American Federation of Government Employees
AFL-CIO

STATEMENT BY

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AND THE DISTRICT OF COLUMBIA

THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

REGARDING

FEDERAL PAY POLICIES AND ADMINISTRATION

ON

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Mr. Chairman and Members of the Subcommittee: My name is J. David Cox, and I am the National Secretary-Treasurer of the American Federation of Government Employees, AFL-CIO. On behalf of the more than 600,000 federal and District of Columbia employees our union represents, I thank you for the opportunity to testify today on the important issue of federal pay.

As has been the case for so many issues, the Bush Administration has been relentless in its efforts to politicize federal pay. The methods of politicization have been numerous and sometimes clandestine, but unfortunately, very effective. First and foremost has been the campaign to replace a system based upon objective market data with one based upon subjectivity and discretion. Second has been a campaign to suggest that the data produced by the Department of Labor and calculated according to sound statistical procedures by professionals at the Office of Personnel Management are fatally flawed, and should be replaced by back-of-the-envelope calculations, "market research" and private data on an agency-by-agency, supervisor-by-supervisor basis. Next come the contradictory claims that a) the government must contract out because it "cannot" match the high salaries demanded by cutting-edge professionals vs. b) the government overpays its lazy bureaucrats and needs a new personnel system with the flexibility to deny raises to those judged "over market" by their bosses. We have seen bonus programs at the Department of Defense that gave substantially more to political appointees than career employees, and pay-for-performance schemes that want to judge federal employees on how effectively

they carry out the President's highly political "management agenda." The list is long, and threatens to grow.

In my statement today I want to focus on two main issues: how pay for performance inevitably undermines the merit system principles, and how enormous is the difference between what the government allows for contractor salaries versus the salaries of federal employees.

Pay For Performance and the Merit System Principles

When the Bush Administration has not been busy trying to privatize our jobs, it has been focused on taking away our rights and protections as federal employees. There is a reason federal employees have had job protections that are different from those which apply to employees in the private sector. The Merit System Principles[1] assure taxpayers that federal agencies and programs will be administered by a workforce that is hired and paid solely on the basis of objective, apolitical criteria. But the personnel systems, including so-called "pay for performance" that the Bush Administration is imposing in the Departments of Defense and Homeland Security, and has sought authority to impose on the rest of government, are a grave threat to the Merit System.

As with "best value contract awards in the realm of outsourcing, discretion on the part of political appointees and those they supervise is the name of the

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[1] The nine Merit System Principles are defined in Section 2301 of Title 5 of the U.S. Code. They say that federal employees should be hired competitively, promoted solely on the basis of ability, and should be treated fairly and without regard to politics, race, religion, national origin, gender, marital status, age, or handicap. Federal employees are to receive equal pay for equal work; employees must maintain high standards of integrity, conduct and concern for the public interest. They should be employed efficiently, provided with training, and protected from any kind of political coercion, or reprisals in response to legitimate "whistle-blowing."

game. "Pay for performance" has perhaps the greatest potential for undermining the political independence of the federal workforce, since it is a policy initiative that can be sold using slogans and assurances that are difficult to rebut. After all, how can one oppose the concept of "rewarding excellence" or giving financial incentives to employees to become more efficient and productive? When set in this context, "pay for performance" sounds as though it will both pay for itself and improve the output and morale of the federal workforce. Who could oppose it? Only "poor performers," as David Chu, the Undersecretary of Defense for Personnel and Readiness asked rhetorically in a 2003 Senate hearing on the Department's proposed National Security Personnel System (NSPS). But what is really at work with "pay for performance" is the ability of a federal manager to discriminate among employees for any reason and call it "performance."

Pay is such a crucial aspect of employment that the authority to manipulate it by setting individual workers' base pay and deciding whether and by how much to adjust that pay each year gives the political appointees who control agencies enormous power over the federal workforce. Under the current General Schedule pay system, federal jobs are classified according to duties, and salaries are assigned to jobs on the basis of market data. Individual federal employees are able to progress through a career ladder if they meet objective performance criteria, and Congress each year decides salary adjustments on the basis of national and local labor market data collected by the Bureau of Labor Statistics (BLS).

