant positions is diminishing as a result of our rigorous hiring standards. We are competing with other Federal, state, and local law enforcement agencies for the same limited pool of qualified and suitable applicants.

CBP faces additional challenges in staffing hard-to-fill and remote locations. For the purposes of this testimony, I have characterized hard-to-fill and remote locations as being a significant distance from amenities and services such as medical care, child care and schools, and employment options for spouses. Geographically remote locations are often accompanied by challenging environmental factors, such as harsh weather conditions. Difficulty in staffing these locations may also be impacted by a lack of affordable housing choices, consumer goods and services, and local infrastructure. In addition, both hard-to-fill and geographically remote locations are sometimes associated with a higher cost of living.

The challenges CBP faces regarding hard-to-fill and remote locations include the limited pool of qualified and suitable candidates interested in working and residing in these localities. This is compounded by funding and regulatory limitations, which limit our efforts to incentivize individuals to apply for, relocate to, or remain at these locations. Due to the nature of CBP's work along the border, many of our areas of responsibility fall in this category. Staffing these locations, with both new hires and existing, experienced personnel, is critical to meeting the operational requirements involved with securing the Nation's border against a variety of different threats and adversaries.

My testimony addresses the challenges CBP confronts in attracting, hiring, and retaining frontline personnel in hard-to-fill and remote locations. I will highlight some of the current limitations regarding pay and compensation flexibilities, as well as potential solutions to address them.

Examples of Hard-to-Fill and Remote Locations

CBP is currently facing challenges recruiting and retaining frontline personnel in Northern Border locations, particularly in North Dakota and Montana. Portal, North Dakota, where both the Office of Field Operations (OFO) and the United States Border Patrol (USBP) operate, is an example of a hard-to-fill and remote location. Portal is a rural community with a population of less than 150 people. It has harsh weather in both summer and winter months, and lacks housing, educational and spousal employment opportunities, and easy access to amenities and services. While there is limited government housing, it often takes years for a unit to become available. The nearest hospital is 42 miles away; pediatric and specialty care are over 100 miles away. The nearest large, commercial retailer is 75 miles away and the closest large metropolitan city, Regina, Saskatchewan, Canada, is a 2.5 hour drive in good weather.

Portal is in the middle of the Bakken Oil Field region, where the cost of living has skyrocketed in recent years. The oil boom drastically increased demand for labor in Western North Dakota; the result was that the addition of thousands of oil workers created a housing shortage, which in turn significantly increased rental costs and home purchase prices in the surrounding areas. For example, in Williston, North Dakota, the average renter pays $2,200 a month and in Watford City, North Dakota rent averages $2,800 a month. For comparison, average monthly rent in New York City is $2,895 and $1,800 in Denver.[1] The result is a location that, at current Federal General Schedule compensation rates, becomes too expensive for CBP personnel to live. These factors threaten our Agency's ability to maintain necessary levels of manpower required to execute our mission.

Despite CBP's efforts to hire frontline personnel in these areas, the data shows that we are still experiencing difficulty recruiting qualified frontline officers and agents. For example, there are less than 30 applicants in the current hiring pipeline for Portal. Only 1.15 percent of all applicants from recent CBP officer vacancy announcements applied for positions in this POE. Furthermore, Portal is not a duty station to which experienced officers are seeking to transfer. Our field locations must include a balance of experienced and entry-level frontline personnel. Experienced personnel will have the skills, knowledge, and confidence to handle dynamic and urgent situations should they occur.

Air and Marine Operations (AMO) is experiencing similar challenges in meeting staffing requirements for the National Air Security Operations Center (NASOC-GF), located in Grand Forks, North Dakota. This location, which operates both manned and unmanned aircraft, is facing particular difficulties attracting pilots for our Unmanned Aircraft Systems (UAS). UAS

[1] http://inewsnetwork.org/2015/04/03/oil-prices-are-low-but-housing-rentals-in-the-bakken-are-still-sky-high/ (April 2015)

pilots are generally difficult positions to fill, and CBP currently requires UAS pilots to also be licensed helicopter and airplane pilots. This requirement, although often difficult to fulfill, grants CBP the flexibility to rapidly re-deploy its pilots and aircraft throughout the Nation and meet the needs of the CBP mission. However, there is a great deal of competition for UAS pilots, and they can often make two to three times the salary working for private contractors. This competition, coupled with extreme weather conditions and rising housing prices in North Dakota, makes NASOC-GF particularly hard-to-fill.

Raymond, Montana is another example of a hard-to-fill, remote location within CBP. Raymond is a rural community with a population of less than 700 people. It experiences hot, humid summers with harsh, frigidly cold winters. Like Portal, North Dakota, Raymond is impacted by the Bakken Oil Fields. What little housing there is available is in high demand due to the influx of oil workers. The surrounding community lacks amenities and services. Although there is basic medical care within 8 miles, pediatric and specialty care is over 70 miles away. The nearest large, commercial retailer is also 70 miles away. Like Portal, the closest large metropolitan city, Regina, Saskatchewan, Canada, is 2.5 hours away. The Raymond POE operates 24 hours a day, seven days a week and has seen an increase in truck traffic associated with the oil fields. Despite offering applicants to recent vacancy announcement a 25 percent recruitment incentive, less than one percent of the overall applicants applied to Raymond, resulting in less than 60 active applicants in the hiring pipeline for the Raymond POE.

Hard-to-fill locations are not specific to the Northern Border. Another example of a remote, hard-to-fill location is Lukeville, Arizona. Although much of the Arizona border locations are both remote and hard-to-fill, Lukeville is particularly challenging. Lukeville is an isolated outpost along the Mexican border. The local community has less than 50 people. It has only one small grocery store and gas station. The closest school and medical clinic is in Ajo, Arizona, another remote location 39 miles away. The nearest metropolitan city with adequate community amenities and services is Phoenix, which is 150 miles away. Lukeville's climate and environment is especially harsh. During the summer months, many of the local roads are impassible because of monsoons. Furthermore, the ground water in Lukeville requires significant treatment prior to drinking due to traces of arsenic. Currently, less than 1 percent of recent applicants to the CBP officers vacancy announcements have applied to Lukeville.

The Port of Nogales, Arizona, one of the Nation's busiest ports, is an example of a duty location that is not necessarily remote, but is hard-to-fill. It is in the top 10 busiest ports based on the number of border crossings, drugs seizures, land border arrests, and inadmissibility cases processed. Only 3.7 percent of applicants applied to recent CBP officer vacancy announcements for positions in Nogales. Further, 16 percent of experienced officers currently working at the port have requested reassignment to another duty location, whereas there are only six officers who have sought reassignment to the port.

Pay and Compensation Flexibilities

Recruitment, Retention, and Relocation Incentives

One of the traditional mechanisms available to Federal agencies to hire and retain personnel in hard-to-fill locations is recruitment, retention, and relocation incentives. Pursuant to Office of Personnel Management (OPM) regulations, Federal agencies may offer recruitment and relocation incentives not to exceed 25 percent of the employee's annual rate of basic pay times the number of years in the employee's service agreement (i.e., an incentive worth up to 100 percent of the annual rate of basic pay for a 4-year service agreement). With a waiver from OPM, an agency may offer recruitment and relocation incentives of up to 50 percent of the employee's annual rate of basic pay times the number of years in the employee's service agreement (i.e., up to 100 percent of the annual rate of basic pay for a 2-year service agreement). Federal agencies may offer retention incentives not to exceed 25 percent of basic pay for an individual employee or 10 percent for a group of employees. With a waiver from OPM, an agency may offer retention incentives for an individual or group of employees of up to 50 percent of basic pay.[2] In some cases, CBP has used these incentives in recruiting CBP officers to small, remote and hard-to-fill POEs. In Presidio, Texas, for example, recruitment incentives have been utilized in 77 percent of Fiscal Year 2015 hires to help fill that critical port.

