A Report on the Proceedings

The Practice of Merit

A Symposium

A Report to the President
and the Congress of the United States
by the U.S. Merit Systems Protection Board

THE CHAIRMAN

U.S. MERIT SYSTEMS PROTECTION BOARD
1615 M Street, NW
Washington, DC 20419-0001

September 2006

The President
President of the Senate
Speaker of the House of Representatives

Dear Sirs:

In accordance with the requirements of 5 U.S.C. 1204(a)(3), it is my honor to submit this U.S. Merit Systems Protection Board report, "The Practice of Merit: A Symposium." This report is on the proceedings of a symposium that the Board convened on April 20, 2006, on how organizations operating outside of the traditional civil service practice merit.

In the last decade, numerous agencies have been granted exemptions from all or certain provisions of Title 5, the law that governs the Federal civil service. Even so, these agencies are still required to observe merit in their human capital practices. They must conform to the Government's ideals of hiring the best-qualified applicant for the job and treating their employees fairly and equitably. This report describes the many ways our featured agencies, which have operated outside Title 5 for some time, live up to the ideals of the merit system principles. This report continues our effort to provide practical information to Federal agencies searching for ways to improve their human resource management practices.

I believe that you will find this report useful as you consider issues regarding the future of the Federal civil service.

Respectfully,

Neil A. G. McPhie

A Report on the Proceedings

The Practice of Merit

A Symposium

The National Press Club
Washington, DC

April 20, 2006

U.S. Merit Systems Protection Board

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Introduction and Highlights

Introduction

The last decade has seen a dramatic change in human capital management. A number of agencies, for example, have been granted exemptions from all or certain provisions of Title 5, the law that governs the Federal civil service. The most recent major exemptions were granted to the Departments of Defense (DoD) and Homeland Security (DHS).

The earlier exemptions, affecting such agencies as the Office of the Comptroller of the Currency (OCC) of the Treasury Department and the National Institute of Standards and Technology (NIST) of the Commerce Department, were mostly driven by the need to have employment flexibilities, especially in determining pay. More recent exemptions, such as those given to the DoD and DHS, were much more comprehensive, covering areas such as employment, performance management, labor relations and appeal rights. The important thing to note is that these and other agencies with exemptions are still required to observe merit in their human capital practices. That is, they must conform to the Government's ideal of hiring the best-qualified applicant for the job and in treating their employees fairly and equitably.

Purpose of the conference

How agencies already operating wholly or partially outside Title 5 practice merit in managing their workforce were highlighted at the U.S. Merit Systems Protection Board's (Board or MSPB) one-day conference on the Practice of Merit. The Board, as the guardian of merit, is statutorily obligated to provide information that will assist agencies in managing their workforce in accordance with the merit principles. In support of this goal, the Board brought together a panel of agency representatives whose agencies have already made the transition to non-Title 5 systems to share their experiences with other human resources (HR) stakeholders. Chairman Neil A. G. McPhie noted that while Title 5 codifies one approach to the practice of merit, however, there are many other approaches. The Board believes that others can learn from the experiences of featured agencies.

The report that follows is a verbatim transcript of the proceedings, which has been edited only to exclude extraneous administrative remarks and for clarity of presentation. With this report, the Board continues its efforts to provide pertinent information to policymakers as they explore ways to build a high-quality workforce based on the merit principles. The Board also hopes that this report will serve as a catalyst for constructive debate to clarify how to practice merit in a decentralized Federal civil service.

Format of the conference

The conference was held on April 20, 2006, at the National Press Club in Washington, DC. The Board was honored to have in attendance top Federal officials involved in human capital, as well as Congressional staff, academicians, union officials and members of the media. The Board was equally honored to have distinguished and highly regarded speakers and presenters to share their views and experiences in practicing merit in their alternative personnel systems.

All of our conference presenters are experts in human capital management, having been deeply involved in developing or implementing their agencies' alternative personnel systems. They have operated their systems for many years and can speak authoritatively about them. They have also learned numerous lessons that can be useful for agencies that are considering changes to their personnel management systems.

Keynote speakers for the conference were David M. Walker, the Comptroller General of the United States, and Dan G. Blair, Deputy Director of the U.S. Office of Personnel Management (OPM). Both have extensive knowledge about alternative human capital systems. Mr. Walker heads the Government Accountability Office (GAO), which is a Federal agency completely outside the realm of Title 5, and he recently oversaw the transformation of its human capital system. Mr. Blair has played a vital role in assisting DoD and DHS develop their new human capital management systems.

Chairman McPhie led a discussion with the U.S. Special Counsel, Scott J. Bloch, and with William L. Bransford, Vice-Chair of the Public Employees Roundtable. They discussed how to preserve merit and protect employees from prohibited personnel practices (PPP). The Board also convened three panels to discuss three major aspects of human capital management: recruitment and placement, pay management and performance management.

