

STATEMENT BY

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BEFORE

**THE SUBCOMMITTEE ON CIVIL SERVICE AND AGENCY ORGANIZATION
HOUSE GOVERNMENT REFORM COMMITTEE**

REGARDING

DOD'S PROPOSALS FOR ITS CIVILIAN WORKFORCE

ON

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Madam Chairman and Members of the Subcommittee: My name is Bobby L. Harnage, Sr. 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 employees our union represents, including 200,000 civilian employees of the Department of Defense (DoD), I thank you for the opportunity to testify today on the legislative proposals submitted by DoD.

AFGE strongly opposes this legislation on the grounds that it erases decades of social progress in employment standards, punishes a workforce that has just made a crucial and extraordinary contribution to our victory in Operation Enduring Freedom, and takes away from Congress and affected employees the opportunity they now possess to have a voice in crafting and approving the personnel and other systems of the Department of Defense. Today, no one owns the Department of Defense – it is a public institution, supported by U.S. taxpayers and administered by a Secretary of Defense appointed by an elected President, and overseen and regulated by the U.S. Congress. If this legislation is enacted, each individual Secretary of Defense, in cooperation with each President, will effectively own the Department of Defense as if it were a private concern. The Congress will have relinquished its oversight and legislative role with regard to approximately 654,000 government personnel.

DoD's "shock and awe" strategy, designed to stun and confuse its opponents, has been wrongly applied to the legislative arena in this proposal. The yet-to-be

introduced legislation, and the public pronouncements relative to its rationale from high-ranking Pentagon officials upon its unveiling, have made me wonder whether its authors were under the impression that Saddam had won, rather than the Coalition troops. I could not understand why the Defense Department was poor mouthing its own effectiveness at the same time that it had just won a resounding victory in Iraq. I still cannot.

Can today's Pentagon officials honestly believe that the Defense Department is mired in failure, and that granting sweeping new authorities to every Secretary of Defense is what is necessary for it to succeed? The civilian employees of DoD represented by AFGE have been working around the clock for months supporting and maintaining both troops and weapons, loading materials and combat forces onto ships, aircraft, and tanks; or in many cases serving on active duty. They are justly proud of their contribution, and are devastated to learn that Pentagon leaders intend to reward this effort with Operation Erode the Civil Service, to be followed by Operation Fait Accompli.

We are at a loss to identify a serious or true rationale for this legislation. Over the past 12 years, DoD has achieved BRAC, services realignment, the creation of several agencies, including:

- Defense Logistics Agency (DLA),
- Defense Finance and Administration Service (DFAS)
- Defense Commissary Agency (DeCA)

- Defense Printing Agency (DPA)
- Defense Contract Audit Agency (DCAA)
- Defense Contract Management Agency (DCMA)
- National Imagery and Mapping Agency (NIMA)
- Defense Information Systems Agency (DISA)

and the elimination and consolidation of several agencies, widespread privatization, and downsizing of more than 200,000 federal positions. DoD has been granted tremendous flexibility, and it has exercised its authorities to the maximum extent. They have engaged in numerous successful combat missions, including two wars in the Gulf and in Europe. They have done a tremendous job advancing and protecting our nation's security interests. What did they need to do to protect our nation's security that the laws and regulation they seek the authority to waive prevent? What is the problem they are trying to solve?

I am not here to tell you that everything is fine at DoD from the perspective of DoD's rank and file civilian workforce. They have been asked to do more with less throughout the past decades deficit reduction and simultaneous and repeated reorganizations, transformations and policy shifts. Thousands live under the constant threat that DoD will contract out their jobs without giving them an opportunity to compete in a fair public-private competition. Because the downsizing of the 1990's was undertaken without regard to mission or workload, DoD's acquisition workforce was cut in half at the same time that the number and dollar value of service contracts exploded, making the job of oversight and

administration of contracts ever more difficult. The promise that federal salaries would rise gradually in order to become more comparable to private sector rates, as provided by the Federal Employees Pay Comparability Act of 1990 (FEPCA) has not been realized, and DoD's blue collar employees have likewise been denied the prevailing wage rates that their pay system promises to them.

But nothing in the proposal would begin to solve any of those problems; instead, it would take away from Congress not only the opportunity, but also the responsibility for addressing them, and likely result in making each of those problems worse. I believe that there are solutions to these problems on which AFGE and Pentagon leaders could agree. There is nothing to explain why our union's repeated overtures to the Administration have been spurned. I stand ready to work together with Pentagon leaders and Members of Congress on constructive solutions to any problems the current personnel system poses with regard to this nation's security. Unfortunately, the proposal being considered today was composed entirely without input or consultation with DoD's largest employee organization.

Description of DoD's Legislative Proposal

What does the proposal do to civilian defense employees? The Act would amend current subpart I of part III of title 5, by adding chapter 99 establishing a new Department of Defense National Security Personnel System. With some notable

exceptions, these provisions are consistent with the analogous provisions in the previously enacted Homeland Security Act.

Secretaries of Defense would be given authority to establish, by regulations prescribed jointly with the Office of Personnel Management (OPM), human resources management systems for some or all of the organizational units of DoD. In addition, they would be authorized to waive the requirement that regulatory changes be issued jointly, “subject to the direction of the President.” It is not clear what “subject to the direction of” means, i.e., whether it implies that the authority may be exercised “subject to the approval of” or whether the Secretaries may undertake such unilateral action only when told to do so by the President.

The proposal specifies that any regulations established thereby are considered “internal rules of departmental procedure” consistent with 5 U.S.C. §553. That section comprises the Administrative Procedure Act (“APA”) “notice and comment” requirements and expressly excludes from its scope “matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts,” or to “interpretive rules, general statements of policy or rules of agency organization, procedures or practice.” Consequently, any rules promulgated pursuant to the proposed 5 U.S.C. §9902(a) are likely to be deemed excluded from the notice and comment requirements of §553 regardless of the explicit exclusion noted here.