But the pay for performance schemes that are central to MaxHR in the Department of Homeland Security and NSPS in the Department of Defense promote individualized pay. Two people with the same job duties hired the same day in the same place can be offered different salaries, and in the future, despite similar performance, can be given vastly different salary adjustments. Supervisors can cite from among a myriad of factors to explain a decision to withhold, reduce, or increase salary adjustments for individual employees. An employee may not receive a raise in a given year because the agency is not experiencing recruitment or retention difficulties in her occupation. Another possibility is that despite her success in meeting or exceeding all performance targets, her coworkers might be so superior that all the money went to rewarding them. Her performance might be satisfactory, but not above and beyond expectations. She might have a child with an illness that forced her to take a short leave of absence, and thereby undermined her eligibility for a salary adjustment regardless of her performance before and after her leave. Her supervisor might not like her, her politics, her philosophy of life, or her hairstyle.

Different pay adjustments for different individuals may also be the result of different types of assignments. The relative performance of their coworkers competing against one another or a share of the "pay pool," is likely to be a crucial factor, giving each employee a financial stake in the failure of others. The funding available to the component of the agency where one works will also be a factor, along with questions of whether the agency provided adequate staffing or other resources to facilitate good performance, such as training; or even whether

one's supervisor is in a good or bad mood, or failed or succeeded to be persuasive relative to other supervisors on the day the "pay pool" free-for-all took place. All in all, the pay systems designed under the personnel authorities in DHS and DoD render the Merit System Principles unenforceable. Any rationale can justify any action, and employees have recourse only to internal agency boards for appeals.

These pay and personnel systems also undermine Congressional authority. Lawmakers may vote to fund annual payroll adjustments to express their support for the federal workforce and for the important missions of the programs they administer and the services they provide. But the discretion granted to agencies and their political appointees to manipulate the distribution of those payroll dollars means that a simple vote to adjust federal pay will not produce the intended result. However much power Congress intended to cede to the executive branch, this Administration has taken the ball and run with it, and the restrictions on collective bargaining, grievance procedures, and access to the Merit Systems Protection Board (MSPB) all conspire to undermine accountability even further. The most sacred public responsibility of federal employee unions is to serve as a check and balance on political appointees' efforts to politicize and otherwise undermine government programs and agencies. This ability has been severely affected by the abolishment of union rights.

The President's FY08 budget expressed the intention to continue to undermine the federal workforce through privatization and government-wide personnel "reform" that would expand the damage to the civil service beyond

DHS and DoD. AFGE will continue to oppose these systems. Our members have made clear that all they desire is the opportunity to do their jobs, free from political interference, free from the constant threat of politically-motivated outsourcing, and free from the necessity to play political games to win the favor of those who will decide their pay raise. They want their salaries to reflect their job responsibilities and the salaries paid to those who do similar work either in the private sector or in state and local government, as the Federal Employees Pay Comparability Act (FEPCA) provides.

While the danger "pay for performance" schemes pose to the political independence of the civil service is their most serious flaw, it should also be understood that these systems also threaten the government's ability to recruit and retain the next generation of federal employees. More than half of the federal workforce is currently eligible to retire, and Congress has granted agencies authority to utilize an enormous array of incentives to recruit their replacements. However, in cases where agencies have not bowed to Administration pressure to replace all retiring federal employees with private contractors, federal salaries have often proven to be an obstacle to recruitment.

This is not only the case in DoD and DHS where the combination of outsourcing gone wild, inadequate salaries and a future of politicized salary adjustments create particularly uninviting prospects for new employees. It is also the case for federal employees who remain in the General Schedule locality pay system. The law which created locality pay for federal employees, FEPCA, was passed in 1990, and set forth a schedule for gradually closing measured

disparities between federal and non-federal pay over the course of nine years. Comparability, defined in the law as 95 percent of the rates set in private labor markets, was supposed to have been achieved in 2002. However, only in 1994 did Congress provide funding to adjust federal salaries in accordance with the law's schedule. In each year since, the president used his authority to invoke one of many of FEPCA's "loopholes" for providing an alternative to the scheduled locality adjustments – and as a result, since 1995 progress toward comparability has been much slower than the law envisioned.