Panel 1

The members of the first panel discussed their agencies' recruitment and placement programs. Daliza Salas of the Department of Labor moderated the first panel. Thomas J. Hogan from the Department of Veterans Affairs (VA), Marianne Myles from the State Department (State) and Ronald P. Sanders from the Office of the Director of National Intelligence were members of the panel. The topics discussed included:

- How merit is ensured in their agencies' recruitment and placement activities.
- How their agencies define "fair and open competition" and how they practice it when they are not required to post vacancies "publicly."
- The types of applicant assessment procedures they use to identify the "best-qualified" applicants.
- How managers and employees are involved in recruitment activities to ensure that their agencies are "hiring the best."

Panel 2

Max Stier of the Partnership for Public Service (a non-profit organization that promotes public service) moderated the second panel. The three Federal officials who joined Mr. Stier operate compensation systems that are very different from the General Schedule (GS) pay system of Title 5. Each of the presenters' agencies' pay system espouses some form of pay-for-performance. Discussing their compensation systems were Robert Kirkner from the National Institute of Standards and Technology; Cynthia T. Petitt from the Office of the Comptroller of the Currency; and Alton Ressler from the Non-Appropriated Funds Instrumentality (NAFI) at Fort Belvoir, Department of the Army. Each panelist provided a history of their agencies' pay systems, the impact the pay systems had on recruitment efforts and issues such as:

- Why their agencies implemented an alternative pay system.
- Whether their pay systems change from initial implementation, and if so, why.
- How supervisors are held accountable for ensuring that pay is determined fairly and accurately, and the safeguards they have instituted in their systems to ensure transparency and fairness.

Panel 3

Robert M. Tobias, of the Institute for the Study of Public Policy Implementation at American University, moderated the panel that discussed performance management. His panel members were Mangala P. Gandhi from the U.S. Postal Service (USPS) and Jesse E. Hoskins from GAO.* Their agencies have implemented pay-for-performance systems. The current Administration has signaled its interest in making pay-for-performance systems available to the rest of the executive branch of Government, and the Board believes that highlighting the experiences of these agencies can be beneficial to HR stakeholders. Some of the topics the panel discussed included:

* Phillip L. Reynolds from the Tennessee Valley Authority was listed as a panel member in the program, but was not able to attend.

- The purpose of the agencies' performance management system.
- How they developed credible performance goals and measures.
- The safeguards they have in place and how they hold managers and supervisors accountable.
- How they ensure fairness and equity in their recognition and rewards programs.

Conference highlights

Keynote addresses

Workforce transformation

Comptroller General David Walker said that the United States is faced with serious challenges but also has a number of opportunities. For example, the Government's total liabilities and unfunded commitments have increased within the last 5 years. To overcome these challenges successfully, Walker stated that the Government has to transform itself to create a more positive future. This will require the Government to reexamine its mission areas, such as defense, health care and homeland security. Mr. Walker emphasized that any transformation efforts should include the area of human capital.

He indicated that the Government's current personnel management systems, especially its GS pay system, might have made sense in the 1950's, but is no longer effective because it is hierarchical and a major barrier to the Government's transformation. In 2001, GAO put human capital on its high-risk list bringing about much-needed changes. Since then, Congress has passed several legislative reforms while the Administration has implemented the President's Management Agenda (PMA), which has made human capital one of the top areas agencies have to address.

Mr. Walker shared his experiences and views about the workforce transformation he initiated at GAO which adopted a market-based and performance-driven pay system. He acknowledged, "Our way is not *the* way; it is *a* way." He further stated, "We are not perfect and we never will be, but we're trying hard to lead by example and we are committed to continuous improvement." Mr. Walker noted that most Federal agencies do not have the necessary infrastructure in place to effect a successful transformation, but pointed out that many of the much-needed changes do not require new legislation. Some of the advice he offered to agencies initiating human capital transformation efforts include:

- The development of a strategic human capital plan to ensure they know where they want to go. He warned that without such a plan, agencies are likely to fail in their transformation efforts.
- A modern, effective and credible infrastructure focused on achieving positive outcomes that balances results, people and partnerships. The infrastructure must include modern, effective and credible performance appraisal, classification and compensation systems that are tied to the strategic human capital plan. These systems must be validated, fair, honest, accurate, transparent and non-discriminatory.
- Credible internal reconsideration processes and external appeal processes. It is critical for employees to have a means by which concerns can be addressed. At GAO, the internal reconsideration process goes all the way up to the Comptroller General. For its external appeals, GAO employees go to an independent appeals board called the Personnel Appeals Board, much like the MSPB for agencies in the executive branch.
- Safeguards and accountability mechanisms. Employee involvement and multi-level reviews are necessary when developing and implementing new systems. Subjectivity in the system cannot be completely eliminated; however, adding safeguards and accountability mechanisms help ensure fairness in the system.
- A phased-in approach. GAO started at the top and with new employees, then moved to the middle. Transformation efforts require committed, sustained, visionary, capable and credible leadership at the top. But that in itself is not enough. People at all levels of the organization are the key to successful transformation efforts.

