NTEU
The National Treasury Employees Union

Testimony of

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National Treasury Employees Union

Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy

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"Are Federal Workers Underpaid?"

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Chairman Ross, Ranking Member Lynch and members of the Subcommittee, thank you for inviting me to testify today on behalf of the 160,000 federal employees represented by NTEU. I appreciate the opportunity to discuss these important issues with the Subcommittee.

PAY

The pay system for the large majority of white collar federal employees is known as the General Schedule (GS). Its main thesis is that federal pay should be comparable to pay for similar work in the private sector. In 1990, Congress enacted the Federal Employees Pay Comparability Act, which introduced the concept of locality adjustments to make the pay system more sensitive to geographic market forces. Previous to that, federal pay was based on comparability to similar private sector jobs, but the same average annual adjustment was given to all GS employees. Under FEPCA, employees were to receive an annual across the board adjustment equal to half a percent below the increase in the Employment Cost Index, which measures non-federal wages, and a locality adjustment based on the size of federal vs. private sector wage gaps in 32 different localities around the country. In practice, the formula set in FEPCA was never fully implemented and Congress has set annual pay adjustments for federal employees almost every year. As you know, Congress last year enacted a two year pay freeze for federal employees covering 2011 and 2012.

But one provision of FEPCA that has been implemented requires the Bureau of Labor Statistics (BLS) to conduct surveys of the 32 separate localities to determine whether there are gaps between federal pay and private sector pay. BLS then provides that information to the President's Pay Agent, which consists of the Secretary of Labor, the Director of the Office of Management and Budget and the Director of the Office of Personnel Management who have the statutory responsibility of submitting a report to the President each year that lists pay gaps in the 32 areas as well as a national average gap. The gaps showing lower pay for federal employees reported by the Pay Agent to the President have been consistent in Democratic as well as Republican Administrations.

While the 2010 report has yet to be submitted, in 2009 the Pay Agent consisted of Hilda Solis (Labor Secretary), Peter Orszag (OMB Director) and John Berry (OPM Director) and that report stated the average "pay disparity as of March 2009 was . . . 22.13 percent." (p. 23) In 2008 the Pay Agent consisted of Elaine Chao (Secretary of Labor), Jim Nussle (OMB Director) and Michael Hager (OPM Director) and that report stated the average "pay disparity as of March 2008 was . . . 23.25 percent." (p. 25) In 2007 the Pay Agent consisted of Elaine Chao (Labor Secretary), Jim Nussle (OMB Director) and Linda Springer (OPM Director) and that report stated the average "pay disparity as of March 2007 was . . . 22.97 percent." (p. 19).

While witnesses at today's hearing will put forth quite different statistics, I do not believe the organizations they speak for have the unbiased credibility of the non-partisan, highly professional and respected, Bureau of Labor Statistics, which does the surveys relied upon by the Pay Agent. The witnesses who will claim today that federal employees are overpaid have clear ideological views that I believe should raise serious questions about the reliability of their findings. Some of these views include opposition to paid sick leave, opposition to collective bargaining in the public sector and opposition to extended unemployment benefits in high unemployment areas.   In fact, Mr. Sherk recently commented that: “Other states should follow Wisconsin’s lead and cease collective bargaining with government unions.” (Time to Restore Voter Control: End the Government Union Monopoly, James Sherk, 2/25/11.) And he recently authored a document that analyzed the Healthy Families Act, which would require employers to provide employees with 7 days of paid sick leave, stating: “The HFA encourages irresponsible employees to game the system and dump tasks on their co-workers while still receiving full pay because they cannot be disciplined for using their leave.” (Understanding Mandatory Paid Sick Leave, James Sherk, 2/22/11). I believe these views are outside the mainstream and particularly unfortunate in their emphasis on denying the most basic workplace rights for wage earning workers in light of the fact that their Board of Directors includes some of the wealthiest men in the world.

NTEU has no problem with The Heritage Foundation and the American Enterprise Institute advocating for their positions. We strongly believe in everyone having the right to do so and we are proud to advocate on behalf of those we represent. The difference here is that we, and they, are not each putting forth products that we have each funded and produced. Rather, they are putting forth self - serving, self - created data, while we are referring to data from an independent, non-partisan, credible source. In fact, Dr. Charles Fay testified before this Committee not long ago that the Bureau of Labor Statistics uses "impeccable methodology" to gather and evaluate statistically valid data for the GS system. (May 22, 2007, House testimony).

