Testimony of

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on

Robbing Mary to Pay Peter and Paul:

The Administration's Pay for Performance System

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Chairman Davis, Ranking Member Marchant, and members of the Subcommittee, I appreciate the opportunity to appear again before this distinguished subcommittee to discuss the important subject of federal pay systems. As you know, the National Treasury Employees Union represents more than 150,000 federal employees in over 30 different agencies and departments throughout the government.

The subcommittee will hear today from a number of distinguished witnesses representing both the Administration and academia. I am here to present the viewpoint of the tens of thousands of dedicated public servants who are currently on the ground working in government. These federal employees are the potential recipients of the various pay experiments being pushed by this administration. They are the ones who help administer our government systems; defend our homeland; process and administer our programs such as social security; support our states and cities; and help regulate and inspect everything from our food supply, to financial institutions. These federal employees want what every other employee wants, a system that offers fair compensation for a fair day of quality work.

In July, I testified before this subcommittee on the many shortcomings of the Administration's so-called pay for performance systems. Unfortunately, despite the growing evidence that these systems lack credibility, the Administration continues its attempts to dismantle the current GS system and replace it with various performance management systems. Just last week, the President's FY 2009 budget submission to Congress reaffirmed its commitment to pay-for-performance alternative systems to "replace the current General Schedule pay system with a modern classification, pay, and performance management system that is both results-driven and market-based." *(p. 1097 FY 2009 Budget Appendix)*

While this is indeed nice sounding rhetoric, make no mistake about it – The GS system *is* market-based. It has the goal of achieving comparability with the private sector through 32 different locality pay areas. And employees receive raises based on merit, which is synonymous with performance and achieving results. As the distinguished professor and witness today, Dr. Charles Fay has pointed out in the past, the Bureau of Labor Statistics uses "impeccable methodology" to gather and evaluate statistically valid data for the GS system. (May 22, 2007 testimony)

Further, the General Schedule is a structured system. It has rules, standards and evaluations which must be written. Yet we see a pattern of managers unable to follow the rules and work within the GS system. If managers currently have trouble with the GS system, it does not make sense to go to a *more subjective* system. That will not solve anything, and my testimony will point to several failed cases of alternative pay systems.

OPM Report: Alternative Personnel Systems

Several weeks ago, OPM released its report entitled *Alternative Personnel Systems in the Federal Government: A Status Report on Demonstration Projects and Other Performance-based pay Systems (December 2007).* While OPM proudly touted this report as evidence as of success, a close reading shows a patchwork of pay systems across government that cannot collectively, or individually, be characterized as successful. If anything, the report demonstrates how inconsistent, arbitrary and problematic the differing pay systems are throughout the government. While the report lists a hodgepodge of systems at various stages of their development, and includes a number of surveys, it lacks hard data on the parameters of the surveys and the numbers of people who participated in them. Simply stating percentage of employee satisfaction or non-satisfaction, without the necessary information on the numbers of people polled, and the exact questions asked, makes the conclusions questionable.

In its Executive Summary, OPM itself refers to "trends and observations" from these pay systems. It then goes on to tout sweeping successes—everything from strong links between pay and performance, to better managing by supervisors, to recruitment and retention benefits to cost-containment in payrolls. This is a gigantic leap of logic. NTEU has extensive front line experience with alternative pay systems at many of the agencies in the OPM report and that experience is characterized by a slew of grievances, arbitrations, litigation, high attrition rates and rock-bottom employee morale.

The problems may differ from agency to agency, but the reality is that each of these programs is terribly flawed. At FDIC for example, the pay-for- performance program was so flawed with only 12 percent of employees finding it viable, the entire program was just suspended. Yet, FDIC is one of the agencies included in the OPM report of pay-for-performance success stories.

The report also showcases the Transportation Security Administration's dysfunctional PASS system, a pay system so flawed that uncertainty has resulted in the highest attrition rate in government. I will address the FDIC case and the failed PASS system later in this testimony.

