STATEMENT BY

JACQUELINE SIMON
PUBLIC POLICY DIRECTOR
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE

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THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA

SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS

REGARDING

ENHANCING EMPLOYEE PERFORMANCE:
A HEARING ON PENDING LEGISLATION

ON

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Mr. Chairman and Members of the Committee: My name is Jacqueline Simon, and I am the Public Policy Director of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the more than 600,000 federal and District of Columbia employees our union represents, I thank you for the opportunity to testify today.

You have asked for AFGE's views on two legislative proposals: The Federal Workforce Performance Appraisal and Management Improvement Act, and the Federal Supervisor Training Act. AFGE appreciates the time and attention that have gone into the development of these proposals, as well as the evident intention to improve the functioning of federal agencies and the ability of federal managers to perform their jobs competently.

The Federal Workforce Performance Appraisal and Management Improvement Act

This legislation purports to improve "performance management" and make annual general salary increases for federal employees covered by the General Schedule and the Federal Employees Pay Comparability Act (FEPCA) contingent on a positive performance appraisal.

Pay for performance is a fad that is on the wane in the private sector but still seems to generate much enthusiasm in some management circles in the federal sector. An interesting new characterization can be found in a draft working paper

prepared by several professors at Harvard's Kennedy School of Government[1] that describes the rush toward pay for performance in the federal sector as a "split the baby" compromise strategy to allow the federal government to mirror the private sector's pay "decompression" without spending more money. In this context, "decompression" is a reference to the expanding gap between the highest and the lowest levels of the salary range in the private sector. The professors cite the fact that while pay differentials between professional and executive salaries on the one hand, and the wages and salaries of "less skilled" administrative and technical jobs on the other have become enormous in the private sector over the past 25 years, differentials between the top and the bottom of the federal pay scale have remained stable due to the structure of the General Schedule and the practice of adjusting the whole schedule annually by the same percentage. The Kennedy School faculty calls federal sector pay for performance "a familiar gambit for avoiding the difficult political and budgetary discussions" about how to raise pay at the top without spending more taxpayer dollars.

The proposal in S. 3492 takes a new turn. Heretofore, pay for performance proposals that have been developed for demonstration projects and specific agencies have been promoted as opportunities to reward high performers and

[1] http://www.napawash.org/pc_human_resources/transitions_present/nye.pdf, "Can We Improve Public Service in the Federal Government? *Or* Public Service for the Information Age", by Elaine Kamarck, Steve Kelman and Joseph S. Nye, Jr., John F. Kennedy School of Government, Harvard University.

help the federal government recruit and retain the best “talent” possible. Although the schemes invariably include a punitive element, that element is usually barely mentioned. The emphasis is always on the positive, the promise of higher pay for employees and higher performance for agencies. Yet this bill provides virtually nothing in the way of reward. The emphasis is on the negative, the threat of punishment for “poor performance.” Implicitly, the legislation assumes that motivating individual employees to improve their performance and align their efforts with agency missions is not a matter of offering the prospect of higher than normal salary adjustments. Rather, it assumes that fear of punishment is the best motivator. The message is: improve performance and better align your efforts with agency missions, *or else*.

S.3492 takes an emphatic position on the proverbial “which works better, the carrot or the stick?” This is all stick and no carrot.

This is not to imply that AFGE would be more supportive of a balanced carrot and stick pay for performance scheme. AFGE opposes pay for performance systems in the federal government because they are ineffective at motivating improved performance, they are inherently inappropriate for the public sector, they are costly and wasteful of taxpayer money and agency resources that are sorely needed in so many other areas. In short, pay for performance schemes are impossible to implement in a way that is fair, equitable, efficient, or effective.