The legislation gives to Secretaries of Defense powers that go far beyond the unprecedented authorities given to the Secretaries of the Department of Homeland Security. The following chapters are nonwaivable for DHS employees but would be waivable for DoD employees under the proposed legislation:

Ch. 41: Training

Ch. 55: Pay Administration (Including backpay, severance pay)

Ch. 59: Allowances (Uniform, Housing, Post differentials)

In addition, almost all of the following chapters of title 5 would be waivable:

Ch. 31: Authority for Employment

Ch. 33: Examination, Selection, and Placement, and

Ch. 35: Retention Preference, Restoration, and Reemployment

The proposal, like Homeland Security, authorizes Defense Secretaries to waive the following critical chapters:

Ch. 43: Performance appraisal system

Ch. 51: Position Classification

Ch. 53: Pay rates and systems (GS/WG/grade and pay retention)

Ch. 71: Collective Bargaining rights

Ch. 75: Due process

Ch. 77: Appeal rights/judicial review

With regard to collective bargaining, the DoD proposal is highly misleading and disingenuous. Although it ostensibly ensures the right of employees to organize and bargain collectively, while concomitantly making the exercise of that right explicitly subject to any limitations provided in the proposal as well as those exclusions from coverage and limitation on negotiability established pursuant to law. The restrictions contemplated by the proposal are substantial. For example, instead of bargaining, the proposal primarily talks in terms of “collaboration.” Moreover, it stipulates that the Secretary may disregard levels of recognition and undertake, at his discretion, to engage in collaborative activities at any organizational level above the level of recognition. To the extent that the proposal does address “bargaining,” it provides that the Secretary may undertake “at his sole and exclusive discretion” to bargain without regard to the level of exclusive recognition. Any agreement negotiated pursuant to this authority supersedes all other agreements “except as otherwise determined by the Secretary” and is not subject to further negotiation except as provided by the Secretary.

The remaining content of the proposal is directed at hiring contract personnel, with the exception of hiring “older Americans” which is plainly intended to permit reemployment of retired military without any diminution to pension currently imposed on so-called “double dippers.”

It is worth elaborating what all this would mean in very practical terms. Allowing each new Secretary of Defense to waive chapters 53 and 51 of Title 5 means that each new Secretary of Defense would be free to create a wholly new pay and position classification system for the Department. It would mean that any Secretary of Defense could eliminate the General Schedule (GS) and the Federal Wage System (FWS) or their successors (whatever they might be) and replace them with new systems of his own design. Annual salary adjustments, nationwide and locality, passed by the Congress to help federal salaries keep pace with private sector wage increases would be gone. Periodic step increases for eligible workers who are performing satisfactorily would be gone. The current Secretary of Defense is said to prefer a pay banding system that allows supervisors to decide whether and by how much an individual employee's pay might be adjusted. Supervisors, not Congress, would decide whether DoD employees get a raise and what the size of that raise would be. No one knows how future Secretaries of Defense might exercise this power.

Chapter 51 describes the current classification system and requires that different pay levels for different jobs be based on the principle of "equal pay for substantially equal work." New systems designed by successive Secretaries of Defense would not have to adhere to that standard. Jobs which are graded similarly today on the basis of that principle might therefore be treated completely differently when various and successive new systems are put into place by each new Secretary of Defense. Granting these authorities to each new Secretary of

Defense with regard to classification raises serious concern, as the current standards go a long way toward preventing federal pay discrimination on the basis of race, gender, or ethnicity.

Allowing waiver of chapter 43 gives over to each Secretary of Defense the power to unilaterally decide a system for taking action against poor performers. In order to make sure that federal employees are not the targets of unwarranted or arbitrary discipline, current law provides employees with an opportunity to undertake a “performance improvement period” before they are disciplined for poor performance. In any new systems created by different administrations, current safeguards and the opportunity to improve or appeal may be eliminated.

Waiving chapters 75 and 77 will put in jeopardy DoD employees’ due process and appellate rights. While non-union private sector workers have no legal right to appeal suspensions, demotions, or dismissals from their jobs, federal workers have these legal rights for very important reasons. In addition to being the right thing to do, because their employer is the U.S. government, the guarantor and enforcer of American citizens’ due process rights, the bar is higher than for private firms whose obligations are different. Thus chapter 75 sets up a system for management to suspend, demote, or dismiss employees, but provides employees with the ability to appeal these actions to the Merit Systems Protection Board (MSPB) if there is evidence that the actions were motivated by factors other than performance, including racial or other prejudice, political views,

or union status. Under this chapter, DoD employees are eligible for advance written notice of the disciplinary action, a reasonable time to respond, representation by an attorney, and a written decision by DoD listing the specific reasons for the disciplinary action. Any Secretary of Defense could eliminate these protections under the proposal.

Chapter 77 establishes the procedures for appealing to not only the MSPB, but also describes procedures for appealing decisions that are alleged to involve discrimination either to the MSPB or the Equal Employment Opportunity Commission (EEOC), and for accountability, establishes judicial review of MSPB decisions. Giving each Secretary of Defense the power to do away with the rights and procedures described in chapters 75 and 77 means that DoD workers could lose and regain these rights according to the political preferences of any Administration. One Secretary of Defense may decide that employees of DoD should have little or no right to information about why they are being disciplined, and little or no right to appeal decisions against them. Another Secretary of Defense may reinstate procedures for the period of his tenure, but they may disappear again after the next election.

Current law, as set forth in chapter 71 of title 5, allows DoD employees to organize into labor unions and pursue union representation through the process of collective bargaining with management over some conditions of employment. Giving each Secretary of Defense the authority to waive some or all of chapter 71

eliminates a very important part of the checks and balances that hold managers and political appointees accountable. Waiving chapter 71 would allow any Secretary of Defense to create new personnel systems without any formal give-and-take with the affected employees' elected representatives.