As previously stated, remote locations need an appropriate balance of experienced and newly-hired personnel at each of CBP's locations. To staff these locations with senior leaders, for example, we have utilized relocation incentives to fill OFO leadership vacancies in Alcan, Alaska, and other remote areas. Additionally, in recent years, the U.S. Border Patrol offered relocation incentives in an effort to fill first-line Supervisory Border Patrol Agent vacancies on the Southwest Border, specifically in Sanderson and Presidio, Texas. A lump-sum payment, up to 25 percent of basic pay, was offered if the selected agents completed a one-year service agreement to remain at the station. However, due to the remoteness of these locations, it is difficult to retain these employees at the end of the one-year commitment.

While CBP is afforded these opportunities to incentivize its workforce, we must work within the confines of both fiscal and regulatory constraints. On November 1, 2013, OPM and the Office of Management and Budget (OMB) issued a memorandum establishing limits on agency expenditures for recruitment, retention, and relocation incentives. Annual cumulative spending on these three incentives combined for the Department of Homeland Security may not exceed Calendar Year (CY) 2010 spending levels, which for CBP amounts to $618,000. As we continue to make progress toward our hiring goals, we suggest that CBP, DHS and OMB explore the possibility of increasing the cap in order to provide more meaningful incentives to attract and retain a highly qualified workforce in a variety of operational and mission support positions.

Moreover, pursuant to OPM regulations, retention incentives for individual employees are permitted only if the employee is likely to leave Federal service in the absence of the incentive.[3] Often, current officers and agents, particularly at the GS-5, 7, 9, and 11 grades, in these

[2] 5 C.F.R. Part 575, Subparts A, B, and C.
[3] 5 C.F.R. Part 575, Subpart C.

geographic locations seek to transfer to other locations within CBP by applying to entry-level vacancy announcements. Under these circumstances, CBP is not able to offer the employees a retention incentive to remain at their current hard-to-fill location because they are not leaving Federal service.

In order to expand CBP's utilization of these incentives, we are working closely with the Department, and OMB to determine the appropriate amount of funding for incentives. Additionally, we will work with DHS and OPM to explore the range of flexibility provided by the regulations and the possibility of seeking waivers to offer incentives up to 50 percent of the employee's annual rate of basic pay for unique situations. CBP may be better able to address staffing deficiencies in hard-to-fill locations if we could offer more meaningful incentives to a greater number of applicants and employees.

We recognize that changes to these incentive structures could have a financial impact on the Agency. Therefore, we will continue to assess our hiring and staffing needs along with other needs to support our mission.

Special Salary Rate

In addition to utilizing incentives, CBP is exploring other flexible compensation practices to recruit and retain personnel in hard-to-fill or remote locations. Pursuant to regulation, OPM may establish higher rates of basic pay, or special salary rates, for a category of employees in one or more areas or locations, grades or levels, occupational groups and series, classes, or subdivisions in order to address existing or likely significant handicaps in recruiting or retaining well-qualified employees. These rates can be established to address staffing challenges caused by factors such as: significantly higher non-Federal pay rates than those payable by the Federal Government within the area, location, or occupational group involved; the remoteness of the area or location involved; the undesirability of the working conditions or nature of the work involved; or any other reason OPM considers appropriate.[4] CBP is looking to initiate a compensation benchmark study with other comparable law enforcement entities within and external to DHS and to build a comprehensive package to support CBP's use of a special salary rate for specific occupational series within its hard-to-fill and remote locations.

Temporary Rotational Assignments

CBP is studying the expansion of its temporary rotational assignment program as a means to facilitate the movement of senior frontline personnel to remote and hard-to-fill locations. Although it is difficult to attract employees to permanently transfer to these locations, they may be willing to accept a Not-to-Exceed (NTE) assignment in order to enhance their career development by working in a new environment. The finite length of the assignment, coupled with a relocation incentive, could be a useful mechanism to attract senior level personnel to these hard-to-fill locations.

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[4] Office of Personnel Management, "Special Salary Rates," http://apps.opm.gov/SpecialRates/Index.aspx; see also 5 C.F.R. Part 530, Subpart C.

Conclusion

As the Nation's largest Federal law enforcement organization, we have a number of challenges in hiring and retaining qualified and suitable applicants in broad geographic areas across the country. This is not a phenomenon unique to CBP given that other Federal, state, and local law enforcement organizations are facing similar challenges. The societal views and changing generational values are making it more difficult to attract qualified and suitable applicants.

The public scrutiny of law enforcement in general, combined with the requirement to work variable schedules, long shifts, and in remote areas, are some of the reasons why individuals under the age of 37 may be reluctant to apply to law enforcement positions.[5] With that said, CBP is working aggressively to employ the pay and compensation flexibilities afforded to Federal agencies to fill positions in mission critical locations.

In addition, CBP has created a Program Management Office, consisting of an integrated team of experts from across the Agency, dedicated to addressing these and other hiring activities to support the onboarding of frontline personnel. I am confident this will provide the holistic and strategic approach to address long-term sustainment of CBP hiring objectives.

We look forward to our continued collaboration with our Federal partners to explore other pay and compensation flexibilities that will facilitate hiring and retention in these unique areas.

Chairman Lankford, Ranking Member Heitkamp, and distinguished Members of the Subcommittee, thank you for this opportunity to testify today. I look forward to answering your questions.

[5] Age 37 is the cut-off age for law enforcement applications with exceptions for veterans.

Testimony of

Anthony M. Reardon
National President

National Treasury Employees Union

Subcommittee on Regulatory Affairs and Federal Management

Senate Committee on Homeland Security and Governmental Affairs

"Improving Pay Flexibilities in the Federal Workforce"

October 22, 2015

Chairman Lankford, Ranking Member Heitkamp and members of the Subcommittee, thank you for inviting me to testify today on pay issues on behalf of the 150,000 federal employees represented by NTEU at dozens of federal agencies. As President of NTEU, I appreciate the opportunity to discuss this critical issue with the Subcommittee, particularly owing to the last few years of extreme pay challenges for the federal workforce.

Mr. Chairman I want to be clear that NTEU believes that the General Schedule (GS) pay system is indeed fully able to meet the needs of both agencies and employees; if agencies also utilize the existing pay flexibilities available to them. The difficult federal employee pay climate does not stem from a problem with current law or regulation, but rather a lack of funding that would allow agencies to pursue the use of pay flexibilities.

PAY

The pay system for the large majority of white collar federal employees is known as the GS. It is based upon the principle that federal pay should be comparable to pay for similar work in the private sector. I want to underscore the fact that federal pay is derived from comparability with private-sector wages, a fact that is often overlooked or ignored by some purporting to analyze and comment on federal pay levels. It is also important to recognize that the federal workforce has a significantly higher number of professional occupations that require advanced degrees and high levels of education than the overall private-sector workforce. According to Department of Labor (DOL) employment data, more than half (56%) of the federal workforce is employed in nine of the highest-paying private-sector occupations, compared to approximately a third (35%) of private-sector workers. Examples are the scientists and chemists we represent at the Food and Drug Administration (FDA), as well as our members who are accountants, tax and financial experts at the IRS and nuclear engineers at the Nuclear Regulatory Commission (NRC). In contrast, while 12% of private-sector workers fall into the three lowest-paying occupations, only 4% percent of federal workers are in these lowest-paying occupations.

