MOM, APPLE PIE, AND WORKING FOR AMERICA: ACCOUNTABILITY AND REWARDS FOR THE FEDERAL WORKFORCE

HEARING

BEFORE THE

SUBCOMMITTEE ON THE FEDERAL WORKFORCE AND AGENCY ORGANIZATION

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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MOM, APPLE PIE, AND WORKING FOR AMERICA: ACCOUNTABILITY AND REWARDS FOR THE FEDERAL WORKFORCE

WEDNESDAY, OCTOBER 5, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE AND AGENCY ORGANIZATION,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Jon C. Porter (chairman of the subcommittee) presiding.

Present: Representatives Porter, Davis of Virginia (ex officio), Norton, and Van Hollen.

Staff present: Ronald Martinson, staff director; Chad Bungard, deputy staff director/chief counsel; Christopher Barkley and Shannon Meade, professional staff members; Patrick Jennings, OPM detailee/senior counsel; Chad Christofferson, LA/clerk; Mark Stephenson and Tania Shand, minority professional staff member; and Teresa Coufal, minority assistant clerk.

Mr. PORTER. Good morning. I would like to bring the meeting to order of the Subcommittee on the Federal Workforce and Agency Organization. Good morning, everyone. Mr. Gage is supposed to bring donuts and coffee. John, where are you this morning? John you are supposed to bring donuts and coffee for everyone. You were late. Next time.

Welcome, everyone. I appreciate you being here. As I mentioned, I would like to bring the meeting to order. We do have a quorum present.

Working for America is a wonderful privilege and a great responsibility, something that I take very seriously, and I know that most Federal employees feel the same way.

The work of Federal employees affects almost every aspect of our daily lives, from sending a timely Social Security check to protecting our country from terrorist attacks. Each aspect is important as millions of taxpayers rely on the Federal Government to provide them with service that is responsive, efficient and accountable. That is why it is important to review ways in which improvements can be made to the current system so the Federal Government can better serve the American people.

Recently the administration released a discussion draft of a comprehensive government-wide reform personnel bill titled the Working for America Act, and I should emphasize that the Working for

America Act is a draft proposal. The proposal has not been introduced as a bill and that is another reason why we are here today as we move forward looking at legislation so we can have everyone's ideas and suggestions before that bill is introduced.

We are here today to discuss the proposal in its current form and exchange some ideas about how to improve its provisions. I believe that a full, open and fair hearing should be held on this matter before a bill of this magnitude is introduced. I am hear to listen to all sides and all viewpoints with an open mind.

I know that we will hear from some groups today that say no change is needed and that everything is working just fine, but there are some glaring problems with the current system. For one, high and low performers get the same annual pay increases. This is something that does not sit well even with the majority of Federal employees. According to a 2004 Federal human capital survey, employees are not satisfied with the recognition they receive for doing a good job and are not happy with the fact that steps are not taken to deal with a poor performer who cannot or will not improve and the differences in performance are not recognized. Who can be against a fair process that rewards the star performers and effectively deals with the poor performers?

Second, we now live in a world where agency performance matters more than ever, but agency performance always has mattered. The Katrina disaster itself demonstrated the need for high performing agencies and leadership in those agencies. Unfortunately, our current Federal personnel system does not always encourage efficiency or hard work.

Any proposal that allows agencies to better manage, develop and reward its employees to better serve the American people should be seriously considered. Better performing employees mean a better performing agency, which means that taxpayers are getting the biggest bang for their buck.

Third, the Federal Government needs to be better able to attract and retain quality employees, but we need to make sure that every agency has the same ability to attract and keep quality employees. The new personnel systems at DHS and DOD will place over half the government under alternative personnel systems within a short time. Agencies without modern, flexible personnel systems are going to be at a competitive disadvantage in the areas of recruitment and retention in relationship to the private sector and in relationship with agencies with flexible personnel systems.

I understand that change can be difficult and that there are lots of concerns out there about moving into a new personnel system. I ask that everyone here maintain an open mind in how we can improve the current system, and when I say an open mind, I encourage all those that testify today, although you may have parts of the draft that you support, I also would like to hear your ideas on what we can do better to make it better. This is not just about a session to complain about a draft. It is a session to provide very honest and very blunt discussion on what we can do to help our Federal employees but, more importantly, the taxpayers.

As I said, I hope that everyone has an open mind on how we can improve the system, and I look forward to hearing from the distinguished group before the subcommittee today. We are privileged to

have some very knowledgeable people here today who will bring different points of view to this proposed legislation, and I look forward to our discussion and would like to move to a few procedural matters at this time.

I ask unanimous consent that all Members have 5 legislative days to submit statements and written questions for the record, that any answers to written questions provided by witnesses also be included in the record. Without objection, so ordered.

I ask unanimous consent that all exhibits, documents and other materials referred to by the Members and the witnesses may be included in the hearing record and that all Members be permitted to revise and extend their remarks. Without objection, so ordered.

It is the practice of the subcommittee to administer the oath, which I will do here in a moment, but first I would like you to recognize my Congresswoman for any opening remarks. Good morning.

[The prepared statement of Hon. Jon C. Porter follows:]

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"Mom, Apple Pie, and Working for America: Accountability and Rewards for the Federal Workforce"

Subcommittee on the Federal Workforce and Agency Organization
Chairman Jon C. Porter

October 5, 2005

Working for America is a wonderful privilege and a great responsibility. It is something that I take very seriously and I know that most Federal employees feel the same way. The work of Federal employees affects almost every aspect of our daily lives – from sending a timely social security check to protecting our country from terrorist attacks. Each aspect is important, as millions of taxpayers rely on the Federal government to provide them with service that is responsive, efficient and accountable. That is why it is important to review ways in which improvements can be made to the current system so that the Federal government can better serve the American people.

Recently, the Administration released a discussion draft of a comprehensive government-wide reform personnel bill, titled the *Working for America Act.* I should emphasize that the *Working for America Act* is a draft proposal. The proposal has not been introduced as a bill. We are here to discuss the proposal in its current form, and to exchange some ideas about how to improve its provisions. I believe that a full, open and fair hearing should be held on this matter before a bill of this magnitude is introduced. I am here to listen to all sides and all viewpoints with an open mind.

I know that we will hear from some groups today that say no change is needed and that everything is working just fine. But, there are some glaring problems with the current system. For one, high and low performers get the same annual pay increases. This is something that does not sit well even with the majority of Federal employees. According to the 2004 Federal Human Capital Survey, employees are not satisfied with the recognition they receive for doing a good job, are not happy with the fact that steps are not taken to deal with a poor performer who cannot or will not improve, and that differences in performance are not recognized. Who can be against a fair process that rewards the star performers and effectively deals with poor performers?

Secondly, we now live in a world where agency performance matters more than ever - but agency performance always matters. The Katrina disaster itself demonstrated the need for a high performing agency. Unfortunately, our current Federal personnel system does not always encourage efficiency and hard work. Any proposal that allows agencies to better manage, develop and reward its employees to better serve the American people should be seriously considered. Better performing employees mean a better performing agency, which means that taxpayers are getting the biggest bang for their buck.

Third, the Federal government needs to be better able to attract and retain quality employees, but we need to make sure that every agency has the same ability to attract and keep quality employees. The new personnel systems at DHS and DoD will place over half the Government under alternative personnel systems within a short time. Agencies without modern flexible personnel systems are going to be at a competitive disadvantage in the areas of recruitment and retention in relationship to the private sector and in relationship with agencies with flexible personnel systems.

I understand that change can be difficult and that there are a lot of concerns out there about moving into a new personnel system. I ask that everyone here maintain an open mind on how we can improve the current system and I look forward to hearing from the distinguished group before the Subcommittee today.

Ms. NORTON. Thank you very much, Mr. Chairman. I am very pleased to be of service with you in Washington. I appreciate, Mr. Chairman, that before this bill is final that you're having another hearing.

In case its controversial nature was not clear on the face of it, it should be noted that the—one of our appropriation committees, the House Transportation-Treasury Appropriation Committee, withheld funding, the funding requested by OPM, to continue to overhaul the civil service. Now that is the appropriation committee, which would have no reason, it seems to me, to do that, nor would the hesitation of the Senate be so clear if this were easy.

Mr. Chairman, I am not at odds with what is being undertaken here. I simply begin with an appreciation for the uniqueness of the system and how difficult it is. Now, if you want to change the system so that it looks like your local largest corporation, we can try to do that. But let me tell you something. Your local largest corporation,wherever members may in fact reside, do not operate in the system under the Constitution of the United States. It requires due process, at the same time there is collective bargaining.

The size of the work force and the unique strictures under which it operates presents a fascinating challenge, but we have to take the challenge and not simply imitate what we see in the larger community. I served on the board of three Fortune 500 companies. Two are unionized. One was not. They don't have the same issues, and they don't have the same problems. And they are able to operate in a way that this committee and that the Congress of the United States must come to grips with.

We have the problems that have been outlined by this subcommittee. The fact that there has already been a court decision overturning a major section of what we have done is more than a shot across the bow. It is an indication that there is still a lot of work to do and that we have not grasped the functional and the intellectual challenge that this presents.

I compare it, Mr. Chairman, to those who approach September 11th not knowing what to do, recognizing we had a specific challenge, and realizing we had to keep our society safe. And so their first instinct was to close down everything. Well, there is a way to do this.

The Constitution of the United States isn't going to let you do it. There is no wording by the Congress that can overcome certain problems that are present in the—what do we call it—this act, the act I want to for the record say it correct, Working for America Act.

Understand that we have already taken most of the work force and by statute of the United States passed by both Houses in fact done what this act would seek to do for the entire work force. You would think that having done that so recently the first thing you want to do is look very closely—since you have the largest section of the work force in the first place, what better laboratory to look at what you have accomplished to correct your mistakes?

I chaired a very controversial agency at the time it was on its knees, the Equal Employment Opportunity Commission, and I knew that the agency had to be changed from top to bottom. Well, I didn't do anything like what we do here, which is take the more than half of the offices and just change them. We took three offices,

tried every single change we were trying to do, see if those changes worked, and after in fact being informed by practice, created a system that worked.

I don't see us doing that here. Let's look at Judge Collier's decision, which focused on collective bargaining. Well, you can't collective bargain everybody. You can't simply redefine collective bargaining in the United States of America today, to quote what the judge said, when good faith bargaining leads to a contract that one side can disavow. Without remedy, the right to engage in collective bargaining is illusory.

Now, you can try to abolish collective bargaining but you can't get around what in fact collective bargaining means in the law. And we can't get out of what it has come to mean and what we ourselves have over the decades reinforced as its meaning in the Federal sector, just to give one aspect, because we are trying to change everything in this bill: Pay, job classification, labor-management relations, adverse actions and appeals. Good luck.

Doing all of that in most of your work force, we have already done that in the DOD, and now you're facing whether you're going to appeal or not a decision that has come down. Very clear, the trial judge left part of the system in place and was very clear what had been done with the rest of it.

Essentially what we did was to redefine collective bargaining. We redefined it out of existence. One side could do what it wanted to do. DOD and HHS, we can do because, we confront emergencies, what it is we have to do. And yet, in this bill, Mr. Chairman, there is language, amazing language, a language that would give agencies, period, we are not even talking about DOD or HHS, which used the pretext of emergency perhaps when it sees fit, but we are talking about any agency that can take action without collective bargaining, in order to prepare for, practice for or prevent any emergency, which is very broadly defined.

Well, you know, you know even a king doesn't have that authority. And I don't think in a democracy we want to give any agency head the right to decide, "I said it is an emergency, it is an emergency. So I am going to do what I want to do and nobody has any say."

You can't run the Federal Government that way, and what we are doing is getting ourselves deeper and deeper into a situation where everything we do is in fact going to be tested in the courts.

So I understand that one of the great remedies for all this is just train everybody and you don't have to care about all the rest of it. Well, you can't train everybody out of the right to collective bargaining. You can't train everybody out of how to make sure that when you give pay increases you do not in fact engage in discrimination that will not take you to court. You have to have a system that does that and that enables people to work it.

We do not have such a system today. I am with you, Mr. Chairman, in trying to see if we can get our way to such a system.

Thank you very much.

Mr. PORTER. Thank you very much. I like giving my colleague a hard time because I do live in the District. So it is always good to have two Members here working together. So I appreciate that very much.

Just a couple of key points. In my position as chairman, I look at this very cautiously and I know there is a lot of steps that have to take place before we make any major changes. There are many, many steps. We also need to look closely at some of the successes and some of the failures throughout the system through the years. But the bottom line is we are looking at a personnel system that was created in the forties. So for those that are opposed to the concept of what may well be in this particular act, and I said in my opening statement, we have to find a better way to treat our Federal employees, which in turn can treat our taxpayers—our bosses—more efficiently, with more accountability, because the expectations are high, as they should be.

Again, we are looking at a personnel system that was created in the forties. Whether the draft before us is the solution is yet to be determined, and that is why we are here today.

We are in a global economy, a global market, where even in technology it is dog years. Everybody's computer is obsolete by the time we plug it in, technology is in dog years, seven for every one. The same with the way we deliver our services. As many of you have heard me say before, probably a large share of the time of every Member of the Congress in their district offices is trying to provide service to our constituents because of their frustration with the system. They are frustrated. Our taxpayers, our bosses, our constituents, our friends and neighbors are frustrated. They call an 800 number and no one answers. They get put on hold and it takes them 30 days to get an answer on certain problems.

So as Members of Congress, we see firsthand the challenges for our constituents, but we also see those Federal employees that are doing a great job, and we need to find a way to reward those folks that are doing a great job. So today we have some experts with us. We are going to talk about better ways to encourage our personnel so we can keep our personnel as we move into this global economy and global market with high expectations, as our bosses should ask for.

Again I thank you all for being here. I would like to first have all the witnesses stand so we can do the proper protocol and administer the oath. So actually all witnesses, please.

[Witnesses sworn.]

Mr. PORTER. Let the record reflect that the witnesses have answered in the affirmative and have been seated. I would like to highlight the fact that we have so many folks here today to express their perspective and expertise. If we can hold our comments to the 5 minutes, we will of course have an opportunity for questions and answers and if time doesn't permit we will ask for you to submit your answers in writing. But it is imperative because of limited time and the number of folks that we limit ourselves to 5 minutes.

So in our first panel we will hear from Director Linda Springer from the Office of Personnel Management and Comptroller General David M. Walker of the U.S. Government Accountability Office.

So Director Springer, we thank you and look forward to your testimony.

STATEMENTS OF LINDA M. SPRINGER, DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT; AND DAVID M. WALKER, COMPTROLLER GENERAL, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

STATEMENT OF LINDA M. SPRINGER

Ms. SPRINGER. Good morning, Mr. Chairman and members of the subcommittee, I want to thank you for the opportunity to discuss the administration's legislative proposal for improving personnel systems in the Federal Government.

Simply stated, the Working for America Act will require agencies to better manage, develop and reward employees to better serve the American people.

This act will establish a government-wide personnel system that creates an environment where employees have the greatest opportunity to reach their full potential. Under the proposal, individual employees will be provided clear performance goals, managers who can help them to be successful, and performance and market-based pay.

An employees's career and pay potential should be determined by achievement, not by the passage of time or obsolete job classifications. But today it takes employees up to 18 years to reach the top of a General Schedule pay grade regardless of how well they perform.

Our proposal establishes a process for implementing a system that recognizes and rewards performance. Each agency will design its individual plan for using the flexibilities once the general authorities are approved. However, no agency will be able to use the pay features in the bill until OPM certifies that agency's readiness.

Our proposed legislation recognizes that enhancements to personnel systems must be made within the context of core values, principles and protections that characterize our American Civil Service. Reform can be accomplished while fully preserving core principles and protections. In fact, the Working for America Act promotes merit system principles by putting them into practice more broadly.

Personnel systems that make it more likely that employees reach their full potential will soon cover more than half of the Federal work force. The rest should be afforded similar opportunities. The Working for America Act ensures that the remaining agencies are not left at a competitive disadvantage.

Let me summarize the central elements of the Working for America Act. First, the Civil Service system must preserve core Civil Service principles. The act does just that.

Second, under the Working for America Act provisions OPM would establish a core compensation system for the Federal Government, would define broad groups of like occupations, as well as pay bands within each group that represent clearly distinct levels of work. In this core system, market-based pay would constitute a significant portion of pay adjustments with the balance allocated on the basis of individual performance.

Third, today even poorly performing employees receive a General Schedule increase across the board and locality pay increases. The Working for America Act would make those increases within a par-

ticular band performance based in the sense that only employees who are at least fully successful would receive those adjustments.

In addition, our proposal would bar pass/fail appraisal systems for all but entry/developmental jobs but, as is the case today, would provide agencies with flexibility in designing their performance appraisal systems and would require OPM to certify that an agency's performance adjustment plan meets the high standards that Congress will set before that agency is permitted to move to a performance-based pay system.

As I noted, Federal pay systems that include performance based pay are not new at all. They have existed inside the Federal Government for 25 years and today cover over 90,000 Federal employees. And I would note that does not include the DHS or DOD legislation. These are other programs that have been around as long as 25 years.

These systems already apply to the same kinds of work and workers that the current General Schedule covers. The results and trends have been positive across those systems and we have looked to the lessons learned from those systems as we have developed the Working for America Act.

The Working for America Act ensures that Federal unions retain core collective bargaining rights. The legislation modifies Federal labor relations statute to clarify essential management prerogatives but preserves the important role and rights of unions in the Federal labor relation system.

These modifications in labor-management are much, much narrower in their scope than the flexibilities granted to the Department of Homeland Security, and I want to underscore that. Let me iterate that an agency will not be able to use pay flexibilities in the bill until OPM has certified that agency's readiness. To help agencies in that regard, OPM is leveraging its leadership of the human capital initiative of the President's management agenda.

Starting in 2006, agencies will be required to develop and expand robust performance management systems for a defined segment within the agency. In other words, agencies must demonstrate that the site is ready to link pay for performance appraisal system with the expectation that such improvements will expand and continue throughout the agency.

We are fully aware that OPM will have a critical role in ensuring the success of the Working for America Act. We recognize agencies will look to us for guidance and assurance from implementation and certification and beyond. You and, very importantly, the men and women of the Federal work force can be sure of the Office of Personnel Management's commitment to being fully prepared to carry out those responsibilities.

Mr. Chairman, that concludes my testimony. I would be glad to answer any questions.

[The prepared statement of Ms. Springer follows:]

Statement of the Honorable Linda M. Springer
Director of the United States Office of Personnel Management

before the

Subcommittee on the Federal Workforce and Agency Organization
Committee on Government Reform
U.S. House of Representatives

on

The Working for America Act

October 5, 2005

Good morning, Mr. Chairman and Members of the Subcommittee. I want to thank you for the opportunity to appear before you today to discuss the Administration's legislative proposal for improving personnel systems in the Federal Government.

Simply stated, the Working for America Act will require agencies to better manage, develop, and reward employees to better serve the American people.

The current personnel system was designed in the late 1940s to maintain Governmentwide consistency for similar jobs based on the principle of the same pay for the same job, with on-the-job longevity serving as a surrogate for performance. However, today's workforce is far less uniform than it was 50 years ago, with federal employees performing a wider range of roles at different proficiency levels. Today, agencies must be able to manage, develop and reward employees as the professionals they are.

American citizens expect the Federal Government to achieve results and better utilize their taxpayer dollars. The goals of individual employees must be tied in a meaningful way to agency missions. Further, individuals deserve to know how their performance contributes to that mission.

The Working for America Act will establish a Governmentwide personnel system that creates an environment where employees have the greatest opportunity to reach their full potential. Under the proposal, individual employees would be provided clear performance goals, managers who can help them be successful, and performance- and market-based pay.

A system that values performance and potential must also ensure accountability. The public expects it, as do Federal employees. The 2004 Federal Human Capital Survey reveals that

only 27 percent of Federal employees believe steps are taken to deal with poor performers and only 29 percent believe differences in performance are recognized in a meaningful way.

An employee's career (and pay) potential should recognize achievement and not be determined by the passage of time or obsolete job classifications. For example, General Schedule pay grades were defined by a law that has remained largely unchanged since the middle of the last century and serve as a legacy of the industrial age. It takes employees up to 18 years to reach the top of a General Schedule pay grade, regardless of how well they perform. Our proposed legislation recognizes that enhancements to the personnel system must be made within the context of the core values, principles, and protections of the American civil service. Reform can be accomplished while fully preserving core principles and protections. In fact, the Working for America Act promotes merit system principles by putting them into practice more broadly.

Personnel systems that make it more likely that employees reach their full potential will soon cover more than half of the Federal workforce. The rest should be afforded similar opportunities. The Working for America Act ensures that remaining agencies are not left at a competitive disadvantage.

The proposal establishes a responsible process for implementing these changes. Each agency will design its individual plan for using the flexibilities once the general authorities are approved. In particular, no agency will be able to use the pay features in the bill until OPM certifies the agency's readiness. We have worked closely with the Chief Human Capital Officers Council in identifying these needed authorities. They support these flexibilities and acknowledge they will be fully accountable for ensuring their successful implementation.

Let me summarize the central elements of the Working for America Act:

Preserving Core Ideals

The civil service system must preserve core civil service principles.

The Homeland Security Act preserved these ideals in law for employees in the Department of Homeland Security (DHS), and they are similarly prescribed for the National Security Personnel System (NSPS) in the Department of Defense (DOD). In each of those legislative initiatives, Congress recognized the key role OPM must play to provide overall coordination and oversight of decentralized human resources management systems that fulfill the

merit system principles and preserve the fundamental values woven into the fabric of the civil service. The Working for America Act reflects the same commitment to those values and ideals. The legislation articulates OPM's modern leadership and stewardship responsibilities by revising chapter 11 of title 5, United States Code, to reflect OPM's role in coordinating decentralized agency human capital management strategies while ensuring they continue to comport with core system requirements and parameters.

Establishing a Results-Driven, Market-Based Pay System

A pay system is needed that does a better job of reflecting differences in occupations, locations, and unique agency requirements. The General Schedule is ineffective in this regard, with its rigid, "one size fits all" approach masking often dramatic disparities in the market value of different Federal jobs.

Under the Working for America Act's provisions, OPM would establish a core compensation system for the Federal Government, defining broad groups of like occupations (such as law enforcement or science and engineering), as well as pay bands within each group that represent clearly distinct levels of work. In this core system, market-based pay would constitute a significant portion of base pay adjustments, with the balance allocated on the basis of individual performance.

Today, even poorly performing employees receive General Schedule across-the-board and locality pay increases. Further, while today's system provides virtually automatic percentage pay increases based on time in grade, the Working for America Act would make all such increases within a particular band strictly performance-based. Only those employees who are at least fully successful would receive such adjustments.

In addition, our proposal would:

- Bar pass/fail appraisal systems for all but entry/developmental jobs, but as is the case today, provide agencies with a great deal of flexibility to design their own performance appraisal systems;
- Require OPM to certify that an agency's performance adjustment plan, including the operation of its performance appraisal system, meets the high standards Congress has

already set for pay-for-performance projects before an agency would be permitted to implement the performance-based pay elements of the core compensation system; and

- Permanently "sunset" the General Schedule and the Federal Wage System by 2010, and in anticipation of that event, require agencies to have a plan in place by 2008 for the development and deployment of an OPM-certified performance adjustment plan, or to adopt a standard OPM system.

Building on Success

It is important to recognize that alternative Federal pay systems that include performance-based pay are not new at all.

They have existed in the Federal Government for 25 years and today cover over 90,000 Federal employees. Taken together, these systems – implemented through demonstration projects and under independent authorities – represent a steady progression away from the current Governmentwide classification and pay systems toward alternative approaches where market rates and performance are central drivers of pay. These performance-based alternative systems already apply to the same kinds of work and workers that the current General Schedule covers. The alternative pay systems vary in some of their technical details, but share many common objectives and practices. Positive results and trends across these systems are clear. The lessons learned from their implementation and experience was carefully considered in drafting the provisions of the Working for America Act.

Providing for Labor-Management Relations, Adverse Actions, and Appeals

The Working for America Act crafts a careful balance, ensuring that Federal unions retain core collective bargaining rights, but precluding them from exercising those rights in a way that would deter, divert, or delay managers from meeting their mission.

The legislation modifies the Federal labor relations statute to clarify essential management prerogatives while preserving the important role and rights of unions in the Federal labor relations system. Further, these labor-management modifications are much narrower in scope than the flexibilities granted to Department of Homeland Security. Bargaining (and agreement) in most instances would continue to be required before an agency could act, but only

when a proposed management action's effect on employees is foreseeable, substantial and significant in terms of impact and duration.

Federal employees are accountable to the American people, not only to do their jobs but also to comport themselves according to high standards of conduct and performance. If employees fail to meet performance expectations, the Working for America Act would provide for a simplified and streamlined process that preserves the fundamental due process rights Federal employees deserve – including the right to take their case to the Merit Systems Protection Board (MSPB) or an arbitrator. It would also require a tough burden of proof for an agency to sustain an adverse action (including those taken for poor performance); however, when that burden is met, the proposal would require the penalty chosen by the agency be granted deference.

Preparing for Implementation

An agency will not be able to use the pay flexibilities in the bill until OPM has certified that agency's readiness.

To help agencies in that regard, OPM is leveraging its leadership of the Human Capital Initiative of the President's Management Agenda. In 2006, agencies will be required to develop and expand robust performance management systems. For a defined segment within the agency, evidence must be provided: that employees have clear, written performance expectations; that they receive feedback; that their performance is being appraised; and that awards programs are being used to reward results. In other words, agencies must demonstrate that the site is ready to link pay to a performance appraisal system, with the expectation that such improvements will expand and continue throughout the agency.

OPM will have a critical role in ensuring the success of the Working for America Act. We recognize that agencies will look to us for guidance and assurance from implementation and certification and beyond. You and, very importantly, the men and women of the Federal workforce can be sure of our commitment to being fully prepared to carry out those responsibilities.

This concludes my testimony, Mr. Chairman. I would be happy to answer any questions.

Mr. PORTER. Thank you very much. You may note that we have this little beeper going here. It is the alarm clock to let you know that your time is up. Anyway, welcome, Mr. Walker, we appreciate you being here.

STATEMENT OF DAVID M. WALKER

Mr. WALKER. Thank you, Mr. Chairman, Ms. Norton, Mr. Van Hollen. It is a pleasure to be back before the subcommittee to talk about the draft proposed Working for America Act. Somehow I have been thinking about James Brown and Living in America all morning. But this is a very serious topic, and I do look forward to the opportunity to answering your questions as well.

Since you have put my entire statement in the record, if I can summarize now, I would be pleased to do so.

Mr. Chairman, each Member of Congress received in February of this year this document that was published by GAO. It is called, "21st Century Challenges: Reexamining the Base of the Federal Government." This document is based upon decades of work by GAO for the Congress, and it provides a clear and compelling case that a vast majority of the Federal Government is based upon conditions that existed in the United States and in the world in the 1950's and in the 1960's, and it includes over 200 questions that need to be asked and answered to position us for a more positive future. One of those 200 questions relates to the topic that we are covering in today's hearing.

Based upon all of the experience that we have in analyzing the government's efforts in the human capital area as well as our own internal experience, GAO supports the concept of moving forward with appropriate human capital reforms and believes that implementing more market-based and performance-oriented classification and compensation systems across the entire Federal Government is both doable and desirable.

Importantly, broad based human capital reform in our view must be part of a broader change in management strategy and must involve a number of changes in the performance management systems that exist in the Federal Government today. This concept cannot be simply overlaid onto the existing and often ineffective performance management systems that exist in the Federal Government today.

In addition, organizations need to buildup their basic management capacity and must have adequate resources to properly design and effectively and equitably implement more market-based and performance-oriented classification compensation systems.

In our view, before implementing dramatic human capital reforms, executive branch agencies should follow a phased approach that meets a "Show me" test, the so-called Missouri test; namely, that they have to demonstrate conclusively to OPM or some independent qualified third party that they have achieved all the conditions necessary in order to maximize the chance that there can be successful implementation before they would have the authority to implement new classification and compensation systems.

This is contrary and different than what was done for the new SES pay ranges. In many cases, agencies were given conditional approval based upon promises to take actions. That is not accept-

able in our view with regard to broad based work force changes. The actions must be taken and demonstrated that they are in place and functioning before the authority should be operationalized in our view.

We have several observations for your consideration in the draft proposal. First, in our view there are two major elements of this proposal. The first deals with classification, pay and performance management reforms. In our view there is strong conceptual merit to moving forward with regard to classification pay and performance management reforms. The Federal Government has significant prior experience there, and I think we know what works and what doesn't work and can learn from those lessons.

We think it is critically important that in making those reforms that OPM has to play a key leadership and oversight role to make sure that people deliver on their promises and they are not abusing their authorities. We also think it is critically important for the Congress to play an active and ongoing role in connection with monitoring any of these reforms efforts.

The second part of the proposal deals with labor-management relations and adverse actions and appeals. In this area, we believe that Congress should move slower and possibly separately from the classification pay and performance management reforms. We do not have as much experience in this area and in fact some of the greatest experience that will be gained relate to the Department of Homeland Security and the Department of Defense, and it might well be prudent for the Congress to understand how those are implemented and to learn from the lessons there before moving forward with broader based reforms in that area.

A few other quick comments. The definition of emergencies with regard to this particular section is very broad and is a matter, I believe, of concern.

Second, there clearly will need to be an adequate pool of resources available for agencies to be able to modernize their infrastructure. And that is something that will have to be addressed.

Furthermore, to the extent that agencies moved to compensation systems that might provide for additional amounts being paid in the form of a bonus rather than a base pay adjustment that otherwise would have been paid in a base pay adjustment under the old Civil Service system, I think it is important that they be given credit for CSRS and Federal Thrift Saving Plan purposes for that. That would require changing the law.

And last, I think the target date, as I understand it, on this proposed legislation is that the current system would expire in 2010. My view is it is fine to have a target date, but I believe that there should be a conditions based approach, that people should not be able to implement these new authorities until they've met the conditions. All these government agencies may or may not meet the conditions by 2010. So it is fine to have a target date. But in the final analysis people shouldn't be able to move forward unless and until they have met all the conditions whenever that might occur, whether it be before or after 2010.

Thank you very much.

[The prepared statement of Mr. Walker follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on the Federal Workforce and Agency Organization, Committee on Government Reform, U.S. House of Representatives

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HUMAN CAPITAL

Preliminary Observations on the Administration's Draft Proposed "Working for America Act"

Statement of David M. Walker
Comptroller General of the United States

GAO-06-142T

October 5, 2005

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Highlights

Highlights of GAO-06-142T, a testimony before the Subcommittee on the Federal Workforce and Agency Organization, Committee on Government Reform, U.S. House of Representatives

HUMAN CAPITAL

Preliminary Observations on the Administration's Draft Proposed "Working for America Act"

Why GAO Did This Study

The federal government must have the capacity to plan more strategically, react more expeditiously, and focus on achieving results. Critical to the success of this transformation are the federal government's people—its human capital. We have commended the progress that has been made in addressing human capital challenges in the last few years. Still, significant opportunities exist to improve strategic human capital management to respond to current and emerging 21st century challenges. A key question, for example, is how to update the federal government's classification and compensation systems to be more market-based and performance-oriented.

The Administration's draft proposed "Working for America Act" is intended to ensure that agencies are equipped to better manage, develop, and reward their employees. Under this proposal, the Office of Personnel Management (OPM) is to design a new core classification and pay system, among other things. In addition, the draft proposal amends some provisions of Title 5 covering labor management relations and adverse actions and appeals.

This testimony presents preliminary observations on the draft proposal; presents the principles, criteria, and processes for human capital reform; and suggests next steps for selected and targeted actions.

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To view the full product, including the scope and methodology, click on the link above. For more information, contact Lisa Shames at (202) 512-6806 or shamesl@gao.gov.

What GAO Found

GAO supports moving forward with appropriate human capital reforms and believes that implementing more market-based and performance-oriented pay systems is both doable and desirable. Importantly, broad-based human capital reform must be part of a broader strategy of change management and performance improvement initiatives and cannot be simply overlaid on existing ineffective performance management systems. In addition, organizations need to build up their basic management capacity and must have adequate resources to properly design and effectively implement more market-based and performance-oriented systems.

Before implementing dramatic human capital reforms, executive branch agencies should follow a phased approach that meets a "show me" test. That is, each agency should be authorized to implement a reform only after it has shown it has met certain conditions, including an assessment of its related institutional infrastructure and an independent certification by OPM that such infrastructure meets specified statutory standards. In any event, OPM's and agencies' related efforts should be monitored by Congress.

Given the above, GAO has the following observations on the draft proposal.

- Congress should make pay and performance management reforms the first step in governmentwide reforms. The draft proposal incorporates many of the key principles of more market-based and performance-oriented pay systems and requires that OPM certify that each agency's pay for performance system meets prescribed criteria. Going forward, OPM should define in regulation what it will take in terms of fact-based and data-driven analyses for agencies to demonstrate that they are ready to receive this certification and implement new authorities.
- OPM should play a key leadership and oversight role in helping individual agencies and the government as a whole work towards overcoming a broad range of human capital challenges. OPM's role would be expanded in several areas under the draft proposal. It is unclear whether OPM has the current capacity to discharge these new responsibilities.
- Congress should move more cautiously in connection with labor management relations and adverse actions and appeals reforms. Selected federal agencies have been implementing more market-based and performance-oriented pay systems for some time and thus they have built a body of experience and knowledge about what works well and what does not that allows the sharing of lessons learned. On the other hand, the federal government has had far less experience in changes regarding labor management relations and adverse actions and appeals. Congress may wish to monitor the Departments of Homeland Security's and Defense's implementation of related authorities, including lessons learned, before moving forward in these areas for the rest of the federal government.

Chairman Porter, Representative Davis, and Members of the Subcommittee:

I appreciate the opportunity to be here today to discuss human capital reform and to offer preliminary observations on the Administration's draft proposed "Working for America Act," which is intended to ensure that agencies are equipped to better manage, develop, and reward their employees. In order to respond to a daunting array of governance and fiscal challenges in the 21st century, the federal government must have the institutional capacity to plan more strategically, react more expeditiously, and focus on achieving results. Critical to the success of this transformation are the federal government's people—its human capital. We have commended the progress that has been made in addressing human capital challenges in the last few years. Still, significant opportunities exist to improve strategic human capital management to respond to current and emerging 21st century challenges.[1] For example, the government has not transformed, in many cases, how it classifies, compensates, develops, and motivates its employees to achieve maximum results within available resources and existing authorities. Thus, a key question for the 21st century is "How should the federal government update its compensation systems to be more market-based and performance-oriented?"[2]

Congress has recognized that federal agencies will need the most effective human capital systems to succeed in their transformations and has given selected agencies statutory authorities intended to help them manage their people strategically to achieve results.[3] Most recently, the Departments of Homeland Security (DHS) and Defense (DOD) received the authority to

[1]GAO, *High-Risk Series: An Update*, GAO-05-207 (Washington, D.C.: January 2005) and GAO, *High-Risk Series: Strategic Human Capital Management*, GAO-03-120 (Washington, D.C.: January 2003).

[2]GAO, *21st Century Challenges: Reexamining the Base of the Federal Government*, GAO-05-325SP (Washington, D.C.: February 2005).

[3]GAO, *Human Capital: Selected Agencies' Statutory Authorities Could Offer Options in Developing a Framework for Governmentwide Reform*, GAO-05-398R (Washington, D.C.: Apr. 21, 2005).

establish "flexible and contemporary" human capital and pay systems.[4] GAO has also received human capital authorities that have given our agency the tools to more effectively support Congress in meeting its constitutional responsibilities. We strive to lead by example and understand that effective implementation of any new policies and procedures is of critical importance.

Before discussing the Administration's draft proposal as we understand it, I would like to emphasize the following three themes that I believe are critical to considering any governmentwide approach to civil service reform.

- First and foremost, we need to move forward with appropriate human capital reforms, but how it is done, when it is done, and the basis on which it is done can make all the difference in whether such efforts are successful. Human capital reforms to date recognize that the "one-size-fits-all" approach is not appropriate to all agencies' demands, challenges, and missions. However, we have reported that a reasonable degree of consistency across the government is still desirable and that broader reforms should be guided by a common framework consisting of principles, criteria, and processes.[5]

- Before implementing dramatic human capital reforms, executive branch agencies should follow a phased approach that meets a "show me" test. That is, each agency should be authorized to implement a reform only after it has shown it has met certain conditions, including an assessment of its institutional infrastructure to effectively, efficiently, economically, and fairly implement any new authorities. The Office of Personnel Management (OPM) should also independently certify that such infrastructure meets specified statutory standards before the agency could implement such reforms. In any event, OPM's and agencies' related efforts should be monitored by Congress.