In addition, the proposal would allow any Secretary of Defense to direct the department to bypass local unions' bargaining rights. It eliminates the process by which disputes between employee representatives and management are resolved. Today, labor-management impasses are sent to the Federal Services Impasses Panel (FSIP), a seven-member board appointed by the President, which acts as a binding arbitrator on all disputes. The legislation would prohibit any bargaining or negotiability impasses, no matter how routine or unrelated to national security, from going to the FSIP, the Federal Labor Relations Authority, or any third party outside DoD. This is unprecedented and any Secretary of Defense who decides to exercise this authority would render the entire collective bargaining process a sham.

One of the most shocking authorities DoD is seeking for its Defense Secretaries is in the power to waive chapters 31 and 33 of title 5. This effectively grants the authority to hire relatives, while simultaneously eliminating requirements for merit-based testing for positions in the competitive service. Supervisors would be able to hire and promote their cronies, their relatives, and their political favorites if any Secretary of Defense decides to exercise this authority. Can it

possibly be the case that Pentagon officials believe that prohibitions on hiring brothers-in-law and members of only certain political parties has prevented DoD from achieving its mission?

The DoD proposal would eliminate the requirement that reductions-in-force (RIF) be conducted according to procedures set out in chapter 35. These procedures assure that RIFs are conducted on the basis of employment status and length of service as well as efficiency or performance ratings. On what basis would supervisors select individuals for RIFS without the constraints described in chapter 35's procedures? No one knows and no one will know since each Secretary of Defense would have the authority to write and rewrite RIF rules if the proposal were enacted. Indeed, every time DoD conducted a RIF, the rules could change. The proposal would allow supervisors to decide who will be the victim of a RIF on the basis of favoritism rather than performance merit, seniority, and employment status.

Again it must be asked – beyond rhetorical homilies about flexibility--why is this authority being sought? DoD downsized by several hundred thousand civilians at the end of the Cold War without apparent loss of mission effectiveness or capacity, and the burden is on DoD to explain the need for this authority outside Congressional review.

Another shocking and dangerous waiver authority is sought in the legislation with regard to chapter 55, which covers pay Administration. This chapter addresses numerous issues ranging from overtime and compensatory time calculations, firefighter pay, Sunday and holiday pay, dual status pay for National Guard and Reserve technicians, jury duty pay, severance pay, and back pay due to personnel actions found to have been unjustified. Likewise, the proposal seeks to give Defense Secretaries the authority to waive chapter 59 which covers everything from uniform allowances to danger pay to duty at remote worksites. By waiving these two chapters, each new Secretary of Defense would have the power to turn back the clock on the last several decades of progressive legislation on matters crucial to the economic security of federal employees and their families.

What the Current Administration Might Do With the New Authorities

DoD reveals in the Section by Section Analysis attached to the proposal a preview of what *this* Defense Secretary might decide to do with his sweeping new powers. However, again it must be noted that the authorities granted to Secretaries of Defense could easily mean a thorough upheaval in personnel practices each time a new individual takes over at the Pentagon, all without the input or approval of either Congress or the affected employees. That is, if the current Secretary were to resign or be replaced as a result of a new election, everything he created under this proposal could be repealed and a whole new

personnel system put in place. Nevertheless, neither this Secretary of Defense nor any subsequent one would need to gain Congressional approval for changing DoD's personnel system if the proposal is enacted.

Indeed, the proposal merely instructs current and future Secretaries of Defense to create personnel systems that are "flexible" and "contemporary." There is a curious paradox in the Section by Section analysis and the promotional remarks that have been made by high-ranking DoD officials who have tried to create a rationale for this legislation. In the Section by Section analysis, the current situation at DoD is described as a "fragmented" system governed by "multiple titles of the United States Code," and "nine demonstration projects covering 30,000 employees, 50 different pay systems, and several alternative personnel systems." When officials are explaining the need for vast and unchecked new authorities, however, they describe the current system as "rigid," "antiquated," and preventive of success. But how could a rigid system spawn so much fragmentation? How could a rigid system allow nine demonstration projects and 50 pay systems? How could a rigid system result in so many alternative personnel systems?

And, it is important to remember that all of this "fragmentation" has been accomplished at the request of DoD. What innovation or alternative or fragmentation does DoD hope to create that they cannot, and more important what problem do they hope to solve that they have not solved with these varied

and flexible alternatives? Pentagon officials must be asked to answer these questions substantively, with something more than bromides about flexibility.

A particularly chilling sentence in the Sectional analysis reads: “Consistent with the Secretary’s broad authority to manage military personnel, the Secretary also would exercise broad authority to manage DoD civilian personnel, subject to the direction of the President, provided he certifies that such authority would be essential to the national security.” It is difficult to interpret that sentence in a way that would quiet concerns that there might no longer be any distinction between the terms of civilian employment in DoD, and the terms of service for uniformed personnel.

The military “employment” system is in fact a relevant point to consider in the context of the authorities requested in this legislation. AFGE does not dispute the need for a personnel system to manage uniformed service members that grants enormous authority up the chain of command. The nation’s defense necessitates a military personnel system that is capable of responding to the demands of an ever-changing national security and battlefield environment. However, to allow each Secretary of Defense the same broad authority to manage the civilian workforce as he has in managing military personnel would be a mistake.

Military personnel management, and the need for a broad authority to manage the uniformed services, is the result of a unique set of demographic, sociological, mission, operational, environmental and cultural imperatives. These unique factors in turn necessitate a unique personnel management system.

The military personnel system is driven by the needs of the battlefield. Recruitment, promotion, career development and assignment, training, disciplinary matters, skills, and retention policies and priorities reflect the needs and unique challenges associated with managing uniformed personnel whose sole purpose is to serve a battlefield mission. Consequently, the force resulting from this personnel system is different from that in the civilian workforce. The military force is younger than the general population. It is intentionally more transient than the general workforce. It operates under a unique legal code (the Uniform Code of Military Justice), and by design, the individuals working in this environment perform a greater number of jobs employing a greater variety of job skills than their civilian federal counterparts. Because of the unique hardships and dangers associated with a military career, the military personnel management system attempts to provide its own singular incentives in order to maintain morale and assist in retention.