The size of the measured gap between federal and non-federal pay has changed in recent years because of the conversion to a new data set and the introduction of new data into that survey. Originally, FEPCA was designed to ensure that the size of the gap would not grow: all federal employees would receive an annual adjustment based upon the Employment Cost Index (ECI), a BLS measure of changes in private sector pay. That way, federal employees would not be chasing a moving target in their pursuit of pay comparability (defined as attainment of the "target gap" of 5 percent). But since BLS lost funding for the survey that compared federal salaries with those in the private sector on an occupation by occupation basis after just one cycle, the gaps used for calculating progress toward comparability were based upon a statistical process that "aged" that initial data.

Eventually, BLS began to collect data appropriate for use in federal locality pay through the National Compensation Survey (NCS), which was incorporated gradually into to the aged data until this year when the disparities were measured

entirely with NCS data. In the meantime, BLS instituted various improvements in NCS data, incorporating more and more federal job matches, and thus making the data ever-more precise for measuring pay disparities between federal and non-federal pay. This year, when data were added that reflected private sector salaries for four levels of supervisory employees, the result was that measured pay gaps in some localities changed dramatically. The largest change was in the Washington, D.C. – Baltimore locality, where the size of the gap increased by 13.99 percentage points. Atlanta, Boston, Chicago, Cleveland, Los Angeles, New York, Phoenix, Richmond, and "Rest of U.S." rose significantly as well. On average nationwide, the size of the measured gap rose from 13.4 percent to 18.4 percent between 2005 and 2006, almost completely because of improvements in data.

These additional data caused a new picture to emerge with regard to *relative* progress toward comparability among the various localities. Based upon the new data, it emerged that some localities had as much as 88 to 89 percent of their target gaps closed, i.e. they were 88 to 89 percent of the way toward 95 percent comparability with the private sector, while others, such as New York and San Francisco were only 53 to 55 percent of the way toward their comparability goal. In light of this new data, President Bush decided to allocate the paltry 0.5 percent allocated to locality pay in such a way that every locality would have the same percentage progress toward comparability.

That meant that for 2007, federal employees received 1.7 percent ECI-based adjustments, and widely varying amounts of the 0.5 devoted to locality

pay. Those outside of major metropolitan areas, the "Rest of U.S." category received 1.8 percent overall salary adjustments, while those in the Washington, D.C. –Baltimore locality received 2.64 percent, those in New York got 3.02 percent, and those in San Francisco locality received 3.0 percent.

Why was so little available for locality pay in 2007? Although both houses of Congress had voted to adjust federal pay by 2.7 percent this year, the appropriation bill that contained this increase never became law. Thus President Bush was able to exercise his authority under FEPCA to impose a pay raise of his choosing, and he chose 2.2 percent. He then chose to allocate locality pay in such a way as to leave about 681,000 federal employees with raises below 2.2 percent, roughly 54 percent of the total General Schedule workforce.[2]

Although decades worth of surveys of federal employee attitudes show how highly they value the missions of the federal programs and agencies where they work and how devoted they are to public service generally, the fact is that like any members of the working and middle class, federal employees' highest priority is to be able to support their families and provide them with economic security. Although federal pay has always been modest, for generations a federal job did provide a decent standard of living and good opportunities for career development. Today, however, both the existing FEPCA-based federal pay system as well as the looming threat posed by DoD's and DHS's "pay for

[2] According to OPM data, the following localities received overall raises (1.7% ECI plus locality) below 2.2%: Cleveland, Denver, Detroit, Portland, Oregon; Miami, Pittsburgh, Cincinnati, Houston, Richmond, Virginia; Huntsville, Indianapolis, Columbus, and Rest of U.S. The actual number of employees who received these raises, which ranged from 2.18% to 1.81%, was 680,877 or 54.52% of GS workers. The range of raises above 2.2% was a high of 3.02% in New York to 2.21% in Phoenix.

performance" schemes, are making it difficult for many federal employees in particularly high cost cities to make ends meet.

Exorbitant housing prices in California, New York, Boston, Washington, D.C. and other cities with concentrations of federal employees have occasioned petitions to the Federal Salary Council for supplemental salary adjustments based upon the cost of living. The premiums for health insurance under the Federal Employees Health Benefits Program (FEHBP) have also far outpaced federal salary increases for over a decade. During the last four years, cost shifting in FEHBP has made matters even worse by forcing federal employees and retirees to shoulder ever higher portions of the increases. Combining these factors with the Administration's unwillingness to fund the pay comparability system has created enormous hardship for federal employees, and creates the self-fulfilling, self-inflicted prophecies regarding the government's projected difficulty in recruiting the next generation of federal employees.