In 1990, Congress enacted the Federal Employees Pay Comparability Act (FEPCA), which introduced the concept of locality adjustments to make the pay system more sensitive to geographic market forces. Under FEPCA, employees were to receive an annual across the board adjustment equal to half a percent below the increase in the DOL Employment Cost Index, which measures non-federal wages, and a locality adjustment based on the size of federal vs. private sector wage gaps in 33 different localities around the country. In practice, the formula set under the law was never fully implemented and for many years Congress set the annual pay adjustment for federal employees through the annual appropriations process.

However, as you know, beginning in 2011 and continuing for three straight years, federal employees were subjected to a pay freeze. In both 2014 and 2015, federal employees received reduced across-the-board pay increases of 1%, which were below the amount called for under the law, and therefore federal pay has been outpaced by private-sector wage increases. Using DOL data, private sector wages have increased 8.3% over the last five years while federal wages have increased by a total of 2%. No employer can expect to recruit and retain a modern, professional, and skilled workforce while failing to keep up with general pay trends. NTEU worked closely

with Senators Schatz (D-HI) and Cardin (D-MD), and Representative Gerry Connolly (D-VA), on legislation--S. 164 in the Senate and H.R. 304 in the House-- to provide a 3.8% across-the-board pay raise for calendar year 2016. It is more than time for federal employees to receive a meaningful pay raise.

One provision of FEPCA that has been implemented requires the Bureau of Labor Statistics (BLS) to conduct surveys of the 33 pay localities to determine whether there are gaps between federal pay and private sector pay. BLS then provides that information to the President's Pay Agent, which consists of the Secretary of Labor, the Director of the Office of Management and Budget and the Director of the Office of Personnel Management who have the statutory responsibility of submitting a report to the President each year that lists pay gaps in these 33 areas as well as a national average gap. The most recent Pay Agent's report found that the overall national pay disparity—between federal and private sector jobs—is 35.37%. NTEU is very pleased that the Administration, based upon the Federal Salary Council's recommendation, has proposed to add 13 new locality pay areas for 2016. After five consecutive years of no increases to locality pay rates, and given its importance to overall wages, NTEU is strongly committed to the resumption of annual increases in locality pay rates.

EXISTING PAY AUTHORITIES

Overall, the GS system is a highly-structured pay system that is set in law under Title 5 United States Code (U.S.C.). There are rules and standards in place for performance, with written employee evaluations required. Importantly, it also has both merit and market-based components. Within-grade and career ladder promotions and employee performance awards are all subject to merit standards. Non-performers can be denied merit pay increases while outstanding performers can be rewarded, through the use of a variety of employee performance awards, quality step increases (QSIs), and the so-called 3 Rs—recruitment, retention, and relocation bonuses. One of its additional key strengths is the limited ability for favoritism, racial and gender discrimination, or other non-merit discriminations to come into play. And, key to this discussion, it is inherently flexible, by design and by law.

Under Title 5, agencies are expressly provided with a substantial variety of human resource (HR) flexibilities and authorities, which includes pay. By intent, the federal personnel system is substantially decentralized, giving agencies full authority to determine what pay authorities and flexibilities to utilize. NTEU strongly advocates that agencies actually utilize the HR tools they have been given to reward high-performing employees--which as an example would mean providing meaningful performance-based awards and QSIs to deserving employees. Agencies have discretion to provide GS employees with performance-based cash awards, which are also termed ratings-based awards and lump-sum cash awards, and which must be justified in writing, as well as for non-rating based awards which can be provided in recognition of a specific contribution an employee has made to an agency. Agencies should also use retention and recruitment bonuses to address the staffing shortages they are currently experiencing. It is simply a myth that the GS system does not allow agencies to reward for high performance or to respond to a changing recruitment and retention environment, rather these HR pay tools are just not regularly being used. My request to the Subcommittee is Funding. Help us get agencies in a

position so they can actually use the myriad pay tools already available to them. Without the necessary funding to reward deserving employees with performance-based awards, which simultaneously also allows for agencies to differentiate between employee performance levels, the GS system's performance elements are being limited.

Additionally, the law provides agencies with pay-setting flexibilities that are designed to respond to an agency's need for specialized talent and highly-technical skills, and to situations where staffing shortages develop owing to an inability to recruit or retain workers. Examples include critical pay authority when a position's qualifications are highly unique, and special pay rates, which can be used when local private-sector wages make any recruitment impossible or difficult. For these two specific pay authorities to be granted, unlike the others previously referenced, agencies must first seek and obtain final approval from the U.S. Office of Personnel Management (OPM).

Another commonly-overlooked pay flexibility granted to agencies is the use of student loan repayments. Student loan repayment programs can be a vital way to provide additional compensation to employees, while also assisting with improving workforce skillsets, and overall agency recruitment and retention needs.

Finally, I'd like to address an issue that is currently contributing to agencies' non-use of their full pay authorities. The Administration's multi-year guidance to employing agencies capping GS employee performance awards at 1% has played a major role in undermining compensation levels for federal employees, and handicapping an agency's ability to reward employee performance. Further, Congress' recent criticism of agency officials for providing awards to employees is only serving to erode agencies' abilities to be good employers—that is any employer must be in a position to reward excellent performance, and to recruit and retain skilled employees. NTEU is concerned that calls for limits to or the total elimination of performance-based awards are further serving to turn off the GS system's most useful performance-based mechanisms and features. I want to be clear that agency management should have both a justification for and a documentation process for use of these pay authorities, and Congress certainly has the right to scrutinize Executive branch decisions, but managers need to be able to perform their core duties—that is in the course of supervising their employees, they evaluate their employees' work, and reward for high performance.

NTEU has long advocated for required managerial and supervisory training before this Committee, which would not only allow for better employee-employer relations and enhanced knowledge of personnel rules, but would also familiarize managers with the various pay flexibilities and authorities available, which could in turn result in an increased use of these pay tools. For similar reasons, NTEU also believes OPM plays a key role through the guidance it provides to agencies, in order to fully educate agency HR, benefit, and management officials on the available pay flexibilities and how to actually apply them.

CBP ISSUES ON THE NORTHERN BORDER

NTEU has the honor of representing over 25,000 Customs and Border Protection (CBP) Officers (CBPO) and trade enforcement specialists stationed at 328 land, sea and air ports of entry. Understaffed ports lead not only to long delays for passengers entering the United States (U.S). at airports, but also in our commercial lanes as cargo waits to enter U.S. commerce. Recognizing the integral role played by CBPOs, Congress recently funded 2,000 new CBPO positions to help address current CBP staffing shortages. However, this increase is less than the number stipulated in CBP's Workforce Staffing Model that shows a need to hire 2,700 additional CBPOs in order to adequately staff all ports of entry.

Additionally, CBP employees perform agriculture inspections to prevent the entry of animal and plant pests or diseases at ports of entry. The U.S. agriculture sector is a crucial component of the American economy generating over $1 trillion in annual economic activity, and according to the Department of Agriculture (USDA), foreign pests and diseases cost the American economy tens of billions of dollars annually. Failure to detect and intercept these non-native pests and diseases imposes serious economic and social costs on all Americans. CBP's Agriculture Specialist (CBPAS) Workforce Staffing Model calculates that CBP needs to hire 723 additional frontline agriculture specialists and supervisors to address current workloads.

