

**Statement of**

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**Before the**

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**Committee on Government Reform**

**United States House of Representatives**

**On**

***Time To Bite the Bullet: Fixing Federal Law Enforcement Pay and Benefits***

**July 20, 2004**

Madam Chairwoman and Members of the Subcommittee:

Office of Personnel Management Director (OPM) Kay Coles James has asked me to testify on her behalf this morning, and we welcome the opportunity to address a vital subject: pay and benefits disparities within the Federal law enforcement community. As its title indicates, this hearing is a key milestone in the Subcommittee's ongoing efforts to adopt a comprehensive, integrated solution to those disparities. The Administration shares that goal, and we sincerely appreciate your leadership in that regard. The urgency is clear and present. One need only consider the dramatic challenges that have confronted the Federal law enforcement community in the wake of the Oklahoma City

bombing in 1995, the terrorist attacks of September 11, 2001, and our Nation's continuing all-out war on terrorism. The specter of those horrific events and the ongoing need to secure our homeland demand that we pay careful attention to the strategic management of our front-line Federal law enforcement personnel.

My remarks today will focus on our recent Report to Congress on Federal Law Enforcement Pay and Benefits, as required by section 2(b) of the Federal Law Enforcement Pay and Benefits Parity Act of 2003, Public Law 108-196 (December 19, 2003). The Congress asked OPM to submit a report providing a comparison of classification, pay and benefits among Federal law enforcement officers (LEOs) throughout the Government (that is, in all three branches) and making recommendations to correct any unwarranted differences. The result of months of intensive review, deliberation, and coordination with various law enforcement agencies and key employee stakeholders, that report was submitted last week, and this hearing begins the process of examining, discussing, and acting on its conclusions.

The report focuses on these critical areas: retirement benefits, classification and basic pay, and premium pay. In addition, we concentrate our analysis on two categories of employees with law enforcement responsibilities: (1) those employees who qualify as law enforcement officers under the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS) laws and regulations, and (2) those other law enforcement employees who have authority to make arrests under Federal law (or an equivalent authority to detain persons under military law) but who do not otherwise qualify as LEOs.

The report and this hearing come at a pivotal time for the Federal law enforcement community. The demands on Federal law enforcement agencies and their professionals are more global, more dangerous, and more dynamic than ever before, rapidly evolving in ways that we never anticipated just a few years ago. The mission of Federal law enforcement has expanded, especially since the terrorist attacks of 9/11. Federal law enforcement, inspection, and police forces currently include highly-trained,

specialized units who must be in a constant state of readiness, and there is no doubt that Federal law enforcement work will continue to evolve at a dramatic rate in the post-9/11 world.

However, the rules that govern the pay and retirement of our law enforcement personnel have not kept pace; they do not reflect this reality and remain fragmented and inflexible. LEOs today are covered by a rigid, half-century old retirement structure, an outdated classification and basic pay system that is not sufficiently sensitive to their unique labor markets and performance requirements, and a confusing patchwork of premium payments. For example, we found that:

With respect to LEO retirement coverage and benefits:

- The evolution of the Federal law enforcement profession has exacerbated the difficulty of applying the circa 1948 definition of “law enforcement officer” to modern missions and work situations.
- Legislation has extended enhanced LEO retirement benefits to some within the broader Federal law enforcement community, but not others, exacerbating differences in the retirement coverage of similarly situated personnel.
- Merit Systems Protection Board and Federal court decisions have created unwarranted differences in LEO retirement coverage, creating morale and administrative problems for employing agencies.
- LEO retirement provisions encourage experienced LEOs to retire at an early age, when it may be in the interest of law enforcement agencies to retain these employees, as they are reaching their peak in terms of experience.

With respect to the classification and basic pay for LEOs and other law enforcement personnel with arrest authority:

- The 50+-year old General Schedule (GS) system does not provide sufficient flexibility to address law enforcement-specific classification and pay problems, which may vary by occupation, grade level, location, and level of performance.
- Differences in pay flexibilities among agencies can harm morale, create staffing disruptions, and increase Government costs unnecessarily. With the creation of new basic pay systems for employees (including law enforcement personnel) in the Department of Homeland Security (DHS) and the Department of Defense (DoD) on the horizon, we anticipate that roughly 50,000 law enforcement employees could be converted from the GS system to basic pay systems that are more flexible and sensitive to labor markets and performance, potentially leaving other law enforcement agencies still bound by the General Schedule at a disadvantage.
- Pending legislative proposals (i.e., H.R. 466, H.R. 1676, and S. 985) would provide across-the-board approaches to problems that require far more targeted solutions, and, as a result, they would increase costs unnecessarily and produce unintended negative consequences.