I want to emphasize that nothing in this OPM report, or any other government study I have found, indicates that the General Schedule system should be modified along pay for performance lines. The GS system is not based on longevity but on the successful performance of employees. This is a performance-based system that works.

And for those who argue that raises are automatic within the GS system and say the only thing that counts is *being there*, I take issue. An employee's supervisor must certify that the employee is performing the job up to standard. If not, the employee's step increase can be withheld and disciplinary action can follow. If there's a problem here, it's that the supervisor is not doing his or her job. Can we expect them to do a better job with a much greater task, the kind of task that is involved in each and every one of the pay for performance systems presently in the government? It took a very long time to build a non-partisan, professional civil service that is envied around the world. There has been no evidence so far that it needs to be changed.

NTEU and Alternative Pay Systems

While NTEU stands ready to contribute to measures leading to a more effective and efficient federal government, my concern is that the Administration has moved forward on pay alternatives without first demonstrating that a problem exists. It has not brought forth the kind of comprehensive impartial data-based research explaining why it finds the GS system I described as inadequate. Nor has it required agencies to use the many authorities and flexibilities already available to them to offer alternative pay and benefits.

I would like to comment specifically about several alternative pay systems that NTEU has been involved with, including the Federal Deposit Insurance Corporation (FDIC) system, the Securities and Exchange Commission (SEC) which the subcommittee is examining, the IRS' paybanding system that currently covers only managers, the Department of Homeland Security (DHS) and the problematic Transportation Security Administration's (TSA) PASS system.

Let me point out that alternative pay and personnel systems have a very small, if not negligible, impact on recruiting, retaining and maximizing the performance of federal employees. To quote Robert Behn, author and lecturer at Harvard University's John F. Kennedy School of Government, "Systems don't improve performance; leaders do." In his book, *The Human Equation: Building Profits by Putting People First*, Jeffrey Pfeffer, of Harvard Business School says, "Although variable pay systems that attempt to differentially reward individuals are clearly currently on the increase, such systems are frequently fraught with problems. Incentives that reward groups of employees or even the entire organization…are customarily preferable." (p.203)

I believe leadership that solicits, values and acts on the ideas of frontline employees in efforts to achieve agency missions is missing in many agencies today. Providing that kind of leadership would do more to improve the quality of applicants and performance of employees than alternative personnel systems and so-called pay for performance projects as proposed by this Administration. Let me bring to the subcommittee's attention the following examples of alternative compensation systems which are all problematic.

FDIC

Last week, I announced an agreement between NTEU and the Federal Deposit Insurance Corporation (FDIC) to suspend the FDIC's pay for performance system covering employees for the 2007 performance cycle. The system had generated a great deal of resentment among FDIC employees and did little to actually motivate people or foster teamwork. Recognizing the low level of morale at this important federal financial regulatory agency, which was highlighted in an extensive survey of all FDIC employees by the respected, independent organization (the Hay Group), FDIC Chair Sheila Bair, held a series of discussions with NTEU and, to her credit, agreed to the suspension. Parties will now review options for a more transparent, credible and fair pay system going forward.

As I mentioned to the subcommittee in previous testimony, NTEU strongly believes that in the absence of a statutorily defined pay system, like the GS system, pay should be subject to collective bargaining, as it is in the private sector. NTEU's ability to bargain at FDIC had the benefit of bringing employee concerns about the flawed pay system to the forefront.

The Hay Group Report *(FDIC 2007 Employee Engagement Initiative, Dec 21, 2007)* found only 12 percent of FDIC employees said they found the pay-for-performance system to be a fair program for rewarding employees' performance and contributions. Fewer than one in three said they believed the pay-for-performance group assignments – which were key to determining pay—were an accurate reflection of performance and contribution.

This was not a surprise to NTEU. NTEU has been at odds with FDIC's system to determine performance-based pay for some time. Several years ago, the FDIC divorced its pay system from its performance management system, and established a separate set of "corporate contribution" factors to determine employee annual pay increases. Although multi-level performance scores had recently been reintroduced as a factor in pay determinations, pay increases were still based primarily on the "corporate contribution" criteria, which are highly subjective, and not grade or job-specific. Furthermore, although pay increases are purportedly based on merit, the FDIC used a forced distribution system in determining employee pay increases: employees in each organizational component needed to be "ranked," and the top level pay increases were limited to the top 25% of employees.