Ranking Member Heitkamp, I know you have been heavily engaged on federal workforce issues in the Bakken region, including addressing serious pay gaps that have developed from the recent oil and gas boom in the region. On behalf of our CBP members, I would like to thank you for your persistent interest in CBP issues on the Northern Border, which frequently can be overlooked at a national level. Currently, there are approximately 300 frontline CBP employees at the land ports of entry from Pembina to Portal on the North Dakota border with Canada. We greatly appreciate your Subcommittee staff members' willingness to explore ways with us to increase pay for our CBP members on the Northern Border, including focusing in on the potential use of either special rates or by utilizing the so-called 3 Rs--recruitment, retention, and relocation-- bonuses. I look forward to our continued work on this issue. I also want to recognize Senator Tester for his continued efforts to enhance the federal workforce, and for his outreach to our CBP members on the Northern Border, some of whom recently had a chance to meet with him in Sweetgrass, Montana.

As the Subcommittee may know, CBP collects user fees to recover certain agency costs incurred for processing, among other things, air and sea passengers, and various private and commercial land, sea, air, and rail carriers and shipments. These fees are deposited into the Customs User Fee Account, and are designated by statute to pay for services provided to the user, such as inspections for passenger and commercial vehicles. The Senate-approved Highway and Infrastructure bill, H.R. 22, includes language requiring the Customs User Fees to be permanently indexed to inflation and directs that the anticipated $4 billion in revenue over ten years be used as an offset for highway infrastructure projects.

The inclusion of this provision sets a troubling precedent, as it, for the first time, diverts user fees paid by the users--commercial vessels, commercial vehicles, rail cars, private aircraft, private vessels, air passengers, sea passengers, cruise vessel passengers, dutiable mail, customs brokers and barge/bulk carriers --from critical border security and inspection needs to other Federal programs. Already, there is insufficient CBP staffing to ensure security and mitigate

long wait times at our nation's air, sea, and land ports of entry. Trade and travel-related job creation, border security and wait time reduction at the ports of entry require stable funding for CBP. It should be noted that Customs User Fees have not increased in several years, so user fees currently cover only a portion of recoverable fee-related costs. As a result, the Administration's Fiscal Year 2016 budget calls for a $2 increase in Customs User Fees to address inadequate border security resources. NTEU strongly believes that any increases in Customs User Fees, including additional revenue from indexing current fees to inflation, must be applied to sorely needed border security needs, including the need for increases to CBPO staffing to strengthen America's border security and economy. I urge this Committee with jurisdiction over both our nation's homeland security and agency management to stop any proposals to divert Customs User Fees away from CBP needs.

CONCLUSION

Mr. Chairman and Ranking Member Heitkamp, in closing, I want to revisit my statement at the beginning of my testimony, conveying to you that while we believe pay increases have been totally inadequate the last several years, we support the current pay system, and believe in its proven ability to provide agencies with various pay flexibilities—in terms of salary, awards, and other targeted payments, and to justly compensate federal employees. As I stated, the real issue that needs to be addressed is the lack of agency use of these existing flexibilities.

However, I want to make it clear that agencies must receive proper levels of funding to be in a position to make use of these flexibilities, or they merely exist on paper. This is the chief reason for NTEU's advocacy to end the sequester, as agencies are not being funded at appropriate levels, and in some cases, simply do not have the funding to properly maintain staffing levels and compensate employees. Congress needs to be fully cognizant that if agencies are not adequately funded, they simply will be unable to recruit and retain talented personnel, which ultimately will only serve to harm the American public. NTEU members well understand the many challenges facing our country and are willing to work hard to help solve them. Federal employees have good ideas about how to do the work of the federal government more efficiently. They care deeply about successfully accomplishing the missions of their agencies, as evidenced again in this year's newly-released Federal Employee Viewpoint Survey. I stand ready to work with this Subcommittee in a productive way to ensure that federal agencies and employees are truly supported—in terms of funding needs and for the work that they do every day to better our nation.

STATEMENT OF

WILLIAM R. DOUGAN
NATIONAL PRESIDENT
NATIONAL FEDERATION OF FEDERAL EMPLOYEES

BEFORE

U.S. SENATE SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT

REGARDING

IMPROVING PAY FLEXIBILITIES IN THE FEDERAL WORKFORCE

OCTOBER 22, 2015

Established in 1917, the National Federation of Federal Employees is the oldest union representing civil service federal employees. NFFE represents 110,000 federal employees in 35 departments and agencies government-wide. NFFE is affiliated with the International Association of Machinists and Aerospace Workers, AFL-CIO.

The History of the General Schedule Pay Schedule

The General Schedule (GS) pay system was established by the Classification Act of 1949, creating a uniform system of compensation for federal employees, "equal pay for equal work". At the time the GS pay system was created, employee compensation was simply seen as the cost of labor – a definition that has evolved rapidly in recent years. In an attempt to keep up with the fluid definition of employee compensation, the GS system has undergone modifications to accommodate industry changes. What resulted was a system to account for regional economic trends and the introduction of numerous pay flexibility options, including performance bonuses and quality step increases.

In this testimony I will examine the GS pay system structure for setting competitive pay rates, as well as pay flexibilities already available to recruit and retain the qualified workforce necessary to carry out the business of the American people. I will also discuss what future compensation supplemental options the federal government may consider – including expanding family-friendly workplace policies, increased availability of telework status and a commitment to employee work-life balance.

While the GS pay system was developed 60 years ago, at a time when the economy and workforce looked significantly different, modifications have been made over the years to adapt. While the system we have now is less than perfect, it serves the federal government and the American people well.

Establishing Locality Pay

In the late 1980s, Congress began to recognize that the pay disparity between federal employment and comparable private sector work was expanding nationally, and was particularly unequal in metropolitan regions with high costs of labor (*ex.* New York, NY; Washington, DC; San Francisco, CA). So in an effort to reduce federal and matching non-federal salary disparity, Congress passed the Federal Employees Pay Comparability Act (FEPCA) of 1990. The law's stated goal was to reduce the "pay gap" between federal and matching non-federal to a "target gap" of five percent and introduced pay localities as the vehicle to reduce disparities.

With FEPCA came a new two-pronged approach to applying yearly pay adjustments for GS employees. One portion of the yearly pay adjustment was to be a general across-the-board adjustment linked to the Employment Cost Index, and a GS locality pay adjustment calculated and applied separately to individual localities across the country. It was thought that this system would allow for the high labor cost regions to bring their pay disparities in line with other regions of the country.

To oversee the administration and adaptation of pay localities, FEPCA created the Federal Salary Council (FSC). The FSC, consisting of federal labor representatives with large GS employee membership and outside compensations experts, reports to the President's Pay Agent, which in turn makes recommendations to the White House.

Since 1994, the FSC has examined troves of data collected by the Office of Management and Budget, Bureau of Labor Statistics (BLS) and other federal agencies to effectively define locality pay parameters. And while statistical models used to calculate localities and their respective pay have evolved over time,

the ultimate goal of making the federal government a competitive employer – able to recruit and retain the most effective workforce – has remained the same.

The number of Locality Pay areas in the GS system has changed and will likely continue to change over time. Currently there are 34 GS Locality Pay areas, but FEPCA allowed for the establishment or modification of pay areas by the President's Pay Agent, a body which gives thorough consideration to the views and recommendations of the Federal Salary Council. As non-Federal pay in various parts of the country fluctuate, new GS locality pay areas may be established. Generally, the President's Pay Agent would act on the recommendation of the Federal Salary Council to establish a new Locality Pay area. Although criteria for establishment of a new Locality Pay area has changed slightly over the years, currently it requires a minimum number of GS employees working in a metropolitan area, and pay gaps averaging more than 10 percentage points above that for the "Rest of U.S." locality pay area for an extended period of time, to trigger a recommendation for the establishment of a new Locality Pay area from the Federal Salary Council.