The civilian defense workforce exists to support those who serve in direct military capacity for the nation's defense. Unlike their uniformed teammates, the civilian DoD workforce is shaped and governed by a complex, yet effective,

infrastructure of federal statutes, laws, policies and regulations. The purpose of this infrastructure is to ensure that a stable and qualified workforce is recruited, compensated and retained to support the service department's and separate defense agencies' missions. Under the infrastructure which governs the federal defense workforce there is no premium placed on "career broadening assignments or transfers." The federal workforce is stationary, in place, reliable and ready at a moment's notice to serve and perform such missions as they may be assigned. While the military system through its assignment and promotions policies such as "up or out" accepts transition and personnel turbulence as the routine cost of doing business. The civilian personnel management system on the other hand places a greater premium on personnel stability, continuity, developing and maintaining organizational knowledge and experience. In like manner, the military system through its training policies and career broadening tours, reflects the battlefield's need for redundancy and multi-skilled performance in a chaotic and confusing environment. The civilian system emphasizes the management of workers performing a single, unique mission essential skill in a stable work environment working in support and in tandem with their military counterparts.

In making the comparison between the two personnel systems I am not saying one system is superior to the other. What I am saying is quite the opposite.

While these two management systems are dynamically different and result from dramatically different needs. They – under the current arrangement - are

complementary and create a healthy symbiosis. Work has continued whether there was a war, Watergate, impeachment, or Congressional stalemate. There can be no military tyrants with our current system. The two different personnel management systems have created an armed force and workforce that has always been there to serve our nation well – and if allowed, will continue to be there for us in the future.

Individual Pay for Performance: A Perpetual War of All Against All

AFGE has testified recently on the question of whether individualized pay for performance is a wise choice for the federal pay system governing the entire Executive Branch. The critique and caution we offered in that context is equally relevant to the Department of Defense. Although the proposal specifically does not ask Congress to approve a new pay system or a new personnel system, but instead asks Congress to relinquish this authority to successive Secretaries of Defense, this Secretary has let it be known that something along the lines of the Navy's China Lake Demonstration Project Pay for Performance Plan might be used as a model for the pay system the current Administration intends to impose.

The question of whether the China Lake Plan is a worthy successor to the General Schedule for DoD or any other agency is one useful way to consider how the authorities in the legislation might be used or abused. It is always more productive to compare systems that are real, rather than compare fantasized

perfect models of pay for performance with the easily-maligned real systems. Thus, I will discuss briefly the General Schedule, since it too deserves an accurate description so that proposed alternatives are not considered or evaluated against an easily dismissed or derided “straw dog.”

The version of the General Schedule I will discuss is the one that was established as a result of the enactment of the bipartisan Federal Employees Pay Comparability Act (FEPCA) in 1990. Despite the insistence of some who claim that it is an aged and inflexible historical relic, the fact is that the General Schedule has been modified numerous times, in some cases quite fundamentally. FEPCA’s distinguishing feature, the locality pay system, has not even had a full decade of experience, since its implementation began only in 1994 after passage in 1992 of technical and conforming amendments to FEPCA that established both locality pay and Employment Cost Index (ECI)-based annual pay adjustments.

Flexibility in Times of Peace

FEPCA introduced a panoply of pay flexibilities into the allegedly rigid General Schedule of which DoD has made ample use:

- special pay rates for certain occupations
- critical pay authority

- recruitment and retention flexibilities that allow hiring above the minimum step of any grade
- paying recruitment or relocation bonuses
- paying retention bonuses of up to 25% of basic pay
- paying travel and transportation expenses for new job candidates and new hires
- allowing new hires up to two weeks advance pay as a recruitment incentive
- allowing time off incentive awards
- paying cash awards for performance
- paying supervisory differentials to GS supervisors whose salaries were less than certain subordinates covered by non-GS pay systems
- waiver of dual compensation restrictions
- changes to Law Enforcement pay
- special occupational pay systems
- pay flexibilities available to Title 5 health care positions, and more.

In addition, FEPCA retained agencies' authority for quality step increases, which allow managers to reward extraordinary performance with increases in base salary that continue to pay dividends throughout a career.

The basic structure of the General Schedule is a 15-grade matrix with ten steps per grade. Movement within a grade or between grades depends upon the satisfactory performance of job duties and assignments over time. That is, an

employee becomes eligible for what is known as a “step” increase each year for the first three years, and then every two or three years thereafter up to the tenth step. *Whether or not an employee is granted a step increase depends upon performance (specifically, they must be found to have achieved “an acceptable level of competence”).* If performance is found to be especially good, managers have the authority to award “quality step increases” as an additional incentive. If performance is found to be below expectations, the step increase can be withheld, and proper steps can be taken either to discipline the employee, demote the employee, and give him an opportunity to improve.

The federal position classification system, which is separate and apart from the General Schedule and would have to either continue or be altered separately and in addition to any alteration in the General Schedule, determines the starting salary and salary potential of any federal job. As such, a job classification determines not only initial placement of an individual and his or her job within the General Schedule matrix, classification determines the standards against which individual worker’s performance will be measured when opportunities for movement between steps or grades arise. **And most important, the classification system is based upon the concept of “equal pay for substantially equal work”, which has done much to prevent federal pay discrimination on the basis of race, ethnicity, or gender.**

The introduction of numerous pay flexibilities into the General Schedule under FEPCA was only one part of the pay reform the legislation was supposed to effect. It was recognized by President George Bush, our 41st President, the Congress, and federal employee unions that federal salaries in general lagged behind those in the private sector by substantial amounts, although these amounts varied by metropolitan area. FEPCA instructed the BLS to collect data so that the size of the federal-non-federal pay gap could be measured, and closed gradually to within 90% of comparability over 10 years. To close the pay gap, federal salary adjustments would have two components: a nationwide, across-the-board adjustment based upon the Employment Cost Index (ECI) that would prevent the overall gap from growing, and a locality-by-locality component that would address the various gaps that prevailed in specific labor markets.