This system of forced rankings and pay distributions had demoralized and angered FDIC employees. Our members report that the system was divisive and discouraged teamwork. It was discouraging employees from taking risks, and sending the message that three quarters of them could never be considered to be top performers, regardless of how well they perform. The forced ranking system, under which employees from different work units with different supervisors were ranked against one another, smacks of a "star chamber" approach to pay-for-performance.

With the heavy reliance on vague and subjective "corporate contribution" factors, employees did not clearly understand what they must do to be evaluated at the highest level. And the forced ranking system prevented them from ever knowing how this might translate into a pay increase, so that the pay system does little to actually motivate performance. The system, therefore, lacked transparency and credibility, and has caused employees to question its fairness. Hundreds of individual grievances have been filed alleging unfair pay determinations, as well as mass grievances alleging discriminatory impact based on age and race.

As the Hay report points out: There is a need for a fundamental change in the FDIC culture, to support employee creativity, innovation, and the exercise of professional judgment, so the FDIC can fully utilize the talents, ideas, and expertise of its employees. I commend Chair Bair in coming to an interim agreement with NTEU on this pay fiasco and look forward to reaching more extensive solutions to employee pay systems down the road.

SEC

In my opinion, any alternative pay system must be fair, credible and transparent. And employees must know what their work expectations are, and what they need to do to improve. Unfortunately, the Security and Exchange Commission (SEC) has failed on all accounts.

Congress authorized SEC to establish a pay system outside of the General Schedule and NTEU has negotiated with the Commission over this since 2002. Its pay-for-performance system is based not on a forced ranking system like FDIC's but rather on a forced *distribution* system with merit step increases designed to fit within an identified budget which is naturally too low to accommodate serious raises. Vague, subjective and generic criteria unrelated to positions were used for determinations about raises. And at one point, SEC broke the GS- 10 step pay scale into 31 steps with each step being worth a certain percentage of salary. As you can imagine this was all very confusing to employees.

But much more troubling is a pattern of discrimination in pay at the agency. NTEU took the agency to task and filed grievances against five pay for performance systems charging that they discriminated against groups of employees protected under federal anti-discrimination statutes. In September, 2007, we won the first important legal battle when an arbitrator ruled for the union that SEC's implementation of its 2003 pay-for-performance system was illegal. This faulty system was found to be discriminatory against African American employees above Grade 8 and employees aged 40 and older.

The arbitrator found that African-American employees above grade 8 and older employees received significantly fewer pay increases than would be expected given their representation in the pool of eligible employees. He ruled that since the SEC's subjective system for awarding pay increases was not valid or even reasonable, the pay-for-performance program violated Title VII of the Civil Rights Act as well as the Age Discrimination in Employment Act.

Among the multiple issues with the SEC system is that it used a set of vague and subjective 'agency success factors' to determine whether and how much of a merit increase an employee would receive. The generic factors were not linked to employees' job duties and applied to every position within the SEC, from administrative staff to IT staff and to attorneys, accountants and other professionals.

They were based on such amorphous criteria as whether employees "focus on achieving results while adapting to changing priorities" or "present information accurately" or "gather and evaluate information to develop effective solutions" or "collaborate with others." The subjective and arbitrary judgments managers were required to make was compounded by the lack of training and guidance the SEC provided them.

It is no surprise, therefore, that the SEC's implementation of this program was a failure. NTEU warned the SEC that employees would not know how to satisfy these vague standards, that arbitrary treatment would occur, and that grievances would undoubtedly follow. This is the first of five pending grievances NTEU had filed challenging the use of the system for each subsequent year, including the 2007 performance period. Those grievances also allege that the system violates federal law, the NTEU compensation agreement and the NTEU-SEC collective bargaining agreement.