What about Wage Grade?

The trend in the Federal Wage System has been slowly toward consolidation of wage areas as opposed to expansion. Unlike the GS system that has Locality Pay areas in and around metropolitan areas with consistently high earning workforce and all other areas of the country falling into one catch-all "Rest of U.S." Locality Pay area, every county in the U.S. fits into one of the 131 federal wage system wage areas spread throughout the country. In recent years consolidation of wage areas has been driven by changes in WG employment and other factors. Changes in the definition of a FWS wage area are generally considered by the Federal Prevailing Rate Advisory Committee, which makes recommendations to OPM on matters concerning the pay of FWS employees.

Existing Pay Flexibilities

For General Schedule (GS) employees, existing pay flexibilities primarily fall within three areas: recruitment incentives, relocation incentives, and retention incentives. Agencies have discretionary authority in certain circumstances to help support efforts in recruiting and retaining employees.

Recruitment Incentives

Agencies can pay a recruitment incentive to a newly-appointed employee if the agency has determined that the position is likely to be difficult to fill in the absence of an incentive. Eligible employees include employees on GS, senior level (SL), scientific (ST), Senior Executive Service (SES), Executive Schedule (EX) and law enforcement officers.

Agencies must document the basis for determining that the position is likely to be difficult to fill in the absence of a recruitment incentive. The quantity and quality of goods and services offered within the geographic location of the position duty station, or the shortage of potential candidates possessing the competencies needed for the position are the two most common reasons agencies will offer recruiting incentives.

Recruitment incentives take the form of a payment not to exceed 25 percent of the employee's annual rate of basic pay at the beginning of the service period (the amount of time the employee must agree to remain employed in the position) multiplied by the number of years in the service period. With OPM approval, this cap may be increased to 50 percent based on a critical need, as long as the total incentive does not exceed 100 percent of the employee's annual rate of basic pay at the beginning of the service period. The incentive can be paid as a lump-sum payment, in installments, or in a combination of these methods.

Employees getting a recruitment incentive must maintain a record of "Fully Successful" performance; demotion or separation for cause will terminate the incentive.

Relocation Incentives

Agencies can pay a relocation incentive to a current employee who must relocate to accept a position in a different geographical area if the agency determines the position is likely to be difficult to fill in the absence of an incentive. Eligible employees includes the same groups of employees as those listed above for recruitment incentives. The employee must establish and maintain a residence in the new geographic area for the duration of the service agreement. The most common reason for offering relocation incentives is having the position located in a geographic area where affordable housing (based on the salary of the position) is lacking or limited.

Similar to recruitment incentives, the payment for relocation incentives is not to exceed 25 percent of the annual rate of basic pay at the beginning of the service period multiplied by the number of years in the service period, with the option of increasing the cap to 50 percent with OPM approval. These incentives have the same options for payment of the incentive as recruitment incentives.

Retention Incentives

Retention incentives are offered to employees who possess unique qualifications if the agency has a special need for an employee's services such that it makes it essential to retain the employee and that the employee would be likely to leave absent a retention incentive. Retention incentives take two different forms: retention incentives can be offered to employees who occupy a position that may or would be affected by a closure or relocation of the agency office or facility, and who would be likely to leave for a different position in the Federal service prior to the closure or relocation; or, retention incentives can be offered to employees who have qualifications that make it essential to retain the employee, and the employee would be likely to leave the Federal service absent a retention incentive. The same group of employees would be eligible for this incentive as for the previously discussed incentive, with the identical 25 percent cap with option to increase the cap up to 50% with OPM approval.

Options for payment of retention incentives are slightly different from options for recruitment and relocation. Payment of retention incentives can be made in installments over the period of the service period or as a single lump sum payment upon completion of the specified period of service required by the service agreement.

An agency cannot begin paying a retention incentive during the service period established by an employee's recruitment or relocation incentive service agreement. However, a relocation incentive may be paid to an employee who is already receiving a retention incentive.

Federal Wage System Pay Flexibilities

Federal Wage System (WG) pay flexibilities allow for the use of special pay rates and special schedules, with the approval of OPM, for occupations experiencing difficulties recruiting or retaining WG employees.

The special rate authority allows an agency to establish rates above the regular Federal Wage System rates for occupations experiencing recruitment or retention difficulties. These special rates are established by occupation, grade, agency and/or geographic location. The rates are paid by all agencies having positions for which the rates are authorized.

The increased minimum hiring rate authority allows an agency to establish any Federal Wage System scheduled rate above step 1 as the minimum rate at which a new employee can be hired.

The special schedule authority allows an agency to establish a Federal Wage System schedule of rates broader in scope than would normally be authorized under the special rates program. Special schedules

are established to ensure the recruitment or retention of qualified employees or to address unique agency missions. Specific special schedules are established for specific occupations within a geographical area.

OPM may approve exceptions to a statutory limitation on Federal Wage System pay adjustments for an occupation in a wage area or part of a wage area upon agency request if such exceptions are necessary to ensure the recruitment or retention of qualified employees. The lead agency for the wage area must coordinate with other agencies to produce an employing agency's request for this exception and submit a consolidated request to OPM. The request must include any available supporting wage survey data and formal recommendation by the lead agency to approve or disapprove the request.

Where does this Leave Us?

This hearing was established to determine if the federal government pay system has the flexibilities to meet the growing challenge of recruiting and retaining the best candidates to the federal workforce. The short answer is yes, it does. The federal government has a clearly-defined and collaborative system developed to make adequate pay adjustments for federal employees that account for various regional and national economic factors in a reasonable timeframe – and the flexibilities to supplement compensation in situations of unique employment obstacles. But what the federal government does not have, and what has largely led to the 35 percent pay disparity between federal and matching non-federal salaries as measured by BLS, is a Congress and Administration willing to allocate the necessary funds to fully implement the FEPCA "target gap" of five percent.

Further exacerbating the pay disparity is the President's unwillingness to enact recommendations from the FSC made to the President's Pay Agent in creating new pay localities. It was only recently that OPM announced the creation of 13 new pay localities. While we are thankful that these locality recommendations have been accepted, it has been nearly three years since the FSC originally recommended 12 new locality pay areas to the President's Pay Agent. The original recommendation came in November 2012. It is worth noting that the 13th pay locality, Kansas City, Missouri, was recommended in a subsequent meeting.

Within FEPCA lies a provision allowing the President to ignore the pay adjustment formulas set forth in the law and establish an alternative pay adjustment, in the case of "national emergency or serious economic conditions affecting the general welfare." With the President enacting this provision for years in issuing pay adjustments below the FEPCA-calculated levels (including three years of pay freezes), he applied similar logic in refusing to accept the new pay localities recommended by the FSC nearly three years ago.

So why were these recommendations not implemented in a timely fashion following the 2012 recommendations made by the FSC? In short – it stems from the austerity-driven budget mentality of Congress and the Administration. In what should be a routine exercise of sampling regional and national economic trends to make annual pay adjustments has become a perennial political lightening rod.

For too many years, including nearly every year in this current Administration, federal employees have endured pay adjustments (or lack thereof) that have failed to keep pace with the annual rate of inflation. This means that each year it is becoming more difficult for an employee to remain with the federal government. All the while, federal employees have been a favorite target of Congress to make deeps cuts in the name of balancing the federal budget. All told, recent estimates indicate that the federal workforce has sacrificed $159 billion in cuts over the last five years.