[4]For more information on DHS's and DOD's human capital authorities, see for example, GAO, *Human Capital: Preliminary Observations on Final Department of Homeland Security Human Capital Regulations*, GAO-05-320T (Washington, D.C.: Feb. 10, 2005) and GAO, *Human Capital: Preliminary Observations on Proposed DOD National Security Personnel System Regulations*, GAO-05-432T (Washington, D.C.: Mar. 15, 2005).

[5]GAO and the National Commission on the Public Service Implementation Initiative, *Highlights of a Forum: Human Capital: Principles, Criteria, and Processes for Governmentwide Federal Human Capital Reform*, GAO-05-69SP (Washington, D.C.: Dec. 1, 2004).

- GAO strongly supports the need to expand pay reform in the federal government and believes that implementing more market-based and performance-oriented pay systems is both doable and desirable. Specifically, pay increases should no longer be treated as an entitlement but should be based on employees' contributions to the organizations' missions and goals. However, GAO's and other organizations' experiences demonstrate that the shift to more market-based and performance-oriented pay must be part of a broader strategy of change management and performance improvement initiatives and cannot be simply overlaid on existing ineffective performance management systems[6].

Hearings such as this one today offer opportunities for stakeholders to express their views as we move forward with human capital reforms. As I have testified on other occasions, reasonable people can and will disagree about the merits of an individual proposal. This morning I would like to speak broadly about the Administration's draft proposal and highlight three preliminary observations based on our understanding of it.

- Congress should make pay and performance management reforms the first step in governmentwide reforms. The draft proposal incorporates many of the key principles of more market-based and performance-oriented pay systems and requires that OPM certify that each agency's pay for performance system meets prescribed criteria. Going forward, OPM should define in regulation what it will take in terms of fact-based and data-driven analyses for agencies to demonstrate that they are ready to receive this certification and implement new authorities.

- Second, OPM should play a key leadership and oversight role in helping individual agencies and the government as a whole work towards overcoming a broad range of human capital challenges. OPM's role would be expanded in several areas under the draft proposal. It is unclear whether OPM has the current capacity to discharge these new responsibilities.

- Third, Congress should move more cautiously in connection with labor management relations and adverse actions and appeals reforms. Selected federal agencies have been implementing more market-based

[6]GAO, *Human Capital: Symposium on Designing and Managing Market-Based and More Performance-Oriented Pay Systems*, GAO-05-832SP (Washington, D.C.: July 27, 2005).

and performance-oriented pay for some time—some organizations for well over a decade—and thus they have built a body of experience and knowledge about what works well and what does not that allows the sharing of lessons learned. On the other hand, the federal government has had far less experience in changes regarding labor management relations and adverse actions and appeals. Congress granted DHS and DOD related new authorities in these areas and may wish to monitor the implementation of those authorities, including lessons learned, before moving forward for the rest of the federal government.

I will now provide some more specific comments on the Administration's draft proposal. I will then suggest next steps for human capital reform, including selected and targeted authorities and a framework comprised of principles, criteria, and processes for governmentwide reform.

The Administration's Draft Proposed "Working for America Act"

The draft proposed "Working for America Act" is intended to ensure that agencies are equipped to better manage, develop, and reward employees to better serve the American people.[7] Its purpose is to establish a federal human capital system under which employees have clear performance goals and opportunities for professional growth; managers who help them succeed; and pay increases based on performance rather than the passage of time. In addition, any new flexibilities are to be exercised in accordance with the merit system principles; related core values; and protections, such as against discrimination, political influence, and personal favoritism, of the civil service. Today I will provide observations on three central areas of the draft proposal as we understand it: pay and performance management; OPM's new responsibilities to implement the proposed pay reform; and labor management relations and adverse actions and appeals.

Pay and Performance Management

As I stated earlier, GAO strongly supports the need to expand pay reform in the federal government and believes that implementing more market-based and performance-oriented pay systems is both doable and desirable. The federal government's current pay system is weighted toward rewarding length of service rather than individual performance and contributions; automatically providing across-the-board annual pay increases, even to

[7]The observations made today are based on the draft version given to GAO dated July 18, 2005.

poor performers. It also compensates employees living in various localities without adequately considering the local labor market rates applicable to the diverse types of occupations in the area. Importantly, the draft proposal, as we understand it, incorporates many of the key practices of more market-based and performance-oriented pay systems and requires that OPM certify that each agency's pay for performance system meet prescribed criteria. Going forward, OPM should define in regulation what fact-based and data-driven analyses agencies will need to provide to OPM to receive certification.

More Market-Based and Performance-Oriented Pay

Clearly, a competitive compensation system can help organizations attract and retain a quality workforce. To begin to develop such a system, organizations assess the skills and knowledge they need; compare compensation against other public, private, or nonprofit entities competing for the same talent in a given locality; and classify positions along various levels of responsibility. In addition, organizations generally structure their competitive compensation systems to separate base salary from bonuses and other incentives and awards.

Under the draft proposal, OPM is to design a new core classification and pay system and agencies, in coordination with OPM, are to establish performance appraisal systems to promote high performance. Specifically, the General Schedule is to be repealed and to replace it, OPM is to establish pay bands for occupational groups based on factors such as mission, competencies, or relevant labor market features. For each pay band, OPM is to establish ranges of basic pay rates that apply in all locations. There are to be market-oriented pay adjustments. The governmentwide national market adjustment is to vary by occupational group and band with the flexibility to make additional local market adjustments. Going forward, more information is needed on what compensation studies are to be conducted in setting these market-based pay rates.

Effective performance management systems can be a vital tool for aligning the organization with desired results and creating a "line of sight" showing how team, unit, and individual performance can contribute to overall organizational results. Such systems work to achieve three key objectives: (1) they strive to provide candid and constructive feedback to help individuals maximize their contribution and potential in understanding and realizing the goals and objectives of the organization, (2) they seek to provide management with the objective and fact-based information it needs to reward top performers, and (3) they provide the necessary information and documentation to deal with poor performers.

The draft proposal incorporates many of the key practices that we have reported have helped agencies implement effective performance management systems.[8] These practices include:

Linking Organizational Goals to Individual Performance. Under the draft proposal, agencies are to set performance expectations that support and align with the agencies' mission and strategic goals, organizational program and policy objectives, annual performance plans, results, and other measures of performance. Further, agencies are to communicate the performance expectations in writing at the beginning of the appraisal period.

Making Meaningful Distinctions in Performance. Supervisors and managers are to be held accountable for making meaningful distinctions among employees based on performance, fostering and rewarding excellent performance, and addressing poor performance, among other things. Agencies are not to impose a forced distribution of performance ratings in terms of fixed numeric or percentage limitations on any summary rating levels. Performance appraisal systems are to include at least two summary rating levels, essentially a "pass/fail" system, for employees in an "Entry/Developmental" band and at least three summary rating levels for other employee groups.

Pass/fail systems by definition will not provide meaningful distinctions in performance ratings. In addition, while a three-level system might be workable, using four or five summary rating levels is preferable since it naturally allows for greater performance rating and pay differentiation. Moreover, this approach is consistent with the new governmentwide performance-based pay system for the members of the Senior Executive Service (SES), which requires agencies to use at least four summary rating levels to provide a clear and direct link between SES performance and pay as well as to make meaningful distinctions based on relative performance.[9] Cascading this approach to other levels of employees can help agencies recognize and reward employee contributions and achieve the highest levels of individual performance.

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

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

Linking Pay to Performance. Employees must receive at least a "fully successful" rating to receive any pay increase. Those employees who receive less than a fully successful rating are not to receive an increase, including the national and local market adjustments discussed above. Performance pay increases for employees are to be allocated by the "performance shares" of a pay pool. Agencies are to determine the value of one performance share, expressed as a percentage of the employee's basic pay or as a fixed dollar amount. There are to be a set number of performance shares for each pay pool so that the employees with higher performance ratings are to receive a greater number of shares and thus, a greater payout. At the agency's discretion, any portion of the employee's performance pay increase not converted to a basic pay increase may be paid out as a lump-sum payment.

Providing Adequate Safeguards to Ensure Fairness and Guard Against Abuse. Agencies are to incorporate effective safeguards to ensure that the management of systems is fair and equitable and based on employee performance in order to receive certification of their pay for performance systems. We have found that a common concern that employees express about any pay for performance system is whether their supervisors have the ability and willingness to assess employees' performance fairly. Using safeguards, such as having independent reasonableness reviews of performance management decisions before such decisions are final, can help to allay these concerns and build a fair and credible system. This has been our approach at GAO and we have found it works extremely well.

In addition, agencies need to assure reasonable transparency and provide appropriate accountability mechanisms in connection with the results of the performance management process. This can include publishing internally the overall results of performance management and individual pay decisions while protecting individual confidentiality. For example, we found that several of OPM's demonstration projects publish information for employees on internal Web sites that include the overall results of performance appraisal and pay decisions, such as the average performance rating, the average pay increase, and the average award for the organization and for each individual unit.[10] GAO is also publishing aggregate data for all

[10]GAO, *Human Capital: Implementing Pay for Performance at Selected Personnel Demonstration Projects*, GAO-04-83 (Washington, D.C.: Jan. 23, 2004).

of our pay, promotion, and other important agency-wide human capital actions.

OPM Certification

As I noted, before implementing any human capital reforms, executive branch agencies should follow a phased approach that meets a "show me" test. That is, each agency should be authorized to implement a reform only after it has shown it has met certain requirements, including an assessment of its institutional infrastructure and an independent certification by OPM of the existence of this infrastructure. This institutional infrastructure includes (1) a strategic human capital planning process linked to the agency's overall strategic plan; (2) capabilities to design and implement a new human capital system effectively; (3) a modern, effective, credible, and validated performance management system that provides a clear linkage between institutional, unit, and individual performance-oriented outcomes, and results in meaningful distinctions in ratings; and (4) adequate internal and external safeguards to ensure the fair, effective, and nondiscriminatory implementation of the system.

A positive feature of the draft proposal is that agencies are to show that their pay for performance systems have met prescribed criteria in order to receive certification from OPM to implement their new systems. Among these criteria are having the means for ensuring employee involvement in the design and implementation of the pay for performance system; adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay for performance system; a process for ensuring periodic performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period; and the means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay for performance system. Further, OPM may review an agency's pay for performance systems periodically to assess whether they continue to meet the certification criteria. If they do not, OPM may rescind the agency's certification and direct the agency to take actions to implement an appropriate system, which the agency must follow.

Going forward, I believe that OPM should define in regulation what it will take in terms of fact-based and data-driven analyses for agencies to demonstrate that they are ready to receive this certification. Clearly, the President's Management Agenda, and its standards for the strategic management of human capital, can inform the certification process. Also, as an example of the analyses that have been required, OPM has outlined in regulations for the SES performance-based pay system the necessary data

and information agencies need to provide in order to receive certification and thus raise the pay cap and total compensation limit for their senior executives. Specifically, agencies must provide, among other things, the data on senior executives' performance ratings, pay, and awards for the last 2 years to demonstrate that their systems, as designed and applied, make meaningful distinctions based on relative performance. Under the SES regulations, agencies that cannot provide these data can request provisional certification of their systems. In our view such provisional certifications should not be an option under any broad-based classification and compensation reform proposal.

OPM's Roles and Responsibilities

OPM should play a key leadership and oversight role in helping individual agencies and the government as a whole work towards overcoming a broad range of human capital challenges. Our understanding of the Administration's draft proposal is that OPM's leadership and oversight role is to expand in several areas, such as establishing a more market-based and performance-oriented pay system governmentwide and implementing a new core classification system. At the request of Chairman Collins and Ranking Member Lieberman, Senate Committee on Homeland Security and Governmental Affairs, along with Chairman Voinovich and Ranking Member Akaka, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, and to assist Congress as it considers OPM's additional responsibilities as outlined in this draft proposal, we are assessing OPM's current capacity to lead a broad-based governmentwide human capital reform effort, including providing appropriate assistance to federal agencies as they revise their human capital systems and conducting effective monitoring of any related reform implementation efforts.

OPM is in the process of its own transformation—from being a rulemaker, enforcer, and independent agent to being more of a consultant, toolmaker, and strategic partner in leading and supporting executive agencies' human capital reform efforts and management systems. However, it is unclear whether OPM has the current capacity to discharge its new responsibilities. Specifically, OPM reported in its June 2001 workforce analysis that 4.2 percent of its employees (about 123 per year), on average, were projected to retire each year over the next 10 years, and the largest percentage of projected retirements, about 8 percent each year, would come from members of its SES. OPM's expected retirement rate for its workforce overall is more than the annual retirement rate of 2 percent governmentwide that we identified in a report issued in 2001.[11]

Our prior work has shown that when required to implement new legislation, OPM could have done more to accomplish its leadership and oversight mission in a decentralized human capital environment. For example, Congress passed a law in 1990 authorizing agencies to repay, at their discretion, their employees' student loans as a means to recruit and retain a talented workforce. In 2001, OPM issued final regulations to implement the program. The regulations were subsequently changed in 2004 to reflect legislative amendments that increased the ceiling on annual and total loan repayments. In our review of the federal student loan repayment program, we found that while human capital officials recognized OPM's efforts, they felt they could use more assistance on the technical aspects of operating the program, more coordination in sharing lessons learned in implementing it, and help consolidating some of the program processes.[12]

Similarly, we found that while OPM had several initiatives underway to assist federal agencies in using personnel flexibilities currently available to them in managing their workforces, OPM could more fully meet its leadership role to assist agencies in identifying, developing, and applying human capital flexibilities across the federal government.[13] In addition, we reported that in its ongoing internal review of its existing regulations and guidance, OPM could more directly focus on determining the continued relevance and utility of its regulations and guidance by asking whether they provide the flexibility that agencies need in managing their workforces while also incorporating protections for employees.

Labor Management Relations and Adverse Actions and Appeals

The Administration's draft proposal would amend some provisions of Title 5 of the U.S. Code covering labor management relations and adverse actions and appeals. Selected federal agencies have been implementing more market-based and performance-oriented pay for some time—some organizations for well over a decade—and thus they have built a body of

[11]GAO, *Federal Employee Retirements: Expected Increase Over the Next 5 Years Illustrates Need for Workforce Planning*, GAO-01-509 (Washington, D.C.: Apr. 27, 2001).

[12]GAO, *Federal Student Loan Repayment Program: OPM Could Build on Its Efforts to Help Agencies Administer the Program and Measure Results*, GAO-05-762 (Washington, D.C.: July 22, 2005).

[13]GAO, *Human Capital: OPM Can Better Assist Agencies in Using Personnel Flexibilities*, GAO-03-428 (Washington, D.C.: May 9, 2003).

experience and knowledge about what works well and what does not that allows the sharing of lessons learned. On the other hand, the federal government has had far less experience in changes regarding labor management relations and adverse actions and appeals. Congress granted DHS and DOD related new authorities in these areas and may wish to monitor the implementation of those authorities, including lessons learned, before moving forward for the rest of the federal government. Discussion of selected proposed amendments follows.

Labor Management Relations

Under Title 5, agencies now have a duty to bargain over conditions of employment, other than those covered by a federal statute; a governmentwide rule or regulation; or an agency rule or regulation for which the agency can demonstrate a compelling need. Under the draft proposal, agencies are to be obligated to bargain with employees only if the effect of the change in policy on the bargaining unit (or the affected part of the unit) is "foreseeable, substantial, and significant in terms of impact and duration."

In addition, an agency now has the right to take any action to carry out the agency's mission in an emergency, without a duty to bargain. However, what constitutes an emergency can be defined through a collective bargaining agreement. Under the draft proposal, an agency is to have the right to take any action to prepare for, practice for, or prevent an emergency, or to carry out the agency's mission in an emergency. The draft proposal also adds a new definition of "emergency" as requiring immediate action to carry out critical agency functions, including situations involving an (1) adverse effect on agency resources, (2) increase in workload because of unforeseeable events, (3) externally imposed change in mission requirements, or (4) externally imposed budget exigency. By broadly defining "emergency" without time limits and adding to management's right an explicit authority to take action to prepare for, practice for, or prevent any emergency, the proposed change as we understand it, could serve to significantly restrict the scope of issues subject to collective bargaining.

Adverse Actions and Appeals

Under Title 5, conduct-based adverse actions are reviewed by the Merit Systems Protection Board (MSPB) under the preponderance of the evidence standard (there is more evidence than not to support the action). Performance-based adverse actions are reviewed under the lower standard of substantial evidence (evidence that a reasonable person would find sufficient to support a conclusion), but agencies must first give employees a reasonable opportunity to demonstrate acceptable performance under a performance improvement plan. Under the draft proposal, MSPB is to

apply a single standard of proof—the higher standard of preponderance of the evidence—to review adverse actions taken for either performance or conduct. On the other hand, while due process features, such as advance written notice of a proposed adverse action are still required, performance improvement plans are no longer required. As we understand the draft proposal, applying the same standard to both types of adverse actions could add more consistency to the appeals process.

Also under Title 5, MSPB now reviews penalties during the course of a disciplinary action against an employee to ensure that the agency considered relevant prescribed factors and exercised management discretion within tolerable limits of reasonableness. MSPB may mitigate or modify a penalty if the agency did not consider prescribed factors. Under the draft proposal, MSPB will be able to mitigate a penalty only if it is totally unwarranted in light of all pertinent circumstances. This change would restrict MSPB's ability to mitigate penalties.

Framework for Governmentwide Human Capital Reform

To help advance the discussion concerning how governmentwide human capital reform should proceed, GAO and the National Commission on the Public Service Implementation Initiative co-hosted a forum on whether there should be a governmentwide framework for human capital reform and, if so, what this framework should include.[14] While there was widespread recognition among the forum participants that a one-size-fits-all approach to human capital management is not appropriate for the challenges and demands government faces, there was equally broad agreement that there should be a governmentwide framework to guide human capital reform. Further, a governmentwide framework should balance the need for consistency across the federal government with the desire for flexibility so that individual agencies can tailor human capital systems to best meet their needs. Striking this balance would not be easy to achieve, but is necessary to maintain a governmentwide system that is responsive enough to adapt to agencies' diverse missions, cultures, and workforces.

While there were divergent views among the forum participants, there was general agreement on a set of principles, criteria, and processes that would serve as a starting point for further discussion in developing a

[14]GAO-05-69SP.

governmentwide framework in advancing human capital reform, as shown in figure 1. We believe that these principles, criteria, and processes provide an effective framework for Congress and other decision makers to use as they consider and craft governmentwide civil service reform proposals.

Figure 1: Principles, Criteria, and Processes

Principles that the government should retain in a framework for reform because of their inherent, enduring qualities:

- Merit principles that balance organizational mission, goals, and performance objectives with individual rights and responsibilities
- Ability to organize, bargain collectively, and participate through labor organizations
- Certain prohibited personnel practices
- Guaranteed due process that is fair, fast, and final

Criteria that agencies should have in place as they plan for and manage their new human capital authorities:

- Demonstrated business case or readiness for use of targeted authorities
- An integrated approach to results-oriented strategic planning and human capital planning and management
- Adequate resources for planning, implementation, training, and evaluation
- A modern, effective, credible, and integrated performance management system that includes adequate safeguards to help ensure equity and prevent discrimination

Processes that agencies should follow as they implement new human capital authorities:

- Prescribing regulations in consultation or jointly with the Office of Personnel Management
- Establishing appeals processes in consultation with the Merit Systems Protection Board
- Involving employees and stakeholders in the design and implementation of new human capital systems
- Phasing in implementation of new human capital systems
- Committing to transparency, reporting, and evaluation
- Establishing a communications strategy
- Assuring adequate training

Source: GAO.

Next Steps for Human Capital Reform

Moving forward with human capital reform, in the short term, Congress should consider selected and targeted actions to continue to accelerate the momentum to make strategic human capital management the centerpiece of the government's overall transformation effort. One option may be to provide agencies one-time, targeted investments that are not built into

agencies' bases for future year budget requests. For example, Congress established the Human Capital Performance Fund to reward agencies' highest performing and most valuable employees. However, the draft proposal proposes to repeal the Human Capital Performance Fund. According to OPM, the provision was never implemented, due to lack of sufficient funding. We believe that a central fund has merit and can help agencies build the infrastructure that is necessary in order to implement a more market-based and performance-oriented pay system. To be eligible, agencies would submit plans for approval by OPM that incorporated features such as a link between pay for performance and the agency's strategic plan, employee involvement, ongoing performance feedback, and effective safeguards to ensure fair management of the system. In the first year of implementation, up to 10 percent of the amount appropriated would be available to train those involved in making meaningful distinctions in performance. These features are similar to those cited in the draft proposal as the basis for OPM's certification for agencies to implement their new pay and performance management systems.

In addition, as agencies develop their pay for performance systems, they will need to consider the appropriate mix between pay awarded as base pay increases versus one-time cash increases, while still maintaining fiscally sustainable compensation systems that reward performance. A key question to consider is how the government can make an increasing percentage of federal compensation dependent on achieving individual and organizational results by, for example, providing more compensation as one-time cash bonuses rather than as permanent salary increases. However, agencies' use of cash bonuses or other monetary incentives has an impact on employees' retirement calculations since they are not included in calculating retirement benefits. Congress should consider potential legislative changes to allow cash bonuses that would otherwise be included as base pay increases to be calculated toward retirement and thrift savings benefits by specifically factoring bonuses into the employee's basic pay for purposes of calculating the employee's "high-3" for retirement benefits and making contributions to the thrift savings plan.

As we continue to move forward with broader human capital reforms, they should be guided by a framework consisting of principles, criteria, and processes. While the reforms to date have recognized that the "one-size-fits-all" approach is not appropriate to all agencies' demands, challenges, and missions, a reasonable degree of consistency across the government is still desirable. Striking this balance is not easy to achieve, but is necessary

to maximize the federal government's performance within available resources and assure accountability for the benefit of the American people.

Chairman Porter, Representative Davis, and Members of the Subcommittee, this concludes my statement. I would be pleased to respond to any questions that you may have.

Contact and Acknowledgments

For further information regarding this statement, please contact Lisa Shames, Acting Director, Strategic Issues, at (202) 512-6806 or shamesl@gao.gov. Individuals making key contributions to this statement include Anne Inserra, Carole Cimitile, Janice Latimer, Belva Martin, Jeffrey McDermott, and Katherine H. Walker.

Highlights of Selected GAO Reports

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Highlights

Highlights of GAO-05-1048T, a testimony before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

September 27, 2005

HUMAN CAPITAL

Designing and Managing Market-Based and More Performance-Oriented Pay Systems

Why GAO Did This Study

The federal government must have the capacity to plan more strategically, react more expeditiously, and focus on achieving results. Critical to the success of this transformation are the federal government's people—its human capital. Yet, in many cases the federal government has not transformed how it classifies, compensates, develops, and motivates its employees to achieve maximum results within available resources and existing authorities. A key question is how to update the federal government's compensation system to be market-based and more performance-oriented.

To further the discussion of federal pay reform, GAO partnered with key human capital stakeholders to convene a symposium in March 2005 to discuss public, private, and nonprofit organizations' successes and challenges in designing and managing market-based and more performance-oriented pay systems.

This testimony presents the strategies that organizations considered in designing and managing market-based and more performance-oriented pay systems and describes how they are implementing them.

www.gao.gov/cgi-bin/getrpt?GAO-05-1048T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Lisa Shames at (202) 512-6806 or shamesl@gao.gov.

What GAO Found

GAO strongly supports the need to expand pay reform in the federal government. While implementing market-based and more performance-oriented pay systems is both doable and desirable, organizations' experiences in designing and managing their pay systems underscored three key themes that can guide federal agencies' efforts.

- The shift to market-based and more performance-oriented pay must be part of a broader strategy of change management and performance improvement initiatives.
- Market-based and more performance-oriented pay cannot be simply overlaid on most organizations' existing performance management systems. Rather, as a precondition to effective pay reform, individual expectations must be clearly aligned with organizational results, communication on individual contributions to annual goals must be ongoing and two-way, meaningful distinctions in employee performance must be made, and cultural changes must be undertaken.
- Organizations need to build up the basic management capacity of their organizations. Training and developing new and current staff to fill new roles and work in different ways will play a crucial part in building the capacity of the organizations.

Organizations presenting at our symposium considered the following strategies in designing and managing their pay systems.

1. Focus on a set of values and objectives to guide the pay system.
2. Examine the value of employees' total compensation to remain competitive in the market.
3. Build in safeguards to enhance the transparency and help ensure the fairness of pay decisions.
4. Devolve decision making on pay to appropriate levels.
5. Provide training on leadership, management, and interpersonal skills to facilitate effective communication.
6. Build consensus to gain ownership and acceptance for pay reforms.
7. Monitor and refine the implementation of the pay system.

Moving forward, it is possible to enact broad-based reforms that would enable agencies to move to market-based and more performance-oriented pay systems. However, before implementing reform, each executive branch agency should demonstrate and the Office of Personnel Management should certify that the agency has the institutional infrastructure in place to help ensure that the pay reform is effectively and equally implemented. At a minimum, this infrastructure includes a modern, effective, credible, and validated performance management system in place that provides a clear linkage between institutional, unit, and individual performance-oriented outcomes; results in meaningful distinctions in ratings; and incorporates adequate safeguards.

United States Government Accountability Office

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Highlights

Highlights of GAO-05-832SP

July 2005

HUMAN CAPITAL

Symposium on Designing and Managing Market-Based and More Performance-Oriented Pay Systems

Why GAO Convened This Symposium

Critical to the success of the federal government's transformation are its people—human capital. Yet the government has not transformed, in many cases, how it classifies, compensates, develops, and motivates its employees to achieve maximum results within available resources and existing authorities. One of the questions being addressed as the federal government transforms is how to update its compensation system to be more market based and performance oriented.

To further the discussion of federal pay reform, GAO, the U.S. Office of Personnel Management, the U.S. Merit Systems Protection Board, the National Academy of Public Administration, and the Partnership for Public Service convened a symposium on March 8, 2005, to discuss organizations' experiences with market-based and more performance-oriented pay systems. Representatives from public, private, and nonprofit organizations made presentations on the successes and challenges they experienced in designing and managing their market-based and more performance-oriented pay systems. A cross section of human capital stakeholders was invited to further explore these successes and challenges and engage in open discussion. While participants were asked to review the overall substance and context of the draft summary, GAO did not seek consensus on the key themes and supporting examples.

www.gao.gov/cgi-bin/getrpt?GAO-05-832SP

To view the full product, including the scope and methodology, click on the link above. For more information, contact J. Christopher Mihm at (202) 512-6806 or mihmjc@gao.gov.

What Participants Said

While implementing market-based and more performance-oriented pay systems is both doable and desirable, organizations' experiences show that the shift to market-based and more performance-oriented pay must be part of a broader strategy of change management and performance improvement initiatives. GAO identified the following key themes that highlight the leadership and management strategies these organizations collectively considered in designing and managing market-based and more performance-oriented pay systems.

1. Focus on a set of values and objectives to guide the pay system. Values represent an organization's beliefs and boundaries and objectives articulate the strategy to implement the system.

2. Examine the value of employees' total compensation to remain competitive in the market. Organizations consider a mix of base pay plus other monetary incentives, benefits, and deferred compensation, such as retirement pay, as part of a competitive compensation system.

3. Build in safeguards to enhance the transparency and ensure the fairness of pay decisions. Safeguards are the precondition to linking pay systems with employee knowledge, skills, and contributions to results.

4. Devolve decision making on pay to appropriate levels. When devolving such decision making, overall core processes help ensure reasonable consistency in how the system is implemented.

5. Provide training on leadership, management, and interpersonal skills to facilitate effective communication. Such skills as setting expectations, linking individual performance to organizational results, and giving and receiving feedback need renewed emphasis to make such systems succeed.

6. Build consensus to gain ownership and acceptance for pay reforms. Employee and stakeholder involvement needs to be meaningful and not pro forma.

7. Monitor and refine the implementation of the pay system. While changes are usually inevitable, listening to employee views and using metrics helps identify and correct problems over time.

These organizations found that the key challenge with implementing market-based and more performance-oriented pay is changing the culture. To begin to make this change, organizations need to build up their basic management capacity at every level of the organization. Transitioning to these pay systems is a huge undertaking and will require constant monitoring and refining in order to implement and sustain the reforms.

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Highlights

Highlights of GAO-04-83, a report to congressional requesters

January 2004

HUMAN CAPITAL

Implementing Pay for Performance at Selected Personnel Demonstration Projects

Why GAO Did This Study

There is a growing understanding that the federal government needs to fundamentally rethink its current approach to pay and to better link pay to individual and organizational performance. Federal agencies have been experimenting with pay for performance through the Office of Personnel Management's (OPM) personnel demonstration projects.

GAO identified the approaches that selected personnel demonstration projects have taken to implement their pay for performance systems. These projects include: the Navy Demonstration Project at China Lake (China Lake), the National Institute of Standards and Technology (NIST), the Department of Commerce (DOC), the Naval Research Laboratory (NRL), the Naval Sea Systems Command Warfare Centers (NAVSEA) at Dahlgren and Newport, and the Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo). We selected these demonstration projects based on factors such as status of the project and makeup of employee groups covered.

We provided drafts of this report to officials in the Department of Defense (DOD) and DOC for their review and comment. DOD provided written comments concurring with our report. DOC provided minor technical clarifications and updated information. We provided a draft of the report to the Director of OPM for her information.

www.gao.gov/cgi-bin/getrpt?GAO-04-83.

To view the full product, including the scope and methodology, click on the link above. For more information, contact J. Christopher Mihm at (202) 512-6806 or mihmjc@gao.gov.

What GAO Found

The demonstration projects took a variety of approaches to designing and implementing their pay for performance systems to meet the unique needs of their cultures and organizational structures, as shown in the table below.

Demonstration Project Approaches to Implementing Pay for Performance
Using competencies to evaluate employee performance.
High-performing organizations use validated core competencies as a key part of evaluating individual contributions to organizational results. To this end, AcqDemo and NRL use core competencies for all positions. Other demonstration projects, such as NIST, DOC, and China Lake, use competencies based on the individual employee's position.
Translating employee performance ratings into pay increases and awards.
Some projects, such as China Lake and NAVSEA's Newport division, established predetermined pay increases, awards, or both depending on a given performance rating, while others, such as DOC and NIST, delegated the flexibility to individual pay pools to determine how ratings would translate into performance pay increases, awards, or both. The demonstration projects made some distinctions among employees' performance.
Considering current salary in making performance-based pay decisions.
Several of the demonstration projects, such as AcqDemo and NRL, consider an employee's current salary when making performance pay increases and award decisions to make a better match between an employee's compensation and contribution to the organization.
Managing costs of the pay for performance system.
According to officials, salaries, training, and automation and data systems were the major cost drivers of implementing their pay for performance systems. The demonstration projects used a number of approaches to manage the costs.
Providing information to employees about the results of performance appraisal and pay decisions.
To ensure fairness and safeguard against abuse, performance-based pay programs should have adequate safeguards, including reasonable transparency in connection with the results of the performance management process. To this end, several of the demonstration projects publish information, such as the average performance rating, performance pay increase, and award.

Source: GAO.

GAO strongly supports the need to expand pay for performance in the federal government. How it is done, when it is done, and the basis on which it is done can make all the difference in whether such efforts are successful. High-performing organizations continuously review and revise their performance management systems. These demonstration projects show an understanding that how to better link pay to performance is very much a work in progress at the federal level. Additional work is needed to strengthen efforts to ensure that performance management systems are tools to help them manage on a day-to-day basis. In particular, there are opportunities to use organizationwide competencies to evaluate employee performance that reinforce behaviors and actions that support the organization's mission, translate employee performance so that managers make meaningful distinctions between top and poor performers with objective and fact-based information, and provide information to employees about the results of the performance appraisals and pay decisions to ensure reasonable transparency and appropriate accountability mechanisms are in place.

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Highlights

Highlights of GAO-03-488, a report to congressional requesters

March 2003

RESULTS-ORIENTED CULTURES

Creating a Clear Linkage between Individual Performance and Organizational Success

Why GAO Did This Study

The federal government is in a period of profound transition and faces an array of challenges and opportunities to enhance performance, ensure accountability, and position the nation for the future. High-performing organizations have found that to successfully transform themselves, they must often fundamentally change their cultures so that they are more results-oriented, customer-focused, and collaborative in nature. To foster such cultures, these organizations recognize that an effective performance management system can be a strategic tool to drive internal change and achieve desired results.

Based on previously issued reports on public sector organizations' approaches to reinforce individual accountability for results, GAO identified key practices that federal agencies can consider as they develop modern, effective, and credible performance management systems.

www.gao.gov/cgi-bin/getrpt?GAO-03-488.

To view the full report, including the scope and methodology, click on the link above. For more information, contact J. Christopher Mihm at (202) 512-6806 or mihmj@gao.gov.

What GAO Found

Public sector organizations both in the United States and abroad have implemented a selected, generally consistent set of key practices for effective performance management that collectively create a clear linkage—"line of sight"—between individual performance and organizational success. These key practices include the following.

1. Align individual performance expectations with organizational goals. An explicit alignment helps individuals see the connection between their daily activities and organizational goals.

2. Connect performance expectations to crosscutting goals. Placing an emphasis on collaboration, interaction, and teamwork across organizational boundaries helps strengthen accountability for results.

3. Provide and routinely use performance information to track organizational priorities. Individuals use performance information to manage during the year, identify performance gaps, and pinpoint improvement opportunities.

4. Require follow-up actions to address organizational priorities. By requiring and tracking follow-up actions on performance gaps, organizations underscore the importance of holding individuals accountable for making progress on their priorities.

5. Use competencies to provide a fuller assessment of performance. Competencies define the skills and supporting behaviors that individuals need to effectively contribute to organizational results.

6. Link pay to individual and organizational performance. Pay, incentive, and reward systems that link employee knowledge, skills, and contributions to organizational results are based on valid, reliable, and transparent performance management systems with adequate safeguards.

7. Make meaningful distinctions in performance. Effective performance management systems strive to provide candid and constructive feedback and the necessary objective information and documentation to reward top performers and deal with poor performers.

8. Involve employees and stakeholders to gain ownership of performance management systems. Early and direct involvement helps increase employees' and stakeholders' understanding and ownership of the system and belief in its fairness.

9. Maintain continuity during transitions. Because cultural transformations take time, performance management systems reinforce accountability for change management and other organizational goals.

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Mr. PORTER. Thank you, Mr. Walker.

I have a question, Ms. Springer, and I am going to read the question because I think it is important as we frame the meeting today, because I think there is some misconceptions.

First question, are Working for America Act provisions identical to the authorities provided DHS and DOD?

Ms. SPRINGER. The answer to that question, Mr. Chairman, is no. They are not identical, particularly in the labor-management section.

Those are the parts that are most notably being dealt with in the courts right now. So I don't want to specifically address them. But I can say that section is much, much smaller, much more limited in the Working for America Act draft bill that we proposed.

The first section is—General Walker has sort of parsed it. That deals more with performance and pay. It is more similar, and that is the less controversial part.

Mr PORTER. Are we giving OPM authority to waive provisions in Title 5?

Ms. SPRINGER. No, we are not, and that is an important question to have clarification. The Congress is the only one that can change that statute. OPM just carries out what is there. So OPM would not have any ability to waive any part of Title 5.

Mr. DAVIS OF VIRGINIA. Will any employee lose pay because of the conversion to the new pay system established under the authority of this act?

Ms. SPRINGER. The answer to that is no. No one's pay will be reduced. This is sort of a forward looking type of arrangement in the sense that from the point of conversion forward the pay increases, not the change in the level of pay preconversion versus post conversion, but the increases themselves may be at a different pace or a different amount than they would otherwise have been. But there will not be a reduction in pay as a result of converting to the new system.

Mr. PORTER. Now why should we move forward with this change prior to having all the results back from DOD and Homeland Security?

Ms. SPRINGER. I can give you a very good case in point, and I am going to answer this in two ways. One is as I mentioned, we have 90,000 employees that we have looked to as we have crafted this bill and the programs that they are under. These are programs, they are demonstration projects, they are programs that span across an entire organization. They have been functioning, some of them, as long as 25 years. That is where we've looked to inform the construct of this bill, particularly the performance and pay part. And we have done a lot of work there, a lot of surveying. There are things that are working very well. By and large the employees in those systems would not turn the clock back to what they were in beforehand.

Let me give you a case in point. A couple days ago, less than a week ago, I had an e-mail that said to me, Director, we are losing someone that we just hired 2 weeks ago to OPM. They are going to go and take another position at an agency that is part of that 90,000 group because they could be in a pay band structure where they had more upside potential for their pay. And as a matter of

fact, that agency right on the spot could pay them a five figure salary higher than—more in their salary than we were able to give them because of the constraints in the General Schedule. It happens time and time again. It is important for us to move on this thing.

Mr. PORTER. One last question for clarification, and I know since there is a lawsuit pending I want to be cautious in the question and of course in the answer as you feel is appropriate.

But it is my understanding that the court injunction is regarding OPM regulations, DHS and OPM regulations, not the law, is that correct?