Meanwhile, while these grievances are pending, NTEU is trying to engage SEC in efforts to make more sense out of the pay system. But the agency's efforts to date have been focused on developing the new system for its executives and managers, so little has been done thus far on developing new performance standards for bargaining unit employees, training managers on the new system, or determining the precise correlation between employee ratings and employee pay increases. For now, the SEC has continued to determine employee annual pay increase based on the flawed system currently in place.

IRS

The Internal Revenue Service (IRS) has a pay banding performance based compensation system. While bargaining unit employees represented by NTEU are not covered by this alternative system, managers participate in it. I do not want to speak for the managers but I think it is safe to say they have not embraced the system.

In their June 18, 2007, public comments on OPM's proposed regulations to revise the criteria for IRS broadbanding systems *(Federal Register April 17, 2007)* the Federal Managers Association highlighted several problems with their pay banding system. The theme that ran through their comments is the notion that under the administration's pay banding proposed regulations, pay is not necessarily dependent upon the *performance* rating. And isn't that the alleged purpose of these alternative pay systems? I'd like to quote from the managers' June 18th comments on the Administration's broadbanding proposals:

> Any reform of the current system must eliminate the current service-wide performance ratings caps. For the IRS personnel system to be truly pay-for-performance, there cannot be arbitrary caps on the number of higher ratings. Managers must receive the ratings their performance dictates and they should not be harmed by a *capricious ceiling.* For any personnel system to be fair and effective, evaluative ratings and performance awards must be based on merit, not *forced quotas*." (*June 18, 2007 public comments (emphasis added))*

The Managers' comments also spoke to how the current award pools fail to adequately reward managers for performance and for the compensation risk they believe they face.

After these comments came out, on July 3, 2007, the Treasury Inspector General for Tax Administration (TIGTA) released a report (2007-10-106) titled, *"The Internal Revenue Pay-for-Performance System May Not Support Initiatives to Recruit, Retain, and Motivate Future Leaders."* The TIGTA report found a number of serious deficiencies in the pay for performance system at the IRS. Most alarming to me, Mr. Chairman, was the sentence on page 1 of the report under "Impact on the Taxpayer" and I quote:

> "In addition, the new System was not adequately communicated to the managers before it was implemented, causing opposition and decreasing morale. As a result, the IRS risks reducing its ability *to provide quality service to taxpayers* because the Internal Revenue Pay-for-Performance System potentially hinders the IRS' ability to recruit, retain, and motivate highly skilled leaders." *(Emphasis added)*

I believe we cannot ignore the bottom line mission of the agency in these pay experiments. If these alternative pay systems are jeopardizing the achievement of an agency's core mission – in this case to provide quality service to taxpayers—how can we justify more experiments with these systems that have questionable successes?

In its report, TIGTA found: 1) the system discouraged both managers and non-managers from applying for managerial positions; 2) performance based pay increases were not necessarily commensurate with a manager's performance; and 3) the Human Capital Office (HCO) did not adequately communicate with affected managers, which increased opposition and decreased morale. I need not remind you, Mr. Chairman, that the point of this pay experiment was to attract quality talent to offset an expected dearth of government managers when nearly 90 percent of high level government managers will become eligible to retire in the near future. These dismal findings hardly confirm the predictions of success.

Finally, as I pointed out to this subcommittee last year, shortly after the TIGTA report was issued we understand the Federal Managers Association (FMA) revealed its own misgivings about the direction of the system in its newsletter to FMA members. Most revealing was its internal survey which showed that 92 percent of respondents answered "no" when asked if the current performance management system accurately identifies the truly 'outstanding' managers. *(FMA newsletter 2007-11, July 10, 2007)* Further, FMA agreed with TIGTA that communication with employees needs to be more "open and timely" with respect to pay before changes to pay and benefits can be made.

Now, as amazing as this sounds, we understand the IRS will be hiring a *contractor* to assess this program. I cannot imagine where the logic of this lies and I urge the subcommittee to look into hiring outside experts to assess a failing pay system.