The role of merit in workforce transformation

In his keynote address, OPM Deputy Director Dan Blair traced the various changes to the civil service from the 1940s to the present. He noted that major changes to the Government's personnel system have been continuously happening and did not just take place with DHS and DoD. For example, the Civil Service Reform Act of 1978 (CSRA) brought major changes to the civil service. In the 1980s, the first crack in the monolithic GS pay system, which CSRA did not touch, appeared when the banking agencies broke away from it. More agencies followed, the most recent of which have been DHS and DoD. But through all this, merit has remained a constant.

Mr. Blair went through each of the nine merit system principles and described why they are still relevant today. He noted that they will always remain the key element for the successful use of personnel flexibilities and can serve as the foundation for a transformed civil service. One of the lessons to be learned from the changes that

have transpired is that when flexibilities are given to agencies, these flexibilities must remain within a coherent framework, which includes the merit system principles and adequate safeguards. He observed that agencies that fail to have a coherent framework are likely to struggle in their transformation efforts. According to Mr. Blair, one safeguard that Congress has recently instituted is to require agencies to be given HR flexibilities to work with OPM when developing their HR systems.

Mr. Blair also stated that the framework for making agencies accountable is already in place. In January 2001, President Clinton signed Executive Order 13197, Governmentwide Accountability for Merit System Principles and Workforce Information, giving OPM the authority to ensure that personnel systems, including those outside Title 5, are merit-based. Building on the Executive Order, President Bush charged OPM to hold agencies accountable for how they manage their human capital under the President's Management Agenda with ratings and evaluations. Since the implementation of the PMA, Mr. Blair noted that great progress has been made with more agencies receiving "Green" in the human capital area. To ensure that agencies operate merit-based personnel systems, OPM has made human capital accountability one of its major goals through 2010.

Protecting employees from prohibited personnel practices

Chairman McPhie and his panelists discussed what agencies should be particularly aware of in preserving merit and avoiding prohibited personnel practices (PPP) as they gain more flexibilities. In addition, they also discussed which merit system principles or PPPs have been most misunderstood by agencies and employees and why.

Mr. Bloch reassured Federal employees in general and DoD and DHS employees in particular that due process has been preserved even as flexibilities are being given to agencies and emphasized that DoD and DHS must also reassure their employees of this fact. He indicated that the Office of Special Counsel (OSC) will enforce the law and will investigate and prosecute PPPs. But more so, OSC is committed to educating the Federal community on their employment rights, which it does through presentations, agency certification processes and online classes.

Mr. Bloch and Mr. Bransford both noted that the most misunderstood merit system principles or PPPs are those related to equal employment opportunity (EEO) and whistleblowing. In the case of EEO, Mr. Bransford indicated that the lack of other grievance procedures causes many employees to inundate the EEO grievance process. In discussing whistleblowing, they agreed that the law is very complicated and can be difficult for supervisors and employees to understand. Mr. Bransford said that the law is complex due to changes in court decisions and changes made by Congress.

Mr. Bloch believed that the complexity of the law is exacerbated by the various exemptions and procedural requirements. To alleviate misunderstandings, they offered the following advice:

- Agencies should educate managers, supervisors and employees of their rights. Such education and training should be conducted regularly and consistently.
- Agencies should implement a streamlined and simplified grievance process that is credible, transparent and conducted with adequate oversight.
- Managers and employees should realize that they are both players in preserving merit and that this should be a common goal.

Summary of merit practices from the three panels

The transcript in the next section contains important insights and helpful suggestions from our panelists, a few of which are listed below. We urge our readers to review the transcript for more information.

Develop recruitment strategies to attract high-quality applicants

Although not as constrained in their hiring processes as their Title 5 counterparts, our panelists indicated that their agencies are committed to hiring the best person for the job. Some recruitment strategies they have implemented include:

- **Maintaining a school presence.** The State Department and the intelligence community assign executives to certain colleges and universities who sometimes teach but mostly act as recruiters identifying at an early stage who would make good job candidates. The VA is affiliated with some of the medical schools whose students train in VA's medical centers. Many of these medical students become VA employees. The intelligence community takes this a step further. One of their initiatives is to develop relationships with schools at the elementary and high school levels in an effort to encourage students to study and learn foreign languages that the intelligence community needs.
- **Targeting talent based on needed skill sets.** Before engaging in targeted recruiting, the State Department and the intelligence community conduct competency gap analyses to identify skills that they need. For example, they identify the kinds of foreign language skills their organizations need and target applicants with fluency in those languages.
- **Offering competitive pay but also using non-monetary tools to attract applicants.** Pay can be a recruiting tool, but it is not the only tool. There are intrinsic motivators, such as the mission or the reputation of the agency that can attract

applicants to apply. For example, NIST has a good brand name in the scientific community, while OCC is well-known in the financial community to the extent that they have no difficulty attracting applicants for their core positions. With respect to other agencies, applicants may be attracted to the culture of the organization, as in the case of former military personnel being attracted to work for a military entity in a civilian capacity. Even so, our panelists emphasized that competitive pay is an essential part of the larger employment package to attract applicants.