Ms. SPRINGER. I would have to find that answer out.

That is correct.

Mr. PORTER. Thank you very much. I appreciate that it.

Ms. Norton.

Ms. NORTON. Mr. Chairman, the court found that the regulations are in violation of the law. That is the problem. And in light of that problem, I must say, Ms. Springer, I said to staff to make sure that you get me this testimony. And got this testimony. It is very thin testimony, and yet you got an extraordinary opportunity and we have no information about how this opportunity—at least from you, about how this opportunity is being used. You have jurisdiction over about 2 million employees, and if you count DOD and HHS, that is running up 900,000-some, almost a million. This is a kind of laboratory that frankly should be a perfect setting for you to come back here and tell us what the most recent experience has been. Nobody is going to leap into the next million without having some greater sense of what has happened with respect to the first million.

Could I ask you, and for that matter, Mr. Walker, who talks about we have pay and classification experience, you must be talking about your agency, Mr. Walker. The whole reason that they are before us is because this is brand new, would be brand new for every section of the work force, beginning with those that we have given the authority to, not to mention the rest. But I would like to know what studies have been done, certainly by the GAO, and if the studies haven't been done, can you give us some idea of experience with these two agencies, which must have been a fertile ground to gather the kind of information an oversight committee needs before it makes the next leap and takes the whole work force with it.

I tell you, I don't know about you and faith-based, but this is too big to put my faith in you or anybody in this government. And I think we deserve to know what has happened so far in great detail before you ask us to go the next step of the way, especially since you're already in litigation and you didn't even mention that and what you're going to do about that.

Go ahead, Ms. Springer.

Ms. SPRINGER. Let me respond. There are several parts there. One thing I do want to say is obviously we are not trying to hide anything. We are not trying to give you a thin document. We have in fact had 18 detailed briefings. We have had 34 hours of briefings and with the House alone we have had 7 hours of detailed briefings.

Ms. NORTON. Staff. Which staff?

Ms. SPRINGER. Minority, majority it was open, anybody was welcome.

Ms. NORTON. The purpose of this hearing is for the public record, to let the Members know what is happening, to let the public know what is happening. And I appreciate that you have told the staff what is happening. Can you tell us what is happening?

Ms. SPRINGER. Sure. I just want to say that it is—for starters we have not tried to hide anything. We have put this draft bill up on the Web sites. We have been very accessible to staff. And as you say, the purpose of the hearing, which we are very happy to have today, gives us more of a public forum to do that. But we have been out there—let me just expand on that.

The briefings have been with unions, they have been with good government groups. They have been with employees that we have had—it has not just only been with staff but I mentioned staff specifically because——

Ms. NORTON. Ms. Springer, were these briefings about the studies or results from the changes Congress authorized and that you have begun to put in place in the two largest agencies in government? That is my question, not what were your briefings about.

Ms. SPRINGER. The briefings to a large degree were about this bill and they were also about the results of the programs that have been in place over the years. We have not briefed on the NSPS system because the final regs haven't even been published on that one yet. That is the DOD. So that is a work in progress, the final regs are in the process, they will be out in the Federal Registry. We will be more than happy to do discussions on that one, and even if there was an interest in a dedicated hearing on that, that obviously would be something we would welcome. But that has not been at the point where it has been—even the final regs have been public on that one.

With respect to the DHS, once that got into court it really constrained our ability to comment publicly on the portions of that bill that are in question that are being dealt with in the court system. So those have not been the focal points of the briefings that we have done. Briefings have been more on the particular bill draft that we have submitted for those reasons.

Mr. PORTER. Mr. Walker, you had a comment?

Mr. WALKER. Ms. Norton, I would like to answer your question if I may. I would divide this bill into two parts, Ms. Norton.

The first part would be classification, pay and performance. It is my understanding at the present point in time the Federal Government has 90,000 to 100,000 employees that are covered by broad banding systems and by more market-based and performance-oriented compensation systems. And some of those go back, back to the 1980's, and it is not just GAO. As you know, we have 3,200 employees covered by that. So there is 90,000 to 100,000. I think there's a considerable amount of experience with regard to classification.

Ms. NORTON. I would like to draw your attention back to the 1980's at the fairly higher levels of the agency involved.

Mr. WALKER. You are correct in saying that we need to look at the nature of the people covered by these and some are very technical and scientific.

Ms. NORTON. That is very important to say that, Mr. Walker.

Mr. WALKER. Absolutely, and I don't debate that at all. Here is my point. We have 90,000 to 100,000 of various levels and I think the other thing that this concept includes is conditions that would have to be met. By the way, these conditions were not in the DOD and the DHS legislation. These are very stringent conditions that would have to be met before anybody could move forward.

Ms. NORTON. Such as?

Mr. WALKER. Such as the conditions that you would have to be able to demonstrate that you have a modern, effective, credible, performance appraisal system that provided meaningful feedback that resulted in meaningful differentiation in performance, that you had adequate training to conduct to help people understand how to implement that system.

Ms. NORTON. Are you saying those are not in the law and should be?

Mr. WALKER. They are not in DHS or DOD. They are in the concept for this proposal. Again we don't have a bill. They are in a concept paper. And we have testified—frankly we have testified in connection with DOD and DHS that those would have been good to put in those bills but they weren't. But they are in this proposal.

Second, in the second half I share your concern. The second half has to do with labor-management relations and adverse actions and appeals. And as I testified, we don't have as much as experience on that. And we believe that it may be prudent for the Congress to consider what happens as a result of DHS and DOD before you decide to move forward on that front.

So the first part, classification, pay and performance management, we think there is enough experience, we think there is a way forward. And you can include work experience——

Ms. NORTON. There is enough experience from employees at fairly high grades and levels, technical employees, scientists, many of them professionals that would leave the government if you mess with them because they have, many, many options. There is enough experience with 100,000 employees to now jump in and take 2 million with us all at one time?

Mr. WALKER. Not all at one time. That is very, very important. What is very, very important is—and first I would be happy to provide for the record information that we have about the nature of that 90,000 to 100,000. I think it is a very legitimate question.

But what is important about this is that this basically would be, as I understand it, conditional authorization. In other words, it would authorize agencies to move to a broad banding system. It would authorize agencies to move to a more market-based, performance-oriented compensation system. But they could not do it unless and until they demonstrated that they had met certain conditions—not based on promises—based on results. And therefore, as I say, I don't think you ought to have an arbitrary date, 2010 or anything else, for getting rid of the GS system because you don't know what people are going to meet those conditions. You're talking about a lot of people, and a lot of these agencies quite frankly

have a lot of work to do before they would end up meeting those conditions in order to move forward.

Mr. PORTER. Thank you, Mr. Walker. I appreciate it.

Ms. SPRINGER. May I add one other thing as well? We have a report that we will be glad to provide for the record as well on the demonstration projects that cover these 90,000 to 100,000. We have just finished it this week and would be glad to provide that for the record.

[The information referred to follows:]

PERFORMANCE-BASED ALTERNATIVE PAY SYSTEMS IN THE FEDERAL GOVERNMENT

Alternative pay systems with performance-based pay have existed for 25 years and today cover over 90,000 Federal employees. Taken together, these systems represent a steady progression away from the current Governmentwide classification and pay systems toward alternative approaches where market rates and performance are central drivers of pay. These alternative pay systems apply to the same kinds of work and workers that the current Governmentwide General Schedule and executive pay systems cover. The alternative systems vary in some of their technical details, but share many common objectives and practices.

Reviewing what happened when agencies implemented performance-based alternative pay systems surfaces five significant conclusions about their common experience:

- **Agencies discarded the General Schedule in favor of more practical classification and market sensitive pay.**
- **Performance – not time – drives pay.**
- **Success depends on effective implementation.**
- **Employees have come to support alternative pay systems.**
- **Agencies funded their systems out of existing budgets.**

These observations are supported by many years of cumulative data found in both internal and external evaluation reports. That support is not unqualified, and progress in some organizations has been slower, as would be expected with experiments. Nonetheless, the evidence presents clearly positive trends.

Although each performance-based alternative system is unique in some respects, they can be grouped in three categories: Demonstration Projects, Independent Systems and Governmentwide Executive Pay. Figure 1 shows the breakdown of employees across the three categories.

Figure 1. Employees in Performance-Based Alternative Pay Systems

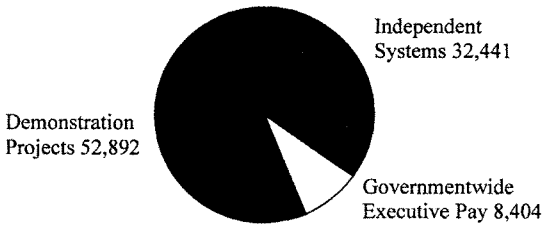


Table 1 provides an at-a-glance view of all of the performance-based alternative pay systems identified by the Office of Personnel Management (OPM). The current numbers of covered employees are based on March 2005 data from the Central Personnel Data File, except for the Government Accountability Office (GAO) data, which are as of 2003.

Table 1. Performance-Based Alternative Pay System Profiles[1]

Agency	Start Date	Total Number of Employees Covered	Types of Employees Covered		
			Bargaining Unit Employees	Non-Supervisory/ Non- Bargaining Unit Employees	Managers
Demonstration Projects		**52,892**			
Navy "China Lake"	1980	10,581	X[2]	X	X
Commerce – NIST	1988	2,681	X	X	X
Commerce – various components	1998	4,242	X	X	X
DoD – Acquisition Workforce (AcqDemo)	1999	10,419	X	X	X
DoD Laboratory Demonstration Program (Lab Demos)		24,969			
– Air Force Research Laboratory (AFRL) – twenty locations	1997	2,379	X	X	X
– Army Aviation and Missile R/D/E Center (ARMDEC) – AL	1997	2,145	X	X	X
– Army Research Laboratory (ARL) – MD	1998	1,953	X	X	X
– Army Medical Research & Materiel Command (MRMC) – MD	1998	955	X	X	X
– Naval Sea Systems Command Warfare Centers (NAVSEA)	1998	12,065	X	X	X
– Army Engineering R/D Center (ERDC) – MI	1998	1,632	X	X	X
– Naval Research Laboratory (NRL) – seven locations	1999	2,595	X	X	X
– Communications Electronic Command (CECOM) – NJ	2002	1,245		X	X
Independent Systems		**32,441**			
Federal Aviation Administration	1996	17,987		X	X
Internal Revenue Service	2001	1,981			X
Government Accountability Office	2002[3]	3,261	N/A	X	X
"FIRREA Agencies"		12,473			
– Office of Thrift Supervision	1989	892	X	X	X
– Office of the Comptroller of the Currency	1991	2,695	X	X	X
– National Credit Union Administration	1992	889	X	X	X
– Federal Deposit Insurance Corporation	2003[4]	4,736	X	X	X
Governmentwide Executive Pay		**8,404**			
Senior Executive Service	2004	7,046	N/A	N/A	N/A
Senior Foreign Service	2004	1,038	N/A	N/A	N/A
Grand Total		**93,737**			

[1] We categorized a pay system as "performance-based" if the system provides at least two levels of performance-based pay increases for employees rated Fully Successful or higher under a regular pay adjustment cycle. We did not include systems that provide the opportunity for higher base pay increases for top performers only on an irregular or ad hoc basis, such as the opportunity to receive quality step increases under the General Schedule. We note that other alternative pay systems apply to other groups of Federal employees (e.g., Department of Veterans Affairs title 38 pay system, Securities and Exchange Commission, DOD Dependent Schools, and portions of the Federal Aviation Administration, to name a few). These systems are not included in this table because we did not identify them as meeting our definition of "performance-based."

[2] At their request, this project was expanded to include bargaining unit employees in the Clerical Career Path only.

[3] GAO has used a broadbanded performance-based pay system since 1980, but the system described here was substantially revised and implemented in 2002.

[4] FDIC has had independent authority to set employee compensation for more than 70 years and has used alternatives to fixed-step, time-driven pay systems for more than a decade; the system described here was implemented in phases beginning in 2003.

DEMONSTRATION PROJECTS

OPM and Federal agencies have invested 25 years in implementing pay-for-performance demonstration projects[5] by developing, approving, testing, and evaluating various approaches to alternative classification, pay and performance management systems. Much of the detailed knowledge about alternative systems – not just "what" was implemented, but "how" the project was developed, as well as its results – has come in the last 8 years through development and evaluation of demonstration projects in the Department of Defense (DoD) Laboratory Demonstration Program (Lab Demos). Demonstration projects have clearly yielded positive results. This conclusion has been further supported by reviews conducted by the Government Accountability Office and the National Academy of Public Administration, among others (see pages 22–24 for References).

RESULTS

OPM maintains an archive of individual and summative evaluation data that spans 25 years of progress. For purposes of this document, data analysis has focused on strategic compensation and effective performance management. Results in these areas are evidence that performance-based pay systems can work in the Federal Government with proper attention to change management and effective leadership practices.

STRATEGIC COMPENSATION. In departing from the General Schedule, demonstration projects are driven by mission needs, particularly to attract and retain top performers by offering competitive salaries and using pay to emphasize that performance matters.

Highest rated performers are paid the most.

- Employees in the demonstration projects reported a much stronger link between pay and performance than under the GS system.
- Demonstration projects were designed to provide higher pay increases to high performers, and results show increasing differences in pay between high and average or low performers over time.
- After 4 years, in the AFRL Lab Demo, performance accounted for 25% of differences in pay, compared to 0% under the GS system.
- In the Navy demonstration projects (loosely labeled "China Lake"), there was a 40% difference in pay between average and high performers after 10 years.
- Annual pay increases ranged from 0% for low performers to as much as 20% for top performers.

[5] Enacted as part of the Civil Service Reform Act of 1978 and codified in chapter 47, Research and Demonstration, of title 5, United States Code, this authority enables OPM to establish up to ten demonstration projects, each of which may cover up to 5,000 employees for 5 years, with possible extensions to permit further evaluation. The original intent of this law was that on the basis of evaluation findings, a successful policy enhancement would be proposed for Governmentwide application. Over time, Congress has enacted some variations of this basic approach including making some demonstration projects permanent and granting the Secretary of Defense authority to establish the DoD Laboratory Demonstration Program, which applies the basic chapter 47 requirements.

Performance – not time – drives pay.

- Performance-driven pay progression replaced statutory waiting periods of 1 to 3 years for step increases and career-ladder promotions.
- In the majority of projects, the annual general increase was at risk and not granted to poor performers. Where unions objected, the General Schedule practice was followed and the general increase was guaranteed, regardless of performance.
- Even where employees did not report high levels of support for the demonstration project, they still reported increased pay satisfaction and a stronger link between pay and performance than under the GS system.

Costs are controllable.

- Through its research OPM has identified six major cost-control factors:
  (1) method of converting pay rates for individual employees to their rates in pay bands
  (2) policy on starting salaries
  (3) type of pay progression and system of performance management
  (4) size and mix of salary and bonus budgets
  (5) choice of full-performance level pay rates
  (6) overall number and distribution of positions established across bands and work levels

  GAO, in its review of demonstration projects, noted a similar set of factors.
- By far the most important cost-control factor relates to the fourth listed above. Experience has proven that using a predetermined percentage of payroll for performance-based pay increases is a much more effective and accepted cost control method than linking predetermined pay increases to different performance assessments, subject to a maximum rate for a given range of pay rates. Under the latter approach, costs are controllable chiefly by enforcing distributions of performance assessments, which in the Federal Government's merit-based culture can be considered harmful to trust and credibility and is generally avoided.
- The fifth cost-control factor listed above derived from an important lesson learned about setting the range of pay rates covering work classified at the full performance level. In an early demonstration project, pay rates more appropriate for work classifiable at the senior expert level were included within the full performance range. As a consequence, full performance work came to be paid at much higher rates than necessary or appropriate from a market perspective, and costs rose significantly. Such effects can be prevented by taking care in setting the range of pay rates for full performance work.
- The average percentage of payroll for base pay increases was about 2 to 2.4% and ranged from a high of 2.9% (NIST, during its early years) to 1.4% (NAVSEA-NUWC Lab Demo).
- Bonus budgets were also similar to the GS system – averaging about 1% of payroll and ranging from a low of 0.6% to a high of 1.96% (NAVSEA-NUWC, supplementing the low base pay percentage).
- For the nine Lab Demos, average pay was about ½ step higher after 4 years than under the GS system. The Lab Demos used many different banding schemes, and there was no indication one scheme was more or less costly than another, because pay progression and promotion policies still influenced movement within and between bands.
- After 14 years, salaries at the Navy China Lake demonstration projects were about one GS step (3%) higher than for GS employees at the control sites.

Work levels are broadly defined.

- Demonstration projects consolidated the 15 narrowly-defined grades of the General Schedule into three to five bands or work levels that more realistically reflect the way work is organized in modern work settings, typically defining levels of work as entry, development, full performance, senior expert, and managerial levels.
- Satisfaction with classification procedures increased and was 59% for the Lab Demos, compared to 41% under the GS system.
- Classification authority based on broader definitions of work levels was delegated to managers.
- The time required to classify positions decreased dramatically, and the number and length of position descriptions decreased.
- Some demonstration projects used competencies to define the factors applied in classifying positions and assessing performance/contribution.

Demonstration projects allow for sensitivity to locations and occupations.

- Pay banding facilitates more strategic use of compensation to recruit and retain high-performing employees.
- Pay can be more competitive in two ways: first, by offering starting salaries at higher levels of a band, and second, by paying high performers commensurate with their performance, increasing their retention.
- After 8 years, salaries for NIST demonstration project employees were about 10% above the GS control groups. Since NIST hires top-level scientists, they were able to maintain more competitive salary levels than agencies under the GS system.
- Largely as an administrative convenience, all demonstration projects adopted the locality pay percentages already used in the GS system to establish geographic pay supplements.

EFFECTIVE PERFORMANCE MANAGEMENT. Making a pay system more performance oriented requires credible performance appraisal. Formal distinctions in measured performance must have recognizably different consequences. Such credibility and transparency is attained through education, strategic alignment, due process, and – most important – accountability.

Managers are held accountable.

- In the demonstration projects, increased managerial discretion was balanced with a number of accountability mechanisms.
- In most demonstration projects, there was a reconciliation process, where managers of different organizational units jointly reviewed their rating distributions and employee accomplishments and reached agreement on relative performance rankings.
- Rating distributions were always reviewed at higher levels to insure fairness and consistency across organizations.
- Rating reconsideration procedures were provided in all demonstration projects and grievance activity was monitored.
- Formal evaluations were another accountability tool. Periodic surveys were administered including questions about procedural fairness, demonstration project support, and employee trust in supervisors. While employee perceptions of fairness and trust generally improved over time, the challenge of expanding a sense of fairness and trust remained.

- Trust is critical in effective performance-based pay systems. Demonstration project results show that trust levels in general remained high and in some cases increased when pay was linked to performance, managers were accountable, and due process safeguards were available.

Managers, HR staff and employees are trained.

- All demonstration projects provided extensive training and orientation in the new systems to managers, HR staff and employees to ensure they understood the new systems and were able to administer them.
- Training in compensation and performance management was often repeated in the second year.
- Demonstration project results show understanding of the systems increased significantly after the first year.

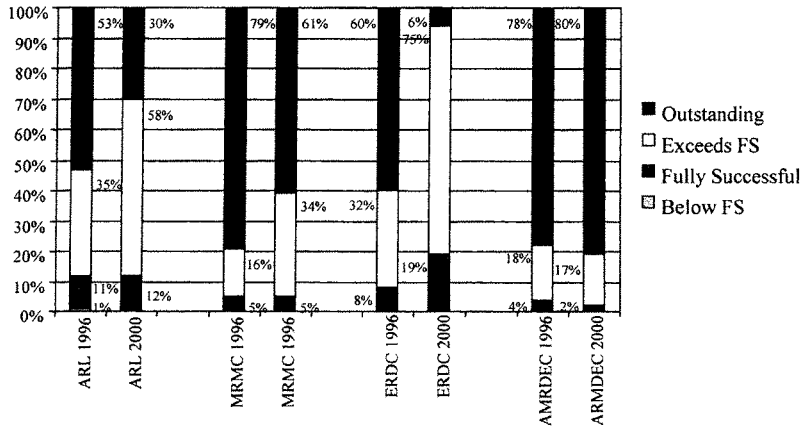
Managers set expectations and provide meaningful feedback.

- Communicating clear expectations and providing constructive feedback is necessary to help employees direct their efforts and improve their performance.
- Results vary across demonstration projects and indicate that although performance-related communication improved, it is a function of how well managers communicate in general. This is one area where continuing improvement is needed.
- Communication was found to be a factor critical to the success of the demonstration projects. Measures of effective communication were positively correlated with demonstration project support, satisfaction with performance management, perceptions of fairness, and organizational commitment.

Meaningful performance distinctions are made.

- When comparing the before (1996) and after (2000) demonstration project implementation rating distributions, there was generally more spread after implementation of pay-for-performance. Figure 2 illustrates changes in ratings distributions over time for four Lab Demo sites:

Figure 2. Ratings Distributions at Four Lab Demos



Overall results were better when systems met effectiveness standards.

- Analysis of Lab Demos against widely accepted criteria for effective pay-for-performance systems[6] showed labs that met most of the criteria tended to have higher levels of support for the project.
- Overall results of Lab Demos that met most of the effectiveness criteria also show they scored higher in surveys that measured procedural fairness, the link between pay and performance, and pay satisfaction.

Best performers stay.

- Demonstration projects were more effective in rewarding high performers and dealing with poor performers than the GS system.
- Results show reduced turnover of outstanding performers, as illustrated by the data in Table 2 for four Lab Demo sites.

Table 2. Turnover Rates Pre/Post Demonstration

		Among Employees Rated Outstanding	
Lab Demo	**Year**	**Annual Turnover Rate**	**Percentage Change**
ARL	1996 2000	56% 29%	**↓ 48%**
MRMC	1996 2000	75% 37%	**↓ 51%**
ERDC	1996 2000	53% 19%	**↓ 64%**
AMRDEC	1996 2000	65% 58%	**↓11%**

[6] The effectiveness criteria used in OPM evaluation studies of performance-based alternative pay systems are shown below. They are derived from the research and writings of Dr. Edward E. Lawler III, one of the most highly regarded academics and thinkers in the United States about human resources management, compensation practices and organizational effectiveness.

1. significant rewards can be given and tied to performance
2. information is communicated to employees about how rewards are given
3. supervisors are willing to explain and support the reward system
4. rewards can vary widely, depending on performance
5. meaningful performance appraisal sessions can take place
6. performance can be objectively and inclusively measured
7. high levels of trust exist or can be developed between supervisors and employees

IMPLEMENTATION

Evaluations of agency demonstration projects have established that Federal agencies successfully changed their pay and performance management systems to be modern, effective, validated, credible, and transparent – criteria repeatedly cited by the Government Accountability Office as essential for achieving results-oriented pay reform. Congress has since enacted such criteria as required design elements for any pay-for-performance demonstration project and other performance-based pay systems. In this regard, funding, leadership, and oversight are critical in implementing such systems and meeting these criteria successfully.

FUNDING. As with any compensation system, agencies were naturally constrained to ensure the pay features of their demonstration projects were affordable. The cost and funding implications of any pay system changes had to be considered carefully.

Agencies funded their demonstration projects out of their existing budgets. Agencies using the demonstration project authority funded design, communication, automation enhancements, training, and conversion into the new system, as well as ongoing salary management, and formal evaluation. Both the design of the pay system and the manner of implementation can have an impact on aggregate payroll costs. In its studies of demonstration projects, OPM identified six key cost factors:

- Whether buy-ins granted to employees at conversion were lump sum or base pay
- How starting salaries are set
- How movement through a band is determined
- Size and mix of salary increase and bonus budgets
- The minimum and maximum pay rates that define the pay band for full-performance level work
- Overall position management and effects of turnover

Project costs include start-up costs and ongoing salary costs.

Start-Up Costs—

- Startup costs included training, information technology (IT) investments in automated classification and compensation systems, conversion of payroll and personnel systems, and converting employees to the demonstration projects. Costs varied across demonstration projects because of different approaches to implementation. A governmentwide project would be more cost effective since design and certain elements of implementation are standardized. There would still be factors to consider such as agency training costs. However, in many respects these are important investments that the Government is making already in its strategic management of human capital.
- GAO reports that total costs relating to designing, installing, and maintaining automation and data systems ranged from $125,000 at NAVSEA's Dahlgren division to an estimated $4.9 million at AcqDemo. While the laboratories used their own staff for project development, many contracted for support in developing software for the new classification and pay-for-performance systems.

On-Going Salary Costs—

- In general, salary cost management for organizations covered by demonstration projects is no different than for agencies covered by the General Schedule (GS) pay system.

- Organizations covered by demonstration projects typically spend approximately the same amount of funds on structural pay increases as do agencies covered by the GS system. That is, demonstration project employees typically receive structural pay increases that are about the same as the base pay and locality pay increases received by GS employees.
- Similarly, organizations covered by demonstration projects typically spend approximately the same amount on performance-based pay increases as do agencies covered by the GS system. That is, performance-based pay increases for demonstration project employees are approximately equal to the within-grade increases, quality step increases, and "career-ladder" promotions received by GS employees.
- Structural pay increases (whether for organizations covered by demonstration projects or for agencies covered by the GS pay system) result in new salary costs, both in the year granted and in all future years, since structural increases in base pay become the base upon which subsequent structural pay increases are paid.
- When combined with normal turnover in the workforce, performance-based pay increases under demonstration projects typically do not result in an aggregate increase in overall salary costs. This is also true for GS employees, since newly hired GS employees generally are placed at lower grades and steps than departing employees. Thus, the cost of within-grade increases, quality step increases, and "career-ladder" promotions for current GS employees is offset by the lower salary costs attributable to newly-hired GS employees.
- Pay pools established under demonstration projects effectively control the cost of performance-based pay increases under such systems by limiting the amount distributed through that mechanism to a fixed amount ranging from 2.0 to 2.4%, depending on the occupational and demographic distribution of the covered workforce. Agencies covered by the GS pay system historically have spent about 2.0% of payroll on within-grade type increases.
- In the early history of demonstration projects, some – like NIST – did not use a fixed pay pool. Decisions regarding funding level, choice of full performance pay band (e.g., GS-13/14 for administrative staff), pay progression formulas, and distribution of performance ratings also affected the degree of salary growth experienced by such projects. This represents a significant "lesson learned" from the Government's experience with demonstration projects.
- Finally, some demonstration project agencies operate on a reimbursable business basis. Thus, the need to keep prices competitive acts as a funding constraint for these agencies.

LEADERSHIP. Sustained, committed leadership – at all levels of the organization – is needed to develop and ensure support for a demonstration project. Leaders must engage stakeholders, dedicate resources, motivate staff, provide direction, promote and reinforce change, and create a strong performance culture.

- Support for the demonstration projects increased over time. Initially many employees were skeptical, which was to be expected with such major cultural changes that eliminated for these selected employee groups entitlements the vast majority of Federal employees still received. As experience and understanding developed, the overall level of support as measured by employee surveys generally reached a very satisfactory level of around 66%.
- Internal champions are critical in developing, communicating, and advancing these projects. They are persistent, persuasive, trusted, and visible. Every successful project can identify such individuals.

- Support for the demonstration projects can be tied to effective leadership practices and conversely, low support is not a result of poor design, but rather ineffective leadership practices. Support was high (80% vs. 26% at the lowest lab) in Lab Demos where more employees:[7]
  - understood how pay decisions were made (70% vs. 58%)
  - viewed pay administration as fair (73% vs. 43%)
  - saw a link between pay and performance (71% vs. 58%)
  - reported good communication by supervisors (55% vs. 40%)
  - reported trust in their supervisor (76% vs. 55%)
- Concerns that increased management discretion over pay decisions would negatively impact job satisfaction and morale proved unfounded. Given concerted communication and training efforts and strong leadership from the top, demonstration projects achieved improvements in both areas
- Management communication was closely related to employee satisfaction with performance management and supervision. It was also related to trust, which is essential for acceptance of pay-for-performance systems. None of the Lab Demos scored high initially on assessments of communication effectiveness, but all improved over time.
- In its report on broadbanding in nine Federal agencies, the National Academy of Public Administration (NAPA) concluded that agencies emphasized communication, but wished they had done more – even though in some respects they had saturated their audiences with information.
- All projects undertook extensive communication efforts by using a variety of modes including: mass emails, newsletter, websites, meetings, public hearings, etc.
- Transitions in leadership can inhibit effectively carrying out changes in human resources management.
- Strong leadership assures consistent practices and results especially with decentralized approaches to implementing human resources management change. According to NAPA, such leadership is necessary to maintain a consistent level of training and management support for change.
- Leadership in gaining union support is a joint responsibility of labor and management. Managers play a critical role in the success of the demonstration projects and those managers who communicate honestly and effectively are most likely to gain trust and support for the project. Unions, on the other hand, need to be open and willing to experiment with new pay-for-performance systems and give the demonstration projects time to prove themselves. The demonstration projects showed the most effective approach has been to involve unions early to gain their support. In the absence of union support, some of the Lab Demos implemented their projects for non-bargaining unit employees only. To date:
  - The Aviation and Missile Research, Development and Engineering Center (AMRDEC), which had high demonstration project support (70%) and trust levels (76%), provides a good example of a project that worked successfully with its union. As a result, after reviewing external evaluation results, the Executive Board of AFGE Local 1858 approved a 5-year extension of the demonstration project.

[7] Percentages show "best to worst" comparison in lab demos survey results

- In some Lab Demos, unions agreed to test the interventions for a certain number of years but required management to renegotiate continuation with the unions.
- At the Department of Commerce, employees of the two bargaining units within the Offices of the Chief Financial Officer and Assistant Secretary for Administration requested participation in the Commerce Project.

OVERSIGHT. Oversight consists of ongoing internal and external review during the development and implementation of these projects, as well as formal program evaluation at key points.

- Development and approval pertain to the formal recommendation of a project, consistent with legal requirements, under chapter 47 of title 5, United States Code, for establishing a demonstration project. Such requirements involve development of a plan specifying purpose, coverage, methodology, duration, training, anticipated costs, and periodic evaluation; publication in the *Federal Register*; public hearings; and advance notification to employees and the Congress. The process of development in general took 2 years and an additional 5 or more years to fully implement. Such extensive up-front time investments that demonstration projects require reflect the fact that they must generate the support necessary to single out an organization for atypical treatment and to design the specific, unique features of that treatment.
- For the Lab Demos, internal evaluation activities were generally performed by project staff and if contracted out were about $150,000 per year. Five-year external evaluation costs were shared by the laboratories and ranged from an annual cost of $14,000 (small lab) to $42,000 (large lab) in the first year, and $16,000 to $85,000, respectively, in the final year.
- The role of OPM varied from chapter 47 programs in which OPM approval was necessary for implementation to certain programs (i.e., Lab Demos) that by law later excluded OPM from the approval process.
- The Lab Demos used three DoD committees outside the local laboratories to oversee the demonstration project development process. Meetings were attended by individual project managers, OPM demonstration project staff, and members of the external evaluation team and DoD staff.
- Employee surveys played a key role in understanding the impact of demonstration projects. All projects used some kind of survey.

INDEPENDENT SYSTEMS

The second group of alternative pay systems are agency-specific and were established under independent authority Congress granted the agency in its authorizing legislation or as a specific authority to implement separate compensation systems. The specific agencies and employee populations covered by the systems reviewed here are listed in Table 1 on page 2.

Several agencies in this group obtained their special pay and classification authorities as Congress acted in response to a crisis, such as the situation in the banking industry that led to passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). In such circumstances, agencies have successfully argued that any improvement Congress expects in recruiting and retaining top-flight talent would be seriously impeded by continued coverage under the General Schedule's outmoded classification scheme and below-market salary ranges for their mission-critical occupations.

In contrast to demonstration projects, these independent systems may proceed without partnering with OPM to facilitate design and implementation, nor in most instances are any particular evaluations required. As one consequence, far less systematic data is available about the implementation and results for these systems. Nonetheless, they constitute an important category and their experience is also instructive.

RESULTS

STRATEGIC COMPENSATION. In many instances, these agencies won their independent compensation authorities as essential means to achieve improvements in meeting specific mission objectives and strategic outcomes. They recognized the role more up-to-date compensation programs could play to support those efforts.

Market sensitivity drives pay.

- To a great extent, agencies used their independent pay-setting authority to move beyond the limitations of the General Schedule salary rates and offer more competitive salaries to attract and retain mission-critical talent.
- Although the FIRREA agencies in particular used their pay authority to set competitive salary levels, several of them retained the strong internal equity value from the General Schedule and adjusted the salary ranges for all occupations, irrespective of their strategic value. In other words, they did not use their available flexibility to set and adjust pay levels only for mission-critical occupations and leave salaries for other more general occupations at normal Governmentwide levels.

Performance – not time – drives pay increases.

- Most independent systems grant within-range increases annually, rather than using multi-year waiting periods.
- Even for systems covering bargaining unit employees, any general structural increase to the underlying pay structure is granted only to employees who meet basic performance requirements.

Highest rated performers are paid the most.

- In most systems, the size of the overall pay increase is related to an assessment of the employee's performance. In some cases, however, the formal ratings of record are summarized at only two levels with other assessment information applied to make further distinctions among the employees who meet basic performance requirements.
- Some FIRREA agencies kept the basic grades of the General Schedule classification system, but expanded their pay rate ranges beyond the narrow 30% General Schedule range to allow stronger pay differentiation for better performers.
- Some FIRREA agencies have used "control points" within their broad pay ranges to ensure that rates of basic pay in the highest portions of a range are restricted to employees with the most highly rated performance.

EFFECTIVE PERFORMANCE MANAGEMENT. Many of the agencies with independent pay systems are not subject to the performance appraisal requirements of most Federal agencies. Nonetheless, they have implemented employee performance assessments to link to pay decisions, and many of their results are similar to the demonstration projects.

Managers are trained and accountable.

- Introducing a substantially new performance management system is often a key element of implementing a more performance sensitive pay system. Both the IRS and GAO concentrated on ensuring managers were thoroughly trained and that effective use of the new techniques became an important aspect of their own performance assessments.

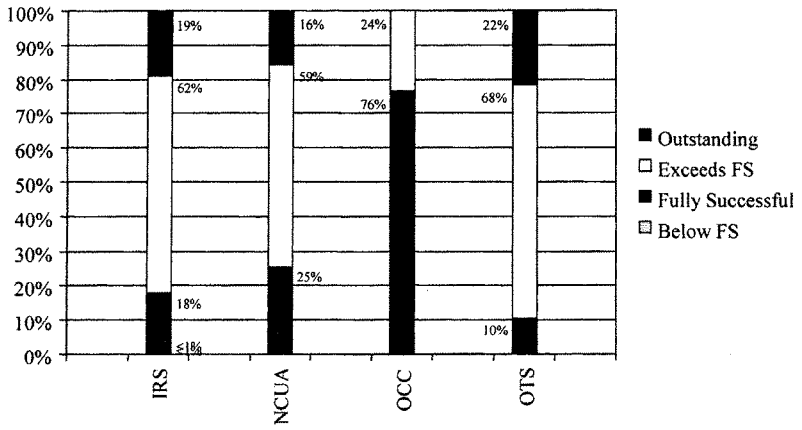
Competencies are assessed.

- GAO uses core competencies as a central common element in its performance management system to ensure integration and strategic alignment throughout the agency. Each employee is clear about how those competencies apply in his or her own performance and expectations. Introducing these core competencies was a central feature of the major overhaul of the broadbanded pay system GAO had already had in place for many years and for which lenient performance ratings had been problematic for many years.

Meaningful performance distinctions are made.

- Through a combination of integrated drivers – including cost control, the objective of creating pay differentiation, and holding managers accountable – several independent systems have successfully maintained rigor in the distributions across their performance assessments, as illustrated in Figure 3 for four independent systems. To some degree, this may reflect the fact that such rigor is commonplace in the private sector organizations that comprise the principal competitive labor market, particularly for the financial regulatory agencies.

Figure 3. Ratings Distributions for Four Independent Systems



IMPLEMENTATION

FUNDING. The agencies with independent classification and pay authority faced many of the same funding challenges as demonstration project agencies. However, in several cases, access to resources was somewhat more flexible.

- Several agencies were not seriously constrained by the limitations annual appropriations impose because they could control their revenue through such means as setting user fees.
- IRS delayed an expansion of its broadbanding system for managers until funding to finance "buy ins" could be identified.
- FIRREA included a statutory requirement that each FIRREA agency "shall seek to maintain comparability with other Federal bank regulatory agencies." This requirement can sometimes put pressure on an individual agency to develop a larger salary increase budget than might have been anticipated. The FIRREA agencies use an informal "comparability committee" to share information about planned pay increases.
- GAO reported spending $1.5 million on the design and implementation of its competency-based performance management system and its performance-based compensation system, including training for management and staff.