The reasons that the data from BLS and the Heritage Foundation differ on whether federal employees are paid more or less than the private sector are many. Most importantly, BLS compares actual job duties, not just job titles. How many budget analysts in the private sector oversee multi-billion dollar agency budgets? How many logistics managers in the private sector implement the deployment of tens of thousands of troops and their supplies? How many physicians in the private sector are doing cutting edge research on curing deadly diseases? BLS data also reflects the types of jobs done by the federal government. More than 54% of federal workers work in the nine highest paying occupation groups, including judges, engineers and scientists. Federal employees are more experienced, older and have more years of education than private sector workers. Fifty-one percent have at least a college degree compared with 35 percent in the private sector. Twenty percent have advanced degrees compared with 13 percent in the private sector.

In addition to pay increases set by Congress, federal employees are eligible for within grade step increases at intervals of one, two or three years depending on where they are in their career ladder. The eligibility for these increases ends once an employee reaches the top of his or her career ladder. Roughly 50% of employees are eligible for these increases each year. Supervisors must certify that an employee has maintained a level of acceptable performance in order for an increase to be received. While these step increases are tied to performance, there has been criticism that supervisors rarely withhold them. NTEU believes that increasing supervisor training could address any problems in this area and that attention should be given to implementation concerns before abolishing a system that has proven transparent, non-discriminatory and understood and respected by those who labor under it.

HEALTH BENEFITS

With regard to benefits, as members of the Subcommittee know, federal employees and Members of Congress are covered by the same Federal Employees Health Benefits Program (FEHBP). The program is administered by the Office of Personnel Management and covers close to 9 million federal employees, retirees and their families. Enrollees can choose among many different types of plans, including HMOs, fee for service plans and high deductible catastrophic plans. Federal employees do not have the right to negotiate over the amount of contributions to FEHBP. Enrollees pay on average 30% of the total premium cost. That is higher than what most private sector employees pay, as Mr. Sherk points out in his publication, "Time to Restore Voter Control: End the Government Union Monopoly," at page 3, "In the private sector, workers pay 18 percent of their premiums for single plans and 29 percent for family plans."

That is not to say that NTEU believes that FEHBP costs could not be brought down for both the government and the enrollees. Premiums have been going up steadily, although in most cases at a lower rate than in the private sector, to the point that premiums have increased by more than 50 percent in the past ten years. One area ripe for savings is FEHBP's prescription drug pricing method. It is complex, non-transparent and results in the government paying more for prescription drugs under FEHBP than in any other government program, including the Veterans Administration, Tricare, Medicare and Medicaid. In the last session of Congress, the Subcommittee's Ranking Member, Representative Lynch, introduced legislation that would have limited the ability of pharmacy benefit managers to make huge, undisclosed profits on discounts and rebates that are not passed on to the government or enrollees. And President Obama's 2012 budget proposes changes to FEHBP's drug purchasing processes that would save $69 million in 2012 and more than $1.76 billion over ten years. I urge the Subcommittee to look further into this issue.

One suggestion for changing the FEHBP program that NTEU strongly opposes was put forth by the National Commission on Fiscal Responsibility and Reform and would change the program into a voucher system with the amount of the vouchers capped at the increase in the GDP plus 1 percent. It is my understanding that this proposal was based on a plan by Budget Committee Chairman Paul Ryan to turn Medicare into a similar voucher program, but the Commission members felt such a radical change to the huge number of seniors on Medicare would be politically unpalatable. Instead they suggested trying the voucher system on federal employees and retirees, a smaller, less politically volatile group, as a "pilot program."

Clearly, the aim of such a voucher system would be to merely shift costs from the government to enrollees, who are already paying more toward their premiums than their private sector counterparts. Tying the value of vouchers to no more than the growth in GDP plus 1 percent would steadily erode their worth since medical inflation consistently increases at a faster rate than GDP. In all likelihood the total cost of premiums would dramatically increase under this scenario since individuals would be left to find their own policies, rather than using the purchasing power of 9 million enrollees to get the best group deal for the largest employer sponsored health care plan in the country.