Unfortunately, neither the Clinton nor the George W. Bush administration has been willing to comply with FEPCA, and although some small progress has been made as a result of Congressional action, on average federal salaries continue to lag private sector salaries by about 22%. The Clinton administration cited, variously, budget difficulties and undisclosed “methodological” objections as its reasons for failing to provide the salary adjustments called for under FEPCA. The current administration ignores the system altogether, and for FY04 has proposed allocation of a fund with 0.5% of salaries to be allocated via managerial discretion. Meanwhile, the coming retirement wave, which was fully anticipated in 1990 and is particularly acute in DoD because of the downsizing of more than

200,000 jobs in that decade, has turned into a full-fledged human capital crisis, as the stubborn refusal to implement the locality pay system which was designed to improve recruitment and retention of the next generation of federal employees continues.

One of the rationales that will be repeated endlessly as DoD officials push for unfettered authorities will be the importance of their being able to act decisively in emergencies involving national security risks or incidents. They may claim, wrongly, that today they lack the authority to abrogate collective bargaining agreements in such cases, or move and direct or terminate personnel easily and expeditiously because of obstacles set forth in title 5. In fact, no such obstacles exist either in law or in collective bargaining agreements.

Flexibility in Times of Emergency

The current federal sector labor law provides that “nothing shall affect the authority of any management official of any agency...to take whatever actions may be necessary to carry out the agency mission during emergencies.”(5 U.S.C.§7601(a)(2)(D)). Thus it is already within the sole discretion of the Secretary of Defense in times of heightened alert to take any emergency action, even those that might be expressly and directly inconsistent with existing labor agreements. In our 70 years of experience, as the largest union representing civilian workers in Defense, we do not know of one instance, in times of

heightened security, where there has been any labor dispute over the Secretary's emergency authority to reassign, transfer, or deploy any worker to any assignment for any security reason. *In other words, the current labor law gives the Secretary of Defense, in the context of personnel actions, all the flexibility he needs when he determines that he needs it.*

Barely one month ago, OPM Director Kay Coles James sent the heads of all Executive Departments and Agencies a memorandum (dated March 17) describing "Level Orange Emergency Human Resources Management (HRM) Authorities that had been put into use. There were two lists of flexibilities: one set required OPM approval prior to implementation, and the other did not. Among the "Existing Authorities" that agencies were invited to exercise without OPM approval were excepted service appointments of up to 60 days, emergency SES appointments, re-employment of annuitants, and competitive service appointments of up to 120 days without regard to CTAP, ICTAP, or RPL requirements. Further, biweekly caps could be lifted for premium pay up to annual limits.

Employees could be excused from work for needed emergency law enforcement, relief, or recovery efforts; telework arrangements can be approved. Employees could be furloughed without advance notice or any opportunity to respond, and more. With OPM approval, agencies have been authorized to make excepted service temporary appointments, waive dual compensation restrictions for re-

employed annuitants, and waive buyout repayment requirements, among other authorities. These authorities are flexibility itself, and AFGE is glad that DoD has access to them in emergency situations. No group is more concerned or more supportive of measures that truly advance our nation's security than DoD's civilian federal workforce.

China Lake

The Navy's China Lake plan started out as a demonstration project under title 6 of the Civil Service Reform Act. It was initiated in 1980, modified in 1987, expanded in 1990, extended indefinitely in 1994 (made into a "permanent" alternative personnel system), and expanded again in 1995. The employees covered by the China Lake plan are approximately 10,000 scientists, engineers, technicians, technical specialists, and administrative and clerical staff—a workforce that is not typical of any government agency, or even a minority of work units in any one agency.

Although the China Lake plan is often referred to as a model for pay for performance, the rationale given to OPM at its inception, and to Congress in its progress reports, was to improve the competitiveness of salaries for scientists and engineers. Nevertheless, the China Lake model is a performance-based pay system that differs from the General Schedule in terms of its classification of jobs

into pay bands that are broader than the grades and steps in the GS matrix. Thus it is often called a broadbanding system.

OPM's evaluation of the China Lake plan was positive. They judged it a success in improving overall personnel management at the two demonstration laboratories studied. OPM cited the "simplified delegated job classification based on generic standards" as a key factor in the demo's success, as the time spent on classification actions was reduced, and the official report was that conflict between the affected workers and management declined. In the 10-year period of evaluation, average salaries rose by 3% after taking into account the effects of inflation. The China Lake plan made an explicit attempt to link pay increases within its "broad bands" to individual performance ratings. Starting salaries were also "flexible" within the bands.

It is important to note that the China Lake demo predated the passage of FEPCA by a decade. Indeed, China Lake's experience was invoked throughout the debate over reforming the federal pay system in the years leading up to FEPCA's passage in 1990, and many of FEPCA's flexibilities were based upon positive experiences accumulating in the China Lake demo.

It is worth describing at length the mechanics of the China Lake pay for performance system, apart from its equally elaborate classification system. I do this in part to show how China Lake's design may be appropriate to some

scientists and engineers, but not to all federal employees since many are in occupations and workplaces that place extreme or even total limitations on creativity, individual initiative, or individualized performance. I also include this description to show that administrative ease is not one of pay for performance's virtues if the pay for performance system attempts to build in safeguards that limit the role of bias, favoritism and prejudice, as has been attempted at China Lake.

Instead of the General Schedule's 15 grades, China Lake has five career paths grouped according to occupational field. The five occupational fields are Scientists/Engineers/Senior Staff, Technicians, Technical Specialists, Administrative Specialists, and General Personnel. Each career path has classification and pay levels under the broadband concept that are directly comparable to groupings of the General Schedule. Within each career path are included many types of jobs under an occupational heading. Each job has its own career ladder that ends at a specific and different point along the path. Each broad band encompasses at least two GS grades. The China Lake plan describes itself as being "anchored" to the General Schedule as a "reality check." For those keeping count, the China Lake broadband has at least as many salary possibilities as the General Schedule, and at most as many as 107,000, since salaries can really be anywhere between the General Schedule's minimum or maximum.