LEADERSHIP. Although their independent authority meant these agencies did not have to coordinate and produce the extensive plans demonstration projects require, most still relied on strong leadership to direct the effort and sustain support.

- GAO's overhaul of its 20-year-old broadbanding system was a primary management goal of Comptroller General David Walker. His singular commitment to developing a robust

performance management system and transforming the agency's culture to focus on core competencies and market-based pay was essential to the success achieved to date.

- Leaders made a strong commitment to employee communication. In its report on broadbanding in five states and nine Federal agencies, NAPA concluded that all organizations emphasized the importance of fostering communication, but wished they had done more, despite saturating their audiences with information.
  - FAA used mass emails, monthly newsletters, briefings, mandatory training, brochures, website and follow-up training. FAA established a communications group with a broad representation of agency managers and employee representatives to consider a corporate approach to communications on all subjects.
  - IRS used focus groups, briefings, satellite broadcasts, a web-based calculator and executive communications packages.
  - GAO used constant communication and collaboration with employees at all affected levels, distributed hard-copy material, and placed it on the GAO intranet, solicited employee views and suggestions, held listening sessions and teleconferences, and provided manager-conducted training when the system was implemented.
- In several FIRREA agencies that are led by corporate boards, those boards have an ongoing leadership role, particularly with respect to setting compensation philosophy and objectives, as well as setting merit budgets and determining affordability. Those boards in some instances directed an overhaul of some aspect of the pay for performance system, e.g., to make it simpler, more performance sensitive, or add cost controls.

OVERSIGHT. Because these agencies were exempt from title 5, oversight varied and was not systematic. In nearly all cases, they were not required to conduct evaluations of their new systems, although several did perform general program evaluations, particularly when new leadership raised questions about their systems.

- Despite their independence from title 5, most of these agencies are subject to Executive Order 13197 on Governmentwide Accountability for Merit System Principles. Compliance with this Order entails establishing accountability systems that meet standards established by OPM.
- The failure to establish standards, indices and time frames by which a change effort is assessed early in the process not only makes success difficult to determine but makes implementation problematic. Although the FAA clearly identified five major objectives for changes in human resources management systems, it did not initially develop an evaluation plan with standards or gather baseline data by which the success of the interventions could be assessed. FAA subsequently did establish comprehensive evaluation plans for its system, conducted multiple evaluations and reviews, compiled baseline data, and established specific measures of success.
- GAO paid special attention to providing due process and safeguards to promote employee acceptance and trust. They established a special reconsideration process to offer employees the opportunity to get their performance assessments examined by independent reviewers.
- External evaluations played a role in most projects, although NAPA found that GAO did not use external evaluation.
- For FIRREA agencies, the "comparability committee" provides some cross-agency accountability.

GOVERNMENTWIDE EXECUTIVE PAY

Because executive pay is based on pay-for-performance systems, the employee numbers are included in Table 1 on page 2. SES pay system implementation and the results of executive appraisal system certification have become an important element of the Government's overall experience with performance-based pay.

Since January 13, 2004, all SES members have been covered by the Federal Government's enhanced performance-based pay system for executives and now ***any*** increase in a senior executive's rate of base pay must be linked to performance. In addition, the enhancement established an expanded open-range for setting and adjusting base pay. A similar, but separate authority granted by Congress in 2005 covers the Senior Foreign Service.

Executives are the most important change agents when it comes to enhancing or replacing performance management systems. OPM has had a year of leadership and oversight experience implementing new certification requirements for agency Senior Executive Service (SES) performance appraisal systems. The entire SES is under an enhanced performance-based pay system. Pay changes are based totally on performance. Stronger distinctions in performance are being made, with previous cases of extremely high and implausible percentages of *Outstanding* ratings declining so that the "outstanding" description can truly carry its intended connotation of "stands out as an exception." Base pay increases in higher amounts and greater proportion are going to higher performing executives. As a further enhancement and incentive to improve performance management practices and results, agencies that meet OPM and congressionally mandated requirements for effective appraisal systems may offer higher rates of base pay to their senior executives.

RESULTS

OPM has seen diligent, thoughtful, and rigorous implementation of the new system. For most agencies, the SES performance-based pay system is their first experience with a system where base pay is set and adjusted using an open pay range without fixed rates or steps.

STRATEGIC COMPENSATION.

Pay adjustments and awards are based on performance.

- Performance Review Boards are using the results of the appraisal system to make recommendations about awards; some are also engaged in recommending pay adjustments.
- In general, results show executives rated *Outstanding* receive higher pay adjustments than executives rated at a lower level.

EFFECTIVE PERFORMANCE MANAGEMENT.

Agencies are holding executives accountable for achieving results that are clearly tied to organizational goals.

- Information about the linkage between mission goals and individual executive accountability is reviewed during the certification process. Executives are now actively incorporating into their performance plans specific business results with clear measures of performance.
- Performance plans that merely hold executives accountable for "providing leadership" or "managing a program" do not meet the certification criteria without also including specific organizational goals and targets to be achieved, with measurable standards.
- With respect to rating distribution, OPM looks for a relationship between the rating distribution and the performance of the agency, as determined through the agency's Performance and Accountability Report (PAR), results of applying the Office of Management and Budget (OMB) Program Assessment Rating Tool (PART) on agency programs, or other organizational performance reports the agency provides.

Agencies are assessing organizational unit performance, communicating that performance to rating officials, and ensuring their rating distribution reflects the unit's performance.

- OPM and OMB review organizational performance information during the certification process.
- OPM is no longer seeing agencies with 100 percent of their executives rated at the highest level allowed by their system while the agency is failing to meet its performance targets.

Agencies are making distinctions in levels of performance.

- Many agencies that were not previously making *any* distinctions across levels of performance are now making those distinctions and are identifying and rewarding their top performers. In addition to being clearer and more beneficial to the executives themselves, providing such differential feedback makes the overall system more credible and useful to customers and other stakeholders.
- The average percentage of executives rated at the top performance level used by their systems went from 80.6 percent in 2001 to 55.5 percent in 2004. Agency-specific changes are shown in Table 3 on the next page. While agencies have continued to make progress, there is still more work to be done.

Agencies are holding executives accountable for the performance management of subordinates.

- This new requirement established in the certification regulations ensures that leadership and supervisory responsibilities are among the performance elements upon which an executive is rated, demonstrating the importance of that aspect of executive responsibility.
- OPM reviews executive performance plans to ensure that this element is included.

Table 3. Senior Executive Service Performance Ratings 2000, 2001 and 2004

Agencies	2000 Percent at Highest Rating Level	2001 Percent at Highest Rating Level	2004 Percent at Highest Rating Level
Agriculture	37%	36%	44%
Commerce	84%	80%	49%
Defense	98%**	99%**	99%
DHS	Not Applicable	Not Applicable	85%
Education	100%*	100%*	99%
Energy	100%*	99%*	44%
EPA	86%	85%	61%
GSA	96%	92%	28%
HHS	91%**	91%**	52%
HUD	100%*	99%*	45%
Interior	100%*	100%*	22%
Justice	91%	91%	62%
Labor	68%	61%	45%
NASA	73%	76%	76%
NRC	100%*	100%	9%
NSF	83%	89%	81%
OMB	88%	20%	33%
OPM	91%	37%	47%
SBA	76%	82%	70%
SSA	100%*	100%*	56%
State	100%	99%	86%
Transportation	99%*	100%*	33%
Treasury	54%	63%	44%
USAID	95%	79%	53%
VA	56%	56%	64%

* Agency used a "pass/fail" system, with no level above Fully Successful available
** Most but not all of the agency was under a "pass/fail" system

Agencies are establishing oversight and accountability systems for their SES performance-based pay system.

- During the certification process, agencies must describe to OPM their oversight and accountability systems.
- A high-level official at the headquarters level within an agency is held accountable for the implementation and operation of the system.

An agency example of how improvements are being made to performance management for senior executives follows:

IMPROVING RESULTS-FOCUSED SES PERFORMANCE MEASUREMENT

OPM works with agencies to improve their SES performance plans, particularly in the way performance measures are established. In 2004, OPM's review of performance plans from the Environmental Protection Agency (EPA) showed they needed to improve the results focus and measures of performance. As a result, EPA refined its approach to assessing executive performance. Previously, EPA appraised executives solely on critical elements, mirroring the Governmentwide Executive Core Competencies (ECQs). These critical elements had only fixed requirements, except for "Results Driven" – which is one of the six general ECQs – - which, in addition, tried to capture business results in commitments developed by each executive. After consultation with OPM, EPA revised its performance plans to place more emphasis on these commitments:

- The first part of each plan has fixed elements and requirements that focus on the ECQs.
- The second part is titled "Individual Commitments" and focuses on specific business results to be achieved by the executive and the organization for which he or she is accountable.

To help executives strengthen their commitments, EPA's website now contains some "model" performance plans as well as guidance (including examples from OPM) for developing good commitments. This new approach is intended to better balance executive focus on competencies and achieving results.

Example of EPA's old and new approach to establishing executive performance elements and requirements:

Original Element and Requirement	Revised Element and Requirement
Results Driven, Individual Commitments: Demonstrates leadership in implementing the Water Quality Accountability in collaboration with States. [Stated in part; full plan included additional requirements]	*Results Driven, Individual Commitments:* Eighty percent of the Division's grants are awarded within 60 days of receipt of a complete application. The backlog of Congressional earmarks is reduced by 50 percent.

IMPLEMENTATION

The implementing regulations issued jointly by OPM and OMB in 2004 for appraisal system certification requirements recognized the variation found in the quality of SES appraisal systems Governmentwide, and OPM established a process for providing provisional as well as full certification. This gave agencies access to pay increases while working to enhance their appraisal systems further. OPM also issued the regulations implementing the new pay system and its more stringent requirements for linking performance and pay. OPM held several forums for agencies to announce and review the certification criteria and pay regulations.

FUNDING.

- Implementing the executive performance-based pay systems in the agencies entails very little startup investments or costs.
- Agencies establish internal pay policies for making pay adjustment and award determinations, under general Governmentwide regulations and limitations.
- Agencies fund their performance-based pay increases and awards out of their existing budgets.

LEADERSHIP.

- The head of the agency or designee must have oversight and accountability for the appraisal and pay of executives.
- All recommended ratings and awards – and in most agencies pay adjustment recommendations – are reviewed by agency Performance Review Boards, which make the final recommendations to the agency head (or designee), who makes the final decisions. This process ensures rating and reward distinctions are fair and credible.
- During the certification process, OPM ensures that the agency system provides for oversight and accountability.
- Agencies have demonstrated their serious commitment to effective implementation of the executive performance-based pay system. The imperative to establish and maintain credible, transparent systems clearly aligned to agency mission is clear.
- Agencies have worked cooperatively to share best practices and to apply OPM feedback and technical assistance to improve their appraisal system features and operations.

OVERSIGHT.

- Internal and external oversight and accountability is a critical requirement for executive performance-based pay systems.
- OPM as the gatekeeper grants agencies provisional or full certification based on a stringent examination of the case the agency puts forward describing how its system meets the regulatory criteria. OMB must concur in the certification decision. To date only one agency, the General Services Administration, has received full certification for its SES appraisal system.
- SES appraisal system certification criteria require an agency to have an oversight and accountability system for their performance appraisal system.
- The process for certifying agency SES appraisal systems has required OPM to conduct thorough reviews of the systems, including detailed review of a sample of executive performance plans.
- During calendar year 2004, OPM reviewed the appraisal system and 10 percent of the executive performance plans (proportionately distributed across the agency) for each agency requesting certification.
- Agencies requesting recertification of their systems for a successive calendar year are subjected to another complete certification review. In particular, OPM analyzes the results of linking performance ratings to pay decisions – both for base pay and for performance bonuses – to ensure that the appraisal results are applied in a meaningful way.

OVERALL SUMMARY

The Federal Government – through a set of landmark demonstration projects, independent agency systems, and the Governmentwide executive pay system – has made considerable progress in recognizing what works and what does not work when it comes to implementing performance-based pay systems. OPM focused attention on many of these lessons learned as the Department of Homeland Security and the Department of Defense planned and began to implement their systems. The challenges must be addressed, but the rewards are significant. When performance-based alternative pay systems are closely scrutinized, the results are clear: better performers get higher pay, agencies can control costs and compete for and retain top-flight talent, and training and accountability result in effective performance management systems that make meaningful distinctions and support agency mission.

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Ms. NORTON. Thank you. That would be very helpful. Mr. Chairman, I do want to just note that the testimony that we received is very important if we are looking at writing a bill that might get through the Appropriations Committee and for that matter through the Congress, and that is Mr. Walker's testimony that a phased approach, a "Show me" approach, a condition-based approach, would be the most prudent.

By the way, would you agree with that, Ms. Springer?

Ms. SPRINGER. Yes, and that is the way this act is set up.

Ms. NORTON. Do you think this act is—oh, you have only seen the concept because we are trying now to find out how to do it and I think that it is very, very important to make this palatable.

Mr. PORTER. As do I. Very compelling comments. Thank you.

Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman, and let me thank both of the witnesses here this morning and thank you, Mr. Chairman, for your continuing oversight in this very, very important area. It doesn't get a lot of public attention, but I think it is very important to the public and the quality of government that we have.

Let me just first begin with breaking it conceptually into the two parts that Mr. Walker has divided it into, on the one hand the management reforms and pay for performance issue, on the other hand labor-management relations and the adverse action provisions of the bill.

And a note on pay for performance. Again, the concept of pay for performance—we have been over this ground before—is something that I don't think anyone can oppose. People should be rewarded based on their ability to produce. The key is implementing that kind of system, and especially within the government context where you have lots of factors that are not present in the private sector context and you have many different potential masters. And I don't mean to pick on anybody but if you're talking about FEMA and Michael Brown and what that kind of message sends in terms of performance and the kind of individual needed in the job and the kind of experience they need in order to carry out their job, what kind of signals can that send out to their employees and can they really believe they are going to be evaluated based on a fair judgment and based on their experience and qualifications to do their job?

Let me just ask Ms. Springer if you would agree with just in terms of approaching this major piece of legislation in a manageable way, one bite at a time, whether you would agree with Mr. Walker's suggestion that we might be better off taking this as two separate pieces; in other words, let's examine the pay for performance part and focus on that issue and not move forward with the other provisions that are in the bill. What would you think of that?

Ms. SPRINGER. I think that is an option that could be considered but having said that, I think that we have crafted the bill with the thought that the two pieces do go together, and we think that they both can be accommodated in a much, much reduced way from DHS.

The one mistake we don't want to make is to say this is DHS revisited or NSPS revisited because that part is scaled down con-

siderably. However, I personally, speaking for myself, think that is an option that you know could be looked at.

Mr. VAN HOLLEN. I just note with regard to labor-management provisions, I understand there are provisions in this bill that are not the same as DHS and the Department of Defense. On the other hand, as I understand, there are some provisions in this bill that are actually potentially more expansive. Mr. Walker mentioned the definition of emergency, which is, as I understand it, is the triggering definition for determining whether or not you're going to continue to follow the labor-management provisions of the bill. And the definition of emergency is broadened to include, "any situation involving or potentially involving an adverse effect on agency resources." It goes on to talk about increase in agency workload or any budgetary exigency caused in whole or in part by external authorities. I can't think of a single department in the Federal Government today that couldn't claim that they were in an emergency right now under that definition.

If you could respond to that.

Ms. SPRINGER. Well, there are technical people here who could probably talk to the specific language better than I can, but the purpose of this hearing, the purpose of our work with you, with your staffs, is that we can refine those things in a way that deals with concerns that you have.

If it is too broad, let's look at it. If it is not immediate enough—my understanding was that it was really intended to be for immediate situations where there is a need for immediate action, there isn't time to deliberate, what have you. But having said that, I am not the technical expert. But if there are things we need to refine, let's look at them. The idea was to get a draft act on the table so we could start to work together and get this thing refined.

Mr. VAN HOLLEN. I hear you.

Mr. WALKER. I agree it is too broad. And second, I think you have to think about, in coming up with a reasonable definition of what is an emergency, for what period of time is there an emergency. Is it envisioned that it is a limited period of time, or is it something that is defined so broadly that it could go on indefinitely? I think, you know, that is a very important area and a very problematic area.

Mr. VAN HOLLEN. And Mrs. Springer, I agree with you that part of this process is give and take. But the problem is when you put something in writing on the table like that it does send signals. You have to build trust to move forward with this kind of process. You have to build the trust of Federal employees who are about to be subjected to the new rules. And when you put on a piece of paper something that is just so broad it would encompass just about any agency today, it creates a more difficult environment to move forward.

Mr. Chairman, if I can just ask one last question with respect to the phased in approach and the fact that you have the "Show me" test. Under the draft, or concept, what is—who are we showing? In other words, is this a certification that is going to be made by OPM as to whether or not the criteria had been met?

Ms. SPRINGER. Yes, that's right. I just want to add one other thing if I can with that emergency issue, I think hopefully we

would all agree that there are legitimate emergencies in critical situations, assessable situations. I hope we're not saying that there is no such situation that could be addressed should we have a labor-management component to the bill.

Mr. VAN HOLLEN. I understand. It is this definition, as I say, it seems to reflect the current condition of every department in the Federal Government.

Mr. WALKER. Can I suggest, Mr. Van Hollen, that you are correct in noting that under this proposed draft legislation or proposal that OPM would do the certification. I would fully expect that the Congress would want GAO to monitor OPM's efforts and to report periodically with regard to the exercise of those.

Mr. VAN HOLLEN. I thank you for that. The red light was on so after the answer I wasn't sure but, Mr. Chairman, just on that point. Clearly, there's going to be a question about the—I think from the Congress' perspective given the nature of this, if we were to move in this direction, it would absolutely be essential from our perspective to have GAO overseeing or monitoring the reporting on that.

Mr. PORTER. Thank you very much.

Ms. NORTON. May I ask one factual question?

Mr. PORTER. Yes.

Ms. NORTON. Ms. Springer, do you intend to appeal the Federal court decision striking down major portions of the Department of Homeland Security provisions on collective bargaining?

Ms. SPRINGER. I am not at liberty to comment. My counsel has told me not to comment on that case.

Ms. NORTON. I hope at the very least it leads to some thoughtful—whatever you do. Because now you're on your way to something that is probably going to just keep going because of litigation. I hope that you're not depending entirely on litigation but are looking closely at what the court said to see if there are things you can to do mitigate the possibility of future suits like this in the future. Thank you.

Mr. PORTER. Thank you. Thank you both very much. I appreciate you being here today. Just know, Mr. Walker, that there is a band on the hill with five Congressman, a bipartisan band. We need to work on that James Brown song.

Mr. WALKER. It is a great song.

Mr. PORTER. It is a great song. Thank you. Thank you both very much.

We have six witnesses left to testify. Actually, panel three and four, and I think for the element of time, I'm going to try to bring all six up—I know we're a little limited for space—and possibly share the mics. So if Theresa, Max Stier, Scott Gould, Mr. Styles, Mr. Gage, and Ms. Kelley—I realize there are three chairs so that's going to be a real trick. We're going to bring a couple more chairs up. Maybe we'll take about a 5-minute recess while we get things situated. Thank you.

[Recess.]

Mr. PORTER. I'd like to bring the meeting back to order. Some of the witnesses came late. I'd like to ask once again that we do the witness and the oath. For those who weren't here, is there anyone

that—Colleen, you weren't here. Anyone else that wasn't here? Please, if you'd raise your right hands.

[Witnesses sworn.]

Mr. PORTER. Please be seated. I'd also like to acknowledge that fellow Member of Congress, Mr. Flake from Arizona, had planned on being with us today, was unable to be here, and, without objection, I'd like to enter his comments into the record. Thank you.

Let's begin with our third and fourth panel.

We'll start with Theresa Shaw, the Chief Operating Officer of Federal Student Aid, U.S. Department of Education. Welcome.

STATEMENTS OF THERESA S. SHAW, CHIEF OPERATING OFFICER, OFFICE OF FEDERAL STUDENT AID, U.S. DEPARTMENT OF EDUCATION; MAX STIER, PRESIDENT AND CEO, PARTNERSHIP FOR PUBLIC SERVICE; W. SCOTT GOULD, VICE PRESIDENT, PUBLIC SECTOR STRATEGY AND CHANGE, BUSINESS AND CONSULTING SERVICE, IBM GLOBAL SERVICES; MICHAEL B. STYLES, NATIONAL PRESIDENT, FEDERAL MANAGERS ASSOCIATION; JOHN GAGE, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES; AND COLLEEN M. KELLEY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

STATEMENT OF THERESA S. SHAW

Ms. SHAW. Good morning. Good morning. Much better.

Good morning, Mr. Chairman, members of the subcommittee. Thank you for inviting me to testify today. I'm pleased to be here representing Secretary Spellings, the Department of Education, and Federal Student Aid, to share some of our successes in transforming our work force, elevating our performance, and delivering tangible results.

Federal Student Aid has operational responsibility for oversight in the administration of all of the Department's Federal student financial assistance programs, and, as one of the government's few performance-based organizations, upholds high standards of operational efficiency, innovation, customer care and individual and organization performance. We are also provided certain managerial flexibilities and authorities over personnel management, budget, and procurement activities.

Prior to our establishment as a performance-based organization, the Federal Student Aid programs were plagued with oversight and management challenges, high default rates, and customers who were not happy with the service they received.

In 1990 the Government Accountability Office found the Federal Student Aid programs at high risk to fraud, waste, abuse, and mismanagement. Financial management and internal controls on the programs were largely nonexistent, and unqualified audit opinions were not attainable. In 1990, students loan default rates had hit a high of 22.4 percent. Customer satisfaction scores were not even measured. Federal Student Aid with its specific purposes, authorities, and flexibilities was created to effect change, and we are transforming our work force and culture to be highly effective.

Mr. Chairman, I believe that delivery of results is the true measure of success, and I'd like to share how we have used our person-

nel flexibilities and our progress on our work force and culture transformation. Our hiring flexibilities allow us to fill critical and time-sensitive resource needs faster and to pay salaries closer to market rates for similar positions in the private sector. With this flexibility, our average period to hire is 34 calendar days versus 200 calendar days for the most recently Federal hired career staff subject to the usually competitive processes. We have used our hiring flexibility to hire staff with needed skill sets obtained in the private sector, to augment the skill sets of our Federal career staff. This marriage of private sector and Federal career skills, experience, and knowledge has been a great success. This hiring flexibility only applies to a small portion of our work force. Most positions are filled by General Schedule and Senior Executive Service staff and subject to the Title 5 competitive process. We recently worked with the Partnership for Public Service to identify a better, faster process for recruiting and hiring qualified Federal career staff.

If you take a look at the chart on the left, the standard staff hiring process had 114 steps, with more than 45 handoffs. In comparison, our new streamlined process eliminates nearly 50 percent of the steps. The Working for America Act would provide even greater efficiencies to this process. We have not focused on the hiring process alone to transform our work force and culture. We have strengthened performance management and aligned individual performance with delivery of results. We have a process that recognizes and rewards differences in performance.

The results are in for us. In January 2005, the Government Accountability Office removed the Federal Student Aid programs from its high-risk list. In March 2005, we achieved all green status in improved financial performance on the President's management agenda score card. The Secretary recently announced a new all-time low default rate, 4½ percent, and we have created innovative contract solutions to optimize the investment of taxpayer dollars and the return on that investment, saving taxpayers an estimated $1½ billion on two contracts alone.

Independent customer satisfaction scores for our flagship product, the electronic Free Application for Federal Student Aid, are comparable to UPS, Mercedes Benz, and Amazon.com. Our high standards and expectations for performance, our ability to hire, manage, develop and reward employees, while being respectful of our collective bargaining obligations, have enabled us to achieve these and many other accomplishments.

However, we can do more. I envision even greater results with flexibility such as those described in the Working for America Act. Competitive market-rate compensation and pay increases, driven by performance and delivery of results, will allow agencies to attract and retain the highest caliber staff. Managers who are equipped to properly set and evaluate job performance in collaboration with employees will ensure fairness in the process. Trained managers will deal effectively with poor performance. This is how the private sector works, and it works for the private sector.

I'm honored to be part of Secretary Spellings' team. On behalf of the Secretary, the Department, and Federal Student Aid, thank you for the opportunity to speak today. And I'd be happy to answer any questions.

Mr. PORTER. Thank you, Ms. Shaw. Congratulations. I'd like to know what the 40th orange dot is.

Ms. SHAW. One of the handoffs.

Mr. PORTER. Thank you very much and congratulations. Appreciate your comments.

[The prepared statement of Ms. Shaw follows:]

Written Testimony of
Theresa S. Shaw
Chief Operating Officer
Federal Student Aid
U.S. Department of Education

To the
Subcommittee on Federal Workforce and Agency Organization
Hearing: "Mom, Apple Pie, and Working for America:
Accountability and Rewards for the Federal Workforce" October 5, 2005

Introduction

Good morning. Chairman Porter, Vice Chairman Mica, Ranking Member Davis, and members of the Committee, thank you for inviting me to testify today. I am Terri Shaw, the Department of Education's Chief Operating Officer for Federal Student Aid, a position I have held since September 2002. I am pleased to be here representing Secretary Spellings, the Department, and Federal Student Aid to share with you some of Federal Student Aid's successes in transforming our workforce, elevating our performance, and delivering tangible results.

The Department of Education's grant, loan, and work programs represent the largest source of student aid for postsecondary education in the United States. In 2005, these programs provided approximately $74 billion to more than 10 million students and their families.

Federal Student Aid is charged with operational responsibility for oversight and administration of all the Department's Federal student financial assistance programs under Title IV of the Higher Education Act of 1965 (HEA). As one of the government's few Performance-Based Organizations, Federal Student Aid upholds high standards of operational efficiency, innovation, customer care, and individual and organization performance.

Established in 1998, Federal Student Aid was the Federal Government's first Performance-Based Organization, with particular emphasis on modernizing the delivery of student assistance programs. The authorizing statute provides that the purposes of the Performance-Based Organization are to improve service delivery, integrate business processes and systems supporting the programs, strengthen program integrity, reduce operating costs, and increase workforce and management accountability.

To carry out these purposes, Federal Student Aid is focused on:

- delivering world-class customer service;
- developing award-winning products and services;
- effectively managing the programs to ensure fair and effective oversight;
- providing service delivery at the lowest cost without sacrificing quality; and
- creating and fostering a work environment that not only attracts, develops, retains and rewards top performers, but also expects high performance and demands accountability.

We are also provided, under the direction of the Secretary, certain managerial flexibilities and authorities, over personnel management, budget and procurement activities. These flexibilities and authorities allow Federal Student Aid to: 1) exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions; 2) hire staff without restrictions on numbers or grades; 3) hire and remove senior managers and to hire a limited number of professional and technical staff without regard to the provisions of Title 5; 4) provide additional performance based compensation to these senior managers; 5) work with the Office of Personnel Management to develop and implement personnel flexibilities in staffing, classification, and pay; and 6) exercise the authority of the Secretary to procure property and services in the performance of our functions.

Prior to the establishment of Federal Student Aid as a Performance-Based Organization, the Federal Student Aid programs were plagued with oversight and management challenges, high default rates and customers who were not happy with the service they received. In 1990, the Government Accountability Office found the federal student aid programs at high risk for fraud,

waste, abuse, and mismanagement. Financial management and internal controls around the programs were largely non-existent and unqualified audit opinions were not attainable. In 1990, student loan default rates had hit an all time high of 22.4%. Customer satisfaction scores were not even measured.

Federal Student Aid, with its specific purposes, authorities and flexibilities, was created to effect change. We demand and expect breakthrough performance and innovation that yields higher efficiency, greater productivity and a more satisfied customer. We are transforming our workforce and culture to be highly effective by: 1) ensuring clarity of vision, mission and values; 2) ensuring that staff at all levels firmly understand their individual and inter-dependent roles in attaining the vision and mission; and 3) most importantly, requiring performance accountability.

Mr. Chairman, I believe that delivery of results is the true measure of success. Federal Student Aid has used its available personnel flexibilities and demand for high performance to achieve real change and real results for the Department of Education, for students and families and for taxpayers. I would like to describe for you how we have used these personnel flexibilities and our progress on our workforce and culture transformation.

Our hiring flexibilities allow us to fill critical and time-sensitive resource needs faster than the competitive process called for under Title 5 and to pay salaries closer to market rates for similar positions in the private sector. With this flexibility, our average period to hire is 34 calendar days. Compare that with the 200 average calendar days it took to hire the four most recently hired federal career staff who are subject to the usual competitive processes. We have used our hiring flexibility to hire 70 senior managers and professional and technical staff with needed skill sets obtained in the private sector to augment the skill sets of our federal career staff. This marriage of private sector and federal career skills, experience, and knowledge has been a great success.

Our hiring flexibilities allow us to fill critical and time-sensitive resource needs faster than the competitive process called for under Title 5 and to pay salaries closer to market rates for similar

positions in the private sector. With this flexibility, our average period to hire is 34 calendar days. Compare that with the 200 average calendar days it took to hire the four most recently hired federal career staff who are subject to the usual competitive processes. We have used our hiring flexibility to hire 70 senior managers and professional and technical staff with needed skill sets obtained in the private sector to augment the skill sets of our federal career staff. This marriage of private sector and federal career skills, experience, and knowledge has been a great success.

While this hiring flexibility is a key tool for us, it applies to only a small portion of our workforce. Most positions in Federal Student Aid are filled by federal career staff and subject to the competitive process called for under Title 5. This past year we worked with the Partnership for Public Service as a participant in their Extreme Hiring Makeover initiative to identify a better, faster process for recruiting and hiring qualified federal career staff. If you will look at these charts, you will see the standard staff hiring process, showing 114 steps with more than 45 handoffs. In comparison, our new streamlined process eliminates nearly 50% of the steps.

We have been equally successful in strengthening and aligning performance management with delivery of results. The development of meaningful performance standards and feedback has improved the motivation and performance of employees. Enhanced evaluation tools and performance metrics allow us to measure the effectiveness of our training programs, and to make improvements or close gaps in mission-critical competencies. Aligned individual staff performance plans, including those for senior officials, contribute to the accomplishment of our strategic objectives. And finally, we have a process that recognizes differences in performance and rewards superior performance.

The results are in.

We are particularly proud of the Department's and Federal Student Aid's recent achievement of a major President's Management Agenda (PMA), Government Accountability Office (GAO), and departmental objective by reducing the vulnerability of the federal student aid programs to fraud, waste, abuse, and mismanagement. As a result of our specific focus on reducing these

vulnerabilities and our clear and sustained demonstration of results, in January of 2005, GAO removed the federal student aid programs from its High-Risk list. "Additionally, in March 2005, FSA achieved "all green" status in "Improved Financial Performance" on the PMA Scorecard used by the Office of Management and Budget..." for monitoring our progress and status. We have received unqualified audit opinions for Fiscal Years 2002, 2003, and 2004 that found no material weaknesses in the last two years. We expect the same superior results when the Fiscal Year 2005 financial audit is completed.

We continue to make meaningful progress on reducing student loan default rates. On September 19, 2005 the Secretary announced a new all-time low default rate -- 4.5 percent--a dramatic 80 percent reduction from the all time high of 22.4 percent in 1990.

Federal Student Aid contracts with, manages and monitors a number of private sector providers for our major business functions. We have created innovative contract solutions to optimize the investment of taxpayer dollars and the return on that investment. For example:

- Our contracts with private collection agencies have performance-based evaluation incentives. This resulted in an increase of defaulted loan recoveries from $670 million to $1.25 billion over a four-year period while collection costs were reduced from 18 percent to 16 percent; and
- Our performance based contracts to reengineer and operate our application, servicing, and collection business functions and systems together will save taxpayers an estimated one and a half billion dollars over the ten-year term of these contracts.

Independent customer satisfaction scores for our electronic Free Application for Federal Student Aid (FAFSA) are comparable to corporations such as UPS, Mercedes Benz, and Amazon.com; Direct Loan Servicing scores are better than Wachovia Bank and similar financial services entities; Pell Grant and Direct Loan originations compare favorably to E-Trade.

Federal Student Aid is realizing efficiencies, productivity gain, and capital savings through our many initiatives enabling us to manage significantly increasing workloads at lower marginal

operating costs. For Fiscal Years 2002 – 2004, the number of FAFSA applications, Direct Loan borrowers, collection accounts, and Pell Grant recipients increased 11 percent, 8 percent, 4.5 percent, and 18 percent respectively, without corresponding increases in our operating expenses.

Our high standards and expectations for performance, and our ability to hire, manage, develop and reward employees while being respectful of our collective bargaining obligations, have enabled the Department and Federal Student Aid to achieve these and many other accomplishments. However, we can do more.

It does not take much imagination to envision even greater results with flexibilities such as those described in the Working for America Act. Competitive market-rate compensation and pay increases driven by performance and delivery of results will allow agencies to attract and retain the highest caliber staff. Managers, in collaboration with employees, will be equipped to properly set and evaluate job performance to ensure fairness in the process. Trained managers will deal with poor performers more effectively.

I am honored to be part of Secretary Spellings' team at the Department of Education. Federal Student Aid ensures that all eligible Americans can benefit from federally funded financial assistance for postsecondary education and we champion that and its value to our society.

On behalf of the Secretary, the Department, and the Federal Student Aid staff, thank you for the opportunity to testify today.

I am pleased to answer any questions you may have.

Mr. PORTER. Mr. Stier.

STATEMENT OF MAX STIER

Mr. STIER. Thank you. Thank you very much, Chairman Porter, Congresswoman Norton, Congressman Van Hollen. It's a great pleasure to be here. Five minutes go quickly so I will speak quickly.

I want to recognize the great work FSA is doing under Terri Shaw's leadership. It's really extraordinary stuff and it's an honor to work with her.

We start from the proposition that you started with, Chairman Porter, and that is the status quo is not good enough. We can and must do better for the Federal work force and for the American people. And one important piece of evidence—this I think comes from the employee surveys that you yourself cited, just to take three quick snapshots. Less than half say they have a high level of respect for their organization's leaders and managers. I would point out that this is across the board, from top to bottom on the management side. Only one-third believe that the leaders generate high levels of motivation and commitment in the work force, and less than one-third agree that differences in performance are recognized in a meaningful way. I would note that is 25 points lower than the private sector benchmark we're looking at. This is a big problem. It's a big problem whether we're looking at this legislation, a big problem we need to focus on beyond just this legislation.

We believe that the Working for America Act can be part of the solution and ultimately needs to be a part of that solution but that system changes alone will not fix the problem. And our first order of business needs to be making sure that we focus on the overall capacity of Federal agencies and Federal managers to better manage and create performance-oriented organizations. We believe we need to invest now to create that management capacity because the consequences are both significant externally and internally for the Federal Government itself.

The Working for America Act, as has been pointed out by Congresswoman Norton's questions and Congressman Van Hollen's questions, is the right approach. It's very different from the reforms we saw for DHS and DOD. It is a "show me" proposition, as Comptroller General Walker said, and essentially says that you need to prove that you're ready before you're enabled to be given these extra flexibilities.

That is the right approach, but it's also a very important process, we believe, because you can make these changes, get agencies ready, but ultimately the kinds of flexibilities that are then available to these agencies will be very valuable. One of them that is rarely focused on that deserves a little attention is the issue of market sensitivity. It's not just performance sensitivity that we're after, but the Federal Government needs to better compete in the overall marketplace for talent, it needs to be able to offer the kinds of compensation levels that are going to be able to attract the very best talent in different geographic regions around different occupations at different levels. And that's one of the provisions the Working for America Act provides for and we think is critical.

We're taking the committee at its word here, and we're offering several amendment suggestions as well. We believe that there are three areas that we can focus most helpfully on in terms of improving this legislation. First and most importantly, focusing on that management issue that I just discussed, we provide some language in our testimony that's appended that obviously is draft language; but the basic concept is this legislation would be improved if we understood better what is it that we are looking for in management and government. And we asked OPM to essentially create the kind of core competencies that we believe will be necessary for Federal managers to succeed and then, very importantly, require agencies to conduct audits, both of their overall capacity to manage, but also against individual managers, and then develop plans that help them identify ways to improve their management capacity, again, both holistically as an agency and also with individual managers. We believe that component should be made part of the certification procedure and would be critical. We also believe that kind of work can and should be done here and now even outside the context of this legislation.

Second, we think that there is an increased need for focus to be paid upon the HR function itself. If you look at the Clinger-Cohen Act which came out of this committee, one of the very important provisions was it focused on the capacity of financial—I'm sorry, IT management staff, to be able to do their job and do it right. The HR function is facing increasing pressure today in the Federal environment. We need HR managers that are HR professionals that are going to be able to provide service to the rest of the agencies in ways that are much, much more demanding than previously, and they have faced an enormous cut over time. If you look at the numbers, you have seen 20 percent reduction in HR professionals during the 1990's and we believe that therefore the provision we provide there will help in that regard.