President Bush proposed a 3.0 percent total increase for federal pay for 2008. That amount just equals the relevant Employment Cost Index measure for the 2008 raise, although FEPCA slices 0.5 percentage points off that figure for the annual across-the-board raise. In effect the President is probably recommending 2.5 percent ECI plus 0.5 percent for locality pay. As this year's experience demonstrated, 0.5 percent for locality pay is grossly inadequate. AFGE supports the 3.5 percent federal salary adjustment for both civilian and military employees that the Congress has passed. AFGE also urges Congress to continue to extend this raise not only to federal blue collar employees, but to all

civilian DoD and DHS employees in the GS system. While this will certainly not solve all the government's problems with regard to pay, recruitment, retention, and fairness, it would take us a fair distance in the right direction and is eminently affordable.

Federal Salaries versus Allowable Charges for Salaries for Contractors

Although the size and composition of the contractor workforce remains "top secret" some amateur cryptologists have made educated guesses. The most frequently cited is that of the Brookings Institution's Paul Light, whose current estimate is roughly eight million. Whatever the exact figure, it seems clear that the number of contractors is far larger than the official federal workforce that numbers 1.8 million. Whether contractors outnumber federal employees three to one or four to one, it seems undeniable that the government's policies for contractor salaries should be a part of any discussion of federal pay. After all, when contractors and federal employees are working side-by-side in what some call, optimistically, a "blended workforce" the issue of comparability takes on even more urgency.

As discussed above, the federal salaries are modest by design; the goal of FEPCA is not market comparability, but 95 percent of comparability. The normative philosophy behind this under-market target is the idea that those who serve the public should be in it for something other than money. While altruism, patriotism, and a strong public service mentality are widespread among federal

workers, it seems to have bypassed the shadow, contractor workforce, at least as far as demands for cash compensation go. Let us start at the top.

For 2007, the Federal Acquisition Regulation (FAR) permits contractors to charge the government up to $597,912 per year for each of the top six corporate officers they employ. Of course, that does not mean that these contractor executives are limited to $600,000 per year in taxpayer-financed salaries. Indeed, they can be paid any amount their shareholders will approve. It is just a matter of allocating shares of the profits charged on the overall amount of the firm's aggregate contracts. And that is how, for example, a contractor like Lockheed Martin, for which the federal government is almost the only customer, can pay its CEO $18.6 million per year.[3] Importantly, the FAR only limits salaries that can be charged for the top six corporate officers. Contractors can and do charge the government *any* "reasonable" amount for salaries for *any* number of employees below that level. Thus, a scientist, engineer, lawyer, or other highly-trained professional can cost US taxpayers any amount, and it is entirely legal. It is just that ordinary citizens cannot see those numbers, another government secret, this time held securely by the Defense Contract Audit Agency (DCAA). If these data were available to the public that pays the bill, we would learn that taxpayers provide far in excess of $600,000 per year to numerous individuals who work exclusively on federal government contracts.

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[3]Although almost entirely financed by US taxpayers (according to Lockheed Martin's 2006 Annual Report, "84% of its net sales were to the U.S. government. Sales to foreign governments (including foreign military sales funded, in whole or in part, by the U.S. Government) amounted to 13% of net sales...while 3% of our net sales were made to commercial and other customers. Lockheed Martin 2006 Annual Report, page 3.

Although Lockheed Martin is known as the number one aerospace and defense contractor, it also holds the number five spot among top service contractors, with $2.2 billion worth of service contracts in 2006. Nevertheless, it is instructive to contrast the parameters of allowable pay for real federal employees at NASA, with what the federal government allows top employees working indirectly for the government at Lockheed. The Administrator of NASA is paid $186,600 (the maximum for Cabinet Secretaries), members of the federal Senior Executive Service at NASA are paid no more than $168,00 per year excluding bonuses and up to $215,700 with bonuses; and most important, the NASA scientists and engineers who are federal employees - including last year's Nobel-Prize winner in Physics and his team, are limited to $154,000 per year, and the reason it is even that high is thanks to the *flexibility* of FEPCA's "special rate authority." But isn't it impossible for the government to hire the best scientists due to the inflexibility of the federal personnel system? Isn't that what the privatizers and advocates of pay for performance insist? Tell that to the federal employees who formulated and worked on NASA's Cosmic Background Explorer Project (COBE) which won the 2006 Nobel Prize and was carried almost entirely by in-house NASA scientists (James Mather and George Smoot shared the prize, the former a full-time NASA employee; the latter a professor at University of California, Berkeley and sometime employee of NASA).