RETIREMENT

In the 1980's, Congress, working with federal sector unions, reformed the federal retirement system. The Federal Employees Retirement System (FERS) was created 24 years ago to replace a defined benefit system (CSRS) that had a serious and growing, unfunded liability problem similar to those faced by many state plans today. FERS solved that problem and has recently been referred to as a model by many diverse pension experts. Retirement age, COLAs and the basic benefit formula for determining pension payments are less generous under FERS than under CSRS. The FERS retirement system is fully funded and financially sound, with no unfunded liability. It is comprised of social security, a small pension and employee and employer contributions to the Thrift Savings Plan, a 401(k) type plan. Most federal employees must work 30 years and be 55 years of age before being eligible for an unreduced annuity. Members of Congress, who pay slightly more toward their retirement and receive a slightly higher pension can retire after 20 years of service at the age of 50 with an unreduced annuity. Federal retirement pensions are not overly generous. Close to 70% of federal retirees receive annuities of less than $3,000 per month.

NTEU is opposed to proposals that would cut the value of federal pensions by changing the formula to one based on the high 5 years of service as opposed to the high 3 years. The federal workforce is an older workforce whose members have relied and planned on a retirement based on the present system. It would be extremely unfair to change the goalposts for these employees as they reach the end of their careers.

PAY FOR PERFORMANCE

Mr. Chairman, in a press release issued before this hearing you indicated your support for instituting so called "pay for performance" systems in the federal government. And I assume that other witnesses will call for that, as well as more contracting out of federal services to private contractors, as a way to bring down costs.

NTEU has always taken the position that in order for a pay system to be credible and effective it must either be set in statute like the GS system so that everyone knows what the rules are and what the consequences of actions are, or there must be collective bargaining so that the employees, through their union, can have a role in the design of the pay system and can take action to remedy any unfairness. As you know, collective bargaining over pay and benefits is prohibited for all but a small number of federal agencies.

Before I discuss NTEU's views on various pay-for-performance systems that have been tried, I would like to address the current GS system. There is quite a bit of confusion among critics about it, and criticisms are usually vague and exaggerated. The General Schedule is a structured system. It has rules, standards and evaluations,which must be written. It has both merit and market based components. Within grade and career ladder promotions are subject to merit standards. There is limited ability for favoritism, discrimination or other non-merit determinations to come into play. But there is also flexibility. Non-performers can be denied merit pay increases and outstanding performers can be given many rewards, including quality step increases, annual leave, as well as retention and recruitment bonuses. Yet, we have seen a pattern of managers' inability to follow the rules and work within the GS system. If managers currently have trouble with the GS system, it does not make sense to go to a *more subjective* system. That will not solve anything.

I am a big believer in setting meaningful goals and then figuring out how best to reach those goals. I have participated in numerous Congressional hearings and Hill and Agency meetings on pay-for-performance and I have to say the goals are very often glossed over with statements like, "we want flexibility," or, "it needs to be more modem." It seems to me that a pay system should have a couple of major goals: 1) Does it help recruit and retain the best people for the jobs? And, 2) Does it help motivate employees to better achieve the agency mission? And this is the area where I believe the pay-for-performance systems that have been tried have had the most problems. I don't know of a single so-called pay-for-performance system that is getting good reviews from the employees who are working under it.

TSA

TSA's PASS appraisal system, which is a unique system, designed by TSA, is widely-seen as a poor tool for measuring and rewarding performance. In our survey of officers, 82 percent identified problems with PASS as a major workplace issue**.** Most officers believe they are treated unfairly by the system, with many complaints about the lack of predictability of advancement under it.

Unlike the General Schedule system, where employee pay increases at regular intervals in accordance with established rules, pay levels and advancement at TSA are mysterious and random**.** All too often, officers do not advance from one pay band to another for years at a time due to minor, often unfair demerits under PASS. Supervisors hand out 'collateral duties' assignments to checkpoint favorites, enabling those officers to receive "role model" ratings. Long-service officers complain they work side by side with new employees receiving similar or higher pay. PASS is a hard to understand system, with performance goals that are moving targets**.** For example, only a certain percentage of employees are permitted to achieve the highest overall rating each year. This results in situations in which an employee can have a higher PASS score than he or she achieved in the previous year—meaning performance improved—but the employee receives a lower raise and bonus.

At the same time, there is no transparency in the component parts of PASS**;** for example, high first time Practical Skills Evaluation failure rates are common, and officers are not told why they failed. Then, upon retaking the test a short time later, they succeed despite performing the skill test in a similar way as they did on the previous attempt, when they were failed. Again, no explanation is provided.