Additionally, it appears that approximately one third of the pay section of the legislation duplicates existing law, except to the extent that it proposes to redefine “pay reduction” and in the process take away some employee rights. In response to a negative performance appraisal, S. 3492 would allow federal supervisors, managers, and political appointees to deny to individual federal employees:

1) The annual salary adjustment based upon the Employment Cost Index (ECI) and,

2) the annual salary adjustment based upon the Bureau of Labor Statistics’ (BLS) National Compensation Survey (NCS) which the Federal Salary Council and the President’s Pay Agent utilize to measure pay gaps in local labor markets between private and federal salaries, and

3) the within-grade salary adjustments that federal employees are eligible for at periodic intervals that reflect increases in job performance based upon experience, accumulation of skill, institutional knowledge, range of abilities, and commitment. This last also serves as an incentive for seasoned employees to provide the agency with continuity and the benefit of their experience, an invaluable component of agency success in the context of turnover of political appointees.

The proposal in S.3492 would, in the jargon of pay for performance, put all three of these components of General Schedule salary adjustment "at risk," whereas, now, only number three is "at risk." That is, although the federal pay and classification systems have been carefully designed to balance market comparability and individual performance and contribution, this bill proposes to transform the Federal Employee Pay Comparability Act's market-based components of GS pay into discretionary "performance-based" components, leaving very little to the market and the principle of market comparability. And if the system described in S.3492 were to be established, no one would be surprised to hear it criticized later for being inadequately market sensitive.

In the past five years, the campaign to impugn the General Schedule and create a sense that replacing it is an urgent need for our nation has been unceasing. It has included an Office of Personnel Management (OPM) White Paper, General Accounting Office (GAO) condemnation and high-risk designation, blue-ribbon commissions' blessings upon the manufactured conventional wisdom, conferences by interested parties parading as disinterested experts touting "studies" that demonstrate the fatal shortcomings of the General Schedule and glories that await their own design for a new federal pay system. Even the MSPB has published a study on pay for performance[2], although its tone and content were notably sober in acknowledging the absolute necessity of having

[2] "Designing an Effective Pay for Performance Compensation System: A Report to the President and the Congress of the United States by the U.S. Merit Systems Protection Board, Office of Policy and Evaluation." January, 2006.

several highly unlikely conditions prevail if pay for performance is to be anything short of a disaster in the federal sector. For example, the MSPB study cited the following seven "requirements" for successful implementation of pay or performance:

1. A culture that supports pay for performance;
2. A rigorous performance evaluation system;
3. Effective and fair supervisors;
4. Appropriate training for supervisors and employees;
5. Adequate funding;
6. A system of checks and balances to ensure fairness; and
7. Ongoing system evaluation.[3]

Although S. 3492 is focused on number four, it does not address the development of a *positive* context for a culture to support pay for performance, meaningful employee input into the development of a performance evaluation system, ensuring supervisors are fair or effective, adequate funding, a fair system of checks and balances, or ongoing system evaluation.

In particular, the MSPB raises an issue often ignored in discussions of pay for performance where advocates assume that the virtues of such a system should be self-evident. But these virtues are self-evident only to those with no

[3] Ibid. page 37.

experience of the negative potential of supervisory discretion on pay. A supervisor may intend to be fair, but, the MSPB report warns:

> Given the growth of diversity in the workplace, communicating with others of a different race or gender has become a common issue. Unfortunately, supervisors may feel uncomfortable providing constructive criticism to employees who are visibly or culturally unlike them – perhaps because they fear that a discrimination complaint might be lodged against them…Supervisors are more likely to communicate well with the employees they view as most like themselves. This open exchange of information and feedback may result in improved performance by the similar employees and a greater likelihood that the supervisor will be aware of their accomplishments…In response, the supervisor rates the "in-group employees higher than the "out-group" employees."[4]

The manufacturing of an apparent consensus on the need to replace the General Schedule with pay for performance has been impressive. Replacing the General Schedule, according to the ideological campaign, is the answer to the government's self-inflicted human capital crisis, the reason the Bush Administration has had to tell agencies to privatize 850,000 federal jobs, and perhaps most absurdly, the best way to make sure the government succeeds in preventing further terrorist attacks.

[4] Ibid. page 32.

