

STATEMENT OF THE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE AND AGENCY ORGANIZATION
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

“TIME TO BITE THE BULLET:
FIXING FEDERAL LAW ENFORCEMENT PAY AND BENEFITS”

PRESENTED BY

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PRESIDENT
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On behalf of the approximately 60,000 Federal law enforcement officers represented by the American Federation of Government Employees (AFGE) in a wide variety of law enforcement occupations, thank you for the opportunity to present our views concerning Federal law enforcement pay and benefits. Without question, dedicated law enforcement officers are our Nation's most valuable resource in the fight against crime and terrorism. It is therefore imperative that their pay and benefits systems be capable of attracting and retaining the best and brightest employees.

This matter has been a perennial concern for Congress, which has ordered numerous studies on various related topics. Most recently, the Federal Law Enforcement Pay and Benefits Parity Act of 2003 required the Office of Personnel Management (OPM) to submit a report to Congress that included "a comparison of classifications, pay, and benefits among law enforcement officers across the Federal Government; and recommendations for ensuring, to the maximum extent practicable, the elimination of disparities in classifications, pay and benefits for law enforcement officers throughout the Federal Government." Although this report was due on April 30, 2004, it was not released to the public until July 16, 2004.

The only specific recommendation made in the report was a call for Congress to cede its responsibility to administer and oversee the pay and benefits of Federal law enforcement officers to OPM, which would exercise this new broad regulatory authority in consultation with employing agencies and with the concurrence of the Attorney General. The fact that OPM fails to outline any role for the affected employees and their representatives in the development of these systems is indicative of its arrogant belief that it is capable of independently developing systems that will be accepted by front-line Federal law enforcement officers.

OPM's recommendation is strongly opposed by AFGE. Congress is much more sensitive to the will of the people than the executive branch, and should retain this power, especially with respect to such an important group of civil servants. The fact that over 30 different sections of the OPM report raise concerns about the costs of funding pay and benefits reforms makes it abundantly clear that

OPM's primary concern is protecting the public coffers, not protecting the public from crime and terrorism. Undoubtedly, this short-sighted approach will ultimately prove extremely costly in terms of both dollars and lives. The cost of a single large-scale terrorist attack would far exceed all of the expenditures necessary to transform the current pay and benefits systems into ones that are fair, equitable and capable of attracting and retaining dedicated and outstanding law enforcement officers.

In essence, OPM's recommendation has the effect of declaring the new personnel system at the Department of Homeland Security (DHS) a total success even though it has yet to be implemented. This wildly optimistic assessment is contrary to the comments of the overwhelming majority of employees, as well as practical experience. During town hall meetings last year with DHS employees, the prevailing sentiment was that the current General Schedule pay system, with some relatively minor modifications, would be far preferable to an untested pay-for-performance scheme. Similarly, during the recent public comment period concerning the proposed new DHS personnel regulations, almost all of the 3,800 comments expressed grave concerns about the proposed new pay system. Moreover, every single pay-for-performance experiment that has been conducted in the Federal sector that has not been accompanied by substantial funding increases has failed miserably. Placed into the existing General Schedule pay system, such significant funding increases would remedy most of its problems by enabling managers to exercise the many flexibilities that already exist in that system.

Although OPM's report fails to make specific recommendations concerning the means to eliminate disparities in classifications, pay and benefits for Federal law enforcement officers, it does contain a lengthy discussion of such matters, and includes several possible options. Due to the extremely short response period, AFGE is unable to generate an exhaustive analysis or rebuttal of those points at this time. Rather, it will issue an independent report in the near future that contains specific recommendations to deal with the problems identified by Congress. The report will also respond in detail to the options surfaced by OPM.

The recommendations in AFGE's report will adhere to the general principles of fairness and equity. Their adoption would result in systems that are credible and acceptable to employees. In the final analysis, the ultimate test of any pay and benefits systems is their ability to attract and retain high-quality employees.