Third and finally, we think looking at employee attitudes is going to be essential in understanding the consequences of these changes and whether we're getting them right, and therefore that the survey requirements that are currently part of law are very important, that the provision that's provided in this draft that would limit some of or provide opportunities for limiting the survey requirements should be itself restricted to focus on the problem that we believe is legitimate, and that is the one I'm focusing on in making sure that small agencies have the option or, rather, that the OPM Director has the option of limiting their obligation for surveys on an annual basis.

Thanks; 5 minutes.

Mr. PORTER. Good job. I appreciate the fact that you have provided for us some suggested improvements and/or changes, and I would encourage all those that are testifying today that as you have ideas and suggestions, by providing them as you have, this is very beneficial to the process. Thank you.

[The prepared statement of Mr. Stier follows:]

Written Testimony of Max Stier
President and CEO, Partnership for Public Service

Prepared for:

The House Committee on Government Reform
Subcommittee on the Federal Workforce and Agency Organization

Hearing: "Working for America Act Proposed by Administration"

October 5, 2005

2154 Russell House Office Building

Chairman Porter, Representative Davis, Members of the Subcommittee, thank you very much for the opportunity to appear before you today. I am Max Stier, President and CEO of the Partnership for Public Service, a non-partisan, nonprofit organization dedicated to revitalizing the federal civil service. We appreciate your invitation to discuss the administration's proposed "Working for America Act" and its impact on federal employees and the agencies in which they serve. This Subcommittee continues to recognize that a skilled and dedicated workforce is absolutely essential to successfully carrying out the many missions of the federal government on behalf of our nation, and we are honored to share with you our perspective on the WFAA and its potential to transform the federal civil service.

The Partnership has two principal areas of focus. First, we work to inspire a new generation to federal service. Second, we work with government leaders to help transform the business of government so that the best and brightest will enter, stay and succeed in meeting the challenges of our nation. That includes all aspects of how we manage people, from attracting them to government, leading them, supporting their development, and managing performance. In short, all the essential ingredients for forming and keeping a winning team. Given those objectives, transforming the current civil service system is high on our list of priorities. We welcome the chance to work with this Subcommittee to ensure that any legislation to modernize our civil service contains what the Partnership views as the essential ingredients necessary for success.

The Case for Change

It is widely accepted that while the current General Schedule pay and classification system established in 1949 may have served the government well for many years, it is no longer good enough to attract and retain the best and brightest – and we know this from listening to federal employees themselves. In the Office of Personnel Management's 2004 Federal Human Capital Survey of almost 150,000 civil servants, only 29 percent agreed that "In my work unit, differences in performance are recognized in a meaningful way." Talented people at all levels – from new college graduates to seasoned professionals – look to work in environments that reward and recognize effort and results. Our 2005 Best Places to Work project, based on the OPM survey, confirms that, compared to workers in the private sector, federal employees are more likely to say their work relates to the organization's mission, their supervisors are supportive in balancing work and life issues, and the people they work with cooperate to get things done. Yet, this same comparison reveals the federal government lags 25 points behind the private sector in rewarding workers for delivering high quality products and services.

To be clear, we think it is misleading to refer to the WFAA as "pay-for-performance," a misnomer that suggests federal employees are motivated primarily by pay. Generally speaking, they are not. As everyone here can attest, many if not most public servants can make more money in the private sector – but they have chosen government service. Again referring to our Best Places to Work rankings, pay and compensation ranked well below leadership, teamwork, how well an employee's skills are matched to agency

mission, and work-life balance as the key drivers of job satisfaction for federal workers. And satisfied employees are more engaged and better able to contribute to agency missions. In fact, the preponderance of research on effective organizations in both the private and public sectors indicates that employee engagement is a key driver of mission success. The WFAA, in our opinion, has the potential to increase employee engagement by establishing a comprehensive performance management system – in other words, by creating an environment in which excellence is both recognized and rewarded.

Of course, improved performance management is only one benefit that accrues from the proposed replacement of the General Schedule system. As OPM's April 2002 White Paper, "A Fresh Start for Federal Pay: The Case for Modernization," states, the current federal pay system is not market sensitive despite the statutory merit system principle that calls for federal pay to be set "with appropriate consideration of both national and local rates paid by employers in the private sector." The proposed WFAA would allow all of the federal government to construct more modern and market-sensitive pay systems, thereby enabling it to be better armed in the war for talent.

Key Reforms in the WFAA

We support the WFAA's emphasis on managers and their responsibilities to better assess, develop and manage their subordinates. The goals of the Act cannot be realized if managers are incapable of fulfilling their extraordinarily important roles. We are encouraged to see that the WFAA provides for training managers and holding them

accountable for their performance management responsibilities. Indeed, under the WFAA, a manager's own performance review would be based in part on how well he or she is managing the people who report to them. We believe the manager capacity and accountability provisions are absolutely key to realizing the Act's objectives, and later in this testimony I will offer a few suggestions as to how to make the WFAA's provisions in this regard even stronger.

Mr. Chairman, I would like to speak for a moment about the Act's acknowledgement that some agencies are more ready than others to design and implement the kind of modern civil service system described under the Act. In short, agencies will need help, and some will need lots of it. The Partnership is pleased to see the OPM assigned a government-wide coordination, support and oversight role. Many agencies will rely heavily on OPM for guidance at the front end of the process. And it is sensible to task OPM with managing the final certification process by which agencies are deemed ready to move forward with a newly-designed system. Care will need to be taken, of course, to ensure that OPM itself has the staff and resources necessary to carry out this very important role.

We think the certification provision in the proposed WFAA is particularly noteworthy. It is a key way in which the WFAA differs from the DHS and DOD personnel legislation. The WFAA directs that an agency's revised pay system must meet certain requirements, and be certified by OPM, before it is implemented. While we think the certification provision could be strengthened slightly, and I will detail our suggestion later in this testimony, we believe that the requirements for certification – including a fair, credible

and transparent performance appraisal system, a means of ensuring employee involvement and a mechanism for ensuring the system is adequately resourced – are essential and should be retained.

Realizing the Goals of the Act

Mr. Chairman and Members of the Subcommittee, we believe there are a few key elements that will determine whether the goals of the WFAA are realized, and we hope you will give them your attention as you move ahead with your consideration of the Act.

First, we think it is impossible to overstate the importance of manager capacity and manager accountability in meeting the objectives of the Act. It is wrong to conclude that changing our civil service system alone will improve management; rather, we must also improve the capacity of managers to manage. Our Extreme Hiring Makeover project, in which the Partnership and several private sector partners worked with federal agencies on a pro-bono basis to revamp their hiring processes, revealed a dramatic variation among managers and their preparedness to implement the kind of performance management system contemplated by the WFAA. Many managers across government have been distanced from personnel decisions as a whole and have devoted little time to the people issues that are so essential to realizing desired outcomes. We are pleased that under the WFAA, managers are held responsible for investing the time and energy necessary to develop and manage the employees who report to them. And just as important, managers must be trained to do so.

The WFAA presents federal managers with a significant change in culture and mindset, and it is incumbent upon all of us – the administration, Congress and outside organizations – to do what we can to help them succeed. And in large part, that means resources. Selecting, training and otherwise preparing federal managers to manage effectively will require a significant investment of time and money in agencies and in the OPM. Given the size of the federal workforce and its management corps, this price tag will not be cheap. But it is an investment that will more than pay for itself over time. During the course of a career, a single federal employee can amount to a million- or even multi-million dollar investment for the federal government. It only makes sense that we spend as much time ensuring the success of that investment as we do for IT networks, financial management systems, or similar tools designed to improve government efficiency, accountability and performance.

Mr. Chairman, the Partnership believes strongly that employee engagement and buy-in are critical elements in the success of the WFAA. It is essential that employees have confidence in their managers to set performance expectations clearly and assess actual performance fairly. Training managers to use the new system will certainly help, but will not be enough to build credibility into the system. We strongly encourage this subcommittee to exercise careful and continual oversight regarding the means by which agencies and their management teams are communicating with affected employees and seeking their input in the design and implementation of the WFAA.

Finally, we think it is imperative that we not wait until this act is implemented to begin creating the performance based workplace that is so needed. Indeed, there is much that can be done under existing flexibilities to promote these goals, and doing what can be done now will undoubtedly help facilitate a rapid and easier transition to the key reforms outlined in the WFAA.

Suggested amendments

The Partnership for Public Service believes that the Working for America Act will contribute in positive ways to the government's ability to attract and retain excellence in the federal workforce. However, we also believe that the draft as proposed by the administration should be amended slightly to improve its chances of success. Following is a brief description of the Partnership's proposed amendments; draft legislative language implementing these amendments is included as an appendix to this testimony.

First, the Partnership proposes a new section directing the OPM to define the core competency standards that each supervisor and manager must meet in order to effectively manage, and be accountable for managing, the performance of employees. Each agency would be responsible for initially selecting and then later assessing its managers and supervisors against those standards and developing and implementing a plan to correct any deficiencies to ensure that the agency has the ongoing management capacity to maintain an effective performance appraisal system. The purpose of this section is to ensure that federal managers have the training and capacity to implement the WFAA's

requirements successfully. And to give added weight to this provision, we strongly suggest that it be included under the "certification" requirement, under which OPM must certify a pay for performance system, and the performance management system therein, before it can take effect.

Second, we encourage a new section in the WFAA devoted to increasing the capacity of the human resources workforce in federal agencies. The federal human resources workforce is fraught with skills gaps and uneven capacity to support the goals of the WFAA. We suggest a section requiring the Chief Human Capital Officer of each federal agency to assess the capacity of the current HR workforce and develop strategies and specific plans for hiring, training, and professional development in order to rectify any deficiencies. This suggestion is modeled after a similar provision for the information technology workforce contained in the Clinger-Cohen Act (P.L. 104-106, Divisions D and E).

Finally, we reiterate our strong belief that employee engagement is a key element in ensuring the WFAA's success. One way to foster employee engagement is by enabling two-way communication between employees and the agencies in which they serve. Annual employee surveys are an effective way of encouraging communication and we believe the draft WFAA as proposed by the administration would weaken the existing requirement for annual employee surveys by allowing them to be waived by the Director of OPM for any department or agency claiming hardship or alleging that the survey would not be in the best interests of the government. It is our understanding that this

provision is primarily intended to allow the exclusion of the very small independent department and agencies (e.g., those with less than 50 employees). We suggest altering the draft WFAA to specifically allow those small agencies to be exempt from annual employee survey requirements on a case-by-case basis, but to maintain the requirement for annual surveys for all Cabinet-level departments and the larger independent agencies. Agencies should seek multiple opportunities to solicit employee feedback, and annual surveys are one high-yield way to assess employee attitudes and establish benchmarks by which to measure improvement in subsequent years.

Conclusion

We believe the Working for America Act, if carefully crafted and well-implemented, will do much to improve government performance and allow our talented federal workforce to perform at its best. Thank you for the opportunity to share the Partnership's views.

APPENDIX

Partnership for Public Service's Proposed Amendments to the Working for America Act

Section 4304. Responsibilities of the Director of the Office of Personnel Management.

Page 16, line 12 – strike "may" and insert "shall"

The purpose of this amendment is to ensure that the Director reviews each agency's performance appraisal system. The current WFAA draft leaves this review to the Director's discretion.

* * * * *

Insert the following new section in Chapter 43, subchapter II:

Section 4316. Capacity to manage performance appraisal systems.

(a)(1) The Office shall define the core competency standards that each supervisor and manager must meet in order to effectively manage, and be accountable for managing, the performance of employees under Section 4312(b) of this chapter.
(2) Each agency shall –
(A) assess each supervisor and manager against the core competency standards defined by the Office under subsection (a)(1) of this section and any additional competency standards defined by the agency; and
(B) develop and implement a plan to correct any deficiencies identified during such assessment to ensure that the agency has the ongoing management capacity to implement and maintain an effective performance appraisal system.
(3) The head of each agency shall report to the Office, on a semiannual basis or as requested by the Director, regarding the agency's progress in implementing the requirements of this subsection.

The purpose of this section is to ensure that federal managers have the training and capacity to implement the WFAA's requirements successfully and in accordance with the principles and goals of the WFAA.

* * * * *

Insert the following new section:

Section ____. Human resources workforce.

(a) The Chief Human Capital Officer or the head of an agency shall as part of the annual strategic planning and performance evaluation process --

(1) assess the requirements established for agency human resources professionals regarding knowledge and skill in human resources management and the adequacy of such requirements for facilitating the achievement of the performance goals established for the agency and for agency personnel;

(2) assess the extent to which agency human resources professionals meet those requirements;

(3) develop strategies and specific plans for hiring, training, and professional development in order to rectify any deficiency in meeting those requirements; and

(4) report to the head of the agency, Congress and the public on the progress made in improving agency human resources management capability.

The federal human resources workforce endured haphazard downsizing during much of the 1990s, resulting in skills gaps and uneven capacity to support the goals of the WFAA. This section requires agencies to improve and maintain a highly-skilled HR workforce, and is modeled after a similar provision for the IT workforce contained in the Clinger-Cohen Act (P.L. 104-106, Divisions D and E).

* * * * *

Sec. 2955. Employee surveys.

Page 13, line 14 -- strike subsection (d) and insert the following new subsection:

(d)(1) The Director may waive the requirement in subsection (a) in a given year for an executive agency not subject to the requirements of the Chief Financial Officers Act of 1990, as amended, when the Director determines that the requirement --

A) would create a substantial hardship; or

B) is not in the best interests of the Federal Government.

(2) The Director may not waive the requirement in subsection (a) for any executive agency subject to the requirements of the Chief Financial Officers Act of 1990, as amended.

This subsection is intended to allow small agencies to be exempted on a case by case basis from the annual employee survey requirement, but to maintain the requirement for Cabinet-level departments and large agencies. The CFO Act as enacted covered all Cabinet-level executive departments, plus EPA, NASA, FEMA, AID, GSA, NSF, NRC, OPM and SBA. Subsequent government reorganizations have slightly altered the list of agencies covered by the CFO Act – e.g., the creation of DHS – and this proposed language can be edited to reflect those changes as necessary.

* * * * *

Section 5257. Certification of pay-for-performance systems.

Page 63, line 3 – after "system" and before the semicolon, insert "that meets the requirements of subchapter II of chapter 43"

This language ensures that an effective performance appraisal system that meets the requirements of chapter 43 of Title 5 ("Performance Appraisal for the General Workforce") must be a part of any pay for performance system certified by OPM. This would include the proposed Section 4316, "Capacity to manage performance appraisal systems."

Mr. PORTER. Mr. Gould.

STATEMENT OF W. SCOTT GOULD

Mr. GOULD. Mr. Chairman and members of the subcommittee, thank you for the opportunity to offer joint testimony today. I'm a vice president at IBM Corp., and my colleague, Professor Linda Bilmes, is a member of Harvard University's faculty. Together we've been working on a book entitled, "The People Factor" for Brookings Institution, to be published next year. We're happy to be here this morning to share with you some of our preliminary findings and conclusions at this stage of our research.

I'd like to offer three main points this morning. First, we agree with those who advocate major changes to the current Federal personnel management system. The reasons are straightforward. It no longer fits much of today's government work force. It defers managers from bringing in the talents government needs, it chokes the system with red tape, and in some cases it creates counterproductive competition between government agencies for certain personnel.

While we agree with these arguments, in our book we have tried to put forward a positive rationale for why the Federal work force will perform better if it is reformed based on our empirical findings. We have developed a method to calculate the benefits to government of personnel reform, using a new formula we call return on taxpayer investment [ROTI]. We have also developed a method to estimate the cost of implementing a modernized personnel system and we believe the benefits will outweigh the costs by a wide margin.

My second major point: For the most part we agree the WAA contains many necessary changes to the Federal personnel system. However, these changes alone are not enough. As discussed more fully in our written testimony, we suggest the following elements are necessary in the system for managing the 21st century work force: a workable pay-for-performance system, significant management training and education, a market-responsive competency-based job classification system to replace the General Schedule system, improved hiring practices, a secure and reliable funding source to support successful implementation, and finally, the means for easier movement of talented individuals between the public and private sectors.

My third main point: We encourage those responsible for modernization of the personnel system to anticipate and prepare for the substantial implementation challenges posed by the Working for America Act. This is the area that we want to emphasize most in our remarks this morning, the need to take reasonable steps in advance to enable government managers to implement successfully the reforms envisioned by the proposed legislation.

These steps should include the following: an active consultation and involvement strategy, two-way dialog. Active involvement and participation by managers and employees at all levels in the organization, in my view, are essential.

No. 2, extensive training. Training people on their new duties and responsibilities is essential to build competence, and, I would say, instill confidence in the new system.

Three, employing a step-by-step change management process, including the use of new systems.

Four, dedicated resources to support successful implementation of a new personnel system. This will require sufficient dedicated resources from inside government and, in most cases, guidance from experts who have done this before. This is not a time for learning on the job or undercapitalized efforts.

Finally, time to effect the change. In addition to extensive training and coaching, Federal managers will need time to adapt, and so will our employees.

In conclusion, Mr. Chairman, I'd like to associate myself with your introductory remarks. We must remember that public servants make possible the millions of individual transactions and relationships that serve the people of our country. They provide the essential capacity of government to serve its citizens and they implement largely the laws that Congress creates.

The change envisioned by this proposed legislation asks a lot of our government employees. In return, leadership must do its utmost to earn and keep mutual trust, respect, and accountability with these employees in order to succeed. This must include consultation with all the parties, extensive training, resources to fund the effort, and time to make a successful adjustment to the new system so that we do not jeopardize mission performance along the way. Thank you.

Mr. PORTER. Thank you very much. When will you your book be completed?

Mr. GOULD. In the summer.

Mr. PORTER. Thank you very much.

[The prepared statement of Mr. Gould follows:]

W. Scott Gould
Vice President, Public Sector Strategy & Change
IBM Business Consulting Services

Linda Bilmes
John F. Kennedy School of Government
Harvard University

Testimony before the Subcommittee on the Federal Workforce and Agency Organization
U.S. House of Representatives
Committee on Government Reform

October 5, 2005

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to comment on the Working for America Act (WAA). After briefly introducing myself, I will make three main points. First, there is a clear need for reform of the personnel system. Second, there are several areas of reform covered in the WAA with which we agree. Finally, there are a number of crucial aspects of implementation that must be addressed in order for the WAA to succeed.

I -- Introduction

Professor Linda Bilmes, from the Harvard Kennedy School of Government, and I have been working for the past year on a book entitled The People Factor, to be published by the Brookings Institution next year. The book will contain our research findings and recommendations for a 21st Century government personnel management system. Consequently, our work is directly related to the WAA presently under consideration by this Committee.

During the past year, Professor Bilmes and I have turned our attention to the federal government workforce because of our shared commitment to excellence in public service. Professor Bilmes is a member of the faculty at Harvard University's Kennedy School of Government, former Director at the Boston Consulting Group and former Assistant Secretary for Administration and Chief Financial Officer at the U.S. Department of Commerce. She previously co-authored a book that correlated investment in human resources with corporate financial performance. I am a Vice President, Public Sector Strategy and Change at IBM Corporation where I lead the Global Leadership Initiative. Formerly, I preceded Professor Bilmes as Assistant Secretary for Administration and Chief Financial Officer at the U.S. Department of Commerce. I am a retired Captain in the U.S. Naval Reserves and a fellow of the National Academy of Public Administration.

The book in progress will draw on academic research and best practices in the public sector, military, and the private sector. We have also conducted a study of 1000 college

students' attitudes toward government as an employer, and we have interviewed a wide range of stakeholders, including government executives, senior civil servants, union officials, academics, organizational experts, and congressional staff who are familiar with the federal workforce situation.

I am happy to comment on the WAA in light of our preliminary findings and conclusions at this stage in our research.

II -- Overview

There are three points we wish to make at this time.

1. We agree with those who advocate major changes to the current federal personnel management system. The current system is often a barrier to recruiting, retaining, rewarding, and reshaping the workforce our government needs to meet the challenges of the 21st century. Some of the barriers are being addressed by the reforms at DHS and DoD. But a large number of federal employees still work under Title V. It is time to move forward and address the remaining segment of the federal workforce. For this reason, we are in favor of the provisions of the Working for America Act that accomplish this goal.

2. For the most part, we agree that the components of the WAA propose necessary changes to this system. However, these changes alone are not enough to turn the federal government, if I may borrow a phrase from Senator Akaka, into "the employer of choice, not the employer of last resort." I will outline our preliminary recommendations about the essential elements of a personnel system that allows the government to recruit and retain its fair share of the best and brightest in the U.S.

3. We encourage those who advocate the modernization of the personnel system to anticipate and prepare for the implementation challenges posed by the WAA. The architects of the WAA proposal should heed the lessons learned from dozens of large-scale organizational change efforts. GAO and others have researched the time-tested practices that work best to promote the adoption of innovations in large organizations. The inescapable conclusion of these studies and prior initiatives is that successful implementation will require consultation with all of the parties, extensive training, resources to fund the effort, and time to make a successful adjustment to the new personnel system.

We address each of these points below.

III -- The Case for Change

In the extensive research, survey, and interview work we have done for the book, we often asked whether the case for change has been made. Surprisingly, most people we

have interviewed feel that a traditional "business case" -- with benefits net of costs has not been made.

The arguments for reform still rest largely on the principle that the current system is broken and needs to be fixed. While we agree with many of these arguments, in our book, we have tried to put forward a ***positive*** rationale for why the federal workforce will perform better if it is reformed, based on our empirical findings. We have calculated the benefits to the government of personnel reform, using a new formula we call "return on taxpayer investment" or "ROTI." We have also estimated the costs of implementing a modernized personnel system, and we find that the benefits outweigh the costs by a wide margin.

The primary concern expressed to us is that the current system no longer "fits" much of today's government workforce and is often a deterrent to bringing in the talent government needs. In addition, we heard concern that "red tape" chokes the system, and that many existing flexibilities are unused or underutilized because of a lack of funding, or a lack of knowledge about how to employ them as they were intended. There is also agreement that Title V needs to be "cleaned up" due to its overwhelming complexity, which is the product of years of practical implementation, interpretation, and court rulings. There is a sense that few managers or employees in government can master these rules and fewer still are willing to bear the cost to plan, document, and work their way through the rule-based processes that define today's personnel system. Therefore, the WAA should seek to reduce the administrative burden on managers and HR professional associated with mastering and adhering to personnel rules, freeing them to focus more of their time on developing the workforce.

We are not saying that the General Schedule and length-of-service increases first put in place many years ago are unsuitable for *everyone* in government. Instead, we are saying that these elements of the current system are badly suited to the needs and expectations of *many* of the people that government needs for today's and tomorrow's workforce.

Finally, let me focus on the competitive landscape. Past organizational changes in DHS and planned personnel reforms at DHS and DoD have created competition between government agencies for personnel. For example, when TSA created hundreds of new law enforcement positions at higher grades with the associated higher pay, we saw an exodus of qualified personnel from other law enforcement agencies; their sudden departure left their home agencies short of trained personnel. When pay banding and pay for performance initiatives are implemented at DHS and DoD, this is likely to happen again. Other federal agencies will be at a competitive disadvantage in their efforts to recruit and retain entry-level and experienced personnel in certain occupations unless a government-wide system is in place.

We also see evidence that government agencies are now competing more directly with the private sector to keep well-trained personnel in government. The current system is partly responsible for allowing or encouraging an exodus of talented government workers whose skills are in high demand across sectors. Civilian and military personnel have

been drawn away from their government jobs by contractors that assume greater risk but offer higher annual compensation packages. When these former government employees return to government service as contractors, taxpayers end up paying much more for the same basic skills in the short-term, per-person basis. There have been several studies at Harvard, conducted by Professors George Borjas and Jack Donahue as well as Professor Bilmes, documenting the growing wage gap between the senior levels of government and the private sector over the past 30 years.

The WAA may be able to help government compete in this tough labor market, but only if it provides sufficient resources. Resources are needed in three areas: first, to narrow the wage gap between government and the private sector for the vast majority of employees who are doing what we ask of them and doing it well. Second, to provide performance bonuses to the group of employees who are doing truly extraordinary work. We recognize the Lake Wobegon effect and we note that not everyone can earn a performance bonus. However, the WAA should provide resources to make it possible for the government to seriously reward individuals who have made a significant contribution to the country. Third, there must be resources provided for training of supervisors to be able to judge and evaluate performance of their subordinates. Employees need to be able to ask "why did I get a 1.7 and Betty Ann got a 1.9?" Without a robust training program that teaches managers to perform, document and explain such evaluations, the system will not work.

Let us emphasize the concept of certification. Professor Bilmes has recently taught an executive program at Harvard with 175 GS-14s and 15s from throughout government. They expressed the wish that supervisors should go through a program and earn a "credential" (their word) to demonstrate proficiency in doing performance evaluations.

Therefore, government-wide personnel reform is needed to level the playing field in the competition for talent. First, inside government, it will minimize the chances of unfair inter-agency competition, which could arise between government agencies that have similar occupational groups, but have very different personnel management rules. Second, it will allow *all* federal agencies to compete more fairly with organizations outside government in the increasingly competitive marketplace for talent.

IV – Discussion on Essential Elements of the Working for America Act

Every organization must have the ability to handle basic personnel management functions effectively. Government is no different. Our review of research and our personal experiences managing in government have led us to conclude that the people who work in government organizations now and those who will work in them in the future are motivated by a desire to make a difference, a desire to grow and develop professionally, and a desire to be recognized for their contributions – just like workers in the private sector.

So from the beginning, when Professor Bilmes and I discussed what government organizations must do to be effective, we relied as much on our experiences with and research on *other* organizations -- in the private sector, the not-for-profit sector, and the

military -- as our experiences in government. Instead of using Title V as our starting point, we started with what we have learned about high-performing organizations in other sectors. And we worked backwards from there.

We set out to determine the factors that contribute to the results achieved by high-performing companies. Our research shows the important role that excellence in people management plays in the overall success of organizations in all sectors.

Professor Bilmes and I are developing a framework for a people management system for a 21st century government workforce. This framework will encompass many of the features of the system proposed in the Working for America Act and a number of new elements as well. At this stage in the legislative process, we suggest the following elements are necessary in a system for managing the 21st century government workforce:

A **workable pay-for-performance system** requires first, a robust performance management system that articulates clear employee performance expectations and places those expectations in the context of the performance goals of their teams, their agency, and their departments. Personnel reform is about organizational performance. Second, federal managers must learn new skills. The perceived fairness of this system is entirely dependent on the ability of managers to provide useful feedback to employees and to make meaningful distinctions in performance. Holding managers accountable for providing performance feedback to staff is a necessary component in a system that fosters individual growth and development. We find these features in high-performing organizations in all sectors.

This will be a tall order for a cadre of federal managers who, in general, have not been accountable for the mandatory and effective use of a high quality performance evaluation system before. For this reason, **managers must be trained** thoroughly, coached, and their skills as people managers must be evaluated for as long as it takes for effective performance management to become embedded in the culture of the federal workplace. We also advocate that organizations refine their performance management systems and develop managers' skills *before* they tie pay decisions to performance ratings. This is the approach that was used at the IRS, when they implemented their pay-for-performance system.

We also believe that in addition to certifying managers, there must be a review process in which individual employees can appeal. This is especially important at the outset, but even over the long-term, accepting that we are all humans and therefore fallible, we must build such a failsafe mechanism into the new system.

And, finally, we believe that managers and employees must have a set of tools that allow concerns to be addressed short of formal complaints and grievances such as alternative dispute resolution. These tools have been shown to reduce the number of formal complaints and grievances by substantial margins.

We have called for a **market-responsive, competency-based job classification system** to replace the General Schedule (GS) system. The WAA approach to compensation allows for variances by occupational group in market demand and geographic location. However, it is unclear what source will be used for this market data on occupations and demand. Unless the government uses the same market data used by the private and non-profit organizations in their compensation strategy and recruiting campaigns, government is likely to be at a competitive disadvantage.

In our research, we have noticed that there are more studies and demonstration projects focused on **improving hiring practices** than on any other personnel function. With so much attention on streamlining this process, one might expect to see substantial improvement across government. Yet, we continue to hear stories of vacancies that remain unfilled for as long as nine months. And the impression among graduating college students continues to be that the only way to get a job in government is to know someone. The Partnership for Public Service and other groups have reported on improvements made, but these improvements are not widespread. The hiring process in most government agencies remains a major barrier to recruiting. We think that the WAA ought to set explicit performance standards for hiring in each major occupational group and these should be benchmarked against large private sector firms. After all, government is competing with these firms and a candidate's often lasting impression of a potential employer is his or her experience during the hiring process.

Over the last few months, it has become clear to us that providing **a secure and reliable funding source for successful implementation** of this major change is essential to its success. This is especially important if the implementation of the proposed rules is meant to serve as a "test" of the overall approach, or if adoption of a new government-wide system is contingent on the success of one agency's implementation. Evaluating one agency's success will not be a valid test of reform if we fail to provide adequate resources to conduct the test.

We want to make one final point on the key elements of a new personnel management system. The WAA should do much more to encourage federal employees to pursue career-long growth and development opportunities. While funding training programs is important, we also advocate the creation of a mechanism that would allow experience to be the teacher. Our research suggests that the personnel system should provide the means for easier **movement of talented individuals between the public sector and private sector.** We have come to this conclusion based on our analysis of data collected from undergraduate and graduate students on their career aspirations. These data show that young people – even those who express their desire to do public service work – want opportunities to work in various sectors over a career. They are anxious to make a contribution, and see opportunities to do this in all three sectors.

Our research also shows that those agencies that have experimented with job rotations and agencies that rehire people after a stint in the private sector are enthusiastic about the results. One of our interviewees put it to us this way. "Most agencies cannot afford to send an employee away for 6 months or a year to retrain and update their skills. Some

things are just easier to learn on the job in the private sector." This strikes us as an opportunity for a win-win. Job candidates want a varied career and agencies want people with up-to-date skills. WAA should provide mechanisms to satisfy this confluence of desires.

What we are recommending is that agencies be permitted to hire federal "hybrid" employees. These would be people with particular skills, from inside or outside of government, who could work on short-term government assignments for up to three years. They would not be contractors. They could be drawn from academia, the non-profit sector, other federal departments, state and local government, or the private sector. They would be full-fledged government employees, able to supervise other federal employees, and covered under FEHB and FERS, and subject to merit principles and other government values. The purpose of creating this new category of employee would be to enable the government to reach out and tap into the skills that are needed -- and to allow workers in government to branch out and receive extra compensation for replicating important innovations in other places.

We agree with the emphasis in the WAA that certain key elements of the current system should be retained in the new system, including protection from undue political influence, diversity, protection for whistle blowers and veterans' preference.

V -- The Challenge of Implementation

For more than two decades, organizational researchers and change consultants have been studying and working on major organizational changes. From this large body of empirical work and practical experience, we can say a few things with assurance about organization change. One of those things is that implementation is the hardest part. In fact, implementation failure is the cause of many organizations' inability to achieve the intended benefits of innovations.

Implementation is the tough part of organizational change for several reasons. It is the stage when most employees are first touched by the change, which tends to trigger emotional reactions. In fact, many employees do not believe changes will occur until they have to *do* something different on the job. This phase is where we often experience for the first time the effects of lack of alignment between managers and staff – between those who have been actively involved in planning the change and those who must implement the change. This is often labeled as "staff resistance." For these reasons, implementation is the stage when organizational changes are most likely to disrupt mission-critical operations.

The "disconnect" between managers and staff happens because while executives and some managers usually are directly involved in conceiving the new system, staff members are not. When it is time to implement the new system, those who were involved in the planning phase are usually on board. They understand why the change is needed and how it is likely to affect the organization. Those who were not involved, on the other hand, are at the bottom of the learning curve on the new system. As one of my

colleagues at IBM discovered in her study of a government agency going through a major change, employees may receive communications about what changes are coming, but one-way communication is never sufficient to build understanding and a desire to try a new way.

There are four specific steps that the WAA should encourage.

Active Consultation and Involvement Strategy

Two-way dialogue, active involvement, and participation by managers and employees at all levels in the organization are effective techniques that help everyone understand the need for change. There are many examples of successful initiatives in government and elsewhere that can be attributed to the high-involvement strategies that were employed.

Extensive Training and Reliable Technology

Training people on their new duties and responsibilities also reaps excellent results. Training can overcome the very natural anxiety that many feel about learning new processes and technologies and doing things they have never done before. When training is done well, it is designed and delivered in a way that suits both to the needs of the learner population and the demands of the learning content. We contend that giving managers a two-hour computer-assisted training program will not teach them how to set performance goals, provide meaningful performance feedback, and make fair judgments when rating employee performance.

Dedicated Resources to Support the Transformation Effort

Successful implementation of a new personnel system will require sufficient dedicated resources from inside government agencies and, in most cases, guidance from experts who have done this before. This is not a time for learning on the job.

The technical systems that HR personnel, managers, and staff members will rely on to capture and aggregate data will have to work right the first time. Again, this is not the time to try out untested technologies. And these tools must be simple and familiar -- if possible, similar to what employees are accustomed to already. As we all know, people can digest only so much new information at one time.

Time to Effect the Change

In addition to extensive training and coaching, federal managers will need time to adapt to a much more demanding people management role. Employees will need customized information for each occupational group, focused leadership, coaching and time to adapt as well. This implementation will be like a marathon; most organizations are ready to run a 5K.

In the case of personnel system reform, employees, managers, and citizens alike will judge the wisdom of this undertaking by their real-time experiences over the next few years as the new system is implemented. They will have no choice, because the outcomes we expect – a more capable, flexible workforce – will only emerge over a much longer period of time. In our view, the implementation process used during this period will have a far greater impact on how key stakeholders view the system than the debates that have occurred to date.

Management of Occupational Groups across Organizations

We find it difficult to conceive how a highly decentralized agency-by-agency approach to implementation can co-exist with the espoused desire for a government-wide personnel system. While we are firmly of the view that there is no "one size fits all" solution for the federal government, the variations needed in the system exist at the occupational level, not the agency level. Why should there be different systems for personnel management of intelligence staff – one for DoD, one for DHS, and who knows how many more?

We suggest that a better way to bring about both needed flexibility and consistency across government is to implement the reforms one occupational group at a time.

In government, the pool of talent in any one occupation or discipline often crosses agency and department lines. For example, there are law enforcement experts in multiple departments. There are financial analysts in every department. Members of each occupational group usually have similar educational backgrounds and similar competencies. These shared experiences and qualifications make it possible for them to move across organizational boundaries within government. This kind of lateral movement should be encouraged for career development, but it should not be prompted by unjustified inequities in compensation and other personnel rules.

VI -- Conclusion

Our research suggests that there is relatively little disagreement about the need for change in the personnel system. In addition, there is a general consensus around *what* should be done. For example, who would argue with the fairness of rewarding your hardest working and most capable employees in a way that is understood and accepted by the rest of their fellow workers?

But there is a good deal of disagreement about *how* it should be done. Also, government tends to overemphasize the importance of conceiving the change (policy development) and pay less attention to the challenges of putting the change on the ground (implementation). The realities of implementation should be fully considered during the policy development phase – especially in the case of personnel reform.

For these reasons, we encourage Congress, the Administration, and key stakeholders to resolve their final concerns about specific elements of the reform together and turn to the enormous task of anticipating, planning, and executing the changes contemplated by the

WAA. In particular, more consultation with Congress, unions, the workforce, as well as agency leaders and managers is needed; as is investment in training and development of supervisors and managers to prepare them to discharge their new responsibilities and meet new expectations. We must have a plan to fund the additional resources that will be required to get the job done and we must allow government personnel adequate transition time to adjust to their new work environment while continuing to meet ongoing mission requirements.

Above all, we must remember that public servants make possible the millions of individual transactions and relationships that serve the people of our country. They provide the essential capacity of government to serve its citizens. They implement the laws that Congress creates and support a just, fair, and safe society. The change envisioned in the WAA asks a lot of government employees. In return, leadership must do its utmost to earn and keep mutual trust, respect and accountability with these employees in order to succeed.

Mr. PORTER. Mr. Styles, president, Federal Managers Association.

Pardon me. Before you begin, I would exercise caution for those folks on the labor side in that you have a lot of allies here today, and you're hearing a lot of comments that probably concur with some of your thoughts. Having read some of the backup material, I would encourage you to temper some of those thoughts because you have a lot of supporters here today, and just exercise a little bit of caution.

Mr. Styles.

STATEMENT OF MICHAEL B. STYLES

Mr. STYLES. Mr. Chairman, Ms. Norton——

Mr. PORTER. I don't believe your mic is on just yet.

Mr. STYLES. Is that good?

Mr. PORTER. That's good. Thank you.

Mr. STYLES. Good morning, Mr. Chairman, Ms. Norton, Congressman Van Hollen. It's an absolute pleasure to be here with you.