And, finally, with respect to the premium pay rules that cover LEOs and other law enforcement personnel with arrest authority:

- While most Federal law enforcement employees are covered by the standard premium pay provisions established in title 5 of the United States Code, there are other complex premium pay differences among and between LEOs and other law enforcement personnel.
- Caps on aggregate premium pay for Federal Labor Standards Act (FLSA)-exempt employees serve important purposes but also lead to pay compression. However, pending legislative proposals to bar their application to availability pay for

criminal investigators would result in excessive pay increases for affected employees, produce pay inversions, and create new inequities.

- Moreover, codifying premium pay rules in law precludes rapid response to changing agency mission requirements. Administrative authority to rationalize and modify these rules would provide far more flexibility. In recent years, Congress has provided such flexibility to the Federal Aviation Administration, the Transportation Security Administration, and (with OPM) the Department of Defense.

Thus, it is clear that considerable and sometimes confusing differences currently exist among law enforcement personnel with respect to retirement, classification and basic pay, and premium pay. And, while their root causes vary, we believe these differences (in particular, disparities between agencies that have pay flexibilities and those that do not) are counterproductive to the 21<sup>st</sup> Century Federal law enforcement mission. As is always the case, particular differences will have had their original purposes and original proponents. OPM, like the Congress and particularly this Committee, carries the special responsibility to consider an issue or specific circumstance using a Governmentwide perspective that applies our expertise and extensive experience at developing solutions that work for the agencies, for employees and their representatives, and for the whole Nation.

To meet this mandate, our report recommends that Congress provide OPM with broad administrative authority to establish a Governmentwide framework for law enforcement retirement, classification and basic pay, and premium pay. Such authority would be exercised with the concurrence of the Attorney General and in consultation with employing agencies, as well as Federal law enforcement professionals and their representatives. This framework would be tailored specifically for law enforcement jobs, providing all law enforcement agencies with the same flexibilities that only a few now enjoy, but with OPM playing a central, coordinating role, responsible for balancing Governmentwide interests with unique agency needs, missions and cultures and ensuring

that, insofar as possible, changes do not unfairly affect those who are covered by the current structure.

We believe such a framework would allow law enforcement agencies to create contemporary and effective human resources systems for their front-line professionals, while still ensuring overall consistency and commonality where appropriate.

- With respect to retirement, this framework would continue to acknowledge the Government's need for a "young and vigorous" law enforcement corps, but it would vest OPM with the authority to modernize the definition of LEO, and establish a more responsive benefits structure that will give agencies maximum flexibility for recruitment and retention of experienced personnel. One option under consideration would create a second LEO retirement tier with benefits falling between current law enforcement retirement and regular civil service retirement benefit levels.
- With respect to classification and basic pay, this framework would provide all law enforcement agencies with flexibilities similar to those that DHS, DoD, and other agencies enjoy, but subject to central OPM coordination Governmentwide. In so doing, it would allow agencies to make strategic pay decisions that reflect their unique missions, labor markets, cultures, and workforces, but with OPM coordinating such things as pay ranges and pay adjustments among affected agencies to ensure against adverse consequences.
- And, finally, with respect to premium pay, the framework would provide a flexible administrative authority so that premium pay rules can be more easily modified to address current and emerging mission needs, prevailing practices, or policy/administrative problems. While similar rules would apply to similarly situated employees, the new system would provide the flexibility to establish special rules to respond to unique and emerging agency circumstances.

While we have separately examined each policy area—retirement benefits, classification and basic pay, and premium pay—we believe our recommendations should be acted on as a package. This “package” approach is imperative, given that the three areas we examined are inextricably interrelated, each impacting the others to some greater or lesser extent; for example, basic pay and classification elements impact retirement system computation, which in turn may affect the retirement creditability of premium pay.

We believe that taken together, these recommendations will provide the administrative authority and flexibility to support a more strategic, mission-centered system of pay and retirement benefits for our law enforcement professionals. However, OPM understands that with greater authority and flexibility comes greater accountability. We are ready to accept that accountability and believe that by consolidating and coordinating it where it is now diffuse, OPM and the Federal law enforcement community will be better able to ensure that both agency and Governmentwide interests are balanced in strategically managing some of our Nation’s most vital and valued human resources. That is a goal that I am certain we all share.

Madam Chairwoman, on behalf of Director James, I want to thank you for the opportunity to testify on this vital topic. I will be happy to answer any questions you and the Members of the Subcommittee may have.