The following overview highlights some of the issues that will be covered in AFGE's report:

- *Definition of Federal law enforcement officer.* The current statutory definitions of Federal law enforcement officers for all purposes are overly narrow and exclude many employees who are engaged in bona fide law enforcement duties. These definitions need to be expanded to include all Federal police officers, guards, inspectors, and other similarly-situated employees. No employees who are currently included should be excluded.
- *Law enforcement retirement benefits.* Full law enforcement retirement benefits should be provided to all Federal law enforcement officers who meet the expanded law enforcement officer definition. OPM's option to provide a less generous law enforcement retirement system for some of these employees is unacceptable, as it is contrary to the basic principles of fairness and equity.
- *Mandatory retirement age.* OPM's suggestion that the mandatory retirement age should be raised is unsupported by common-sense and experience. Although life expectancies have risen slightly during the past few decades, much of that has to do with modern medicine and not physical fitness. The fact that extreme physical exertion is not an everyday occurrence for law enforcement officers makes the prospect of serious injury all the more likely for middle-aged officers. Moreover, raising the mandatory retirement age would also require a concomitant increase in the entry age. Any attempts to maintain the current entry age restrictions while raising the mandatory retirement age would almost certainly be overturned by the courts on the basis of age discrimination.
- *Incentives for retirement-eligible employees to continue working.* The current system provides very little incentive for employees to remain in service beyond the time they are eligible for retirement.

This could easily be remedied by implementing a progressive retirement formula that increases the percentage of their benefit at that point in their career instead of decreasing it as under current law, and by raising the maximum percentage of salary that an employee can receive as an annuity.

- *Geographic pay.* The underlying concept of the current system – standardized general salary rates with adjustments for geographic areas that have a higher than average cost of living – is sound. Unfortunately, the geographic adjustments in many areas have not kept pace with the cost of living, creating a large gap between Federal pay and that of similarly-situated employees in the private sector and State and local governments. These defects must be addressed if the Federal Government is to remain competitive.

- *Pay flexibilities.* The current General Schedule pay system has ample flexibilities to reward performance, overcome recruitment and retention difficulties, and address every conceivable special circumstance. There is no justification for abandoning the current system, which is fair and largely predictable, especially since the potential for arbitrary and capricious compensation variations within OPM's proposed systems would increase exponentially.

- *Pay-for-performance.* Federal law enforcement officers are highly-motivated individuals who depend upon the close cooperation of their colleagues to accomplish their mission. They must be self-motivated and able to work without close supervision. Placing these employees under a private industry pay-for-performance model will be counter-productive, and will demotivate and demoralize them.

- *Overtime systems.* The different types of overtime worked by various categories of Federal law enforcement officers require different types of overtime systems. For example, while the concept of availability pay makes sense for criminal investigators who primarily work a single shift and are frequently called back afterwards, it makes little sense for Border Patrol agents who are assigned to around-the-clock shifts and whose overtime is almost exclusively an unpredictable continuation of their duties.

- *Fair Labor Standards Act.* Employees should be covered by the provisions of the Fair Labor Standards Act (FLSA) regardless of their overtime system. Employees who work long hours deserve to be fairly compensated for all hours worked. Without FLSA coverage, employees end up working long hours without any compensation.
- *Overtime limitations.* Artificially limiting the amount of money that employees can earn without regard to the hours that they work is also unfair and demoralizing. OPM's argument that this can lead to pay inversion problems is grossly overstated. The example used to support that argument compares the pay of a GS-15 Step 10 Criminal Investigator to that of a Senior Executive Service manager, when in fact almost all criminal investigators are paid at the GS-13 level.
- *Differentials.* The disparity in night, Sunday, and holiday differentials of Federal law enforcement officers should be eliminated by providing all such employees with the more generous and fair differentials.
- *Relationship of General Schedule pay system and DHS and DOD pay systems.* The new flexibilities within the Departments of Homeland Security and Defense will exacerbate pay inequities among Federal law enforcement officers. Instead of following OPM's recommendation to extend such flexibilities to the pay systems of all Federal law enforcement officers, a more rationale approach would be to eliminate these untried flexibilities and reinstate the role of Congress in setting and overseeing pay for all Federal law enforcement officers.
- *Collective bargaining rights and civil service protections.* Pay and benefits are but one factor that contribute to the attractiveness of a career in Federal law enforcement. Fair treatment and a meaningful voice in workplace decisions are other necessary elements in the equation. All Federal law enforcement officers deserve full collective bargaining rights and civil service protections. Without such rights and protections, it will be extremely difficult to maintain a cadre of dedicated, high-quality employees.

In sum, AFGE agrees that there are numerous inequities within the current pay and benefits systems, but strongly disagrees with OPM's recommendation that Congress cede its authority to set and administer the pay and benefits of Federal law enforcement officers. These roles properly belong to Congress, which is in a far better position to make decisions that are driven primarily by the public interest. Public safety is the single most important function that a government performs. Allowing it to become subservient to fiscal considerations would set the stage for further national tragedies.