Despite dismal results of these systems, they continue to be showcased as models for moving the whole federal government to pay-for-performance systems. There is a dearth of information to indicate that alternative pay systems have had any significant impact on recruitment, retention or performance. A GAO report on "Human Capital, Implementing Pay for Performance at Selected Personnel Demonstration Projects" from January 2004 (GAO-04-291) included virtually no evidence that the systems improved any of those measures. In fact, the Civilian Acquisition Personnel Demonstration Project, reviewed in that report, had as one of its main purposes, to "attract, motivate, and retain a high-quality acquisition workforce." Yet, attrition rates increased across the board under the pilot.

DHS and TSA

Mr. Chairman, my July 31, 2007 testimony discusses in detail some of the pervasive problems at the Department of Homeland Security (DHS). Today I'll not focus on department-wide issues except to point out that despite being ranked at the bottom of the Partnership for Public Service's annual survey of "Best Government Places to Work", DHS is insistent on moving forward with an alternative personnel and pay system. Fortunately, however, the agency has not been provided the funding to do so.

I would like to focus now on the alternative pay system for Transportation Security Officers (TSOs) at the Transportation Security Administration (TSA) called the Performance Accountability and Standards System (PASS). While this agency technically resides within DHS, its PASS system is an entirely separate pay system. And it is in disarray. Problems with PASS are so numerous, it's hard to list them all – employees are constantly tested, but if they fail, they're not told what they did wrong. The training is minimal. A majority of screeners don't even really know what they have to do in order to get a pay raise. This year, the pay raises were adjusted so that more people would get some amount of a raise. Unfortunately, since there's only so much money to go around, many of the top performers from last year find that their rating is the same, but the pay raise is smaller.

OPM hails this system as a "key element in the long-term professional development" of the screeners. Nothing could be further from the truth. Supervisors need to keep a small booklet of ratings on each employee. Some forms don't get filled out, some get lost. Retraining is difficult, because there are no materials, and no time to review the materials if there are any. It's a system easily abused. OPM can say what it will about the GS system, but that system is one where people know exactly what is expected of them and exactly what they can expect to get out of it. The uncertainty in PASS has resulted in the highest attrition rate in the government. And there is no professional development.

The TSA PASS system should be eliminated and it is critical that TSA screeners be put into the General Schedule pay system. NTEU would support legislation to require this.

Going back to my earlier comments about OPM's performance-based pay systems report, the notion that PASS was created to offer "significant compensation" to the screeners is a joke. TSOs' average pay is $30,000. They never know if they will get a raise or not. Pay increases are sporadic and unexplained.

Mr. Chairman and Members of the subcommittee, unfortunately, I do not believe the experiments in alternative pay systems like the ones I have described can be any sort of model for positive change. It is a mystery to me where the evidence is that these systems have produced successes to justify putting them in place throughout the federal government.

OPM and Flexibilities

Mr. Chairman, the subcommittee has pointed out -- and we have all read in the media -- that a surge in federal retirements could occur in the next several years. The Council for Excellence in Government & Gallup Organization recently reported that 60 percent of the federal government's General Schedule employees and 90 percent of the Senior Executive Service will be eligible to retire in the next ten years. (*Within Reach . . . But Out of Synch: The Possibilities and Challenges of Shaping Tomorrow's Government Workforce,"* December, 5, 2006).

While no one knows for sure whether all of those eligible to retire will actually do so, I do know that the federal government had better be prepared to compete for the best and brightest of the young new workers. Just as importantly, however, it must be prepared to use its many existing authorities and flexibilities to *retain* the hundreds of thousands of talented public servants who have the knowledge and expertise to continue contributing to the federal workforce. The failure to pay competitive salaries, the constant focus on downsizing and outsourcing and the bashing of federal bureaucrats have put the federal government at a disadvantage when it comes not only to hiring the best new college graduates, but also to retaining its current employees.

Unfortunately, many federal agencies have been lax in utilizing their existing authorities and administrative personnel rules to retain the thousands of dedicated public servants who are currently working in our federal agencies. I contend that we should not plunge forward with untested pay experiments until we require OPM and the agencies to use existing flexibilities.