And right now we are experiencing the consequences of the unwillingness from the Administration and Congress to provide adequate pay adjustments. Federal employees are losing buying power every year they continue their federal employment, and the dissatisfaction shows in the annual Federal Employee

Viewpoint Survey results. Furthering this dissatisfaction is the recent phenomenon of Congress taking the country to the brink of a government shutdown with regularity, essentially casting the lives of federal employees into a turmoil. Add on top of all of this the volatile and nasty rhetoric used every day by members of Congress decrying hard-working federal workers as "government bureaucrats" and it is no wonder the federal government is severely hampered in its ability to recruit and retain the next generation of talent into the civil service.

Unfortunately, this country's problems with hiring the best and brightest are mostly self-inflicted. What might be considered easy political points when taking benefits away from federal employees or decrying "big government" on national news outlets – these actions have real consequences, and they come in the form of a demoralized workforce and difficulties hiring the next generation of civil servants.

Where do we go from here?

So the question is – now what? Despite having a relatively flexible pay locality system clearly outlined by law, we still lag in making the federal government a competitive regional employer in too many regions – losing the best and brightest to private sector employers that can offer higher salaries and greater workplace flexibilities. The federal government must be able to compete for the next generation of leaders, and there are many options in doing so.

The simplest solution to ensuring federal government salaries remain regionally competitive would be for Congress and the Administration to fully fund FEPCA-calculated annual pay adjustments, combined with additional adjustments for the localities suffering the greatest pay disparities. In addition, the Administration needs to place full faith in the Federal Salary Council and accept, with haste, recommendations made to the President's Pay Agent.

But other options outside of simple pay adjustments must be considered, as they are quickly becoming industry standard in the private sector. Two of the most common non-compensation flexibilities that need to be given more consideration are telework and flexible work schedules.

While telework continues to be implemented in many agencies across the federal government, the pace of establishing telework is much slower than it should or needs to be. Major barriers to telework in some agencies include lack of trust that employees can actually be efficient and effective in completing work assignments outside of the agency office setting, and perceptions about what work can be done by telework versus having to do that work in the office leading to fewer positions being eligible to telework. Organizational cultures that value the status quo and the way things have always been done also make telework implementation difficult.

Despite these concerns, research has demonstrated that telework does not lead to lowered productivity; indeed, employees will go the extra mile to ensure work of high quality gets accomplished in a timely manner in order to continue to be eligible to telework. Telework offers other important benefits to the agency and to society: with a workforce that teleworks, it is possible to reduce office space, resulting in significant savings in costs associated with owning or leasing buildings; and, reducing the number of days the workforce must come to the office results in less use of vehicles for commuting, reducing traffic and vehicle emissions.

Flexible work schedules, such as "maxi-flex" and other flexible alternative work schedules to the standard 8-hour workday, 5 days a week schedule, offer workers the ability to adjust their start and stop times during the day as well as adjust what days of the week they work. Being able to offer alternative flexible work schedules to a diverse workforce allows workers to fit in the other important "non-work" activities into their day. For example, working parents often have childcare, school activities and sporting events occurring during the traditional workday. A flexible work schedule makes it much easier to schedule an

appointment with the pediatrician, to "plan for the unexpected" involved with raising children or simply be able to arrive to a child's sporting event on time.

Both telework and flexible work schedules are powerful incentives to many younger workers, who may not have ever worked in an office setting every day on a fixed 8-hour schedule. Older workers often start out somewhat skeptical of telework, but most will quickly adapt to working from home. And a flexible work schedule makes it easier to schedule the other activities that occur in their lives outside of work.

There are other incentives not currently available in the federal government that are being successfully used in the private sector. Being able to offer a newly-hired employee more hours of annual leave than they would otherwise be entitled to is a powerful incentive. Some organizations in the private sector use this concept to great advantage in being able to recruit high-quality candidates for either hard-to-fill positions or positions that demand a highly-skilled employee to immediately fill the position and begin performing at a high level. Many employees place a high value on being able to earn, and use, larger amounts of annual leave; for some, it is a bigger motivator than offering them a higher starting salary.

Unlike for-profit corporations, the purpose of the federal government is not to generate profit. But utilizing that basic concept to allow federal employees to share in a portion of cost savings generated through increased workforce productivity could also be a powerful incentive for employees to focus on ways to accomplish their work more efficiently and safely. Tapping into the creativity and innovation of employees has been demonstrated to result in amazing gains in efficiency and in major cost savings. Rewarding that innovation and creativity by sharing some of the cost savings generated should be investigated as a possible incentive that could be used to help retain a highly skilled and motivated workforce.

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October 21, 2015

The Honorable James Lankford
Chairman,
Subcommittee on Regulatory Affairs &
Federal Management
Committee on Homeland Security &
Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Heidi Heitkamp
Ranking Member,
Subcommittee on Regulatory Affairs &
Federal Management
Committee on Homeland Security &
Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman & Ranking Member Heitkamp:

I am writing on behalf of the more than 26,000 members of the Federal Law Enforcement Officers Association regarding the October 22, 2015 hearing entitled "Improving Pay Flexibilities in the Federal Workforce." We applaud the Subcommittee's focus on this important topic and respectfully request that this letter be made a part of the hearing record.

In order to carry out the innumerable daily demands that are placed upon it, the federal government has to rely on its ability to recruit and retain the best possible workforce. Nowhere is this need greater than in the ranks of the men and women who staff our nation's federal law enforcement agencies. Federal law enforcement is an occupation that is absolutely unique in the ranks of the federal government. Indeed, no other employee in the federal service is routinely asked to put their lives on the line to protect our nation from terrorists and criminals. It is one of the most stressful, most dangerous, and most rewarding careers for those who meet the rigorous requirements of the job.

Before we address ways in which the government can improve its pay flexibilities and its ability to recruit and retain a strong federal workforce, it is important to note what does not work. In recent years, pay and benefits have become the "low-hanging fruit" for Congress to pick in dealing with the stresses of the budget and sequestration. In both the 112th and 113th Congresses this resulted in law enforcement pay and benefit systems coming under heavy attack, with numerous legislative attempts to reduce or eliminate the pay and benefits that officers have earned and are entitled to by virtue of their service to the United States. Many of the legislative proposals put forward during this period included such things as arbitrary and across-the-board pay freezes, changes in the retirement benefits for federal law enforcement officers and how those benefits are calculated, and hiring freezes that would decrease officer safety and fail to acknowledge the time required to select and train men and women for demanding federal law enforcement positions. Policies such as these do not work in the law enforcement context and do a disservice to the brave men and women who are asked to put their lives on the line to protect us from terrorists and criminals. Had any one passed, it would have had an immediate and negative impact on law enforcement agencies' recruitment and retention efforts.

For the first time in decades, we are seeing that the once revolving door through which individuals bring their skills and experience into a career in federal law enforcement has become stuck in one direction. It is now seen much more as an exit only, in which highly-trained law enforcement officers are more rapidly leaving federal service. This is particularly true of those with cybersecurity backgrounds whose skill set is highly marketable in the private sector. Agencies are having an increasingly difficult time backfilling those positions because of the time it takes to recruit and train an individual for a law enforcement position. Unless the Congress decides to invest in its law enforcement workforce, we will continue to see turnover at an unsustainable rate and an increase in vacancies. This is something we can ill-afford at the federal agencies that are the core of our domestic security and safety.

With that as background, there are a number of pay-related measures that the Subcommittee could consider to help increase flexibility and improve the federal government's ability to recruit and retain a strong workforce. These include an overhaul of the locality pay system, modification or elimination of the biweekly and annual caps on overtime as premium pay, and revising the calculation rate under the Federal Employees Retirement System (FERS) to increase the annuity level for federal law enforcement officers at the time of retirement. Each of these is discussed briefly below.