I had remarks that I was going to read that were excerpts from my testimony, but given the fact that we may not have enough time to answer questions in the fullest, I'd like to at least point to some issues that I think are important that would be part of a question-and-answer period perhaps.

I appreciate the comments that have been made thus far, but I also think that it should be noted that as we've moved into this HR modification process in all agencies, as we talk about the Working for America Act, to continue on with the things in DHS and DOD, I think we've started out in a negative mode. What we've started to do is talk about how the managers in the Federal work force can't manage effectively, how the work force has an awful lot of nonperforming individuals who get increases automatically. I think these are fallacies, and I think that we should readdress our focus and we should start to approach this process with a positive rationale for the development of a new system, taking into account those negative aspects of the systems that we're working under today.

First of all, I believe in the empowerment of managers and employees so that we can bring about innovative changes within our work forces. I believe that we have been involved, and you just watched a cycle time management demonstration right behind me that I thought was excellent, but those of us who have been managing in the Federal work force have used cycle time management and total quality processes for years. So I think it's important that the reputation and the image of the Federal employee is recognized for what it is. We touch everything that happens every day in America, and we do a darn fine job at that, and I applaud everybody in this audience for their job and I thank you for your original comments.

We also heard from Congressman Van Hollen. He said that we have to build trust if we're to move forward. That can only be done if we have a collaborative effort that's being put forward by the labor folks, management, the legislature, and the executive branch.

Certain concerns that we have as we move into this new era. We have myths that have to be debunked. The private sector does not

manage better than the Federal sector in all instances. We can learn from each other in very many ways. Each agency can learn from each other.

Workers are more efficient in the private sector? I don't think so. I think, once again, we have a balance here that we have to look at. Our workers are pretty darn good. FMA represents managers and supervisors across 35 different agencies, and I've had tremendous pleasure over time, 16 years of that time as president of the FMA, to go to all of these agencies and see what we do in America, day in and day out, and I am very proud of what we accomplish.

Points to bring out before my 5 minutes are up. If we are going to move forward, obviously funding for training is essential. When I talk about training, training for bringing into place new HR systems. And, by the way, we need training for the HR systems that are in place. We haven't had enough training, it isn't ongoing, and one of the reasons is because funding hasn't been provided for us. That funding, in our eyes, should be fenced. You should not be able to go out and use training funds as a discretionary fund for some other aspect of business. Agency oversight of expenditures has to be taken into account and tracking of training so that we ensure all personnel are trained. We can't allow those training dollars to be stolen from—and I have here, Peter to pay Paul.

What we've already seen in demonstration programs across the country is the fact that we haven't given them extra money to provide training, we've just given them training dollars. And now suddenly they don't have the same amount of funding for safety and security training, for instance.

Pay for performance. We already have pay for performance, but people don't seem to recognize that. It's kind of an ironic thing. We do have a process to provide people with—my time is running here. OK.

In order to be effective in pay for performance, we have to make sure that we fund for the raises, whether we're in our system or another system, and I think it's a fallacy, as I said before, to think that folks automatically get pay raises, because nonperformers don't have to get a pay raise in our current system either.

Do I think that there are merits to our proposal, Working for America Act? I do. I think market-based pay is essential if we're to move forward and be competitive in the marketplace. But, just to quickly say this before time goes out here, an example, what we do now is take a GS–11 and GS–12 and make a band out of it. We take a 13 and 14, make a band out of it.

I thank you very much. Maybe I'll get a question on that later to finish that out. Thank you for your time.

Mr. PORTER. Thank you, Mr. Styles. I appreciate your comments. The success of the current system or the future system rests in your hands as long as it's funded properly and you have the proper training to work with. So I concur.

[The prepared statement of Mr. Styles follows:]

Testimony
Before the United States House of Representatives
Government Reform Committee
Subcommittee on the Federal Workforce and Agency Organization
Wednesday October 5, 2005

Mom, Apple Pie and Working for America: Accountability and Rewards for the Federal Workforce

Working for America Act: A Cautious Perspective Into the Future of the Civil Service

Statement of
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Chairman Porter, Ranking Member Davis and Members of the House Subcommittee on the Federal Workforce and Agency Organization:

My name is Michael Styles and I am the National President of the Federal Managers Association. On behalf of the approximately 200,000 managers and supervisors in the Federal government whose interests are represented by the Federal Managers Association (FMA), I would like to thank you for inviting us to present our views before this hearing of the House Government Reform Subcommittee on the Federal Workforce and Agency Organization regarding the proposed Working for America Act.

Established in 1913, FMA is the largest and oldest Association of managers and supervisors in the Federal Government. FMA was originally organized within the Department of Defense to represent the interests of civil service managers and supervisors, and has since branched out to include some 35 different Federal departments and agencies. We are a non-profit professional organization dedicated to advocating excellence in public service. As those who will be responsible for the implementation of the proposed changes to the current human capital management systems, managers and supervisors are pivotal in ensuring its success. I submit this written testimony to you on behalf of those managers with respect to the process of developing the regulations, the proposed changes themselves, and the eventual rollout of the new system.

This is truly a historic moment. The employees of America have not seen such attention, diligent focus and commitment to action on proposals that would affect the systems governing their employment in more than a generation. With nearly half the federal workforce already on tap to move into new personnel systems at the Departments of Defense and Homeland Security, we must stress a deliberate and insightful process for drafting and considering the Working for America Act. While decisions will be made by officials in Washington, the men and women overseeing operations in the field will be the ones responsible for

successful implementation of the new programs. It would be disadvantageous to send them a system that does not reflect the proper time and deliberation in assessing the merits and pitfalls in similar systems at DOD and DHS. This careful review could mean a world of difference to a workforce trying to successfully navigate through a new work environment.

The Working for America Act at its core holds considerable merit. The face of America's growing workforce is changing. As a once attractive model for employing the most talented members of the workforce, by today's standards the federal civil service system seems to be unreflective of the expectations of new job seekers. We believe that change needs to take place. The overhaul of the Department of Defense and Department of Homeland Security personnel systems has opened the door to avail the rest of the federal government to a culture of reformation. The current General Schedule pay system and performance review methods are in some cases inadequate. However, certain fundamental principles of merit remain crucial to preserving the integrity and accountability of any new employment system. We have seen through demonstration projects and pilot programs in various agencies around the country over the past few decades that implementing human resources management structures can help improve the productivity and mission of the affected agencies.

As we move forward with any changes to personnel systems, we expect that there will be:

- maintenance of current benefits for active duty and retired employees;
- support for travel and subsistence expenses;
- continuation of current leave and work schedules;
- no loss of pay or position for any current employee;
- no negative changes in current overtime policies and practices; and

- merit principles preventing prohibited personnel practices as well as an adherence to current whistleblower protections and honoring and promoting veterans' preference.

We at FMA recognize that change does not happen overnight. However, we are optimistic that new personnel systems may help bring together the mission and goals of the agencies within a culture of productivity and results. We cannot do it alone. We will need considerable leadership from the top down and collaboration between upper management and employees. It is only through that process that we will be able to realize the potential of the new systems successfulness.

TRAINING AND FUNDING

While we have said it before, we feel it timely to say it again. Two key components to any successful alternative personnel system are training and funding. As any federal employee knows, one of the first items to get cut when budgets are tightened is training. Mr. Chairman, you have indicated your commitment to the importance of training across government. Training of managers and employees on their rights, responsibilities and expectations through a collaborative and transparent process will help to allay concerns and create an environment focused on the mission at hand.

For years, FMA has championed the position that training funds should be fenced off from agencies discretionary spending authority, and we are encouraged by the proposal's inclusion of a provision to protect training dollars to ensure that agencies have resources available to them to prepare for the eventual roll out of any new system. However, we would also like to know that there is some level of accountability for the agency to not only spend those dollars, but spend them correctly. In that vein, we recommend the creation of a position that would oversee the training program, and authorize that person to use the fenced off funds as they deem appropriate.

For any new personnel system in any agency, we must keep in mind that managers will also be reviewed on their performance, and hopefully compensated accordingly. A manager or supervisor cannot effectively assign duties to an employee, track, review and rate performance, and then designate compensation for that employee without proper training. Part of the success for those employees in the demonstration projects and pilot alternative pay systems was the commitment to adequate training and persistent evaluation. The better we equip managers to supervise their workforce, the more likely we are to ensure the accountability of the new system – and the stronger the likelihood that managers will be able to carry out their non-supervisory responsibilities in support of the department's mission.

For employees, they will now be subject to their manager's objective determination of their performance in a much more direct way. Employees would be justified in having concerns about their manager's perception of their work product in any performance review if they felt that the manager was not adequately trained. Conversely, if employees have not been properly trained on their rights, responsibilities and expectations under the new human resources requirements, they are more apt to misunderstand the appraisal process.

Our message is this: As managers and supervisors, we cannot do this alone. Collaboration between manager and employee must be encouraged in order to debunk myths and create the performance and results oriented culture that is intended by the draft legislation. Training is the first step in erasing doubt and opening the door to such a deliberate and massive change in the way the government manages its human capital assets. We need the support of each department's leadership, from the Secretary on down, in stressing that ongoing training across the board is a top priority. We also need the consistent oversight and input of Congress to ensure that both employees and managers are receiving the proper levels of training in order to do their jobs most effectively.

The Executive leadership and Congress must also play a role in proposing and appropriating budgets that reflect these priorities. Agencies must also be prepared to invest in their employees by offering skill training throughout their career. This prudent commitment, however, will also necessitate significant technological upgrades. OPM has already developed pilot Individual Learning Account (ILA) programs. An ILA is a specified amount of resources such as dollars, hours, learning technology tools, or a combination of the three, that is established for an individual employee to use for his/her learning and development. The ILA is an excellent tool that agencies can utilize to enhance the skills and career development of their employees.

Clearly agency budgets should allow for the appropriate funding of the ILA as an example. However, history has shown that training dollars have been a low priority for many agency budgets. In fact, in the rare event that training funds are available, they are quickly usurped to pay for other agency "priorities." Toward this end, we at FMA support including a separate line item on training in agency budgets to allow Congress to better identify the allocation of training funds each year.

Neither the Office of Management and Budget (OMB) nor OPM collects information on agency training budgets and activities. This has only served to further diminish the minimal and almost cursory attention on training matters. Many agencies do not even have dedicated employee "training" budgets. Training funds are often dispersed through other accounts. It is no surprise that budget cuts inevitably target training funds, which is why FMA continues to advocate for the establishment of a training officer position within each Federal agency. This would allow for better management and recognition of training needs and resources, in addition to placing increased emphasis on critical training concerns.

The Federal government must, once and for all, take the issue of continuous learning seriously. FMA advocated for the existing Chief Human Capital Officers Council, which the leadership in this Committee was instrumental in bringing about

as part of the Homeland Security Act of 2002. While we applaud the Council's creation of two needed subcommittees to examine performance management as well as leadership development and succession planning, we would urge the Council to add another subcommittee to evaluate training programs across government. Without proper training, and funding for training, we cannot hope to effectuate expansive human resources changes and fully achieve them.

CHANGING THE PAY AND REVIEW SYSTEM

At the center of the Working for America Act is a move away from the current General Schedule pay system. The most notable alternative pay structure that our membership has had experience with – through demonstration projects and agency reform efforts – is a pay-for-performance model of compensation. We believe that the hardest working employees should be rewarded with the highest rate of pay, and those employees who fall below the curve on their overall performance should not be rewarded at the same rate. The link between performance and pay provides greater incentive to employees that their efforts will be appropriately recognized. For where is the incentive in doing a better job than your colleague when little is done to differentiate additional efforts?

Under the current system, there are rewards available to high performing employees that distinguish their performance. However, as could be the case with any alternative personnel system, the resources available to managers and supervisors to reward those employees are limited, which in turn renders them nearly ineffective. The move into an alternative pay system must be a deliberate process that takes into account past failures and makes systematic changes to prevent history from repeating itself. The move must also take into account both an internal and independent review mechanism for the implementation of a pay-for-performance system within the agency and elsewhere in the Federal government.

The current pay systems being used at the Navy's NAVAIR China Lake, Ca. facility and the Keyport Naval Warfare Center in Keyport, Wa. are two demonstration projects that represent good examples of what to expect in alternative personnel systems. China Lake has been a demonstration project for more than 20 years, whereas Keyport Naval Warfare Center has only been in a demonstration project for five years. According to data provided by the Human Resources division of the China Lake facility, 70 percent of the employees surveyed approve of the overall project.

However, as we have stated in previous testimony, of major importance to the implementation of any pay-for-performance system is ensuring that an adequate pool of funds is available to the supervisor to recognize the efforts of his/her employee. As it stands, agency budgets feel the pinch from cuts not only due to unforeseen events such as Hurricanes Katrina and Rita, which can effectively drain the availability of funds to support the rewards pool, but also by a growing budget deficit fueled by the War in Iraq and other financial commitments. If this pool of money is lacking, the performance of some deserving federal employees may go unrecognized, causing the new system to fail in meeting its objective, in addition to creating dissension in the workplace.

In short, the integrity of "pay-for-performance" will be severely hindered if all high performers are not rewarded accordingly. We believe that any new personnel system should continue to allocate at least the annual average pay raise that is authorized and appropriated by Congress for General Schedule employees to those employees under the new system who are "fully successful" (or the equivalent rating), in addition to other merit-based rewards based on "outstanding" performance (or equivalent rating).

The performance appraisal process is key to this new personnel system. The review determines the employee's pay raise, promotion, demotion or dismissal in a far more uninhibited way than is currently established in the General Schedule. We support the premise of holding federal employees accountable for performing

their jobs effectively and efficiently. More specifically, the removal of a pass/fail performance rating system that does not allow for meaningful distinction of productivity is a step in the right direction.

We are concerned, however, that within any review system there must be a uniform approach that takes into account the clear goals and expectations of an employee and a system that accurately measures the performance of that employee, with as little subjectivity on the manager's part as possible. According to our members at Keyport, the managers were provided an initial 20 hours of onsite, in-person training, and employees were provided four hours of training highlighting their responsibilities, duties and expectations. This level of training was a good start. However, ongoing and in-depth training for managers and employees is critical to the overall success and implementation of any new system.

Training helps alleviate concerns of bias. It is essential that within any alternative review process, the methodology for assessment is objective in order to reduce the negative effects of an overly critical or overly lenient manager. The most important component in ensuring a uniform and accepted approach is proper training and funding thereof, that will generate performance reviews reflective of employee performance. We would like to submit the following necessary elements for executing a pay-for-performance system that has a chance to succeed:

- adequate funding of "performance funds" for managers to appropriately reward employees based on performance;
- development of a performance rating system that reflects the mission of the agency, the overall goals of the agency, and the individual goals of the employee, while removing as much bias from the review process as possible;
- a transparent process that holds both the employee being reviewed and the manager making the decision accountable for performance as well as pay linked to that performance; and
- a well-conceived training program that includes skills training and is funded properly and reviewed by an independent body (we recommend the

Government Accountability Office as an auditor) which clearly lays out the expectations and guidelines for both managers and employees regarding the performance appraisal process.

We believe that *transparency* leads to *transportability*, as intra- and inter-Department job transfers could be complicated by the lack of a consistent and uniform methodology for performance reviews. While we need training and training dollars, we should allocate those funds towards a program that takes into account the various functions and missions within the overall mission of the departments. If we are to empower managers with the responsibility and accountability of making challenging performance-based decisions, we must arm them with the tools to do so successfully. Without proper funding of "performance funds" and training, we will be back where we started – with a fiscally restricted HR system that handcuffs managers and encourages them to distribute limited dollars in an inequitable fashion.

Pay banding is not a new concept to the private- and public-sector. It is currently underway in a few government agencies, notably in the Federal Aviation Administration as well as in the Internal Revenue Service – where FMA has a large number of members. The job classification and pay system was developed in the late 1980s, and has seen varying levels of success across private industry and in the public sector.

First and foremost, we cannot stress enough the importance of offering market based pay in reforming any current pay structure. An incentive for working for the federal government is the stability in employment, compensation and benefits. Despite the best intentions of the Federal Employee Pay Comparability Act of 1990, there still remains a considerable pay gap of 32 percent according to the recent numbers from the Bureau of Labor Statistics (BLS) that indicate market forces are not at work in federal employment. We concede that some federal jobs might pay employees higher salaries as compared to the private

sector, but from the BLS data, it is also clear that there exists a far greater disparity in wages for the underpaid in federal service.

According to a survey of college graduates, Federal and non-Federal employees conducted by the Partnership for Public Service[1], the Federal government is not considered an employer of choice for the majority of graduating college seniors. In the survey, nearly 90 percent said that offering salaries more competitive with those paid by the private sector would be an "effective" way to improve Federal recruitment. Eighty-one percent of college graduates said higher pay would be "very effective" in getting people to seek Federal employment. When Federal employees were asked to rank the effectiveness of 20 proposals for attracting talented people to government, the second-most popular choice was offering more competitive salaries (92 percent). The public sector simply has not been able to compete with private companies to secure the talents of top-notch workers because of cash-strapped agency budgets and an unwillingness to address pay comparability issues.

By shifting to a compensation model that looks at the local and national job markets for the pay range of a given position, the federal government makes themselves a more competitive employer. In certain fields, particularly higher paying professions such as law, medicine, science and engineering, market-based pay will allow for the federal government to offer prospective employees attractive recruitment packages that would include benefits such as $60,000 towards student loan repayments and hiring bonuses as already authorized by Congress. It is the coalescing of all these factors that will allow the government to maintain a top-notch, results-oriented workforce that rivals any other in the world.

Pay banding offers considerable benefits to managers and supervisors that otherwise were unavailable under the rigid GS pay and job classification system. Without the tedious task of having to obtain laborious job descriptions, managers have the flexibility to move employees into better positions and higher-paying

[1] Survey conducted by Hart-Teeter for the Partnership for Public Service and the Council for Excellence in Government, Oct. 23, 2001, p. 1-3.

salaries without as much red tape. This frees the supervisor up to accomplish his or her day-to-day tasks, while providing more incentive and motivation to the employee. Employees are given a broader range of options to explore various job functions that will demonstrate greater ability and more closely align their work to their compensation.

While the exact determination of the pay range for each pay band varies, we believe that predicating any alternative system on the current GS salary structure acts as a fair baseline for moving an employee into the new band. It is also important to create a system that is familiar to the employee and manager while still enabling the change that is needed to help ease all parties through the process further. Along those lines, it would be a disservice to recruitment and specifically retention efforts to reduce any employee or manager's pay, and in fact qualified employees should be able to receive higher salaries from this transition. The GS system has been in existence for decades, and moving into a new pay-banding system in and of itself creates some consternation. Using the base salaries of the GS system as the foundation will allay concerns that pay rates will be significantly reduced.

The General Schedule places its emphasis on longevity, and the new system will place more emphasis on job performance than duration of employment. Pay bands provide the opportunity to have accelerated salary progression for top performers. As in the IRS pay-band system, managers are eligible for a performance bonus each year. Those managers with "Outstanding" summary ratings will receive a mandatory performance bonus, while managers with "Exceed" summary ratings are eligible for performance bonuses.

Pay bands can also be designed to provide a longer look at performance beyond a one-year snapshot. Many occupations have tasks that take considerable lengths of time. Pay bands can be designed to recognize performance beyond one year. Arbitrary grade classifications in the GS system inhibit non-competitive

reassignments while broader bands foster non-competitive reassignments. This enhances management flexibility and developmental opportunities.

Of course, there remain challenges with any proposed pay-band system for that matter. First, pay-for-performance systems are only as good as the appraisal systems they use. Since performance is the determining factor in pay-band movement, if there is no confidence in the appraisal system, there will be no buy-in for the pay system.

Another considerable drawback to moving current GS employees into a pay banding system is that some workers will enter at the top of the band. This leaves little room for increase in the base pay of an employee. While they are still eligible for bonuses, the overall base pay goes towards final calculation of their retirement annuities, and could end up having a negative impact on their expected payout, even if they are performing well and receiving comparable bonuses. The idea behind pay bands is to give supervisors greater flexibility in increasing the pay of high-performing employees with the potential for moving up higher in the pay band than in the GS system. If you hamstring them from the beginning from being able to offer that incentive, you are crippling a system that is supposed to be designed to both encourage and reward results.

Closing the pay gap between public and private-sector salaries is critical if we are to successfully recruit and retain the "best and brightest." In this regard, we are pleased to see a shift in the determination of "locality" pay from strictly geographical to market based. Locality pay adjustments based on regions across the country did not take into account the technical skills needed for a given occupation. The new regulations allow for a look nationwide at a given occupation within the labor market that more accurately ties the rate of pay to job function, which could overcome geographic impediments in the past in closing the gap between public- and private-sector salaries.

MERIT SYSTEMS PROTECTION AND THE EEOC PROCESS

Under the draft legislation, fewer changes are made to the appeals processes for employees and managers to address adverse actions, labor relations, and other grievances. We support the decision by the authors to preserve the Merit Systems Protection Board as well as the majority of collective bargaining rights. FMA supports an open and fair labor-relations process that protects the rights of employees and creates a work environment that allows employees and managers to do their jobs without fear of retaliation or abuse.

There has also been a commitment on the part of the Office of Personnel Management, DHS and DOD to hold close the Merit System Principles as they undergo their reformation process. We cannot stress adherence to these timely standards enough for the rest of the federal government agencies under the Working for America Act. For generations they have acted as a protective lining for managers and employees to feel confident that their employer is accountable for any misdirected actions taken. Further, they provide a foundation of ideals that should be upheld by all employers that wish to create a results oriented culture that promotes creative thinking and rewards exceptional productivity. They are timeless standards that should remain the bricks and mortar of any alternative personnel system introduced to govern federal service.

The importance of having a place for employees to address their grievances to an objective and independent body is of the utmost importance in maintaining a legitimate and fair process for both the employee and the manager. However, the current process for an employee to file an Equal Employment Opportunity Commission complaint is flawed. According to the EEOC's published report on the Federal Workforce, the agency met the timeline of 180 day review process for complaints 60 percent of the time in 2003. It went on to say, "Overall, agencies failed to meet timeliness requirements for completing complaint investigations."

On average, it takes an agency 267 days to complete an investigation. Moreover, only two percent of claims filed are found to be meritorious.[2]

The bottom line is that a filtering process needs to be put into place that allows legitimate claims to be brought forth and frivolous claims to be dealt with as such. It is not fair for the employee who has been discriminated against to remain in their hostile position for nearly a year, nor is it acceptable for a manager to be passed over for promotions and raises due to a false claim. While the overall number of complaints has decreased in the last few years, disrupting the workforce and bringing about change without paying proper attention to inclusion, collaboration, providing necessary resources, and instilling confidence in the employees the claims are likely to increase as employees feel they have little recourse for their grievances. Something must be done to address this glaring problem.

RECOGNIZING MANAGEMENT ORGANIZATIONS

The recognition of management organizations such as FMA is a fundamental part of maintaining a collaborative and congenial work environment. Of the provisions in Title 5 that would be waived under the Working for America Act, the retention of the majority of collective bargaining rights does not guarantee that managers and supervisors that are members of the Federal Managers Association are recognized by the employing agency.

Title 5 CFR 251/252 grants non-union employee groups the formal recognition of their Department by ensuring a regular dialogue between agency leadership and management organizations. Specifically, these provisions stipulate that:

[2] Annual Report of the Federal Workforce Fiscal Year 2003, U.S. Equal Employment Opportunity Commission Office of Federal Operations

- such organizations can provide information, views, and services which will contribute to improved agency operations, personnel management, and employee effectiveness;
- as part of agency management, supervisors and managers should be included in the decision-making process and notified of executive-level decisions on a timely basis;
- each agency must establish and maintain a system for intra-management communication and consultation with its supervisors and managers;
- agencies must establish consultative relationships with associations whose membership is primarily composed of Federal supervisory and/or managerial personnel, provided that such associations are not affiliated with any labor organization and that they have sufficient agency membership to assure a worthwhile dialogue with executive management; and
- an agency may provide support services to an organization when the agency determines that such action would benefit the agency's programs or would be warranted as a service to employees who are members of the organization and complies with applicable statutes and regulations.

In summary, Title 5 CFR 251/252 allows FMA, as an example, to come to the table with Executive Branch leadership and discuss issues that affect managers, supervisors, and executives. While this process is not binding arbitration, the ability for managers and supervisors to have a voice in the policy development within each agency is crucial to long-term vitality. Such consultation should be supported by all agencies and departments, thus we strongly urge the inclusion of CFR 251/252 into the final regulations in order to maintain the strong tradition of a collaborative work environment that values the input of Federal managers.

CONCLUSION

With so many varied demonstration projects and pilot personnel systems having been underway throughout the federal government for years, it makes sense that Congress and the Administration want to move forward with design and implementation of personnel reforms across the entire government. Change for changes sake is not what we are after. We believe the most successful agency reforms must take into account the overall mission of the organization and are guided by the overarching principles of transportability, objectivity and transparency. The ultimate goal is to create the most efficient organization.

A shift in the culture of any organization cannot come without an integral design and implementation process that brings together the managers responsible for implementing the new personnel system and the employees they supervise. A total overhaul of the GS pay system to reflect a more modern approach to market and performance-based pay must be funded properly and must train managers and employees adequately in order for it to succeed. As we have explained, the lack of proper funding for "pay for performance" will work contrary to its intent. Ensuring that employees feel their rights are protected and safeguards are in place to prevent abuse or adverse actions necessitates a strict adherence to Merit Systems Principles. Additionally, all parties would benefit from a revision of the current EEO process.

There are many challenges ahead, but we at FMA cannot stress enough the need to take a cautious and deliberate path for designing and implementing the Working for America Act. We recommend continued collaboration with management and employee groups as well as independent review and auditing by the Government Accountability Office, with the oversight of Congress. Through these checks and balances, we are hopeful that a set of guiding principles will emerge to assist agencies in their expected personnel reform efforts. Thank you again, Mr. Chairman, for the opportunity to testify before your committee and for your time and attention to this important matter. Should you need any additional feedback or questions, we would be glad to offer our assistance.

Mr. PORTER. Mr. Gage is the president of the American Federation of Government Employees.

STATEMENT OF JOHN GAGE

Mr. GAGE. Thank you, Mr. Chairman, and Ms. Norton and Mr. Van Hollen.

Mr. Chairman, you have entitled today's hearing, "Mom, Apple Pie, and Working for America: Accountability and Rewards for the Federal Workforce," and asked me to comment on the proposals.

Working for America, mom, apple pie—based upon our union's experience with the congressional debates over personnel changes in the Departments of Homeland Security and Defense, we certainly hope that the proponents of this legislation do not mean to portray those who might oppose it as working against America in an opposition to mom and apple pie. We certainly hope that a reasoned discussion of the merits will take place and that one's position on pay for performance and the destruction of union rights and due process will not be framed as yet another measure of loyalty and patriotism.

Should Federal employees be forced to compete against their coworkers for a salary adjustment? Should Federal employees have to wonder from year to year whether a supervisor might decide he or she needs a pay cut?

Mr. PORTER. Excuse me, Mr. Gage. If I may interrupt for a moment. I personally take exception to those comments. And as an individual that for 20-plus years has worked closely with the employees of local, State and Federal Government, I take exception when you would comment that we be against those and would not believe that they're American. So I take exception to that. Please understand this committee is here to have a fair hearing on the proposed structure of pay for performance, or whatever it is that we conclude at the end of the day. But, please, I do take exception.

Mr. GAGE. Thank, you Mr. Chairman.

Mr. PORTER. Excuse me, Mr. Gage. As for the balance of my committee and this Congress, there are people that are working very hard, trying to work with you to make sure that employees—we have the best and brightest that can take care of our customers, and that's the taxpayers.

Mr. GAGE. With all due respect, Mr. Chairman, we've been through this before with Homeland Security and DOD. I just want to note that we didn't think those discussions were very fair. And I do appreciate that this will be different, but I thought it would be appropriate that we mention that because we have been through it.

Mr. PORTER. Again, Mr. Gage, we have a meeting later on today, and I think we can finish this discussion at 2 o'clock. On behalf of this body and this committee I do take exception to those comments.

Mr. GAGE. Thank you.

Should Federal employees be prevented from access to their union-negotiated agreement procedures when they have evidence that a supervisor's evaluation of his performance is inaccurate? Should Federal employees be denied to have an unfairly imposed penalty overturned after an unbiased third party has decided the

penalty was unwarranted? Should Federal employees be forced to work as probationary employees for 3 full years, without any rights on the job at all? And should Federal employees who work for the Federal Government be forced to trade a pay system that sets their salaries according to objective factors such as job duties and responsibilities, and adjust those salaries according to objective market data for one in which supervisors decide their salaries based on personal assessments of their personal qualities or competencies? Should these employees trade salary adjustments based on data collected by the Department of Labor's Bureau of Labor Statistics for so-called market surveys conducted at the discretion of local management by whatever private outfit the manager chooses? And should Federal employees who vote for union representation and pay union dues be denied the right to collective bargaining on anything except issues management decides are foreseeable, substantial, and significant in terms of impact and duration, including such issues important to every employee, as work schedules, travel, overtime, fair promotions, career development and training?

Our answer to each of these questions is an unequivocal no. And that is why we urge you to reject the proposed legislation.

The employees AFGE represents want their voices to be heard in the development of any new pay system, especially on fundamental issues such as the classification methods, criteria and systems structure, the way base pay is set and adjusted, and the rules of pay administration, including policies and procedures for something as complex as pay for performance.

The administration's draft legislation extinguishes the voice of workers who would actually be paid under the new system. There is no provision for any collective bargaining at all with regard to the development of the new system, despite the fact that, across the board, participants in demonstration projects maintain the only way such systems have any degree of legitimacy, support, or fairness is if these issues are addressed in collective bargaining and worker protections are written into a fully enforceable collective bargaining agreement.

The administration's bill is not about either rewards or accountability; indeed, it would eliminate several mechanisms for holding agency managers and political appointees accountable for how they treat the Federal work force in terms of the way that work force is selected, retained, disciplined, terminated, managed, and paid.

Although the administration contends that the merit system principles will be upheld if its legislation is enacted, there's almost no way for Federal employees or others to obtain information to confirm or disprove this.

Mr. Chairman, I think what I'd like to conclude on is that we think there can be changes in this system. We have suggested changes in this system. But for this system to have any credibility and be transparent, taking away union rights, employee rights, Civil Service protection, starts off on the wrong foot. And I hope

that in further discussions we can make this a much more positive experience for Federal employees instead of what it is being seen out there by Federal employees now. Thank you, sir.

Mr. PORTER. Thank you, Mr. Gage.

[The prepared statement of Mr. Gage follows:]

STATEMENT BY

JOHN GAGE
NATIONAL PRESIDENT
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE

THE SUBCOMMITTEE ON THE FEDERAL WORKFORCE AND AGENCY ORGANIZATION

HOUSE COMMITTEE ON GOVERNMENT REFORM

REGARDING

THE BUSH ADMINISTRATION'S PROPOSAL FOR CIVIL SERVICE CHANGES

ON

OCTOBER 5, 2005

My name is John Gage, and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the more than 600,000 Federal and District of Columbia employees our union represents, I thank you for offering me the opportunity to testify today on the Bush Administration's proposals for government-wide changes to the civil service system. You have entitled today's hearing "Mom, Apple Pie, and Working for America: Accountability and Rewards for the Federal Workforce" and asked me to comment on the proposals contained in the draft version of the Administration's so-called "Working for America Act."

Working "for" America. Mom. Apple Pie. Based upon our union's experience with the Congressional debates over personnel changes in the Departments of Homeland Security and Defense, we certainly hope that the proponents of this legislation do not mean to portray those who might oppose it as working "against" America and in opposition to moms and apple pie. We certainly hope that a reasoned discussion of the merits will take place, and that one's position on "pay for performance" and the destruction of union rights and due process will not be framed as yet another measure of loyalty and patriotism.

The Administration's proposed legislation to force all Executive Branch agencies to adopt pay-for-performance schemes certified by the Office of Personnel Management (OPM) and drastically reduce the rights of federal employees to union representation will not help the Federal government in any way. Indeed, there is no objective, audited data to affirm or even to suggest that pay for performance and the reduction of workers' rights to union representation improve any aspect of either public or private sector organizations. Productivity does not go up with pay for performance. Employee satisfaction does not go up with pay for performance. "Accountability" does not go up with pay for performance. Costs do not go down with pay for performance. Accomplishment of mission does not improve with pay for performance. And prohibiting workers from having union representation also does not improve productivity, employee satisfaction, "accountability," cost control, or accomplishment of mission.

Should Federal employees be forced to compete against their coworkers for a salary adjustment? Should Federal employees have to wonder from year to year whether a supervisor might decide that he or she deserves a pay cut? Should Federal employees be prevented from access to their union's negotiated grievance procedures when they have evidence that a supervisor's evaluation of his performance is inaccurate? Should Federal employees be denied union representation when management speaks to her about problems at the workplace? Should Federal employees be denied the right to have an unfairly imposed penalty overturned after an unbiased third party has decided the penalty was unwarranted just because the agency says overturning the decision would have an impact on the agency? Should Federal employees be forced to work as probationary employees for three full years without any rights on the job at all?

Should Federal employees who work for the federal government be forced to trade a pay system that sets their salaries according to objective factors such as job duties and responsibilities, and adjusts those salaries according to objective market data, for one in which supervisors decide their salaries based on personal assessments of their personal qualities or "competencies"? Should these employees trade salary adjustments based upon data collected by the U.S. Department of Labor's Bureau of Labor Statistics for so-called market surveys conducted at the discretion of local management by whatever private outfit the manager chooses?

Should Federal employees who vote for union representation and pay union dues be denied the right to collective bargaining on anything except issues management decides are "foreseeable, substantial and significant in terms of impact and duration" including such issues, important to every employee, as work schedules, travel, overtime and access to promotions, career development, and training? Make no mistake about it: this new standard for negotiability will *end* collective bargaining in the Federal government as we know it. The only difference from DHS and DoD is that this time the proponents of this notion will not have the excuse of national security as a pretext to radically reducing workers' rights.

The consequences of this reduction in meaningful issues for collective bargaining will be worker burnout, increased danger to workers because of unsafe conditions, and adverse impact on morale within work units if assignments and work schedules are not offered or ordered in a fair and consistent manner. This lowering of morale will correspondingly lead to reductions in productivity. And ultimately the inability of the elected employee representatives to resolve these matters through collective bargaining will create recruitment and retention problems for the government, as employees find more stable positions in state and local government, or with the private sector.

The employees AFGE represents want their voices to be heard in the development of any new pay system, especially on fundamental issues such as the classification methods, criteria, and system structure; the way base pay is set and adjusted and the rules of pay administration, including policies and procedures for something as complex as pay for performance. But the Administration's draft legislation extinguishes the voice of workers who would actually be paid under any new system. There is no provision for any collective bargaining at all with regard to the development of a new system, despite the fact that across-the-board, participants in demonstration projects maintain that the only way such systems have any degree of legitimacy, support, or fairness is if these issues are addressed through collective bargaining and worker protections are written into a fully enforceable collective bargaining agreement.

Should Federal employees be denied the protection of the Douglas factors which have served for 30 years to protect them from being victimized by overly harsh,

unreasonable, or discriminately applied penalties? This proposal would rob employees of the ability to have the Merit Systems Protection Board (MSPB) alter a penalty unless he or she were able to show that the penalty was "totally unwarranted" – a high legal standard no one is likely ever to meet. The Douglas Factors that the MSPB has used to evaluate the fairness of agency-imposed penalties on employees that the Administration would deny to workers are as follows:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

2. the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

3. the employee's past disciplinary record;

4. the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

5. the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;

6. consistency of the penalty with those imposed upon other employees for the same or similar offenses;

7. consistency of the penalty with the applicable agency table of penalties; (The Board mused in footnotes that these tables are not to be applied mechanically so that other factors are ignored. A penalty may be excessive in a particular case even if within the range permitted by statute or regulation. A penalty grossly exceeding that provided by an agency's standard table of penalties may for that reason alone be arbitrary and capricious, even though a table provides only suggested guidelines.)

8. the notoriety of the offense or its impact upon the reputation of the agency;

9. the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

10. potential for employee's rehabilitation;

11. mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad

faith, malice or provocation on the part of others involved in the matter; and

12. the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

The Administration's bill is not about either rewards or accountability. Indeed, it would eliminate several mechanisms for holding agency managers and political appointees accountable for how they treat the federal workforce, in terms of the way that workforce is selected, retained, disciplined, terminated, managed, and paid. Although the Administration contends that the merit system principles will be upheld if its legislation is enacted, there will be few opportunities for federal employees or others to obtain information to confirm or disprove this. Indeed, the independent organizations with the closest ties to the federal workforce, democratically elected unions, will be denied access to information necessary to process grievances. For example, the legislation denies the union's existing right to information if such information is not normally maintained or "reasonably available." These exceptions are, obviously, large enough to hide evidence of mismanagement and fraud, and are certainly large enough to hide evidence of breaches in the merit system principles.