To further confuse officers, PASS scores—and, thus, annual raises and bonuses—are negatively impacted by the first failure. The obvious conclusion many draw is that the high first-time failure rates are simply a way for TSA to lower PASS-based payouts.

IRS

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

In their June 18, 2007, public comments on OPM's proposed regulations to revise the criteria for IRS broadbanding systems *(Federal Register April 7, 2007)* the Federal Managers Association (FMA) highlighted several problems with their pay banding system. The theme that ran through their comments is the notion that under the proposed regulations, pay is not necessarily dependent upon the *performance* rating. And isn't that the purpose of these alternative pay systems? The FMA's comments included this statement: "Any reform of the current system must eliminate the current service-wide performance ratings caps. For the IRS personnel system to be truly pay-for-performance, there cannot be arbitrary caps on the number of higher ratings. Managers must receive the ratings their performance dictates and they should not be harmed by a *capricious ceiling.* For any personnel system to be fair and effective, evaluative ratings and performance awards must be based on merit, *not forced quotas.* " *(June 18, 2007 public comments (emphasis added))*

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

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

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

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

Finally, shortly after the TIGTA report was issued the Federal Managers Association (FMA) revealed its own misgivings about the direction of the system in its newsletter to FMA members. Most revealing was its internal survey which showed that 92 percent of respondents answered "no" when asked if the current performance management system accurately identifies the truly 'outstanding' managers. *(FMA newsletter 2007-11, July 10, 2007)* Further, FMA agreed with TIGTA that communication with employees needs to be more "open and timely" with respect to pay before changes to pay and benefits can be made. There is a dearth of information to indicate that alternative pay systems have had any significant impact on recruitment, retention or performance. A GAO report on "Human Capital, Implementing Pay for Performance at Selected Personnel Demonstration Projects" from January 2004 (GAO-04-291) included virtually no evidence that the systems improved any of those measures. In fact, the Civilian Acquisition Personnel Demonstration Project, reviewed in that report, had as one of its main purposes, to "attract, motivate, and retain a high-quality acquisition workforce." Yet, attrition rates increased across the board under the pilot. I would also note that shortly after GAO began a pay-for-performance system for its own employees, the employees voted for the first time for representation by a labor union.

DOD

And , of course, there was the National Security Personnel System that was put in place at the Department of Defense, which was recently repealed by Congress due to many shortcomings including non-transparency, discriminatory impact of pay increases, arbitrary caps on the number of higher ratings and lack of credibility among employees.

EXISTING FLEXIBILITIES

Mr. Chairman, we are all aware that a surge in federal retirements could occur in the next several years. The Council for Excellence in Government & Gallup Organization has reported that 60 percent of the federal government's General Schedule employees and 90 percent of the Senior Executive Service will be eligible to retire in the next ten years. While no one knows for sure whether all of those eligible to retire will actually do so at the rates predicted, I do know that the federal government needs to be better prepared to compete for the best and brightest of the young new workers. Just as importantly, however, it must be prepared to use its many existing authorities and flexibilities to *retain* the hundreds of thousands of talented public servants who have the knowledge and expertise to continue contributing to the federal workforce.

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

The Government Accountability Office (GAO) has undertaken a number of studies focusing on the importance of designing and using human capital flexibilities. In one report (GAO-03-02), the GAO found that the flexibilities that are most effective in managing the federal workforce include time off awards and flexible work schedules that allow employees to better balance the demands of career and family life. These flexibilities need to be used more broadly. I also believe we should explore allowing retirement eligible employees to continue to work part time and draw part of their pension as a cost effective way to keeping experienced workers while bringing in new less experienced ones.

CONTRACTING OUT

Recommendations have been made that suggest contracting out more federal work will lead to more cost efficiency. We have had recent experience with this notion and it has not proven true. During the Bush Administration "competitive sourcing" was a priority issue. We saw the rules of competition overhauled, quotas set for competed jobs and grades given to agencies on their efforts in conducting competitions. The result was that government contracts doubled from 2001 to 2008, reaching over $500 billion in 2008. The size of the federal contract workforce, although no one seems to have its exact size, is clearly larger than the number of federal workers. According to the Office of Management and Budget, this excessive reliance on contractors has eroded the in-house capacity of agencies to perform many critical functions and has undermined their ability to accomplish their missions.