1. *Overhauling the locality pay system*—In 1990, Congress passed the Federal Employees Pay Comparability Act in part to address the disparities that existed in federal and non-federal pay in different parts of the United States, particularly in those areas with the highest costs of living. In the same law, Congress adopted an additional locality-based adjustment under the Federal Law Enforcement Pay Reform Act (FLEPRA) specifically for law enforcement employees in eight of the highest cost of living areas, such as New York, Boston, San Francisco, and Washington, DC. While the intent was to eliminate the disparities within 10 years, it has been a quarter century since the passage of these reforms and the federal government is no closer to closing the pay gap. This is a problem for agencies trying to fill positions in major metropolitan areas as well as those that are trying to increase staffing in other parts of the country to respond to specific needs and situations. To address this problem, FLEOA recommends that Congress expand the FLEPRA special law enforcement locality-based supplement to all locality pay areas. We further recommend that federal law enforcement agencies be granted additional flexibilities to increase locality-based payments as needed to address specific staffing problems that arise for different law enforcement occupations and grade levels in individual localities. Finally, FLEOA recommends that the formula for determining locality pay be revised to better account for the true costs of living in different geographic areas. One indicator to consider is using average housing prices. In the DC area alone, the median sales price of a home is $539,000, a roughly 6 percent increase from last year. While this is a positive development for a long-time homeowner, it is not so good for a federal law enforcement officer who transfers to DC and is trying to find housing in this market.

2. *Eliminate or modify the biweekly and annual caps on overtime compensation as "premium pay"*—Due to the nature of their profession, federal law enforcement officers are not 9-5, Monday through Friday employees. The work they perform does not lend itself to regular schedules. It is a job that often requires a significant amount of unanticipated or unscheduled overtime hours paid through systems such

as Law Enforcement Availability Pay (LEAP) or Administratively Uncontrollable Overtime (AUO). Unfortunately, many federal law enforcement officers and criminal investigators lose a significant amount of overtime compensation each year because AUO and LEAP are considered "premium pay" and subject to biweekly and annual pay caps that limit the amount of pay an officer or agent can receive. More importantly, the application of these pay caps affects the calculation of a retirement annuity, such that only overtime pay that falls under the caps is taken into consideration by OPM when making an annuity calculation under Civil Service Retirement System (CSRS) and FERS. This means that even at the time of retirement, a law enforcement officer receives zero credit for the years of overtime hours he has provided at no cost to the government and for which he was never paid. In the context of improving recruitment and retention, failing to provide full pay for hours worked is not only an unwise human resources policy but undermines morale, contributes to retention problems, and unnecessarily burdens federal law enforcement employees. We therefore believe that Congress should remove the cap on law enforcement overtime compensation and make AUO and LEAP fully creditable for *pay* purposes. At a minimum, Congress could also consider legislation like H.R. 1702, the "LEO Fair Retirement Act," introduced by Representative Peter King earlier this year which would ensure that law enforcement overtime compensation is fully creditable for *retirement* purposes. Specifically, H.R. 1702 would amend current law to require OPM to take into account the full amount of overtime hours accrued when calculating the amount of an annuity at the time of retirement. In the end, removing or modifying the premium pay caps will help ensure that those who willingly place themselves in harm's way receive some credit for all of the long hours spent carrying out their sworn duty to protect and serve.

3. *Adjusting the calculation rate under FERS for purposes of determining a federal law enforcement officer's pension annuity*—Most law enforcement officers today have been hired under FERS. Unlike its predecessor, FERS is a three-legged retirement program that relies on a more modest pension annuity than CSRS. Under current law, law enforcement officers may retire after 20 years of service at age 50 or 25 years of service at any age. Nearly all officers are also subject to a maximum hiring age of 37 years old and face mandatory separation from service at age 57; policies which FLEOA fully supports as paramount to ensuring that the law enforcement ranks are filled by individuals who are physically vigorous enough to meet the demands of the job. However, these requirements and the current annuity calculation rates mean that a law enforcement officer would be required to work a minimum of 36 years beginning at the age of 21 to achieve a pension annuity worth 50 percent of their pay at the time of retirement. That is because law enforcement officers receive 1.7% of their high-3 pay for the first 20 years of service and 1.0% of pay for every year of service in excess of 20 years. The reality is that most law enforcement officers do not get hired until they are in their late 20s or early 30s because these are positions which require a college education and prior military or work-related experience. Thus most law enforcement officer annuities end up at the level of 34-39% of pay at the time of retirement. This is far below what many state and local law enforcement agencies are able to offer and is a major factor for individuals determining whether to seek employment with a federal agency. We therefore recommend that the Subcommittee similarly look at the FERS system as a

major factor in recruitment and retention and consider revising the annuity calculation to increase the annuity level for federal law enforcement officers at the time of retirement.

In recent years, federal law enforcement officers have weathered a perfect storm of assaults on their jobs and their livelihoods through the government shutdown, sequestration, and hiring and pay freezes, to name just a few. While each of the workforce policy changes that have been considered during this timeframe may appear to have merit in the overall effort to reduce the federal budget, they have also negatively impacted both employee morale and the various missions law enforcement agencies are asked to perform. As such, they also have the potential to significantly impact the safety of both federal law enforcement officers and the public they serve. It is past time for Congress and the Administration to reverse course before the effects are irreversible. Serious consideration must be given to prioritizing both the human capital and operational needs of the agencies charged with protecting homeland security and public safety.

It is no easy, quick, or inexpensive thing to recruit, vet, train, and assign an individual to a federal law enforcement position; particularly if it is in response to an imminent threat or to a catastrophic natural or manmade disaster. That is why we hope that your hearing on improving pay flexibilities is the first of many examining ways to not only improve recruitment and retention, but also to strengthen our nation's federal law enforcement workforce. FLEOA looks forward to working with you and others to advance solutions for the benefit of the brave men and women who are asked to put their lives on the line to protect us each and every day.

Sincerely,

Nate Catura

Nate Catura
National President

CC: Members, Subcommittee on Regulatory Affairs & Federal Management, Committee on Homeland Security & Governmental Affairs, United States Senate

STATEMENT BY

J. DAVID COX, SR.
NATIONAL PRESIDENT
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE

SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE
SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT

ON

IMPROVING PAY FLEXIBILITIES IN THE FEDERAL WORKFORCE

October 22, 2015

American Federation of Government Employees, AFL-CIO
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Mr. Chairman and Members of the Committee: My name is J. David Cox, Sr. and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). Our union proudly represents approximately 670,000 federal and District of Columbia employees across the nation and around the world. I am pleased to have the opportunity to submit this statement on their behalf. No one cares more about federal workforce issues than AFGE. Our members are the Department of Defense civilians who provide support to our warfighters, the Department of Veterans' Affairs employees who provide both health care and benefits to our nation's veterans, Social Security claims representatives, corrections officers in the Bureau of Prisons, Border Patrol Agents, Transportation Security Officers, FEMA personnel, those who enforce wage and hour, occupational safety, and pension protections laws in the Department of Labor, and many more throughout the Executive Branch.

The oil boom in the Bakken region of North Dakota and eastern Montana has been a "shock" to the economy there. In a very short span of time, demand for all goods and services in the area skyrocketed. Before the boom in 2006, wages in the Bakken region were lower than they were in the rest of Montana and North Dakota. In the last quarter of 2014, average weekly wages in Bakken oil counties were almost double those in the rest of Montana and 40 percent higher than those in the rest of North Dakota. Unemployment has also been much lower in the Bakken oil counties than in non-oil counties of both states. The Bakken region clearly stood out from other states as well as other regions of the United States.