Some of the campaign's signature slogans include the charge that the General Schedule is a system that rewards only "the passage of time" rather than performance, and that it is an anachronism designed for a late 19th and early 20th century government populated mostly by clerks and typists rather than the "information based" government of today. Neither charge is true but repetition breeds plausibility, and today they have at least the ring of truth. After all, the General Schedule does provide financial recognition for experience gained over time, and the federal government has had a pay system since the late 19th century, so the slogans aren't outright lies. Nor is it entirely false to claim that there are some "poor performers" among the 1.8 million civilian federal employees. However, the notion that pay for performance is what is necessary to turn poor performers into better performers, rid the entire federal government of underperformers, is questionable at best.

From federal employees' perspective, pay for performance advocates have too often tried to limit the discussion to whether a fantasized, perfect model is preferable to a much more easily-maligned real system. To make sure that the existing pay system is not mischaracterized, it is worthwhile to try to provide the poor General Schedule with an accurate description, so that proposed alternatives are not considered or evaluated against an easily derided "straw dog."

The version of the General Schedule that is relevant is the one that was established as a result of the enactment of the bipartisan Federal Employees Pay Comparability Act in 1990. Despite the insistence of some anti-General Schedule ideologues who claim that it is an aged and inflexible historical relic untouched by history, the fact is that the General Schedule has been modified numerous times, in some cases quite fundamentally, including through last year's passage of the Workforce Flexibility Act which altered bonus authority and made several profound changes in pay administration practices. However, FEPCA's distinguishing feature is the locality pay system, which has had just over a 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 ECI-based annual pay adjustments.

FEPCA introduced panoply of pay flexibilities into the allegedly rigid and never-changing General Schedule:

- 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 (altered last year to as much as 100% of pay over four years)

- paying retention bonuses of up to 25% of basic pay (altered last year to as much as 100% of pay over four years)
- 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, each year for the first three years, and then every three years thereafter up to the tenth step, employees become eligible for small performance-based raises. If an

employee is found to be especially good, managers have the authority to award "quality step increases" as an additional incentive. If an employee is found to be performing below expectations, the supervisor can withhold the step increase.

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 goes a long way toward preventing 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, on average federal salaries continue to lag private sector salaries by about 14%. 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, except to call for its elimination. Meanwhile, the coming retirement wave, which was fully anticipated in 1990, has by some accounts turned into a full-fledged human capital crisis due to highly irresponsible and untargeted downsizing and privatization in the intervening years, as well as a stubborn refusal to implement the locality pay system which was designed to improve recruitment and retention of the next generation of federal employees.

The Treatment of Denial of Pay Raises under S.3492

In addition to the fact that AFGE strongly opposes transforming all market-based salary adjustments for GS workers into performance-based raises, we are also extremely troubled by the legislation's treatment of the denial of an annual pay

increase. The bill creates the fiction that the denial does not constitute a reduction in pay, and therefore does not trigger the procedures applicable to an adverse action. Rather, it treats this *de facto* pay reduction as though it were the equivalent of the denial of a within grade increase. The differences between the two are significant.

Under 5 U.S.C. § 5335(c), which refers to the denial of within grade increases, a federal employee is entitled to "prompt written notice" *after* the agency has made its determination. However, under 5 U.S.C. § 7513 (b), which refers to adverse actions, including a reduction in salary, the employee is entitled to "at least 30 days' advance written notice" *before* the agency has taken action against the employee.

Under 5 U.S.C. § 5335(c) a federal employee has a right to reconsideration of management's decision "under uniform procedures" established by OPM. However, under 5 U.S.C. § 7513 (b), the statute provides explicit and specific procedural rights. For example, in the context of an adverse action, a federal employee has "a reasonable time, but not less than 7 days" *before* the agency has taken action against the employee to present an answer or an appeal to the proposed action. This answer can include oral and written responses, affidavits, and documentary evidence. Additionally, the employee has the right to be represented by an attorney or other representative. The employee also has a right to a written decision and specific reasons supporting the decision. None of

these rights are included under 5 U.S.C. § 5335(c), and thus none would be available to an employee denied either a nationwide ECI-based or locality-based salary adjustment if S. 3492 were enacted.