- **Using agency employees as recruiters.** The VA's number one recruiting source is its employees. The VA's medical personnel generally know the talented individuals in their profession and encourage their cohorts to apply. In the Army's NAFI, employees, many of whom are members of minority groups, often tell their friends about job vacancies.

Conduct rigorous assessments

Our panelists indicated that to ensure that they identify applicants who best fit their agencies' needs, they conduct rigorous assessments. The assessment tools they use focus more on results than on process. Some assessment methods that they use are:

- **Peer review and evaluation.** The VA uses professional standards boards, comprised of VA employees, to evaluate the credentials of applicants whom selecting officials have interviewed and tentatively selected. For example, a board made up of nurses evaluates the credentials of applicants for nursing jobs. The board determines whether the selectee's education, training, experience and professional membership fit the job. Based on the candidate's qualifications and accomplishments, the board also determines the would-be employee's pay. The VA also uses employee review boards to promote employees. Much like the VA's boards, the State Department uses promotion boards of peers to determine whether to grant Foreign Service personnel tenure or a promotion.

- **Conduct rigorous verification and background checks.** The VA independently verifies all claimed qualifications, such as education and licenses, while the intelligence community conducts background checks. Rigorous verification and background checks can ensure that potential employees are who they say they are and eliminate some potentially bad hires.

- **Conduct written and oral assessments that are job-related and validated.** For example, the State Department conducts Foreign Service written exams and oral assessments once a year. New employees are selected based on their scores on these exams. To ensure that the written exams do not have an adverse impact on certain groups of applicants, the exams include job knowledge and biographical portions. Due to the nature of their work, the intelligence community's assess-

ments evaluate not only competencies, but also trustworthiness, character and suitability. Thus, for certain types of jobs, the intelligence community's assessments can include polygraph tests and psychological tests.

Have a clear purpose when instituting alternative systems

All of our featured agencies have transitioned away from the General Schedule in determining pay. Their representatives indicated that having a clear purpose for moving away from the General Schedule makes it easier to judge whether the change has achieved its goals. For example, OCC has changed its compensation system to support organizational change. One of NIST's purposes for implementing its pay banding system was to improve its ability to recruit and retain high-quality scientists and engineers. The Army's NAFI, which generates all of its revenue, implemented its pay system to enable its various business units to operate on what the labor markets demand in particular areas. USPS created its pay-for-performance system to emphasize organizational success through objective, measurable performance indicators that are linked to the mission of the agency.

Be inclusive when developing and implementing new systems

Involve employees when developing, designing and implementing new personnel management systems to get employee buy-in. For example, OCC and NIST conducted employee focus groups to solicit input from their employees. GAO had their employees validate the competencies used in their market-based, performance-driven performance appraisal system. USPS conducted yearly employee surveys and used the results to rate managers' performance. Involving employees removes some of the fear associated with a new system and develops trust.

Educate and train employees on the system and communicate constantly with them

Employees and supervisors need to know how the new personnel system works, so education is critical. Supervisors who are responsible for implementing the system must be educated and trained on how to use the system to ensure consistency and fairness. Employees, too, need to be educated to gain their trust and support. To educate their employees, OCC's human resources staff educates supervisors on the results of their performance rating determinations at the end of every pay-for-performance cycle. The Army's NAFI trains its supervisors because supervisors are asked to use different skills under a new system compared to what they are used to exercising. GAO uses outside assistance to help train their supervisors on how to better communicate with their employees, especially when relaying negative information.

Make the system transparent and provide safeguards

Panelists indicated that their agencies track the results of their personnel decisions, i.e., performance ratings, pay adjustments, bonuses and awards, as well as the impact of those decisions on protected groups of employees. To enhance the transparency of their systems, some agencies post their pay-for-performance awards and bonuses on their Web sites. For example, NIST examines data after each pay cycle on how various groups performed to determine whether there was an adverse impact and then posts organizational results on its Web site so that employees can compare their organization with that of others. To ensure privacy, no individual results are posted.

One of the safeguards GAO has implemented for its pay-for-performance system is that its human capital office and the office responsible for inclusiveness independently review just about every major event or policy change. Such reviews include demographic data at the macro, team and individual levels. As safeguards for their peer review process, the State Department and the VA have pre-set standard criteria or requirements against which employees are evaluated for promotion, and rotate membership on the peer review boards.

Tie alternative personnel systems to the agency's mission and business plan

To define performance and develop measures for it, USPS used its mission and business plans as guides for developing its pay-for-performance systems. For example, USPS aligned its performance indicators to its mission, which is delivery and service. Measures are defined at the organization, facility and individual levels, which ensure that employees have a "line of sight" from their position/level to the organizational goals. USPS also uses a "balanced scorecard" approach that includes the four elements of its business plan: service, performance culture, revenue generation and cost reduction. In adopting a balanced scorecard approach, USPS informed its employees that it did not want to compromise any one of the elements to benefit another element, e.g., decrease service to reduce costs.

Conclusion

As mentioned earlier, the conference was conducted to inform interested parties of the different ways in which merit can be practiced. Our speakers, moderators and panelists identified numerous practices and insights, some of which have been highlighted in this summary. Based on their presentations, we have drawn the following conclusions from the proceedings.