Movement along an individual career path is the key factor to consider, as the overall plan has been suggested as a pay for performance model. As such, it is important to note that although some individuals may have an opportunity to move up to the top of a career path, not all can. Each job has its predesignated “top out” level. The promotion potential for a particular position is established based on the highest level at which that position could be classified, but individuals’ promotions will vary. Promotion potential for a given position doesn’t grow just because movement is nominally based upon performance. The only way to change career paths is to win a promotion to another career path altogether, i.e. get a new job. One can move along a pay line, but one may not shift to a higher pay line.

The description of the China Lake system involves pages and pages of individualized personnel actions involving the classification and reclassification of workers, and the setting of salary and salary adjustments. It is certainly neither streamlined nor simple, and asks managers on a continuous basis to evaluate each individual worker on numerous bases. In terms of bureaucratic requirements, and a presumption that managers have the training, competence, available time, commitment, and incentive to be as thorough as this system expects them to be for every single employee under them, the China Lake plan seems unrealistic at best. Further, the plan lacks adequate opportunity for employees to appeal their performance appraisals and the attendant pay consequences.

Unlike some of the radical “at will” pay and classification systems advocated by those who believe that any rules or regulations or standards or systems constitute intolerable restrictions on management flexibility, the China Lake plan retains a requirement to tie salary to job duties and responsibilities, not an individual worker’s personal characteristics.

AFGE’s Views on the General Schedule vs. “Individualized Pay for Performance”

The rationales offered by proponents of pay for performance in the federal government have generally fallen under one of four headings: improving productivity, improving recruitment prospects, improving retention, and punishing poor performers. Perhaps the most misleading rationale offered by advocates of pay for performance is that its use has been widespread in the private sector. Those who attempt to provide a more substantive argument say they support pay for performance because it provides both positive and negative incentives that will determine the amount of effort federal workers put forward. Advocates of pay for performance wisely demur on the question of whether pay for performance by itself is a strategy that solves the problem of the relative inferiority of federal salaries compared to large public and private sector employers. That is to say, when pay for performance is referred to as complying

with the government's longstanding principle of private sector comparability, what they seem to mean is comparability in *system design*, and not comparability in salary levels.

Does a pay system that sets out to reward individual employees for contributions to productivity improvement and punishes individual employees for making either relatively small or negative contributions to productivity improvement work? The data suggest that they do not, although the measurement of productivity for service-producing jobs is notoriously difficult. Measuring productivity of government services that are not commodities bought and sold on the market is even more difficult. Nevertheless, there are data that attempt to gauge the success of pay for performance in producing productivity improvement. Most recently, DoD's own data from its "Best Practices" pay demos has shown that they have not led to improvements in productivity, accomplishment of mission, or cost control.

Although individualized merit pay gained prominence in the private sector over the course of the 1990's, there is good reason to discount the relevance of this experience for the federal government as an employer. Merit based contingent pay for private sector employees over the decade just past was largely in the form of stock options and profit-sharing, according to BLS data. The corporations that adopted these pay practices may have done so in hope of creating a sense among their employees that their own self interest was identical

to the corporation's, at least with regard to movements in the firm's stock price and bottom line. However, we have learned more recently, sometimes painfully, that the contingent, merit-based individual pay that spread through the private sector was also motivated by a desire on the part of the companies to engage in obfuscatory cost accounting practices.

These forms of "pay for performance" that proliferated in the private sector seem now to have been mostly about hiding expenses from the Securities and Exchange Commission (SEC), and exploiting the stock market bubble to lower actual labor costs. When corporations found a way to offer "performance" pay that effectively cost them nothing, it is not surprising that the practice became so popular. However, this popularity should not be used as a reason to impose an individualized "performance" pay system with genuine costs on the federal government.

Jeffrey Pfeffer, a professor in Stanford University's School of Business, has written extensively about the misguided use of individualized pay for performance schemes in the public and private sectors. He cautions against falling prey to "six dangerous myths about pay" that are widely believed by managers and business owners. Professor Pfeffer's research shows that belief in the six myths is what leads managers to impose individualized pay for performance systems that never achieve their desired results, yet "eat up enormous managerial resources and make everyone unhappy."

The six myths identified by Professor Pfeffer are:

- (1) labor rates are the same as labor costs;
- (2) you can lower your labor costs by lowering your labor rates;
- (3) labor costs are a significant factor in total costs;
- (4) low labor costs are an important factor in gaining a competitive edge;
- (5) individual incentive pay improves performance; and finally,
- (6) the belief that people work primarily for money, and other motivating factors are relatively insignificant.

The relevance of these myths in the context of the sudden, urgent desire to impose a pay for performance system on the federal government is telling. Professor Pfeffer's discussion of the first two myths makes one wish that his wisdom would have been considered before the creation of the federal "human capital crisis" through mindless downsizing and mandatory, across-the-board privatization quotas. Pfeffer's distinction argues that cutting salaries or hourly wages is counterproductive since doing so undermines quality, productivity,

morale, and often raises the number of workers needed to do the job. Did the federal government save on labor costs when it “downsized” and eliminated 300,000 federal jobs at the same time that the federal workload increased? Does the federal government save on labor costs when it privatizes federal jobs to contractors that pay front-line service providers less and managers and professionals much, much, much more?

Salaries for the 1.8 million federal employees cost the government about \$67 billion per year (a little over a third of this goes to DoD employees), and no one knows what the taxpayer-financed payroll is for the 5 million or so employees working for federal contractors. But as a portion of the total annual expenditures, it is less than 3%, according to Congressional Budget Office (CBO) projections. Regarding the relevance of low labor costs as a competitive strategy, for the federal government it is largely the ability to compete in labor markets to recruit and retain employees with the requisite skills and commitment to carry out the missions of federal agencies and programs. Time and again, federal employees report that competitive salaries, pensions and health benefits; job security, and a chance to make a difference are what draw them to federal jobs. They are not drawn to the chance to become rich in response to financial incentives that require them to compete constantly against their co-workers for a raise or a bonus. DoD employees, in particular, are drawn to the agency’s national security mission.