One such example is the Department of Homeland Security, which now has 188,000 civilian employees and 200,000 contractors working for it. As Chairman Lieberman noted during a recent Senate hearing, "the sheer number of DHS contractors currently on board again raises the question of whether DHS itself is in charge of its programs and policies, or whether it inappropriately has ceded core decisions to contractors." The Obama Administration has already begun to reform this out of control contracting by requiring agencies to cut wasteful contracting practices and improve oversight and accountability. These efforts are expected to result in $40 billion in annual savings beginning in 2011. NTEU believes that rather than increasing contracting, further savings can be achieved by ending no-bid and cost-plus contracts and ensuring that federal employees do inherently governmental work and are able to compete for commercial work on an even playing field.

CONCLUSION

Federal employees are facing a two year pay freeze. They are seeing proposals every day to expand and extend that freeze. They are reading about efforts to cut the retirement benefits they have spent years earning and have seen proposals to require unpaid furloughs. They are being called lazy, selfish and greedy. Sometimes, even by members of this body, who earn much, much more than they do. Some of the hardest working people I represent, like Tax Examiners at the IRS and Transportation Security Officers at TSA earn less than $30,000 a year.

NTEU members understand that the country faces challenges and although they did not cause the fiscal crisis, they are willing to work to help solve it. Federal employees have good ideas about how to do the work of the federal government more efficiently. They care deeply about successfully accomplishing the missions of their agencies. I hope this Subcommittee will work with us in a productive way to address the challenges before us. Thank you for the opportunity to testify here today. I would be happy to answer any questions you may have.

NTEU

The National Treasury Employees Union

Biography of Colleen M. Kelley, National President

National President Colleen M. Kelley is the leader of the National Treasury Employees Union (NTEU), the nation's largest independent federal sector union, representing 150,000 employees in 31 separate government agencies. As the union's top elected official, she leads NTEU's efforts to achieve the dignity and respect federal employees deserve. As spokesperson for the union, Kelley represents NTEU with the agencies, in the media, and testifies before Congress on issues of importance to union members and federal employees.

Kelley has been at the forefront of the union's successful effort to end the IRS' program to outsource the collection of tax debts to private collection agencies, citing the danger to taxpayer's private information and the risk of taxpayer harassment. The program was canceled in March 2009.

As president of the union representing nearly 24,000 U.S. Customs and Border Protection (CBP) employees in the Department of Homeland Security (DHS), Kelley helped protect DHS employees' collective bargaining rights by successfully leading a lawsuit against a revamped personnel system the agency tried to impose on its employees and won an enhanced Law Enforcement Officer retirement benefit for CBP Officers. She is currently leading an effort to organize Transportation Security Administration workers and secure collective bargaining rights for these employees.

As the federal government prepares to face an unprecedented retirement wave, Kelley stresses the need for fair treatment and competitive pay and benefits for federal employees. Through her efforts, the Office of Personnel Management permitted federal employees to have Flexible Spending Accounts, a common private sector employee benefit. According to Kelley, the failure to pay competitive salaries and the previous administration's focus on contracting out federal jobs have put the federal government at a disadvantage when it comes to hiring the best new college graduates and retaining its current employees. Kelley's efforts focus on making the federal government a workplace that attracts the best and the brightest employees in their respective fields. She believes that employees have a lot of good ideas about how to do the work of the federal government better and works hard to ensure their voices are heard.

President Kelley sits on the National Council on Federal Labor-Management Relations and played a lead role in encouraging the Obama Administration to adopt the program. Kelley serves on the Federal Salary Council, the Employee Thrift Advisory Council of the Federal Retirement Thrift Investment Board, the Federal Employee Education and Assistance Fund (FEEA) Board of Directors, and the Federal Advisory Council on Occupational Safety and Health (FACOSH). She also is a member of the Board of Governors of the Partnership for Public Service, which is committed to enhancing perceptions of public service and encouraging participation in the public sector.

A Pittsburgh native, certified public accountant (CPA) and an NTEU member since 1974, Kelley was an IRS Revenue Agent for 14 years and served in various NTEU chapter leadership positions, including chapter president of NTEU Chapter 34 in Pittsburgh. She was elected National President in August 1999 and was overwhelming re-elected to a third four-year term in 2007.

Kelley first joined the IRS upon graduation from Drexel University, where she earned a bachelor's degree in accounting. She also earned a Master of Business Administration (MBA) from the University of Pittsburgh.

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