The Working for America Act

The Administration's proposed legislation would require the establishment of entirely new classification systems and pay systems. Performance "ratings of record," which would include evaluation of an employee with regard to both "performance requirements" and "performance expectations," would be used for all purposes under Title 5 that mention them. "Performance requirements" are defined in the draft as "broadly defined duties, responsibilities, competencies, or other contributions that an employee must demonstrate on the job" and have to "support and align with agency mission and strategic goals, organizational program and policy objectives, annual performance plans, and other measure of performance" and have to be communicated to the employee in writing. In contrast, "performance expectations" are "more specific and include the particular contributions (and applicable measures) that an employee's supervisor expects from him/her as s/he carries out specific assignments" and "need not be conveyed in writing.". "Performance expectations" can include "goals or objectives set at the individual, team, or organizational level" and can take any form. Also, "the means of communicating performance expectations" are at the "sole and exclusive discretion of management."

I want to call the committee's particular attention to this: "Performance expectations" need not be conveyed in writing, can be set at either the individual, team or organization level, and can take any form. So these "performance expectations" can, in the Administration's plan, be as important as market data, and fulfillment of expectations or requirements that are both individualized and

put in writing in determining an individual employee's base pay, pay adjustment, and job security. There is no way for an employee or a union or any judicial body to hold an agency accountable for legal authority as broad and vague as this.

The supervisor's evaluation of performance – relative to requirements and expectations-- will be the basis for pay, any awards provided under any agency awards programs, and promotions. Although the performance ratings could be grieved through either a negotiated or administrative grievance procedure, arbitrators would not be able to conduct independent evaluations of performance in order to ascertain whether the rating were accurate.

The legislation allows absolutely no collective bargaining with respect to the design or implementation of a pay for performance system. The new pay systems designed solely by agency management will need to be submitted to OPM for "certification," although there is a "meet and confer session" and the proposed systems do need to be published in the Federal Register prior to a 30-day comment period. The capacity of OPM to provide effective oversight or a meaningful certification process is highly questionable. Like FEMA, OPM has become highly politicized in the last five years and has seen an exodus of many highly qualified career professionals. It is almost certain that OPM would, following Administration preference, contract out this work and yet another inherently governmental function that is "intimately related to the public interest" would fall into the hands of private consultants.

The outline proposed in the Bush Administration's plan would, for the first five years a pay for performance system is in existence, fund the "pay pool" for performance adjustments at a level that is equivalent to what the agency would have spent on within grade increases and other step increases. After those five years, however, all bets would be off.

I testified last week before the Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management and the Federal Workforce and the District of Columbia about successful demonstration projects involving alternative personnel systems. All the examples of success discussed at the hearing provide across-the-board salary increases and receive funding that exceeds that which would have been spent on General Schedule adjustments, both in order to fund the performance payments themselves as well as to cover the additional administrative expenses that a pay for performance system requires. This supplemental funding is absolutely critical to ensure that pay for performance schemes do not become methods to either reduce the payroll, or to reallocate it away from bargaining unit members and into the pockets of managers and high level professionals.

In the President's proposed government-wide legislation, local market supplements can be paid on top of "pay pool" performance increases to those with at least fully successful ratings. OPM would be given the authority to

decide whether to adjust the bands. *Only in the event that OPM decided to adjust the rates at the very bottom of a band would every worker with a successful appraisal receive a raise.* But there would be no parity or uniformity even within a locality. Instead, OPM could exercise its discretion to "provide different adjustments for different bands and may adjust band minimum and maximum rates by different percentages."

That is, OPM could take the money that under the General Schedule would be allocated equitably across the federal workforce and decide to forgo any raises at all for so-called unskilled work such as military equipment repair or serving meals to veterans, decide to allow miniscule raises for those who process Social Security benefit applications, and lavish big raises on folks in the highest grades charged with carrying out the President's Management Agenda.

The discretion is immense: OPM can decide that these local market supplements apply only to specific occupations and these can vary in size by band, occupation, and location. When OPM decides whether and by how much to adjust bands, it can consider "mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other agencies, and any other relevant factors." There is nothing in the bill describing what kind of data OPM has to use to justify its actions; OPM has complete discretion.

The draft legislation also authorizes relaxation of standards and procedures with regard to competitive service appointments. It allows agencies to set probationary periods of up to three years. It amends the definition of "grievance" to include "any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation ...if it was issued for the purpose of affecting conditions of employment...including misinterpretation, or misapplication regarding an employee's pay, except those that involve the exercise of a manager's discretion."

The bill changes the authority of the FLRA to issue "status quo ante" remedies. Even if an agency is found to have committed an unfair labor practice, if the remedy "would adversely impact the agency's or activity's mission or budget or the public interest" the remedy cannot be ordered. Also, a bargaining unit employee would lose the right to have a union representative present when a manager "reiterates" an existing personnel policy practice or working condition, when the meeting "is incidental or otherwise peripheral to the announced purpose of the meeting" or the meeting doesn't result in the announcement of any change. Further, it only allows union representation at grievances filed under negotiated grievance procedures, not administrative grievance procedures. It also restricts the release of information to unions. Finally, the bill only requires an agency to bargain over changes that will affect members of the bargaining unit in ways that are "foreseeable, substantial, and significant in terms of both impact and duration."

With regard to grievances over "ratings of record," arbitrators would only be able to order changes if they can determine what the rating would have been if not for the violation of law, agency rule or regulation, or provision of a collective bargaining agreement. Finally, the draft bill proposes that penalties imposed on employees under chapter 75 (adverse actions) cannot be changed unless they are found to be "totally unwarranted" in light of "all the relevant factors."

The civil service that would exist if the Administration's bill were enacted would be relatively lawless. It is not just that a statutory pay system would be replaced by schemes governed by regulation and OPM certification. It is that the federal workplace would no longer be governed by a legal framework that effectively prohibits favoritism. All the key decisions affecting the composition of the federal workforce – who is hired, who is fired, who is assigned to what work – will be made without reference to a solid legal foundation that assures the public that these decisions will be apolitical. All the key decisions affecting the terms of employment for the federal workforce – classification, pay, discipline, access to information, union representation in the context of management communications to workers with regard to issues that affect one's assignments, schedules, eligibility for either pay raises or reductions; will be altered in favor of unilateral managerial discretion.

These profound changes in the very nature of the civil service are dangerous. The rule of law is necessary for a politically independent civil service, and the Working for America Act substitutes the rule of law for the rule of men in far too many instances. Its restrictions on collective bargaining over any aspect of pay and performance management will effectively prevent workers from holding agency management accountable to Congress and the public. Its OPM-certified pay for performance systems will not only allocate appropriated funds in ways that will not be transparent to the public or the Congress, they will also spend inordinate amounts of scarce resources on the complex administrative procedures inherent in all individualized pay systems.

Scholarly Analysis of Pay for Performance: What do the Data Show?

The only truly objective academic survey and analysis of the appropriateness and effectiveness of pay for performance in the federal sector has been conducted by Iris Bohnet and Susan Eaton of Harvard's Kennedy School of government. Their work is apolitical, and is based on empirical data of outcomes in the private and public sectors rather than projections or anecdotes from those with a material or political interest in carrying out a particular agenda.

Professors Bohnet and Eaton have identified through their research "conditions for success" for pay for performance in the public sector generally, and the federal sector in particular. They describe their work as providing a "framework" for determining whether and in what circumstances it makes sense to make

"incentive pay" a percentage of salaries in the pay system for federal workers. Their analysis combines economics, human resource management, and social psychology in both theory and practice.

Bohnet and Eaton start out by defining pay for performance as a system that ties pay to output "in a proportional way, so that the more output, the higher the pay" and connect this approach to the views of Frederick Taylor, first published in 1911, who argued that workers had to be "motivated to do their jobs more efficiently" by external factors. It is instructive to recognize that although advocates of the Bush Administration's legislation repeatedly describe their approach as a modernization, it would in fact take us back about 100 years with regard to an understanding of "performance management."

Bohnet and Eaton note that the best empirical studies of performance pay use "simple jobs" where measuring performance is straightforward. Even then, however, the analysis of the success of pay for performance becomes ambiguous because of the trade-off between quality and quantity. Their survey of this research shows that while workers whose jobs require just one, discrete task, such as replacing windshields, have been shown to improve output in response to the pay incentives, when just one more factor – quality—is added to the equation, the conclusions become unclear. That is, if you only look at quantity, workers can be expected to produce more if they are paid more for higher output. But if quality is considered, the overall benefit to the enterprise is less clear.

Inherent Difficulties in Measuring Individuals' Credit for Improvements to Output

The three primary "conditions of success" identified by Bohnet and Eaton depend upon "the kind of output produced, the people producing the output, and the organizational setting in which the people produce the output." Their conclusion is that the "conditions for success are generally not met by empirical reality in the private sector—and even less so by the empirical reality in the public sector."

The first "condition of success" is that output should consist of a single task that is clearly measurable and linked to a single individual. As everyone knows, the vast majority of federal employees is charged with completing multiple tasks only a small fraction of which is clearly measurable or susceptible to linkage to the work of a single individual. Bohnet and Eaton use the example of workers at the Occupational Safety and Health Administration who, under a pay for performance scheme that attempted to measure output, would have a strong incentive to focus on workplace safety rather than workplace health concerns because preventing an injury, e.g. falls from a platform, is far more measurable and linkable to the work of an individual agent, than is preventing a disease from developing 15 years into the future. Is preventing falls more valuable to OSHA than preventing cancer by limiting exposure to carcinogens? Would focusing

more on preventing injury than on preventing illness improve OSHA's performance as an agency?

Linking increases in output, performance, productivity, or contribution to mission to individuals would seem to be an uncontroversial prerequisite to implementation of an individualized pay for performance scheme. However, Bohnet and Eaton describe the near impossibility of achieving this in the context of some federal agencies' missions such as the State Department's responsibility to "promote the long-range security and well-being of the United States." It is in this context that they cite the fact that although more and more work in the federal and non-federal sectors is performed by teams of employees, even team awards can create perverse incentives to be a "free rider" and enjoy the benefits of other people's efforts.

Perhaps this is why the Department of Homeland Security (DHS) has fallen back on the truly irrational and subjective use of pay for personal "competencies" rather than pay for performance, even though their system pretends to be a pay for performance system. Paying according to personal attributes such as ability to learn, lead, and conduct oneself in a pleasant and professional manner is an obvious recipe for favoritism and corruption in the context of a federal agency. While no private business would survive the rigors of competition in the market if it paid employees according to such ephemera, a federal agency could get away with such a corruption of the public trust indefinitely, at least until someone blew the whistle or some type of disaster exposed the effect of this type of mismanagement.

Misunderstanding Federal Employees' Motivation to Perform Can Produce Negative Results

With regard to Bohnet and Eaton's second "condition for success," the question is whether pay for performance motivates federal employees. Their literature review focuses on the fact that federal employees have been found to be "much less likely than employees in business to value money over other goals in work and life." They cite the work of numerous psychologists and economists that suggest that "performance pay can even decrease performance if it negatively affects employees' intrinsic (inner-based) motivation." They discuss so-called "public service motivation" which was found in a 1999 study of federal employees to be the primary source of high performance.

Another aspect of the "people factor" in evaluating the potential impact of pay for performance is the unpredictable way people may react to changes in their pay. Bohnet and Eaton discuss the differences in attitude toward "absolute" and "relative" pay. Research shows that wage cuts of a particular amount cause more harm than the positive effects of wage increases of the same amount. In other words, especially in zero-sum pay for performance schemes where one

worker's gain is another's loss, the impact from the loss outweighs the impact of the gain for the enterprise as a whole.

Regarding the question of relative pay, these scholars argue as follows:

> Comparisons with similar others, or "social comparisons," are a second reason why performance pay may not work; they involve considerations of both procedural and distributive justice. This simply means that for a pay system to enjoy legitimacy and acceptance (both are required for effectiveness), employees must see it as fair in terms of process and outcomes. Recent research suggests that even if outcomes are agreed to be fair, performance can be negatively affected if the process through which the outcomes are achieved is perceived as unfair.
>
> Human psychological processes make differentiation among close co-workers extremely controversial...The "silver medal syndrome" based on a study of Olympic champions, shows that the most disappointed people are those who come in second in a competition, having hoped they would be first. (p.17)

These are just two ways in which pay for performance schemes misunderstand federal employees' motivation to perform their jobs well, and might actually lower overall performance. Bohnert and Eaton also ridicule the "carrot and stick" method that Administration officials have repeatedly used to justify both the imposition of pay for performance and the elimination of union rights. Professor Levinson of the Harvard Business School calls this the "great jackass fallacy" because of the image of the animal that most people imagine standing between the proverbial carrot and stick, and argues that it is a self-fulfilling prophesy in the context of personnel management. If people are treated as if they need the threat of a proverbial beating in order to perform, they'll act with the same enthusiasm and intelligence of the beast in question.

Uniqueness of Federal Government Creates Organizational Impediments to Successful Pay for Performance

The efficacy of pay for performance also has been shown to depend upon the type of organization imposing it. Federal agencies are particularly inappropriate venues for pay for performance, according to the researchers, because federal employees "serve many masters" including Congress, executive branch political appointees, career managers, and the public at large. Often there are competing objectives that will cause employees being rated for performance to confront -- and be forced to choose among -- ambiguous or contradictory goals. Unlike a private sector firm where the objective of profit maximization is clear, in a federal agency there may be conflicting "political or programmatic differences" which make it virtually impossible for federal employees' performance to be measured objectively.

Does anyone believe that Michael Brown, the former head of the Federal Emergency Management Agency (FEMA) is the lone federal manager or political appointee who won his position on the basis of factors other than competence and experience and could be expected to do a poor job of: a) setting performance objectives for career employees, and b) appraising their performance relative to these objectives? The fundamental differences between the public and the private sectors are so often denied by proponents of pay for performance, yet evidence of politicization in federal agencies should remind everyone of how difficult it is for apolitical, career civil servants to perform in the public interest over the objections of those with political agendas who have been granted authority to run agencies.

Shifting Congressional Authority to the Executive Branch

The Working for America Act would also constitute a change in the balance of powers with regard to authority over the civil service. Currently, the Congress has the authority to decide the terms and conditions of federal employment. The federal pay systems are statutory pay systems. Congress decides whether and by how much federal pay will be adjusted, and Congress decides what criteria will be used to link base salaries to positions. It sets the differences between what the lowest and highest paid federal employees will earn. Under the Working for America Act, this authority would be shifted to the Executive Branch and located within OPM. OPM would assume virtually all authority over all aspects of federal pay and performance management, from "certifying" the agency pay systems that would replace statutory systems, to deciding whether to grant salary adjustments, to deciding the ratio between salaries at the top and the bottom of the federal pay scales. OPM would decide the role that federal unions could play in defending the interests of their members in the context of pay.

Combining the indefensible curtailment of collective bargaining rights with the complete elimination of the role of Congress in setting federal pay policies is a double silencing of federal employees with regard to the most important issues in their work lives. Today, federal employees can contact both their union and their representatives in Congress with their concerns over the pay system, and have good reason to expect that both will be able to hold an agency accountable for implementing a system that is transparently written into the law. Under the Working for America Act, neither Congress nor a union will have a role to play in making sure that the pay system operates fairly or equitably.

Conclusion

No one finds fault with the concept of pay for performance. Yet real-world implementation is notoriously difficult and highly unlikely to produce the desired results. In fact, as the Harvard scholars have shown in their survey of empirical

research on implementation of pay for performance in the public sector, the danger is not only that pay for performance will fail to improve results, it is likely to make many things worse. The "conditions for success" for pay for performance identified by the research simply do not exist in the federal government, and they never will.

The authors of the Working for America Act have taken the current infatuation with pay for performance and used it as yet another opportunity to deny federal employees the right to union representation. By severely curtailing federal unions' rights to represent their members, the Administration is effectively insulating itself from public accountability for how it spends appropriated funds, and whether it is adhering to the merit system principles for an apolitical civil service. As such, AFGE opposes the Working for America Act in the strongest possible terms and urges the Congress to reject it in its entirety.

That concludes my statement. I will be happy to answer any questions you may have.

Mr. PORTER. Ms. Kelley. Save the best for last. Appreciate your being here today.

STATEMENT OF COLLEEN M. KELLEY

Ms. KELLEY. Thank you, Mr. Chairman, Ms. Norton, Mr. Van Hollen.

Mr. PORTER. I don't think you're on just yet, your mic.

Ms. KELLEY. Does that work?

Mr. PORTER. That's working. Thank you.

Ms. KELLEY. Can you hear me now?

In anticipation of the proposal from the administration, I have been talking to NTU members across the country of what we expected would be in this proposal, and I can tell you that they are very concerned and opposed to many of the provisions.

In anticipation of this hearing, we conducted a survey of our members just over the past 2 days, and I wanted to share with you the results of the survey.

We have a chart over here. Our survey shows conclusively that mom and apple pie lovers who work for the Federal Government are overwhelmingly opposed to the proposal that is being put forward that would change the personnel system across the government.

NTEU has serious concerns and objections to the administration's proposed governmentwide changes, and they fall into two main categories: The first is that despite the administration's comments to the contrary, the proposal would make numerous, substantial, and detrimental changes to employee rights in the areas of collective bargaining and due process.

And, second, the proposed pay system is unacceptable on several grounds, including the fact that it is not seen as fair or transparent, nor has it been tested.

Employees who perform superbly will have no reliable expectation of pay increases. It is excessively complex and will require huge increases in funding to administer. Its references to holding managers accountable have no foundation in the statutory language, and it will thwart rather than promote the teamwork that is necessary to advance the missions of the agencies.

With regard to the labor management provisions, there have been a number of discussions already around the new definition of emergencies. I would just note that the current law already provides great latitude to agencies to act without regard to collective bargaining obligations in emergencies. NTU does not object to that. What we do object to are the new definitions that have been discussed that were read from the record by Mr. Van Hollen, and, I would also add, one other set of language in here. It talks about the agencies' ability to preclude bargaining when they are preparing for, practicing for, or preventing any emergency. Now it seems to me if you are preparing, preventing, or practicing for, you are not in an emergency; and therefore, this language should not apply.

The administration's proposal also limits employee due process rights in a number of significant ways. Just one example is a new standard that is being proposed for the mitigation of penalties by the Merit Systems Protection Board. Today, if the MSPB finds a penalty unreasonable, it can direct it be changed. This new bill

would change the standard to totally unwarranted, rather than unreasonable, and this proposal is very similar to language that we see in the DHS regulations, and that language is wholly without justification.

Now as we all know, that provision has been struck down by the U.S. District Court in *NTEU et al.* v. *Chertoff.* I find it hard to believe that the administration wants to pursue this provision when one so similar has already been ruled illegal.

The administration's bill would also expand the untested and complex pay model from DHS and DOD before it has ever been implemented or tested in these agencies, and there is no evidence that this model will increase recruitment, retention, or performance. And in fact, similar models have shown negative results.

At the IRS, while employees represented by NTEU are not covered by a pay banding system, the managers there are, and the IRS hired the Hay Group to do an evaluation of that system and this is what they found. Here are the results: 76 percent of covered employees felt the system had a negative or no impact on their motivation to perform their best; 63 percent said it had a negative or no impact on the overall performance of senior managers; only 25 percent of senior managers agreed that the system was fair, and increased organizational performance was not attributable to the system.

Now, under the administration's proposed pay system, there will be many changes in how adjustments of any kind will be provided to employees. There are a lot of new terms to be learned, range rates and maximums and minimums, and there is a lot of language in the proposal that says the director may establish this or the director may provide that pay raise. But at the end of the day, when you apply this new language, it is very likely that an outstanding employee could receive no locality adjustment because their occupation was not given an increase. Because of the new definitions around pay pools and the authority of the director, who may do this or may do that, it is very possible that top performance would not receive a pay performance or a performance pay adjustment because their pay or their occupation may be determined not to have contributed significantly to the mission of the agency, even though they are a top performer in their occupation and doing what they need to do to excel.

Now, assuming there is adequate funding to pay for performance increases, which I think is questionable at best, there are a lot of questions about managers who are having difficulty applying the current structured system today and having to move to a more vague, undefined system that employees will have no confidence in.

If I could just summarize for a few seconds here, I would suggest that the things NTU and our members believe are important to the success of the agencies and a new system are leadership; that rules and systems don't motivate people; leaders do; opportunities for employees to have input into decisions that affect them and the functioning of their agencies—they have good ideas that are currently being ignored; and a fair compensation that has credibility among employees, promotes teamwork, is adequately funded and is not administratively burdensome, as is being defined in this new system.

So unfortunately, we do not see the system as meeting these standards. But, again, I very much welcome the opportunity to appear before you today, look forward to working on changes that can be made that would be fair and appropriate, and to answer any questions you might have. Thank you.

Mr. PORTER. Thank you very much.

[The prepared statement of Ms. Kelley follows:]

Testimony of

Colleen M. Kelley

National President

National Treasury Employees Union

Before The

**House Subcommittee on Oversight of Government
the Federal Workforce and
Agency Organization**

on

**"Mom, Apple Pie, and Working for America: Accountability
and Rewards for the Federal Workforce"**

October 5, 2005

Chairman Porter, Ranking Member Davis, thank you for the opportunity to present the views of NTEU members on the Administration's proposed new government wide personnel system. I must note that I think your title for the hearing, "Mom, Apple Pie, and Working for America: Accountability and Rewards for the Federal Workforce," is a little off base. In fact, NTEU has conducted a survey that shows conclusively that both Moms and Apple Pie lovers who work for the federal government are overwhelmingly opposed to the Administration's new personnel proposal. Based on these results, I would also like to take this opportunity to announce the formation of a group called Moms And Dads and other Federal Employees Determined to Stop the WFA, or MADFEDSWFA. You will be hearing more from them.

NTEU has serious concerns and objections to the Administration's proposed government wide personnel changes, which it refers to as the Working for America Act. The concerns fall into two main categories.

First, despite Administration comments to the contrary, the proposal would make numerous substantial and detrimental changes to employee rights in the areas of collective bargaining and due process appeals.

Second, the proposed pay system is unacceptable on several grounds, including that it is not fair, or transparent, or tested. Its goals are not clearly identified. Employees who perform superbly will have no reliable expectation of pay increases. It is excessively complex and will require huge increases in funding to administer. It usurps Congressional authority, giving unprecedented power and discretion to the Office of Personnel Management. Its references to holding managers accountable have no foundation in the statutory language. It will thwart, rather than promote, the teamwork necessary to advance the missions of the agencies.

In addition, since the proposal was conceived with absolutely no input from frontline employees, or managers for that matter, who are tasked with accomplishing the missions of the agencies, it does not reflect or address the most critical challenges facing federal employees, which include a lack of funding, training and consistent communication of priorities by leaders who value the input of frontline employees.

LABOR-MANAGEMENT PROVISIONS

With regard to the labor-management provisions of the Administration's proposal, I would like to highlight some of the most offensive provisions that limit current collective bargaining rights. Current law provides great latitude to agencies to act without regard to bargaining obligations in emergencies. NTEU does not object to that. However, this proposal would change the current statutory definition of emergency, broadening it to an absurd extent, to include, "any situation involving or potentially involving . . . an adverse effect on agency resources . . . an increase in agency workload . . . or any budgetary exigency caused in whole or in part by external authorities." See sec. 401, proposed amendment to 5 U.S.C. 7103(a). This definition goes well beyond what is applicable even in the new DOD and DHS systems. In addition to making virtually any situation fit under the big tent definition of emergency, the bill also expands on the emergency exemption to preclude the need to bargain when, "preparing for, practicing for, or preventing any emergency." See sec. 401, proposed amendment to 5 U.S.C. 7106(a)(2)(D). It seems to me that if you are preparing, preventing or practicing for an emergency, you are not in one. To bring

in the issue of accountability here, if a federal manager can't make each and every particular situation fit into this new emergency standard he or she should be fired.

DUE PROCESS RIGHTS

The Administration proposal limits employee due process rights in many significant ways. To note just one example, the bill sets out a new statutory standard for mitigation of penalties by the Merit Systems Protection Board. Currently, if the MSPB find that a penalty is "unreasonable" it can direct that it be changed. The bill would require the MSPB to find that a penalty was "totally unwarranted," rather than unreasonable. See section 403, proposed amendment to 5 U.S.C. 7701(c). This proposal is very similar to a provision in the DHS regulations that would have changed the MSPB mitigation standard to "wholly without justification." That provision was struck down by the U.S. District Court in NTEU, et al. v. Chertoff. (Civil Action No. 05-201). In that regard, the Court stated, "rather than afford a right of appeal that is impartial or disinterested, the Regulations put the thumbs of the Agencies down hard on the scales of justice in their favor." I find it hard to believe that the Administration wants to pursue this provision when one so similar has been ruled illegal.

PAY SYSTEM

The Administration's bill would expand the untested, complex and controversial DHS/DOD model government-wide before the model has even been implemented in those agencies. There is no evidence that this model will increase recruitment, retention or performance. In fact, similar models have had negative results. While bargaining unit employees represented by NTEU are not covered by a paybanding performance based system at the IRS, managers are. The Hay Group did a Senior Manager Payband (SMPB) evaluation on this system for the IRS last year. Here are some of the results: 1) 76% of covered employees felt the system had a negative or no impact on their motivation to perform their best; 2) 63% said it had a negative or no impact on the overall performance of senior managers; 3) "Only one in four senior managers agree that the SMPB is a fair system for rewarding job performance or that ratings are handled fairly under the system;" 4) "Increased organizational performance is not attributed to the SMPB."

The Administration proposal gives unprecedented authority to OPM. In addition to certifying agency plans, it will have the exclusive authority to define and adjust occupational groups and subgroups; define and adjust pay rate ranges

for those groups and define and adjust local market areas and pay supplements for those areas. There will be no judicial review on the merits of these decisions.

The proposed system will give employees no assurance that they will continue to receive annual pay adjustments needed to preserve the buying power of their federal salaries or that they will receive locality adjustments or "performance" increases, despite having performed at an outstanding level.

What we think of now as annual national adjustments go to all employees with small locality differences based on wage surveys from the 32 locality pay areas. Under the proposed system, there will be no national adjustment. Rather, OPM will determine which "rate ranges" should get increases. The proposal states, "the Director may provide different rate range adjustments for different bands and may adjust the minimum and maximum rates of a band by different percentages." The Director also can just increase the maximum rates, leaving those at the lower steps of the rate range with no increase. An adjustment that now is limited to 32 different amounts will be open to as many different variations as the number of steps within each rate range, multiplied by the number of bands within each occupational group or subgroup, multiplied by the number of occupational groups or subgroups.

Under the current locality pay rules, all GS employees who work in the same location receive the same locality pay adjustment. Under the proposed system, the Director may establish locality adjustments "for each rate range" and "may provide different local market supplements for different career/occupational groups or for different bands within the same career/occupational group in the same local market area." So on the performance issue, an outstanding employee could receive no locality adjustment because his or her occupation is not given an increase, or because the pay band he or she is in does not receive a locality adjustment. On the complexity issue, the different locality adjustments could reflect the number of localities, multiplied by the number of occupational groups, multiplied by the number of pay bands, multiplied by the number of rate ranges. This number would then be multiplied by the total number of variations in the national adjustment referred to above.

In addition, the Director can provide special market supplements that can vary based on locality and occupational group and subgroup.

Moving on to the performance adjustment, agencies must establish "pay pools." "Each pay pool shall cover a defined group of employees, as determined

by the agency." Employees are awarded "shares" that correspond to their performance ratings. "An agency may determine the distribution of funds allocated for performance pay increases among pay pools and may adjust those amounts based on overall levels of organizational performance or contribution to the agency's mission . . . an agency may, for any pay pool, adopt a method of adjusting shares based on an employee's position in the rate range." Again, an outstanding employee could miss out on a performance increase because he or she is in a pay pool that the agency has determined is not contributing to the agency's mission or because he or she is at a position in the rate range that the agency has determined will not be awarded performance increases. As far as the complexity of the performance adjustment, one must multiply the number of federal agencies by the number of pay pools within each agency, then multiply the number of shares within each pool that can be earned by each employee.

Assuming there is adequate funding to pay performance increases, which is questionable at best, performance pay shares will be based on annual ratings derived from an untested, vague performance system administered by managers who have difficulty applying the current, structured system and who do not have the confidence of those they supervise. Rating systems must have at least three levels as opposed to many agencies that currently use pass/fail to rate employees.

With more pay and other important factors tied to these ratings, managers and employees will spend more time on them. Time that NTEU believes would be better spent on frontline mission related efforts. Many agencies, including DHS and the IRS, where we represent employees are in desperate need of more frontline employees. Clearly, this proposal will require more human resource positions in each federal agency and especially in OPM. We do not believe this is the right priority for our underfunded agencies.

ACCOUNTABILITY

The Administration has stated repeatedly that this bill will hold managers accountable. Yet, I see nothing in this bill that would do so. I would be very interested in hearing specific references to provisions in the bill that will "require" management accountability as Administration officials have stated. Saying it, doesn't make it so. We agree with the Administration that accountability is critical to a successful performance management system and we believe that accountability must start at the top. For many years the IRS and NTEU have jointly sponsored an employee survey that includes the opportunity for employees to rate the performance of their managers. Employees have become so disillusioned, seeing absolutely no action that would indicate that managers who

consistently receive low ratings face any repercussions, that NTEU this year withdrew its support for the survey. We see nothing in this proposal that will impose any consequences on managers who consistently receive low ratings from the employees they supervise.

The employees represented by NTEU want to be successful in accomplishing their agencies' missions. These are the things I believe will have the most impact on the quality of applicants and the motivation, performance, loyalty and success of federal workers.

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

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

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

Unfortunately, I do not believe the proposal being pursued by the Administration follows these standards.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions.

Mr. PORTER. I'd like to ask, Mrs. Kelley, possibly we can chat some time as to maybe a blueprint that you would suggest. I say this, taking lead at Mr. Styles from a positive perspective. I would assume you would concur that the system needs some change, whatever it is. We may disagree on what that it is, but it's a system that's been in place for 50, 60 years. Today is not necessarily the time, but this is a draft, and I would encourage that we could sit down and come up with some positive ways to work on a system, a new and improved system. I realize it's not a question. I just look forward to working with you for some ideas and a blueprint you would suggest.

Ms. KELLEY. I would welcome that opportunity. But if I could add, Mr. Chairman, I do not think the current system is perfect, but I believe what is wrong—where the current system is the implementation of it, not so much the system. So my worries are really magnified when I think about a vague, undefined system and having to implement that, when there are so many problems with implementation of the structured system in place today.

Mr. PORTER. I would expect you have heard this morning, not only from some of the panelists but the subcommittee, that we have similar concerns. Thank you.

Again, we always like to pick on manager styles. I follow your lead again and ask for comments from Ms. Shaw.

On a positive side, you have had such great success and we've been hearing this morning of the pros and the cons, and certainly a lot of cons have been brought out, but how does it work, how did you do it? Share with us how you had such great success, because, based on what I'm hearing from some folks this morning, is that it can't work and it hasn't been successful.

Ms. SHAW. Well, it can and does work. It's worked for Federal Student Aid. I'd like to say for the record here, all of the accomplishments in the Federal Student Aid Office at the Department of Education have been made by our incredibly dedicated and talented Federal career staff at all levels. We have just under 1,100 employees and those are the people who did all the work for these accomplishments.

I would say that what we have been able to do, we do have some flexibilities afforded to us in our performance-based organization statute. We've been able to use those, and particularly the hiring flexibilities I described. But also I need to add that we've been able to work very diligently with what—the other processes and procedures that are already in place.

We've heard some of my panelists up here talk about the system that we have today is difficult for people to administer. It is. We have focused on that very diligently. We have a host of training for our supervisors, new supervisors, employees, around performance management and how that could and should work, and we just keep at it.

We don't expect change overnight. We've been working on this during my tenure, for 3 years. And there is an organizational and operational and people readiness around change. And we have been working that with a very focused plan around our work force management. We have a strategic plan around that, and it is working.

I'm not here to say it's perfect, but it is working. We are delivering incredible results for the Department and for taxpayers.

Mr. PORTER. Thank you. I think I said earlier, and I would concur with your comments that we truly have some of the best and brightest working for the Federal Government. With proper funding, proper leadership, and proper training, I think we certainly could emulate what your success is also. So with that, I'd like to just remind the subcommittee we have about another 30 minutes for questioning. I'd like to open it up for questions.

Ms. NORTON. Thank you very much, Mr. Chairman.

Let me begin with Ms. Shaw. First of all, let me congratulate you on the vast improvement in the student loan program. The taxpayers are happy, and I'm sure that the consumers, colleges and universities, and particularly students themselves.

I just want to note for the record that the Washington Post did run an article this summer in which it talked about thousands of civil servants leaving the Federal Government, and that OPM led the list, 21.8 percent. So they wanted to seek employment elsewhere in the government. The high rollers were the OPM, Homeland Security, Defense—these are all percentages—and, surprisingly, OMB. I guess they're tired of cutting people's budgets or something. And the Education Department was among the high rollers.

I don't think that takes away from what you have done. I've read your testimony carefully and listened to you, and as best I can tell, there are two major factors responsible for your success. First of all, the problems with the agency were attributable, it seems to me, to two bodies. One is this body and the other is the management of the agency. And when you describe what you have been able to do, essentially put in place whole new systems so that you have tackled the high default rate, that didn't have a thing to do with employee performance. That had to do with the management of the agency.

Unhappy customers. That had to do with the shocking performance of the agency. And its customers were, of course, the colleges, universities.

Financial controls. That didn't have anything to do with anything, except how managers, in fact, enable an agency to run.

Then you go on in the second part of your testimony to indicate how you did it, and one of the things you stress—and I appreciate, and I'm not sure there would be much exception taken to what you did in hiring—if we were in fact to streamline our hiring. And you talked about hiring 70 senior managers and professionals with the right skills who were needed to work with the Federal career staff. Your career staff is still there. The same folks are still there who everybody was complaining about, and I know exactly what that process is about. When I came to the EEOC, the people who took the flak were the investigators, were the people who had to deal with the public. What needed to happen was a whole new system needed to be put in place.

With all due respect and for all the credit you must be given, I must say that you show what can be done with the present system, with the present pay system, with the present—absolutely everything else. We didn't do anything to you the way we did to OPM

and to DHS. You made the present system work. I think everybody needs to get in there, first and foremost GAO, and find out how by putting in new systems you were able to get the same civil servants to give you far better performance. Has there been a GAO study of what you have been able to achieve?

Ms. SHAW. Well, GAO was in for practically a whole year before they took the Federal Student Aid programs off the high-risk list, and they studied us from top to bottom.

Ms. NORTON. But they were studying, of course, the very things you report in your testimony.

Ms. SHAW. They studied—one of their particular focus points was around our work force management and how we were caring for our staff, growing our staff, focused on performance, focused on the challenges that face every agency with succession planning, the aging work force and planning for the future. They actually spent an incredible amount of time with us on that.

And I don't disagree with you, and I remarked to the chairman that we worked very diligently to do better with what we did have in terms of process, procedure, and program and systems. And I'm not going to deny it does take leadership, not only from me, but from every leader and manager in the Federal Student Aid Office; and for my office, that's around 150 people. I meet with those people once a month, all together, and we talk about these kinds of things: How are we going to elevate our performance? How are we going to solve for this problem or that problem with what we have? How are we going to use the flexibilities that are afforded to us in a very smart and managed way and with purpose, with an end result in mind, and be able to, of course, correct as we go to inform ourselves with things that maybe weren't working so well? How are we going to change that? So it's a combination of all of those things together, you're absolutely right.

Ms. NORTON. Thank you. I think this neglected notion of how management transforms, rather than workers from the bottom up transforming agencies, could not be more important. And I don't know the extent to which it's reflected at all in our bill.

I do have a question really out of—really to ask the experts who have been looking at this. With all due respect to you and the work you have done, because I think your work, Mr. Gould—and, I'm sorry, is it Mr. Stier—is very important to us to get, by people who think from outside the government. But you are not helping me enough to meet the intellectual challenges that I think we are posed with.

Let me just put the hard question to you as far as I'm concerned. First you have to ask yourself why would anybody set up a system like this. Why would anybody set up a cumbersome, unwieldy system for hiring people, when we live in a market society and everybody else out here gets paid basically to the extent that they can? And of course, this is overblown, this whole notion that everybody in the private sector gets paid based on merit, and everybody sits down and goes through these exercises. But let's leave that for a moment. Why are we in such a system? All of this talk about market-based doesn't phase me at all, because I don't work in that system.

If I ask myself these two hard questions, I come back with these answers. We have this system for this unique work force for two reasons: One, when there was a market-based system—if you will forgive me, before there was a Civil Service system, there was wholesale favoritism and fraud that so disgraced the government of the United States that the Civil Service system was created. Second, over the years, as a result of cases brought in the courts, the courts have been forced to face the fact that this is a system to which Constitutional protections of due process apply.