Professor Pfeffer blames the economic theory that is learned in business schools and transmitted to human resources professionals by executives and the media for the persistence of belief in pay myths. These economic theories are based on conceptions that human nature is uni-dimensional and unchanging. In economics, humans are assumed to be rational maximizers of their self-interest, and that means they are driven primarily, if not exclusively by a desire to maximize their incomes. The inference from this theory, according to Pfeffer, is that “people take jobs and decide how much effort to expend in those jobs based on their expected financial return. If pay is not contingent on performance, the theory goes, individuals will not devote sufficient attention and energy to their jobs.”

Further elaboration of these economic theories suggest that rational, self-interested individuals have incentives to misrepresent information to their employers, divert resources to their own use, to shirk and “free ride”, and to game any system to their advantage *unless* they are effectively thwarted in these strategies by a strict set of sanctions and rewards that give them an incentive to pursue their employer’s goals. In addition there is the economic theory of adaptive behavior or self-fulfilling prophesy, which argues that if you treat people as if they are untrustworthy, conniving and lazy, they’ll act accordingly.

Pfeffer also cites the compensation consulting industry, which, he argues, has a financial incentive to perpetuate the myths he describes. More important, the

consultants' own economic viability depends upon their ability to convince clients and prospective clients that pay reform will improve their organization.

Consultants also argue that pursuing pay reform is far easier than changing more fundamental aspects of an organization's structure, culture, and operations in order to try to improve; further, they note that pay reform will prove a highly visible sign of willingness to embark on "progressive reform." Finally, Pfeffer notes that the consultants ensure work for themselves through the inevitable "predicaments" that any new pay system will cause, including solving problems and "tweaking" the system they design.

In the context of media hype, accounting rules that encourage particular forms of individual economic incentives, the seeming truth of economic theories' assumptions on human nature, and the coaxing of compensation consultants, it is not surprising that many succumb to the temptation of individualized pay for performance schemes. But do they work? Pfeffer answers with the following:

Despite the evident popularity of this practice, the problems with individual merit pay are numerous and well documented. It has been shown to undermine teamwork, encourage employees to focus on the short term, and lead people to link compensation to political skills and ingratiating personalities rather than to performance. Indeed, those are among the reasons why W. Edwards Deming and other quality experts have argued strongly against using such schemes.

Consider the results of several studies. One carefully designed study of a performance-contingent pay plan at 20 Social Security Administration (SSA) offices found that merit pay had no effect on office performance. Even though the merit pay plan was contingent on a number of objective indicators, such as the time taken to settle claims and the accuracy of claims processing, employees exhibited no difference in performance after the merit pay plan was introduced as part of a reform of civil service pay practices. Contrast that study with another that examined the elimination of a piece work system and its replacement by a more group-oriented compensation system at a manufacturer of exhaust system components. There, grievances decreased, product quality increased almost tenfold, and perceptions of teamwork and concern for performance all improved.¹

Compensation consultants like the respected William M. Mercer Group report that just over half of employees working in firms with individual pay for performance schemes consider them “neither fair nor sensible” and believe that they add little value to the company. The Mercer report says that individual pay for performance plans “share two attributes: they absorb vast amounts of management time and resources, and they make everybody unhappy.”

¹ “Six Dangerous Myths about Pay”, by Jeffrey Pfeffer, Harvard Business Review, May-June 1998 v. 76, no.3, page 109 (11).

One further problem cited by both Pfeffer and other academic and professional observers of pay for performance is that since they are virtually always zero-sum propositions, they inflict exactly as much financial hardship as they do financial benefit. In the federal government as in many private firms, a fixed percentage of the budget is allocated for salaries. Whenever the resources available to fund salaries are fixed, one employee's gain is another's loss. What incentives does this create? One strategy that makes sense in this context is to make others look bad, or at least relatively bad. Competition among workers in a particular work unit or an organization may also, rationally, lead to a refusal on the part of individuals to share best practices or teach a coworker how to do something better. Not only do these likely outcomes of a zero-sum approach obviously work against the stated reasons for imposing pay for performance, they actually lead to outcomes that are worse than before.

What message would the federal government be sending to its employees and prospective employees by imposing a pay for performance system? At a minimum, if performance-based contingent pay is on an individual-by-individual basis, the message is that the work of lone rangers is valued more than cooperation and teamwork. Further, it states at the outset that there will be designated losers – everyone cannot be a winner; someone must suffer. In addition, it creates a sense of secrecy and shame regarding pay. In contrast to the current pay system that is entirely public and consistent (pay levels determined by Congress and allocated by objective job design criteria), individual

pay adjustments and pay-setting require a certain amount of secrecy, which strikes us as inappropriate for a public institution. An individual-by-individual pay for performance system whose winners and losers are determined behind closed doors sends a message that there is something to hide, that the decisions may be inequitable, and would not bear the scrutiny of the light of day.

Beyond compensation consultants, agency personnelists, and OPM, who wants to replace the General Schedule with a pay for performance system? The survey of federal employees published by OPM on March 25 may be trotted out by some as evidence that such a switch has employee support. But that would be a terrible misreading of the results of the poll. AFGE was given an opportunity to see a draft of some of the poll questions prior to its being implemented. We objected to numerous questions that seemed to be designed to encourage a response supportive of individualized pay for performance. We do not know whether these questions were included in the final poll. The questions we objected to were along the lines of: Would you prefer a pay system that rewarded you for your excellence, even if it meant smaller pay raises for colleagues who don't pull their weight? Do you feel that the federal pay system adequately rewards you for your excellence and hard work? Who wouldn't say yes to both of those questions? Who ever feels adequately appreciated, and who doesn't secretly harbor a wish to see those who *appear* to be relatively lazy punished? Such questions are dangerously misleading.