Our speakers showed us that the practice of merit does not end when an agency moves away from the provisions of Title 5. They demonstrated that although they have different processes, not only can merit be practiced in their alternative personnel systems, it can also flourish. As our speakers explained, merit, as an embedded aspect of an agency's culture, naturally compliments the effective functioning of a workplace.

In implementing their alternative personnel systems, our speakers' agencies have experienced some growing pains. No speaker claimed that his or her agency's HR system was exactly right on the first try. Rather, they all recognized that there is always room for improvement. An effective system is one that includes a recurring evaluation of what works well, and what could work better. When changes are based, at least in part, upon feedback from the affected employees, they can help ensure employee buy-in and keep the system effective. Change should be carefully planned, directed and communicated and should never take place just for the sake of change.

Our speakers also made it clear that personnel systems can never be completely objective. As long as human beings run systems for their fellow human beings, such systems will always contain an element of subjectivity. Managers, after all, have to apply judgment when assessing employee performance. It is important to note that some element of subjectivity is generally accepted as long as employees understand why subjective criteria are being used and are confident that the application of the criteria is fair and impartial. The maximum use of objective criteria—when feasible—as well as transparency and safeguards help ensure that employees perceive the system as legitimate.

It is not a new concept, but our speakers indicated again and again that people are the most critical resource to success in any change initiative. Rules, regulations and processes are necessary. However, people are what makes a system work. It is natural for employees to be wary of any new personnel system; however, educating them about the new system and constantly communicating with them can alleviate their fear and earn their trust. Getting employees on board is crucial in any transformation, and agencies must realize that this will require time and effort. Fortunately, many of the practices our presenters described do not require legislative changes. Agencies can start today to take the necessary steps to transform their personnel management systems to begin to build a more effective 21st century culture.

Welcoming Remarks

Steve Nelson
Director, Office of Policy and Evaluation
Merit Systems Protection Board

"We've invited an impressive and diverse group of people here today…"



Steve Nelson

Good morning, everyone. I'm Steve Nelson. I'm the Director of the Office of Policy and Evaluation at the Merit Systems Protection Board. I want to welcome you to our Symposium on the Practice of Merit. We've invited an impressive and diverse group of people here today, and I'm glad to see that so many people have been able to make it already.

We do have a very august group of people here, and I want to recognize some notable people who are here. First, I would like to say a special welcome to Chairman Neil McPhie, to Mary M. Rose, our Vice-Chair, and to Barbara Sapin, who is our Board Member. Thank you for being here. And to Tracey Watkins, who is our Chief of Staff. Good morning, Tracey.

I want to say a special thanks and recognize our moderators who will be working with us today: Daliza Salas, who is already in place and ready to go so that we can keep things on track. Daliza, thanks very much for being with us. Max Stier, who is the President of the Partnership for Public Service, will be one of our other moderators today. And our third moderator will be Bob Tobias, who is with the Institute for the Study of Public Policy Implementation at American University.

I note that we have a couple of Hill staffers here, one from the Senate and one from the House: Jennifer Tyree, who is the minority staff counsel on the Senate Committee on Homeland Security and Governmental Affairs, the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. Jennifer, thanks also. And Chad Bungard, who is the deputy staff director and senior counsel on the majority staff for the House Committee on Government Reform, the Subcommittee on Federal Workforce and Agency Organization.

I also want to thank a number of the CHCOs[1] who have shown up. We have Rick Hastings, who is the Director of Human Capital Policy at Homeland Security; Debra Tomchek, Deputy Director of Program Support for the Defense Civilian Personnel Management Service; Dawn Petchell, the General Deputy Assistant Secretary for the Office of Administration at HUD;[2] Barbara Edwards, who is the Deputy

[1] Chief Human Capital Officer.
[2] U.S. Department of Housing and Urban Development.

Assistant Secretary for Human Resources at HUD; Christine Major, who is the Acting Director of Human Resources at NIH,[3] and her deputy, Philip Lenowitz; Kathleen Wheeler, the Deputy Chief Human Capital Officer at Interior; Linda Washington, the Acting Assistant Secretary for Administration at the Department of Transportation; Rochelle Granat, who is the Chief Human Capital Officer at the Department of Treasury; Patricia Pointer, who is the Deputy Chief Human Capital Officer at Treasury; and Debbie Jackson, who is the Vice-President of Employee Resources Management at the Postal Service.

We tried to get a very diverse group of people, and so I want to acknowledge several other groups. We have Susan Grundmann, who is the General Counsel of NFFE;[4] Darlene Young, the National President of Blacks in Government; Thomas Burger, who is the National President of the Professional Managers Association; Jose Oseg-ueda, who is the President of the National Association of Hispanic Federal Execu-tives; Rhonda Trent, the President for Congressional and Government Relations at Federally Employed Women; Linda Tuazon-Miller, the President and Chief Execu-tive Officer of the Federal Asian Pacific American Council; and Didier Trinh, the Executive Director of the Federal Managers Association.