During the debate over the Bush Administration's ill-conceived proposal to change the GS pay system, I pointed out that there are a host of provisions on the books that allow the federal government to reward high performers, including recruitment and retention bonuses, quality step increases and paid time off awards. These options are often not used because agencies are not given the resources to fund them, or agencies find it cumbersome to ask OPM for authorization.

But before we spend more taxpayers' money designing entirely new compensation systems, the Office of Personnel Management (OPM) must do more to make sure agencies are aware of these existing provisions and are given the necessary tools to use them to their maximum capacity.

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

The Government Accountability Office (GAO) has undertaken a number of studies focusing on the importance of designing and using human capital flexibilities. In one report (GAO-03-02), the GAO found that the flexibilities that are most effective in managing the federal workforce are those such as time off awards and flexible work schedules. In other words, flexibilities are in place for employees and agencies to agree upon set times off to better balance the demands of career and family life.

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

I would like to address just a couple of options the agencies now have available.

First, Telecommuting.   Agencies can now offer telecommuting, also known as telework, or programs that allow employees to work at home or another approved location away from the regular office. While existing flexibilities exist on telecommuting, Congress has also acted to promote its use. In the FY 2006 State, Justice Commerce Appropriations bill, language was included in Sec. 617 requiring each department or agency to report to Congress on telecommuting and to maintain a telework coordinator. Earlier, in 2000, Congress passed legislation requiring executive agencies to establish telecommuting policies to the extent possible. And NTEU has negotiated telework agreements with management in many federal agencies.

In surveying the thirty agencies represented by NTEU, we found mixed results in terms of management's commitment to the concept. Experience has shown that telework can bring increased productivity due to uninterrupted time for employees to plan work and carry it out. It also saves energy, reduces air quality problems and congestion on our roads while enhancing the quality of family life. We found successful programs at the IRS and the Patent and Trademark Office. NTEU has also found various forms of resistance at other agencies. The Security and Exchange Commission has model policies but there has been resistance by mid-level managers. At the Bureau of Alcohol, Tobacco and Firearms (AFT), management engaged in foot dragging for years resisting even a modest program.

There is no doubt in my mind that OPM could be playing a more prominent role in assisting agencies to move forward on their telecommuting and telework policies.

Second, Compensation and Salary. Mr. Chairman, a quick look at OPM's handbook will show the many areas in which OPM and federal agencies have the authority to offer special salary and compensation without requiring additional legislation. I have called upon the OPM Director, for example, to grant Special Salary Rates under Title V to federal workers in the New Orleans area who continue to face skyrocketing expenses like higher rents, gas, commuting costs, and insurance premiums after the devastation of the Gulf Coast Hurricanes. No legislation is needed for this. Federal agencies simply need to make their case to OPM and OPM can grant special salary relief.

Many, many other compensation flexibilities exist at federal agencies and I won't go into all of them here. But The Government Accountability Office (GAO) reported in its study of human capital flexibilities a few years ago that "monetary recruitment and retention incentives, such as recruitment bonuses and retention allowances…and incentive awards for notable job performance and contributions, such as cash and time-off awards" ranked as among the "most effective flexibilities" (GAO-03-2).

Third, Student Loan Repayments. This benefit could be critical to recruiting top notch qualified public servants. Under this existing authority, agencies may repay federally insured student loans as an incentive for attracting candidates. An agency may pay up to $10,000 per employee in any calendar year or a total of $60,000 per employee. I would like to see, Mr. Chairman, a report from the agencies on how many are using this excellent opportunity to recruit federal employees. Unfortunately, I suspect, not many are.

Conclusion

In summary, I will be brief: 1) There is no hard evidence that the current pay system for federal employees needs to be changed; 2) The current experiments with alternative pay systems are failing; and, 3) The government should use the flexibilities it currently has before moving to new pay system experiments.

But most of all, a federal personnel system should recognize and reward leadership, foster opportunities for input and ensure a fair compensation system that is transparent and credible.