Being able to challenge a reduction in pay before it has taken effect, and before a final decision has been made, is a crucial employee right that S.3492 would eliminate. It is insupportable to suggest that a supervisor's action that results in an effective reduction in pay is not a reduction in pay or an adverse action.

If the proposals in S.3492 were the only thing that had happened to federal employees, and we knew that it was an end in itself, it would be one thing. But after five years of having the Bush administration take away collective bargaining and appeal rights from the two largest departments, and knowing of their desire to spread this bad system government-wide through the Working for America Act, even after two negative court decisions, AFGE cannot support even a modified version of S. 3492.

During the same period when federal employees have had to try to fend off the administration's efforts to take away their collective bargaining and appeal rights and privatize their jobs, they have also had to put up with skyrocketing health insurance premiums, and an Office of Personnel Management that either cannot or will not engage in serious negotiations with insurance companies to keep a lid on their greedy behavior, and whose focus in regard to health insurance has

been to attempt to shift even more costs on to employees and retirees. Now, there is a performance problem that needs attention.

In the meantime, overall federal pay continues to lag behind the private sector and state and local governments by 14% on average. If we start making the annual pay raise optional, it will only lay the foundation for reducing the raises even further in the future, thereby punishing the over 95% of federal employees who by all accounts are doing a good job.

Contrary to what some pay for performance advocates have suggested, federal employees do not lie awake at night hoping that their supervisor will withhold the annual pay raise from a less-than-stellar coworker. When they're not worrying about their lengthy and increasingly expensive commutes, the rising cost of health insurance, and whether their jobs are going to be contracted out, chances are good that they are worrying about how to keep up with the pace at work, where they are continually expected to “do more with less” and do so without gratitude or recognition.

On the rare moments when they might think about poor performers in their workplace, what they do want is for their supervisor to take appropriate action to correct the behavior of the poor performer. It is undoubtedly the case that sometimes people are poor performers because they are lazy or have a negative attitude. For those employees, the supervisor should take the action that is in

current law: put the employee under a performance improvement period, and then take disciplinary action if that doesn't succeed.

Often, however, people are poor performers because they truly do not understand how to do their work, or they think they do, but need additional training and attention from their boss. They may be in the wrong job for their skills. For those employees, withholding the annual pay raise will only serve as intimidation and a disincentive to ask for additional help. It won't help get the work done.

This legislation, if enacted, will not achieve the goal of its sponsor: to weed out the poor performer. The only thing that does work in that context is disciplinary action in the first example, or additional training and attention in the second.

The Federal Supervisor Training Act of 2006

In contrast to S.3492, the proposed Supervisor Training Act is focused on positive strategies that make sure federal managers receive adequate, high quality training designed to teach them how to help all federal employees improve their performance. In addition, the proposal explicitly addresses the content of supervisor training, and directs the training program to focus on "developing objectives needed for performance plans *with* (emphasis added) employees, communicating performance evaluations to employees, discussion

performance progress with employees…mentoring and motivating employees and improving employee performance and productivity."

In addition, the bill requires that federal supervisors learn strategies for "effectively managing employees with unacceptable performance and otherwise carrying out the duties or responsibilities of a supervisor." Supervisors would learn both what constitutes a prohibited personnel practice and how to enforce employee rights. It even makes use of what pay for performance advocates love to hate – experience. The bill establishes a program where "experienced supervisors mentor new supervisors" by helping them with such important managerial skills as "communication, critical thinking, responsibility, flexibility, motivating employees, and teamwork…" In the context of political denunciations of the current system's emphasis on longevity, it is refreshing to see a legislative proposal that values the benefits of tenure and experience in the transmission of knowledge and skill.

AFGE supports this approach to elevating the role of performance management in a federal supervisor's responsibilities. It recognizes that disappointing performance by an employee is a management responsibility. While an employee surely has a responsibility to perform to the best of her ability, no one should underestimate the role that operations managers play in facilitating that outcome.

This concludes my statement. I would be happy to answer any questions Members of the Committee may have.