We also have some very notable guests that I'd like to recognize: Bernard Rosen, who is the former Executive Director of the Civil Service Commission, and a very significant contributor to the Civil Service Reform Act of 1978; Steven Cohen, who is the former Special Assistant to the OPM director and Acting Director of OPM during the transition before Kay James. Thanks very much, Steve. And Rosslyn Kleeman, who is the Distinguished Executive in Residence at the School of Public Administration at George Washington University. Thank you also, Roz.



And lastly, I want to recognize that we have several members of the media

[3] National Institute of Health, which is part of the U.S. Department of Health and Human Services.

[4] National Federation of Federal Employees.

here: Steve Barr, who is with the *Washington Post*; Karen Rutzick, with the *Government Executive*; and Mollie Ziegler, who is with *Federal Times*.

We tried to put together a group of people who are inextricably intertwined with our business, and you will find everyone is indeed in that category.

To start our conference, it's my pleasure to introduce to you the Chairman of the Merit Systems Protection Board, Mr. Neil Anthony Gordon McPhie. Thank you.

Opening Remarks

Neil A. G. McPhie
Chairman
Merit Systems Protection Board



Neil A. G. McPhie

Good morning. On behalf of the Board, including my esteemed colleagues here, Vice-Chairman Rose, and Member Sapin, I welcome you to today's Symposium on the Practice of Merit. The sessions planned have been carefully developed and coordinated through the hard work of our Office of Policy and Evaluation. Steve Nelson leads that office, and a number of his hard-working staff are right here. We sincerely appreciate their efforts. We're also joined by the staff of influential legislators in Capitol Hill. Thank you for your presence.

"I believe that as guardians of merit in civil service, the Board is obligated to provide information that will assist in the management of an effective and efficient workforce."

Today's conference is unique because it brings together different stakeholders from Federal agencies and organizations to discuss the practice of merit through the exchange of ideas and commentary. I believe that as guardians of merit in civil service, the Board is obligated to provide information that will assist in the management of an effective and efficient workforce. We hope that what you learn today will assist you in managing the human resources within your agency as together we attempt to build a 21st century civil service that will remain committed to the tradition of merit. This is extremely important in today's world of change, but I'll get to that a little bit later.

As Chairman of the Merit System Protection Board, I am frequently contacted by other governments, including emerging democracies who admire our government's dedication to a merit-based civil service, and seek to learn from us how they can enjoy the benefits of a workforce that is hired, trained, paid and retained on the basis of knowledge, skills, and ability. You see, the irony is these democracies are where we were years ago. They want to be where we are today. There is something to be said about that. Although our civil service may serve as a benchmark for others, I believe there's even more we can do to make the Federal workforce effective and efficient through a continued adherence to the merit principles as we explore new human resource management flexibility, which is the mantra of today's reforms.

Neil Anthony Gordon McPhie was appointed to the Board on April 23, 2003. He was subsequently confirmed as the Chairman of the Board on November 21, 2004. His appointment will run until March 1, 2009.

In recent years, a number of agencies have been granted exemptions from the provisions of Title 5 to create alternative personnel systems designed for flexibility and specific agency missions. While Title 5 codified one approach to ensuring compliance with the merit principles, we recognize that there are certainly other ways to achieve these important goals – perhaps ways that can also help agencies to meet their particular requirements. The challenge for all of us, however, is that agencies under Title 5 and those exempt – and this comment really goes to those that are exempt from Title 5 – must continue to observe the principles of merit in hiring, promoting, disciplining and retaining their employees. After all, it is the American way, is it not?

I believe that there is a need for contemporary and flexible personnel systems. Congress and the President have signaled their interest in authorizing the creation of new human resource systems that allow agencies to be more flexible and responsive but still conform to the enduring values of fairness and effectiveness embodied in the merit principles. Management personnel flexibilities must always be balanced with fairness. The core values of the Federal system, which are the essence of the merit system principles, must be preserved. You see, it's not only good values; it's also good business that fairness, openness and transparency are apparent in whatever we do, whether we're in or out of Title 5.

"You see, it's not only good values; it's also good business that fairness, openness, and transparency are apparent in whatever we do, whether we're in or out of Title 5."

We at the MSPB are in a fairly unique position. We have to follow the system that has been created by the legislators. Therefore, we have always been very careful to avoid judging the various personnel systems on available models. We look forward to working with everybody, including DHS and DoD, in advancing new systems. Care must be taken – and we will always try to influence the conversation along these lines – to ensure that due process is afforded to covered employees and that the new systems are perceived as fair. You know, a commentator once said, "Due process is whatever process is due." So when people talk to me about due process, I always try to find out what process they are anticipating.

I will note that for an adjudicatory body to be viewed as credible and authoritative, independence from the parties in the dispute is paramount. The Board is an independent agency, and sometimes we, by our decisions, provoke the ire of every side involved in the dispute. Agency actions, as I said before, must be transparent and expectations clearly defined. I think, most importantly, there must be employee buy-in, open communication, and trust for any system to succeed, whether it's in Title 5 or out of Title 5.