Everyone has heard, anecdotally, about McDonald's offering starting pay of $11 or $12 per hour and charging $1.39 for what elsewhere in America is the "dollar menu."

Everyone has heard about overflowing "man camps" housing oil workers who moved to the region to take advantage of the jobs and wages that overflowed during the boom.

The private sector did its best to accommodate the rapid shifts in demand that characterized the eight years of boom. It's important to remember that initially, even in the private sector, the market adjustment in the regional labor market was not a rise in wages but rather a rise in the supply of labor. People poured into the region to take advantage of job opportunities created by the oil boom. The supply of housing and other amenities rose immediately, but wages did not because there was no shortage of workers. Only toward the middle and end of the boom did private sector wages – including those at McDonald's – go up substantially.

The federal government was slower than private employers in adjusting wages. *But the reason for the relative slowness of federal agencies to raise wages had nothing to do with the federal pay system and everything to do with bureaucratic delays and a strong reluctance on the part of the agencies to incur higher costs.*

It took a tremendous amount of urging and lobbying and nudging and pestering and public shaming to persuade the Department of Defense and the Office of Personnel Management (OPM) to exercise their authorities under the law to put in place "special rates" to respond to the higher wages in the region. A year ago, in October 2014, I wrote to Katherine Archuleta, then the Director of OPM, asking her to make good on promises she made during a town hall meeting at Minot Air Force Base weeks earlier. The reason she went to North Dakota was that she was pressed so hard during a hearing of this committee five months earlier.

It is customary for agencies to blame one another for controversial or unpopular actions. With regard to the Bakken region, OPM insisted that they were ready to approve special rates for Bakken in the blink of an eye, if only DoD and the Department of the Interior, the two largest agencies in the region, were to ask formally. DoD blamed budget austerity (the Office of Management and Budget) and OPM's regulatory/bureaucratic complexities for its failure to act.

This blame game is, unfortunately, all too familiar to AFGE. Right now, thousands of the lowest graded jobs in the Department of Veterans' Affairs are being downgraded in a completely arbitrary and probably illegal manner. And although Secretary McDonald has issued a moratorium on downgrades, they continue to occur. The "human resources" specialists in the VA insist that OPM is making them do it. OPM, in turn, pleads innocence. It is a frustrating situation and not unlike the one we dealt with in our efforts to secure higher wages and salaries in the Bakken region.

In March of 2015, OPM approved higher *wage rates* for numerous occupations at Minot Air Force Base, three National Guard bureaus in North Dakota, two Army Corps of Engineers installations in North Dakota, at the Agricultural Research Service in North Dakota, at the Bureau of Reclamation in one county in Montana and one in North Dakota, as well as the National Park Service and the Fish and Wildlife Service in several North Dakota counties. Six weeks later, special *salaries* were approved by OPM and implemented in the Department of the Air Force, the Army National Guard, the Army Corps of Engineers, the Department of the Interior's Bureau of Land Management, the Departments of Agriculture, Homeland Security, and Transportation, the Department of Energy, and the Department of Labor's OSHA.

One legitimate delay occurred after DoD and DoI finally made their request of OPM. OPM asked all the agencies in the Bakken region whether they, too, wanted to establish special rates for the occupations requested by DoD and DoI, or for other occupations, so that there would be consistency within the government.

In all, it takes OPM just eight to twelve weeks to approve and process special rate requests, and that includes the time it takes to ask other agencies (besides the ones doing the initial request) whether they want to be included. In my view, this is a fair turnaround time.

In no way should the history of the effort to secure special rates for the Bakken region be interpreted as a story of inadequate pay flexibilities in the federal pay systems. Within two months of DoD's request, hourly workers in the Bakken region had new special wage rates implemented. Within twelve weeks of DoD and DoI's request, salaried federal workers in certain occupations had new, higher special rates as well.

The Federal Pay Comparability Act (FEPCA), the law that governs the locality pay system for federal white collar employees, is sometimes misunderstood as providing a cost-of-living adjustment and a local labor market adjustment. By habit, many people refer to the nationwide across-the-board adjustment as a "cola." But FEPCA provides pay adjustments solely on the basis of labor market comparability data, not cost of living data from the Consumer Price Index (CPI). FEPCA uses the Employment Cost Index (ECI), a Bureau of Labor Statistics measure of changes in private sector wages and salaries. Thus, in a region like Bakken where measures of the cost of living went way up, the federal pay system was required to restrict itself mostly, but not exclusively, to measures of the cost of *labor.*

Here is how flexible the federal pay systems are when faced with situations like the one that occurred during the Bakken oil boom: the Department of Defense was authorized to implement a ten percent across-the-board "group retention incentive" without OPM approval, but it chose not to do so. With OPM approval, DoD could have provided up to a 50 percent "group retention incentive" but it chose not to do so. The failure to provide these payments to alleviate the economic stress on federal employees in the Bakken region was not due to lack of statutory authority on the part of the agencies or OPM, it was because they chose not to exercise their authority.

What ultimately occurred was the application of special, higher wages and salaries, to specific positions for which agencies faced difficulties in recruitment or retention. Not every federal employee in the region received higher pay. The special rates were not the group incentive payments that are designed to reflect changes in the cost of living. The special salary rates were given to ten percent of the General Schedule workforce, and the occupations targeted were engineers and computer specialists. A little over half of the hourly workforce, those whose occupations are in the skilled trades, received special rates. Federal agencies apparently decided that they were not at risk of losing most of their employees to other employers and were only facing recruitment problems in certain STEM fields. We believe that the agencies should have exercised their authority to provide group incentives. It is clear that austerity was their primary excuse.

Conclusion

There is no question that current law and regulation contain fully adequate flexibilities for responding to special economic situations such as surges in demand and

prices. The delayed and limited action on the part of federal agencies in response to the oil boom in the Bakken region was wholly a function of austerity budgets and bureaucratic foot-dragging on the part of agencies. OPM did its part and did so quickly.

The federal pay system's only real problem is the refusal of successive Congresses and successive presidential administrations to provide adequate funding. The federal pay systems, both the Federal Wage System for hourly employees and the General Schedule Locality Pay System for salaried employees, are supposed to be market-sensitive comparability systems. Federal pay is supposed to track pay in the private sector and state and local government for similar jobs.

The period of the Bakken boom coincided with an unprecedented period of attack on federal compensation, in terms of wages and salaries and retirement benefits. Wages and salaries were frozen in 2010, 2011, and 2013. In 2014 and 2015, federal employees received just one percent pay adjustments. During that period, the pay of newly hired employees was cut across-the-board by requiring higher retirement "contributions." Salaries for those hired in 2013 will be 2.3 percent lower than their co-workers hired prior to that year, and salaries for those hired in 2014 or after will be 3.6 percent lower than those hired prior to 2013. The impact of frozen salaries, miniscule raises, retirement cuts, and sequestration furloughs, not to mention unacknowledged cost burdens placed on federal employees from government shutdowns comes to a total of $159 billion.

The bottom line is that the federal pay systems suffer from a lack of funding, not a lack of flexibility. The treatment of federal employees over the past several years has been a disgrace to this nation, an insult to the dedication, skill, and commitment of this

highly patriotic workforce, and ultimately, a disservice to the American people who rely on us for high-quality government service. That federal workers continue to serve with such perseverance and devotion is a source of constant pride and amazement to me.

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