Another large government services contractor, SAIC, which is number two behind Haliburton in total service contracts for 2006 (and which ranked, ironically, as the number three recipient of small business federal contracts last year) had

$8.3 billion in revenues in year ending January 31, 2007. SAIC's most recent 10-K states that 93% of total consolidated revenues in fiscal 2007, 2006, and 2005 came from its Government Segment, and "within the Government segment, substantially all of our revenues are derived from contracts with the US Government. Further, the SEC filing goes on to describe its contract types and how each provides various types of reimbursement for labor costs. This is relevant because what SAIC sells to government agencies is labor services or "labor hours"– in the form of "a wide array of technical services and solutions" and they are, of course, always at the "cutting edge."

At what price do taxpayers buy these "cutting edge" labor hours from SAIC? Last year, the SAIC CEO was paid $2.1 million in cash compensation, and an additional $625,000 and change in restricted stock awards and security options, far more than the Secretaries of Defense, Homeland Security, and the heads of Intelligence agencies to whom SAIC sells its services. And what about the rank and file workers who staff these contracts? No one knows. Taxpayers pay the bill for SAIC, but taxpayers cannot learn how much SAIC pays the employees who do government work under its name. All we know is how much SAIC charges in the aggregate for its contracts.

Whether it is the data from the Department of Labor describing the federal-non-federal pay gap, or the data from the Federal Procurement Data System (FPDS) that shows only how much contractors charge, we are left with one conclusion: federal employees are a bargain, in part because their salaries are so low.

Why pick on poor Lockheed Martin and SAIC? And why raise the issue of contractor salaries at a hearing on federal pay? Because they are the contractors of choice for the federal government's outsourcing and privatization of government work previously performed by federal employees. They are the contractor of choice for new government work, and expansions of government work. There is little that Lockheed Martin or SAIC do for their customer, the U.S. Government, that federal employees could not do at a far lower cost to taxpayers. But it is instructive, in the context of considering the adequacy of federal employee salaries, to consider the question of why federal agencies have been able to fund contractors' payrolls so generously, and why there never seems to be enough funding available to provide even the 95 percent of comparability that FEPCA is designed to provide. Are our exemplary NASA underpaid relative to contractors, or are the contractors overpaid relative to federal employees? Our answer is that we believe that all who perform work for the government, and whose salaries are financed by taxpayers, should be paid a fair salary determined by objective market data. Whether the work is scientific, janitorial, clerical, or managerial, taxpayers should pay about the same whether the work is done directly for a government agency, or indirectly, for a profit-making corporate contractor. The relatively generous salaries permitted through the FAR for contractors give lie to the persistent contention that FEPCA's standards for market comparability are unaffordable, or that federal employees are already paid too much. And we think serious consideration should be paid not only to the Department of Labor's measure of the federal-non-federal pay

gap, but also to the gap between the FAR's salary allowances and the General Schedule.

Conclusion

Federal pay should not be a contentious issue. It should be a matter of market data. It should be subject to public scrutiny. It should be adequate to allow the government to recruit and retain a high quality workforce dedicated to public service and capable of carrying out the missions of every federal agency and program. It should be consistent with the merit system principles, and absolutely protected from influence by political appointees who would use it to coerce career employees to implement a particular political agenda. Federal pay should be high enough so that all federal employees are able to support themselves and their families with a dignified standard of living, including being able to afford to participate in the Federal Employees Health Benefits Program and the Thrift Savings Plan. And federal pay should not vary substantially depending upon whether the work is being performed by a federal employee or a member of the "shadow" government workforce of contractors. This concludes my statement. I would be happy to answer any questions members of the Subcommittee may have.