The focus of this Symposium raises the question: How do you practice merit while operating outside of the specific rules and procedures defined by Title 5? This can be a particularly difficult question for individual agencies to address, especially at a



time when they're also required to meet increasingly complex mission requirements, often with fewer resources. Fortunately, it is not necessary for every agency to start from scratch. For a number of years, there have been agencies that have operated outside some of the provisions of Title 5, and as is true of agencies that operate solely within Title 5, these innovators also observe the principles of merit in hiring, promoting, compensating, retaining and managing their employees.

There are a number of people from those types of organizations that are here today, and we anticipate that they will talk about some of their successes. I hope you will ask vigorous questions: how they did it, and also, what are some of the difficulties? The list includes such diverse agencies as the Departments of State, Labor and Veterans Affairs. We'll also hear from representatives of the U.S. Postal Service, the Government Accountability Office, the Office of Personnel Management, the Office of the Special Counsel, the Office of the Director of National Intelligence, the Senior Executive Association and the Army's Non-Appropriated Funds Instrumentality.

We have an exciting agenda today. And we really look forward to hearing from all of these distinguished guests on their best practices, challenges and successes on the practice of merit. I believe that together we can learn from their experiences and work toward making all Federal workplaces a place where employees can flourish while serving the American people.

My wish for you at this point is to enjoy today's conference. The real information is going to be given not by me but by the folks who are our invited speakers. Please enjoy it and I hope you benefit from it, and tell us what you think. Thank you very much.

Panel 1

Hiring the Best: Practicing Merit in Recruitment and Placement

Moderator: **Daliza Salas**
Director of Human Resources
Department of Labor

Members: **Thomas J. Hogan**
Deputy Assistant Secretary Human Resources Management
Department of Veterans Affairs

Marianne M. Myles
Director of Human Resources for Recruitment, Examination and Employment
Department of State

Ronald P. Sanders
Intelligence Community Chief Human Capital Officer
Office of the Director of National Intelligence

Introduction

MR. NELSON: I would like to kick off our first panel that Daliza Salas, the HR Director of the Department of Labor, will moderate. She will introduce her other panel members and get us kicked off. So, Daliza, welcome and thank you.

MS. SALAS: Good morning, Chairman McPhie and distinguished guests and colleagues. It is my pleasure to be with you today to moderate this panel of colleagues who are also in the



L-R: Daliza Salas, Thomas Hogan, Marianne Myles, and Ronald Sanders

Daliza Salas is the HR Director of the Department of Labor. In that capacity she helped the Department of Labor achieve a green rating in human capital, and win the President's Quality Award for Strategic Management of Human Capital and the President's Quality Award overall.

business of HR management. It has been a pleasure working with many of you in many different aspects of work in organizations – grassroots organizations as well as government agencies – and so I feel like I'm among many friends here. It's very nice to see you all.

We hope to share some thoughts today on different aspects of hiring and HR practices from agencies that use other hiring authorities. These agencies are not subject to Title 5 all the time. Some have combination of Title 5 and other systems. And of course, we're all, as Chairman McPhie said, responsible for ensuring that there are no prohibited practices in whatever system that we implement at our agencies.

We're seeing very dramatic changes in Federal human capital management with the increase in human capital flexibilities. Several agencies have been granted exemptions from Title 5. We're replacing a lot of our traditional government-wide flexibilities and authorities and we're looking at many different human capital systems.

We know that we're going to keep going in this direction. Agencies are likely to receive even more flexibilities in the future. It benefits us all to listen to our colleagues and find out what their experiences have been, and their lessons learned, in implementing these various programs. But first I'll take a few minutes to introduce our panel members this morning. To my immediate left is Tom Hogan, who is the Deputy Assistant Secretary for Human Resources and Labor Relations at the Department of Veterans Affairs.

Next is Ms. Marianne Myles. She currently serves as the Director of the Office of Recruitment, Examination and Employment at the Department of State.

And Dr. Ronald Sanders. Ron was appointed as the U.S. intelligence community's Chief Human Capital Officer in 2005 by the Director of National Intelligence. In this capacity he is charged with implementing various HR provisions of the Intelligence Reform and Terrorism Prevention Act of 2004.

Our distinguished panelists have a lot to share with us, but time allows for only 15 minutes apiece so that we have time after their presentations for questions and answers. I invite you to jot down your questions and hold them until the end of their presentations.

Let's begin with Tom Hogan. Tom?