Now, unless you can help me get through those two major issues, you can't—the rest of this I already know and accept. Therefore, I need to know, giving you the two great challenges I see we face, how you would deal with a section of the present proposal, for example, that gives so much flexibility to pay that if an employee happens to be in the wrong pay pool, the pay pool which the supervisor has decided in his discretion it should not have, that group should not have the same kind of increases that others have, even though that person has worked their fanny off trying to hold up their end of the bargain. That person is out of luck.

So if you can help me get through that, you would have helped me. Or if you can help me get through this, you have helped me. We're talking about pay for performance. Now, we're talking about pay for performance so far in a bill that would—and, again, the chairman could not be more right, it's not a bill. We know what the administration has proposed, but we have not disposed yet; and the chairman is trying to find out what is the best way to do this.

But look at what it would do. Performance on which your pay, your life, sir, depends, for all intents and purposes, not to mention you might be out of the government altogether based on this performance. That doesn't have to be in writing, can be set—if the particular supervisor decides, or the agency decides, it can be for the team, performance for the team, it can be for the organization; in fact, it can take any darn form you want it to take.

Now, I'm talking about a 2 million work force Federal Government, and I'm talking about the structures we're talking about, and you don't help me unless you can help me get through those kinds of circumstances; because I guarantee you this, gentlemen, this system, as the administration has now given us, is a bonanza for lawyers, but it won't do anything for the work force, because you'll be litigating this over and over again.

And I'd like your answers based on those two examples.

Mr. STIER. Congresswoman Norton, system change alone is not going to fix our problems here. And as President Kelley said, implementation issues are vital, and that is part and parcel of our recommendations here; that we focus now, irrespective of any legislation, on making sure that we help the Federal Government improve its performance by focusing on management capacity, on training development and a variety of other issues. That has to be dealt with here and now, and I think the function you're performing here in the oversight role will be also vital to making sure that the Federal Government gets the resources it needs and also focuses the attention that it needs.

Ms. NORTON. Would you agree, for example, before you went to any system that said you can pay based on that, that you ought

to experiment with that in a sufficient number of folks before spreading it throughout the work force? Would you agree that before you decided that there should be flexibility to pay performance, on which everything is based, could be any darn thing you say it should be at your discretion? Do you believe those things should be implemented only after it has been shown they produce fairness and that they survive due process constraints under which the government of the United States, even its work force, must operate?

Mr. STIER. I would agree with you 100 percent. I think the Working for America Act does this. Agencies should not be given additional authorities and additional flexibilities until they can show that they can use them effectively. And that is, I think, a very important component of this legislation.

You asked the question why would anyone set up the system that we have here today? And I would argue with you that all of the issues that you raised can be addressed in a very different system, a more streamlined system. I don't think anyone set up this system, I think it grew topsy-turvy over time. I think it grew because there wasn't sufficient focus from the top of the house down on making sure we had a system that was enabling people inside government to do their jobs effectively.

I think all of your concerns are absolutely legitimate in that there is no doubt that the public sector is a different environment than the private sector. There are different concerns and there are different needs, and it would be a mistake to believe that any system that is the best in the private sector could be translated fully, as is, into the public sector.

That said, I believe there is enormous room in the existing system to permit Federal workers to be in an environment in which they are supported more, they're rewarded more, not just financially but in recognition for better work. I think that would enable Federal workers to do more and do better. I think there is enormous room to permit the system to allow it the flexibility to hire people at rates that reflect the overall talent war that's out there.

When the Federal Government is looking for people, it's competing against all other sorts of organizations and different sectors, and I think that's what the Working for America Act should be designed to do. And I think there is room here for it to do that.

I look forward—I think that there are individual places, a lot of places where it can be improved. I think that the chairman's question to President Kelley is a great one. I believe that there is going to be unanimity that we can do better, and the real issue will be identifying ways to make that happen.

Mr. PORTER. Thank you very much. Mr. Gould.

Mr. GOULD. My view is the system was created 50 years ago when Frederick Taylor reigned, and the nature of the mission challenges the government faces today have changed substantially: faster cycle times, greater threats, the evolution of terrorists in the world, plagues that can travel the globe in a matter of hours on an aircraft. We need people who think, act, and move differently in the system and a system that will support that.

I offer that as a mission-base perspective at the same time that I acknowledge your very astute point on what part of the system do we need to preserve the merit-based components, protecting

from undue political influence, and recognizing the core fact that government is spending other people's money, the taxpayers' money. We've got to find a way to do that efficiently and effectively.

Mr. PORTER. Thank you. We just have a few moments left.

Ms. NORTON. I want to say, Mr. Chairman, that one thing that this hearing has done for me is to indicate where emphasis has to be. Certainly it's not on these bottom-line notions, all that you have just said about the need for upgrading the system or changing even substantially a system after 50 years. You get everybody agreeing with that in the whole Congress, and that will get us nowhere.

What in fact we need to do is, and Ms. Shaw has helped us immensely by showing us the difference between hiring where the flexibility does not implicate due process in nearly the same way, to some extent, but not nearly in the same way; that streamlining can work; and that you can use hiring as part of the overall system.

But her testimony also shows us, and everybody needs to look at what she's done, because she did it with what was in place. And no one here has talked about what is in place works good enough, or is all of that to be disposed of? So I would ask us to focus on two things, because those are really the only two things that matter here: performance and how we measure that; and pay, and how you arrive at how pay is done. Everything else is secondary or tertiary. Thank you.

Mr. PORTER. Thank you very much. Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. Thank you all for your testimony.

Thank you, Mr. Stier, for what you do at the Partnership for Public Service to recognize the many achievements of our public employees. I thought that the reception that you had the other evening, recognizing those public employees, put exactly what we're talking about here, the importance of the positive forward and the incredible achievements of so many of our public employees.

So often, I think, to the American public you have this image of faceless bureaucrats, and I think that's compounded by the fact that people often are critical of the Federal Government without knowing what they do and the complexity of the services they provide. So I think that recognition is important, and I thank all of you for coming to testify in that spirit.

I would also like, Ms. Shaw, to congratulate you on what you have been able to do, and part of what does come out of this conversation is the leadership of the manager is important, and it's also important to support the managers with the resources they need both in terms of training, so we have trained managers, and that they have the resources they need to provide the incentives that we need to deliver.

We're having this discussion outside sort of the whole budget process, but I think we all have to understand it's easy to say we're going to provide the resources, but I can tell you, around here providing resources for this kind of critical function has been very difficult to get.

So I hope that everybody will be just as unified in calling for those additional resources and not supporting an effort that's going

to go forward in a way that's not done right. You need the resources to do it, and the testimony has reflected that.

I'd just like to pursue a little bit what my colleague Ms. Norton, Representative Norton, was discussing with respect to the existing tools that are out there that would allow us, if they were put to better use, to get better results. I think that there are clearly areas for improvement. We need to be able to hire people more quickly. Doesn't do anybody any good if people who want to join the Federal Government and offer their services and are qualified, if they go somewhere because we can't hire them quickly.

Clearly, we need to compete with the private sector on salary in many, many areas, because we are losing expertise. I do think that we need to be able to provide managers to have clear criteria for their employees, the ability to reward employees, but I would just—here is an example I think sort of tests the system.

There is a little department within the State Department, the Bureau of Intelligence and Research. You can't measure them by what they produce in terms of how many student loans they grant or that kind of performance. They are measured in performance in terms of their ability to try to analyze what is going on around the world and provide an intelligent assessment and analysis of threats and that kind of thing. The Bureau of Intelligence and Research, if you look at the footnotes on various intelligence, national intelligence estimates, were among the people who said, with respect to Iraq, that there really wasn't a great—a lot of evidence of weapons of mass destruction in Iraq.

And I am not going to debate the Iraq War. I am just saying that is their job is to reach that conclusion. There was a little foot buried in the national intelligent estimate. They did their work. They were skeptical. They did it at some risk to themselves in many cases because the whole politics of this were that we are going to find evidence.

Well, I don't think any of them, frankly, has been recognized or rewarded for the fact that they got it right and then you have George Tenet getting the Presidential Medal of Freedom, and he said it was a slam dunk case that there were weapons of mass destruction.

Now, this is the political environment that we operate in. And we need to have a system where those Federal employees, whether in INR or Department of Education, or wherever they may be, have the assurance that their work is being judged based on their performance and not being judged based on other considerations.

Now we have a vast Federal Government. Some of it is done in a context that is not that political. But much of it is done in a context political. And whatever system we come up with has to be able to accommodate employees in both spectrums, or you are going to have to have separate systems, depending on the nature of the work.

And so I just, as we go forward, and Representative Norton was talking about that, which is that part of the reason we have the existing system is to prevent people from being unfairly punished just because they have a different political perspective in certain jobs.

And many jobs, again, are outside that parallel. So I would just ask, with the system we have today, what more should we be doing, what are the existing authorities that people have that are not being taken advantage of? If we are not allowed to hire people quickly, we should change that, in my view. OK, if we can't compete with the private sector, which we obviously can't, we should change that. We can find common ground.

But where are some areas in terms of pay for performance like the bonus system that are not being adequately used today to try and do the kinds of things that Ms. Shaw has been able to do under the existing system? And I would just throw that open to all of you.

Mr. GAGE. Well, there are a number of things. I have been advocating that we take a look at our career ladder system. And I don't disagree with what anyone said about hiring. But once you're in, what motivates Federal employees is not the within grade increase that everybody says is—I don't know, people get unfairly or just for longevity.

What motivates Federal employees is promotional opportunity, is to be able to do a good job and to really excel. And I see that just an agency that week I believe is saying one problem with their pay for performance is that people with a pay band did not have that incentive to work hard for a promotion. And I think that is an incentive that really is overlooked by the whole pay banding. But you know to reward people, I think there is opportunity right now, Mr. Van Hollen, to reward the best and brightest. I don't think that really is a problem to use the system that we have right now to reward the best and brightest. And if we want to change criteria from within grades, have at it, that's fine. That is really not a problem. I think that the pay for performance system and the experiments that we have seen so far are really apples and oranges compared to what this is.

Some of these, most of these, and I look forward to seeing OPM's paper on these things, but most of them have—the agencies have put supplemental money into it. People are getting actually more money under that system—under the experiment. I don't think that is the same—that is contemplated in this proposal.

I think too, that when you break down, and we had a hearing the other day in front of the Senate, and I thought there was pretty much of a consensus that in the Federal Government, one size does not fit all with many of our jobs. Pay for performance, for instance, in law enforcement, will not work. Can't work. Kills that teamwork. It just—no experiment has showed that it works.

So I think it takes a lot of thought and to be very careful to try to extrapolate from some experiments that applies to scientists and take that down to our VA workers, our Social Security workers, whose job is much different than the jobs that were used in these experiments.

Ms. KELLEY. I would also suggest that the agencies do have authority to do some things today that they don't make the maximum use out of, things like quality step increases to high performers. They are given out in most agencies in very small numbers. And there are no restrictions on that. They can give them as they see fit. Yes, they have to do it within their budget structure, they have

to be able to fund those. But those are recognitions that are seen and recognized across the Federal work force when they are given. But they are given so rarely.

There are also opportunities for managers to provide management awards. And they have the discretion to do that. Because we see them not implementing that very much, in many of our negotiated rings, NTU has negotiated award agreements with agencies so that there are known criteria for what employees would need to see in a performance evaluation to know that they would then be eligible for, or not eligible for an award under the negotiated system. And we have done that because left to the discretion of the agencies, they just do not use these things the way they should.

Are they, you know, the be all and end all? Would it solve all the problems of the current system? Of course not. But there are two things right there that are within their discretion that they do not use.

And someone last week at a hearing said that everyone gets quality step increases. Well, I can tell you that is absolutely not true. We have looked at numbers across agencies where NTU represents and the percentages of employees who receive these are very small. And there is no consistency across agencies. Some will give as high as 5 or 10 percent of the work force, and others will give less than 1 percent. We have worked with some of our agencies in an effort to have them raised to more of an average government level. Even though we don't think there is a magic number, we think that if an employee is told if they do A, B and C, and that is what they need to be to excel, and they excel, then they should expect that recognition and reward at the end.

I agree it is not just about money, but it is about compensation and it is about recognition among the work force. It is about promotional opportunities, about detail opportunities, about temporary promotions, about creating new jobs that will allow these employees to use the skills that they have shown that they have and can excel at.

And all of these things are available to every agency today with no limits on them at all, and yet they are not used.

Ms. SHAW. If I may add, we do use all of those things that were just mentioned in Federal Student Aid. And in fact, we used existing performance management system at the Department; it is called Ed Pass. It is a five-tier system from highest performance being outstanding, lowest being not acceptable. We have spent the first 2 years of my tenure really focused and talking about performance and educating the work force, including management, training management, what does it mean to have a sound, understandable, measurable performance plan? How do you as a manager, evaluate that performance fairly and accurately with that employee-based process that is currently in place?

And then what we believe in, in the Department of Federal Student Aid, is we want to reward the highest performance to the maximum extent we possibly can. Our average outstanding performer on this recent review cycle received an average of $6,000 cash award. I don't know if that is high compared to other agencies or not, but we told our performers, if you perform in an outstanding manner, we are going to be fair and we are going to reward

you. And we have done just that. And people respond. And it is not just about money. They do respond.

We are doing incredible work. And people want us to be fair and they do want us to recognize their performance. And that is what we are about.

Mr. STYLES. I think revamping some of the processes as well, when you talk about QSIs, different agencies have different methodologies for providing the QSIs. And I think that, you know, you keep hearing me going to funding, funding, funding. Even if you go to pay for performance, if you don't provide the funding, you're going to undermine the system before you even get there.

If you talk about market-based pay, if I could just jump to there for a second. For us to take GS–11 and 12 brackets and put them together and call them a pay band, and then 13 and 14 and make them a pay band, that is all well and good, especially at the hiring levels where it gives you a little more of an opportunity to hire people at different levels. But if you don't raise the top level, if the GS–14 step 10 or GS–12 step 10 remains the same as it is today, you have not created a market-based pay system unless you put into effect FEPCA, if you really want to come down to it.

If you do not have those levels within those market areas equal to, how can you possibly go out and recruit those folks using a market-based pay? Did I make any sense with that? All I am saying is to name it something, without providing that essential tool, which happens to be the dollars, and the benefit program that we have in place, then you're not going to accomplish anything by doing that.

Ms. KELLEY. If I can add one other thing that I hear over and over, and in my experience, front line managers share many of the same issue with front line employees. That is where the rubber meets the road. That is where the work gets done. And they very often, the front line manager wants to recognize the front line employee. They want to give them a QSI or they want to give them a cash award. And then what they run into is lack of support from above.

I have had employees tell me that they were nominated for QSI and their manager said they were told they could only put in one per group. Well, what if you have three top performers, three outstanding performers? Putting caps like that is not pay for performance. That is exactly the kind of thing that will give no credibility to a system. And that happens every day today where front line managers who see the work and recognize the top performers, and who should be recognized and rewarded so they can motivate as well as reward, are not being supported in their efforts, whether it is about training, whether it is about support commitment, funding whatever it is, those front line managers are really in a position where they cannot do what they recognize needs to be done on behalf of the front line employees.

And I don't doubt that it happens to them too, but I can just tell you that I see it between the front line managers and front line employees all the time, that the front line managers are in a very, very difficult position and not being given the training and support and funding to do what they know is the right thing.

Mr. PORTER. Appreciate your comments. We are out of time. Mr. Van Hollen.

Ms. NORTON. Would the gentleman yield to me? I just want to because I think something very important has happened here. You know, in this last discussion, I think we have learned that there are more than the devil in the details, that the solution to much of this may lie in the details.

You were telling me stuff, you know, I didn't know, and I find it very informative. Because, first, when my colleague asked about quality staff increases, my first notion I said to him, do you know why anybody would do it? And this discussion—by the way, Ms. Kelley, I can see reasons why there would be some limits on it, you know, wherein the front office has to deal with the agency's total budget, I can see where there might be great variations, and I am sure you can see circumstances in which that would happen. But I am driven back, as I listened to you, to a hypothesis, that despite Ms. Shaw's experience, and again, she is a gold star performer, where she has been able to do very substantial quality step increases, apparently, without getting morale problems within the agency.

Let's assume that, at least. I am driven back to the risk that the manager takes by presuming to do so in a system, again, bound by due process, where everybody compares to everybody else under the law, where there is, in place, no standard, even a rough one, to guide that manager, and so the manager sees what she wants to do and she does it. She is taking a great risk. And the burden is on the Congress to help the OPM come to some way to harness this so it can be used.

Mr. PORTER. Thank you, Ms. Norton.

Mr. VAN HOLLEN. I want to thank you all you for your testimony. I think this was a hearing where lots of good ideas came out. I think the transcript will be something that we will all want to read as we go over this. And we welcome obviously your continuing input. Thank you, Mr. Chairman.

Mr. PORTER. Thank you very much. I appreciate you all being here. We had some diverse opinions, but all taken in a positive sense. I would hope that as we picked on you, Ms. Shaw, today, in a positive way, we would like to make sure that your successes would be the rule and not the exception. And it appears that there are managers that are afraid to take—or afraid they are not going to have support. There are leaders that have troubles with existing systems. So we want to make sure that yours is the rule and not the exception. Thank you all very much and all Members will be able to submit additional questions. And they can submit them for the record. I want to thank you all for being here today. The meeting is adjourned.

[Whereupon, at 12:14 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

The Honorable Jeff Flake

House Government Reform Subcommittee on the Federal Workforce
Hearing on the Working for America Act (WFAA)

Wednesday, October 5, 2005

Chairman Porter, Ranking Member Davis and Members of the House Federal Workforce and Agency Organization Subcommittee:

Thank you for inviting me to testify on the merits of the Working for America Act (WFAA). At a time of national emergency and increased federal spending, it is irresponsible to not seek to make the federal workforce more efficient and effective. I believe that the WFAA establishes new incentives that will not only improve the morale of federal workers, but will, in the long run, maximize taxpayer dollars. In essence, we will be buying more productivity with less money.

Most of us agree that the current General Schedule civil service system based on the government of 1950, which was comprised largely of clerks, has become outdated in today's modern workforce. The workforce has changed, and the way that workers are compensated must be changed as well. There must be a system in place to differentiate between employees who perform at or above expectations from those who do not. The federal government has a limited amount of money and time to provide the services it has been charged with. Colleen Kelly of the National Treasury Employees Union (NTEU) has stated that leaders, not systems, improve performance. Well, effective leaders invest where the payback in the highest, and that is with employees who meet or exceed expectations. Americans want a federal government they can trust to perform effectively by encouraging meritocracy within, not a system that promotes poor performers and breeds mediocrity.

Some have said that merit pay is unfair because it is always corrupted by office politics. It is true that a perfect system does not exist. Luckily, cases of abuse can be prevented by a candid, clear-cut performance system, with defined expectations, goals, and timelines, and a program of consistent appraisals. Most importantly, and I think this is something easily forgotten, is that under the WFAA, the Office of Personnel and Management (OPM) must certify that each agency is ready to switch from the current General Schedule system to performance-based pay. OPM must ensure that each agency establishes a link between the agency's strategic plan and their performance management system. They are the human resources department of the federal government and play a key role throughout this process. Ensuring that adequate agency resources are allocated for the design, implementation and administration of their performance management system is also necessary. I believe that transforming administrative budgets of the agencies into line-item appropriations would be a positive step to ensure this funding is there.

I have also heard the federal employee unions say that merit pay pits people against one another and undermines teamwork. Our own Arizona Diamondbacks function perfectly well as a team with a very transparent system of merit pay. Stars are

rewarded handsomely and underperformers are asked not to come back the next season. And, just like federal employees, players' salaries are very public. Some team members make $10 million a year, and others wearing the same uniform make the Major League minimum of $300,000. And yet everyone pulls together for the *team* to win. In game seven of the 2001 World Series, I am sure Luis Gonzalez's single to left field which brought Jay Bell home felt good, but I am sure it felt a lot better to him because it meant that the Diamondbacks beat the Yankees to become the quickest expansion team ever to win a World Series. Without question, Gonzales loves to excel for his own sake. But I am sure it is always more fun and exciting when his team wins. No doubt, this takes great leadership and a well-communicated and understood system of rules and regulations.

The WFAA would make modest, commonsense changes in the federal labor relations statute to clarify essential management prerogatives, while also preserving the important role and rights of unions in the federal labor relations system. It is important to note that bargaining would still be required before an agency could act, but only when the effect of a proposed management action is foreseeable, substantial and significant. This standard is similar to that used by the private sector today.

Bargaining would not be required over any aspect of a pay system. Employee input would be obtained through a 30-day "meet and confer" period following publication of the proposed pay-for-performance system in the Federal Register, and collaboration would continue as implementing directives are proposed. This alternative to bargaining would allow agencies to develop consistent programs allowing for agency-wide application, but also important flexibility for local needs. Additionally, union input would be obtained more quickly by avoiding lengthy delays caused by bargaining disputes.

Bargaining would also not be required over management action necessary to carry out the agency mission during an emergency, or to prepare for, practice for, or prevent any emergency. This would give agencies the flexibility to conduct unannounced simulations to ensure emergency preparedness. As we have seen in the aftermath of Hurricane Katrina, in a state of emergency we do not have time to cut through red tape.

Lastly, the WFAA authorizes the establishment of a streamlined and consolidated one-stop-shop process for effectively resolving collective bargaining disputes. This consolidated approach would provide more timely resolution of bargaining disputes, rather than the current system, which holds up the implementation of new policies, procedures, or collective bargaining agreements for one year or more as the parties work their way through these multiple roadblocks.

I firmly believe that the federal government will run more efficiently, and employees will be treated more fairly, if the WFAA reforms are enacted. The time has come to promote a personnel system that mirrors the market and requires management and employees to work together to achieve the same goals.

Thank you again, Chairman Porter, for allowing me the opportunity to stress the importance of moving ahead with the Working for America Act.

Mom, Apple Pie, and Working for America: Accountability and Rewards for the Federal Workforce

Subcommittee on the Federal Workforce and Agency Organization
Chairman Jon C. Porter
October 5, 2005

PANEL 2

Linda Springer, Director, Office of Personnel Management

1. I would like you to clear up some misperceptions:

   a. Are the Working for America Act provisions identical to the authorities provided to DHS and DoD?

      No, there are important differences between these two *agency-specific human resources systems* and the Governmentwide provisions contained in the proposed Working for America Act (WFAA). In terms of merit system principles, veterans' preference, faith in our workforce, managerial accountability, and respect for stakeholders, they all share the same firm commitment. However, in terms of process, structure, and substance, there are some distinct differences. Instead of waiving provisions of title 5, United States Code, requiring the Office of Personnel Management (OPM) to hold meet-and-confer sessions with those agencies and their unions, and requiring OPM and those agencies to jointly prescribe the new human resources system, WFAA would explicitly amend title 5, requiring that OPM certify the readiness of agencies before they can implement pay for performance, and provide for agency-union collaboration in implementing the system. In terms of structure, WFAA retains the Merit Systems Protection Board and the Federal Labor Relations Authority (FLRA) while streamlining some of their processes. In terms of substance, WFAA makes only modest changes in labor relations, adverse actions, and appeals laws. Finally, WFAA includes some staffing flexibilities, as does the DOD system, whereas the DHS system has no additional authority.

   b. Is WFAA giving OPM authority to waive provisions in title 5?

      No. As indicated above, WFAA would amend title 5, making explicit changes, rather than permit broad waivers of it. However, OPM would retain the authority to waive certain provisions of title 5 in accordance with chapter 47 covering demonstration projects.

   c. Will any employee lose pay because of conversion to the new pay system established under the authority of WFAA?

No employee's pay will be reduced as a result of converting to the new system.

2. Why is it important to move forward on civil service reform for the rest of government, before the results of the DHS and NSPS experiences are fully known?

   It is urgent that we modernize civil service processes that do not spend taxpayers' dollars wisely, do not hold managers accountable, do not fairly compensate employees, and do not treat employees fairly. While DHS and DOD have urgent national security missions, other agencies have urgent domestic missions such as caring for the aged, holding schools accountable, protecting public health, supporting the Nation's infrastructure, and ensuring energy sufficiency. WFAA ensures that change would begin to happen one agency at a time, since each agency's readiness would be certified by OPM.

   Also, DHS and DOD are implementing different reforms than are proposed in WFAA, some less complex agencies are better prepared to implement reforms today than DHS and DOD, and reform implementation depends on how individual agencies implement the changes: success at one agency is relatively independent of success or failure at other agencies.

3. Last week, the Chairman of the Senate Homeland Security and Governmental Affairs Committee said the administration "would have done well to focus on what was working well" in current pilot projects and alternative pay methods "before proceeding to transform" the departments of Defense and Homeland Security. What is your view?

   The legislation authorizing new human resources flexibilities in DOD and DHS and the systems they are developing, as well as the reforms proposed in WFAA, are based on the lessons learned in the Government's demonstration projects, which have been going on for some 25 years.

4. Would it be more useful to look at an agency-by-agency solution rather than a comprehensive framework for performance pay?

   Actually, WFAA does both. It provides for an agency-by-agency process of rigorous certification by OPM within a comprehensive framework for performance pay. However, to proceed with a congressional authorization process of one agency at a time risks further fragmentation of the civil service system through breakout efforts by agencies to obtain their own flexibilities through their own authorizing committees in order to be competitive or to get a competitive advantage.

5. In his statement, Mr. Walker indicated that OPM's capacity to carry out the Working for America Act needs to be monitored. Is OPM prepared in terms of

staff, budget, and other resources to effectively perform its responsibilities under the Working for America Act? If not, what do you need?

We are confident we will have the resources we need to implement WFAA when and if legislation is enacted. Given the complex and long-term effort to implement WFAA, there will definitely be additional responsibilities. OPM's work with DHS and DOD, our ongoing work with all agencies on human capital leadership, and our certification responsibilities for agency executive appraisal systems provide a solid basis from which OPM can lead this change process. In addition, OPM will be able to leverage the lessons learned from its oversight and evaluation responsibilities related to demonstration projects and the ongoing work being done with DHS and DOD to shorten the period of implementation and obtain economies of scale in implementing a performance-oriented system, agency by agency.

6. How large is the task of training supervisors to leave the General Schedule and convert to new pay systems?

Any time a large-scale system is changed, such as a pay system, training and ongoing communication are required for supervisors and employees. Agencies are responsible for providing that training, and OPM provides support and guidance. For example, when an agency changes its performance management system, it must train its supervisors and employees on the new system. Many agencies are already investing in improving their systems and have undertaken extensive training efforts. When GSA, Interior, and Transportation moved from pass/fail appraisal systems to multiple-level systems, they trained all supervisors and employees on the new systems. The GSA training was based on OPM's guidance, the Handbook for Measuring Employee Performance. The agencies used a combination of contractor classroom training, satellite broadcasts, Web-based training, and other in-house training and briefings. DHS and DOD also are investing heavily in training their supervisors and managers in their new performance management and pay systems. Training plays a large role in ensuring the effectiveness of the new systems.

As agencies migrate to new systems, OPM supports performance-oriented pay and management training efforts in a variety of ways: (1) providing a performance management competency model for agencies to use as a guide for developing supervisory training; (2) developing an on-line training course for supervisors on establishing employee performance plans that align with organizational goals, include credible measures of performance, and focus on achieving results; (3) developing an on-line course for supervisors on enhancing performance and addressing and resolving poor performance; and (4) providing guidance, tools, briefings, conferences, training, and other effective methods for supporting agencies in their move to performance-oriented pay.

7. Does the Working for America Act give OPM the authority to waive the labor-management relations provisions of title 5?

   No.

8. In relationship to the authority granted to DHS and DoD to set up new personnel systems, how extensively does the Working for America Act affect the labor-management relations provisions of title 5?

   The WFAA amendments would not create a new labor-management relations system but rather authorize the Chairman of the FLRA to streamline the process for resolving bargaining disputes. WFAA also makes modest substantive changes, many of which are grounded in case law, to apply the experience gained from 25 years under the Federal labor relations law enacted as part of the Civil Service Reform Act of 1978. Case law, however, can change, and one can find third-party decisions on the same issue, based on similar facts, that reach opposite conclusions. WFAA's amendments would have a stabilizing effect on Federal sector labor-management relations.

9. For example, the Working for America Act redefines the term "grievance" and "emergency" in chapter 71 of title 5: How extensively do these changes affect employee rights, and why are the changes necessary?

   These specific changes would not have a large impact on employee rights. The amendment to the definition of "grievance" codifies case law from the U.S. Court of Appeals for the District of Columbia which the FLRA currently follows. However, case law can change, and this amendment would ensure stability in this area of labor-management relations. This amendment also would clarify that although many aspects of pay may be grieved, management's pay determinations made in accordance with an agency-specific performance adjustment plan certified by OPM would not be grievable. This change is necessary to implement an effective pay-for-performance system by precluding arbitrators from determining an employee's pay.

   WFAA would provide a statutory definition of "emergency" for the first time in chapter 71. The definition would clarify the kinds of events, or potential events that would constitute an emergency under chapter 71 and is narrowly tailored to circumstances in which immediate action is required to carry out critical or essential agency functions. It would exclude resource shortages driven by new mission requirements or budget exigencies related solely to agency management actions. The intent is to strike the right balance between management's need to take immediate action in narrowly defined circumstances and employees' right to bargain collectively.

G A O
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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

December 1, 2005

The Honorable Jon C. Porter
Chairman
Subcommittee on Federal Workforce and Agency Organization
Committee on Government Reform
House of Representatives

Subject: *Posthearing Questions Related to the Administration's Draft Proposed Working for America Act*

Dear Chairman Porter:

On October 5, 2005, I testified before your subcommittee at a hearing entitled "Mom, Apple Pie, and Working for America: Accountability and Rewards for the Federal Workforce."[1] This letter responds to your request that I provide answers to follow-up questions from the hearing. The questions, along with my responses, follow.

1. Based on your previous testimony before this Subcommittee and your testimony today, I think it is fair to say that you are a supporter of performance-based pay, as long as there are appropriate performance appraisal systems and safeguards in place to ensure the system is transparent and fair. Would you agree?

Yes, as I stated in my testimony, I strongly support expanding pay reform in the federal government. I believe that implementing more market-based and performance-oriented pay systems is both doable and desirable. Specifically, pay increases should no longer be treated as an entitlement but should be based on employees' contributions to their organizations' missions and goals. Nevertheless, as discussed at a symposium recently held at GAO, organizations' experiences show that the shift to more market-based and performance-oriented pay must be part of a broader strategy of change management and performance improvement initiatives.[2] More market-based and performance-oriented pay is only one part–albeit a critical one–of a larger effort to improve the performance of an organization. In addition, appropriate systems and safeguards need to be in place to help ensure implementation of an effective, credible and more market-based and performance-oriented pay system.

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[1] GAO, *Human Capital: Preliminary Observations on the Administration's Draft Proposed "Working for America Act*, GAO-06-142T (Washington, D.C.: Oct. 5, 2005).
[2] GAO, *Human Capital: Symposium on Designing and Managing Market-Based and More Performance-Oriented Pay Systems*, GAO-05-832SP (Washington, D.C.: July 27, 2005).

2. You have expressed concerns that the Office of Personnel Management's (OPM) capacity to implement the Working for America Act needs to be monitored. In your opinion, what resources will OPM need to carry out its responsibilities under the Working for America Act?

OPM should play a key leadership and oversight role in helping individual agencies and the government as a whole work towards overcoming a broad range of human capital challenges. At the request of the Senate Committee on Homeland Security and Governmental Affairs and its Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, we have begun to assess OPM's current capacity to lead a broad-based, governmentwide human capital reform effort, including providing appropriate assistance to federal agencies as they revise their human capital systems and conducting effective monitoring of any related reform implementation efforts.

As I observed in my testimony, OPM's internal management challenges could affect its ability to take on additional responsibilities such as those outlined in the draft proposed Working for America Act, as well as under other governmentwide human capital initiatives. For example, OPM reported in its June 2001 workforce analysis that 4.2 percent of its employees (about 123 per year), on average, were projected to retire each year over the next 10 years, and the largest percentage of projected retirements, about 8 percent each year, would come from members of its Senior Executive Service. OPM's expected retirement rate for its workforce overall is more than the governmentwide annual retirement rate of 2 percent that we identified in a report issued in 2001.[3] Leading organizations use succession planning and management to identify the skills and knowledge required to achieve their goals.[4] Effective succession planning and management could help OPM strengthen both its current and future organizational capacity.

3. I think that GAO's pay-for-performance system is a good example of how a successful system of performance-based pay can be implemented. What aspects of GAO's system would be useful examples for us to consider for the Working for America Act proposal?

Given our goal and commitment to lead by example in all major management areas, we believe that the federal government could benefit from GAO's experience with human capital reforms. Among the valuable lessons GAO has to share with other federal agencies are to use validated core competencies; build in safeguards to help ensure consistency, fairness, credibility and transparency; and involve employees in the design, implementation and evaluation of the performance management system.

Validated core competencies are a key part of evaluating individual contributions to organizational results. Competencies define the skills and supporting behaviors that individuals are expected to demonstrate and can provide a fuller picture of an

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[3] GAO, *Federal Employee Retirements: Expected Increase over the Next 5 Years Illustrates Need for Workforce Planning*, GAO-01-509 (Washington, D.C.: Apr. 27, 2001).
[4] GAO, *Human Capital: Selected Agencies Have Opportunities to Enhance Existing Succession Planning and Management Efforts*, GAO-05-585 (Washington, D.C.: June 30, 2005).

individual's performance. At GAO, we have a set of core competencies with detailed performance standards that are documented in writing. Employees validated the competencies, which address areas such as achieving results, communicating orally and in writing, and developing people. The performance standards for each competency describe the behaviors required to merit a rating of "meets expectations" or "role model." Such documentation helps to ensure transparency, consistency, and clarity in communicating performance expectations to the analyst community.

GAO's performance management system has built in numerous safeguards. Among these safeguards are multiple levels of review to ensure consistency and fairness in the process and resulting decisions. Specifically, before performance ratings are finalized, they receive second-level reviews, typically by a senior executive within the employee's team to check if raters have consistently and reasonably applied the performance standards. Subsequently, the Human Capital Office and the Office of Opportunity and Inclusiveness review the performance ratings and pay decisions across all of GAO to determine whether there are any irregularities or potential adverse impacts to be addressed. To further help ensure consistency in ratings and in applying performance standards within and across GAO's teams, we implemented standardized rating scores (SRS) for employees for the first time in the fiscal year 2004 performance appraisal cycle. The SRS indicates the employee's position relative to the average rating of that employee's team. Employees in different teams with the same SRS have the same relative performance and if they are paid within applicable competitive compensation ranges, receive the same percentage of performance-based compensation. Employees' SRS and the midpoint for their pay range are key factors in calculating their performance-based compensation for that year.

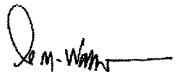
Finally, we actively involve employees to help improve their confidence and belief in the fairness of the system. For example, we are continually working with employees to identify the best way to communicate the SRS information as part of GAO's ongoing commitment to employee feedback on the new system and transparency about pay decisions. We involve employees through informal focus groups, task teams, and town hall meetings, among other ways. It is my impression, based on employee feedback, that GAO has made significant strides in allaying the significant initial concerns expressed by employees by involving them in the design, implementation and evaluation of these initiatives.

4. Specifically, how would you improve the Working for America Act?

As I testified, Congress should make pay and performance management reforms the first step in any governmentwide reforms. Selected federal agencies have been implementing more market-based and performance-oriented pay for some time—some organizations for well over a decade—and thus they have built a body of experience and knowledge about what works well and what does not that allows the sharing of lessons learned. On the other hand, the federal government has had far less experience with changes regarding labor management relations and adverse actions and appeals. Congress has granted the Departments of Homeland Security and Defense related new authorities in these areas and may wish to monitor the implementation of those authorities, including lessons learned, before moving forward for the rest of the federal government.

In the short term, Congress should consider selected and targeted actions to continue to accelerate the momentum to make strategic human capital management the centerpiece of the government's overall transformation effort. One option may be to provide agencies one-time, targeted investments that are not built into agencies' bases for future year budget requests, through a central fund such as the Human Capital Performance Fund. Such a fund has merit and could help agencies build the necessary infrastructure to implement a more market-based, performance-oriented pay system. Congress should also consider potential legislative changes to allow cash bonuses that would otherwise be included as base pay increases to be calculated toward retirement and thrift savings benefits (for example, by specifically factoring bonuses into the employee's basic pay for purposes of calculating the employee's "high-3" for retirement benefits and making contributions to the thrift savings plan).

For additional information on our work on strategic human capital management, please contact J. Christopher Mihm, Managing Director, Strategic Issues, at 512-6806 or mihmj@gao.gov.



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