The only question which needs to be asked of DoD's civilian federal employees is the following: Are you willing to trade the annual pay adjustment passed by Congress, which also includes a locality adjustment, and any step or grade increases for which you are eligible, for a unilateral decision by your supervisor every year on whether and by how much your salary will be adjusted?

It is crucial to remember that the OPM poll was taken during a specific historical period when federal employees are experiencing rather extreme attacks on their jobs, their performance, and their patriotism. The Administration is aggressively seeking to privatize 850,000 federal jobs and in many agencies, is doing so in far too many cases without giving incumbent federal employees the opportunity to compete in defense of their jobs. After September 11, the Administration began a campaign to strip groups of federal employees of their civil service rights and their right to seek union representation through the process of collective bargaining. The insulting rationale was "national security" and the explicit argument was that union membership and patriotism were incompatible. Some policy and lawmakers used the debate over the terms of the establishment of the Department of Homeland Security as an opportunity to defame and destroy the reputation, the work ethic, loyalty, skill and trustworthiness of federal employees. And out of all of this has come an urgent rush to replace a pay system based upon objective criteria of job duties, prerequisite skills, knowledge, and abilities, and labor market data collected by the BLS with a so-called pay for performance system based on managerial discretion.

In this historical context, federal employees responded to a survey saying that they were satisfied with their pay. In fact, 64% percent expressed satisfaction and 56% believed that their pay was comparable to private sector pay.

But as the representative of 600,000 federal employees, AFGE would suggest that they are satisfied with their pay system, not their actual paychecks. Since the alternatives with which they have been threatened seem horrendous by comparison, expression of satisfaction with the status quo in a survey sponsored by an agency determined to give managers discretion or “flexibility” over pay is no surprise.

Perhaps more important for the subject of pay for performance in the context of the survey is the fact that 80% report that their work unit cooperates to get the job done and 80% report that they are held accountable for achieving results. Only 43% hold “leaders” such as supervisors and higher level management in high regard; only 35% perceive a high level of motivation from their supervisors and managers, and only 45% say that managers let them know what is going on in the organization.

In this context, it seems reasonable to ask if the majority of employees are relatively satisfied with their pay, why the frantic rush to change? If federal supervisors and managers are held in such low regard, how will a system which grants them so much new authority, flexibility, unilateral power, and discretion be

in the public interest? How will a pay system that relies on the fairness, competence, unprejudiced judgement, and rectitude of individual managers be viewed as fair when employees clearly do not trust their managers? Given that less than a third of respondents say managers do a good job of motivating them, is pay for performance just a lazy manager's blunt instrument that will mask federal managers' other deficits?

We are also highly concerned about the introduction of managerial discretion over pay in the context of recent aggressive attempts on the part of this administration to disparage and dismantle important elements of the merit system and provisions of title 5 which protect federal employees from discrimination in hiring, firing, pay, classification, performance appraisal, and which provide for collective bargaining. The current system makes sure that winning a federal job is a matter of what you know, not whom you know. The current system makes sure that the salary and career development potential of that job are a function of objective, job description criteria, not a manager's opinion of an individual worker's "competency" or skin color, gender, religion, age, political affiliation, or union status. Deviations from these protections are not warranted. Our nation has prospered and our government programs have benefited from having a professional, apolitical civil service that is strongly protected from corruption and discrimination. Introducing individualized pay systems that grant enormous power to federal managers regarding pay represents a grave danger to this protection.

The advocates of pay for performance in DoD or elsewhere in the federal government have the burden of demonstrating exactly how and why the General Schedule prevents federal managers from managing for excellence and productivity improvement. They must demonstrate exactly how and why each of the merit system principles will be upheld in the context of political appointees' supervision of managers who will decide who will and will not receive a salary adjustment, who will receive a higher salary for a particular job and who will receive a lower salary for the same job. They must demonstrate exactly how and why individualized pay for performance is superior to systems that provide financial reward for group and organizational excellence. They must demonstrate exactly how and why paying some people less so that they can pay others more will contribute to resolving the federal government's human capital crisis and attract the next generation of federal workers to public service. They must demonstrate exactly how and why agencies will invest in the training, oversight, and staffing necessary to administer elaborate, federal employee by federal employee pay for performance plans fairly and efficiently. And they must demonstrate that they will be able to secure adequate funding so that pay for performance does not degenerate into a false promise, where discretion is exercised to award higher salaries only to recruit and/or retain particular individuals rather than to reward actual performance.

Conclusion

Pentagon officials have argued their case as a plea for freedom – freedom *to* waive the laws and regulations that comprise the federal civil service – so that the nation’s security can be assured. We ask Members of the Subcommittee to consider that our opposition is a plea for freedom as well – freedom *from* political influence, freedom from cronyism, freedom from the exercise of unchecked power. As the Defense Department is not a private corporation, the pressures of the competitive market will not hold it accountable for mismanagement or cronyism. That is why government agencies operate under a set of laws and regulations set by the Congress; that way, taxpayers and government employees are guaranteed freedom from coercion and corruption.

We have no reason to suspect that there is any intention to abuse the power DoD has sought for its Secretaries of Defense. Nevertheless, history has shown that a concentration of power in the hands of one individual does not necessarily translate into success on the battlefield. Our nation’s tradition of checks and balances on power has been tremendously successful in allowing our military the freedom *to* pursue our nation’s security interests at the same time that the public and the civilian workforce are allowed freedom *from* unfettered military authorities.

As I stated above, AFGE has always supported our nation’s military mission, and we remain ready and willing to sit down with Pentagon leaders to work collaboratively to solve any real problems they have experienced with regard to

accomplishing that mission that can be traced to the civil service infrastructure. The DoD proposal, however, would effectively eliminate any opportunity for collaboration between DoD management and its civilian workforce. I urge the Subcommittee in the strongest possible terms to reject this legislation and the processes that led to its presentation. Further, I urge you to recommend to the Pentagon a resumption of dialogue with its unionized workforce.

This concludes my testimony, and I would be happy to answer any questions Members of the Subcommittee may have.