The Department of Veterans Affairs

MR. HOGAN: Thank you, Daliza, and good morning, ladies and gentlemen. I want to talk to you about the Department of Veterans Affairs' Title 38, excepted service employment for the healthcare professionals who deliver care in our VA medical centers. We're talking about 80,000 people. It's a very large number and larger than many Federal agencies, but I'd like to put that in perspective.[5]

Practicing merit

The VA has about 240,000 employees, so the excepted service is roughly one-third of all VA employment. Most of these employees work at the 163 VA medical centers scattered throughout every state in the country and 1,100 other clinics and points of contact. All of the people who are in charge of clinical programs, whether they're nurse executives, or chiefs of medicine or surgery, also supervise General Schedule employees. So Title 5 employees covered by all of the rubrics of merit staffing, of non-discrimination, of protected classes, of prohibited personnel practices and so forth are part and parcel of the responsibility of every manager who manages Title 38 employees. I think that's important to be aware of that. I don't know if you're starting out an agency where the entire group is excepted service, but I think it would be an enormous challenge if you're not able to just build upon an embedded culture of merit. I'm glad we didn't have that particular challenge.

"…I think it would be an enormous challenge if you're not able to just build upon an embedded culture of merit."

The other part of Title 38 that I think makes it relatively easy for us to adhere to the merit principles, is because it's a very mature system. The VA was created in its present form in 1946 immediately following World War II when all of the veterans came home and needed care. It was obvious even in 1946 that for the highly competitive health care occupations – nursing and dentistry – that you wouldn't be able to recruit them rapidly in enough numbers and retain them given the relative inflexibilities of Title 5. Congress developed Title 38 as a way for the VA to effectively and rapidly recruit and retain a very professional workforce.

There is one minor piece in the Congressional record that reflects the discussion that Congress had at the time as they created the Department of Veterans Affairs: To what extent would the new excepted service be required to give veterans preference in employment? Veterans' preference, as we all know, is a hallmark of Title 5. It's one of the fundamental, inviolable tenets of what we do. There was a long discourse in the public record, and finally Congress decided that a veteran's right to the best health care he or she could obtain superseded the right of a veteran applicant to veterans preference for a job with the Department of Veterans Affairs.

[5] See "Department of Veterans Affairs Title 38 Employment System" handout in Appendix A.

So for our Title 38 employees, we give veterans' preference inter alia. All other things being equal, we will select a veteran as opposed to an equally well-qualified non-veteran candidate. If more than one candidate applies for the job and the non-veteran candidate has more skills, better credentials or more relevant experience, the selecting official can hire him or her over a veteran with preference. And I will tell you, as odd as that might sound, within the Department of Veterans Affairs, we literally have no discord, no questions, no problems with that.

Composition of the VA's healthcare workforce

Within our excepted service, we have two categories of employees. We have what we would call the pure Title 38 – I sound a little bit like a Harry Potter book – but pure Title 38s are physicians, dentists and nurses. We have 15,000 doctors, 39,000 nurses, 700 dentists, as well as a few other occupations – podiatrists, optometrists, dental assistants, chiropractors and so forth. For them, Title 38 is a completely self-contained, coherent personnel system. It not only deals with what we're here to talk about, mostly appointments and advancements, but it also governs their pay, it governs their discipline and it governs their performance appraisal.

Subsequent to 1946, we created in 1983 what we call hybrid Title 38 for licensed, practical nurses, occupational therapists and physical therapists. Hybrid Title 38 employees are in the excepted service for the purposes of appointment and advancement only. In all other respects – for their leave, for their performance appraisal, for discipline, for appeals – they remain subject to the provisions of Title 5. In the late '80s, we added pharmacists to the group, and just recently we had 21 new occupations with 18,000 employees converted to hybrid Title 38. You see, these occupations in medical centers are incidental to the provision of care, such as social workers, psychologists, medical technologists.

Recruiting a healthcare professional

How does it actually work? What does it mean to be in excepted service? It means that we can hire without constructing registers. We can hire and make direct offers of employment to well-qualified employees as they present themselves. We conduct rigorous outreach programs in professional environments, advertise in media, attend job fairs, all kinds of things. What we have found in our surveys of entering employees as well as exiting employees is that our single largest source of referrals is other VA employees. People work with colleagues or with friends. Typically, it's a closed occupation in many respects. All the nurses in town will know one another, all the pharmacists in town will know one another, and they can come to the VA, see the selecting official

and be interviewed. At the end of that discussion, if the selecting official believes the person is a good candidate, and has the requisite experience and credentials, the selecting official can make a tentative job offer, and the machinery starts.

Assessing qualifications

"…[W]e go through a very rigorous procedure to ensure that they are who they say they are, and that their credentials are what they say they are."

At that point, we go through a very rigorous procedure to ensure that they are who they say they are, and that their credentials are what they say they are. We have them provide us with extensive documentation. If you say you went to a medical school, we don't take a copy of your diploma; we call the medical school and verify that Dr. X graduated in 1978. If you indicate that you have credentials in a board specialty, we verify those. If you indicate that you have a license in a given state, we don't take a copy of that; we do original source verification.

While that is going on, your credentials are referred to what we call a professional standards board. That is a board of your peers. If you are a nurse, it will comprise of three to five nurses. If you're a physician, it will comprise of three to five physicians – dentists, likewise. Your credentials are evaluated by your fellow practitioners. They will evaluate your education, your experience, any professional achievements you've attained and professional societies you've joined, and they will effectively recommend that you be accepted for appointment. They will also recommend your pay. Now, this system is a very strong rank-in-person system, at least at the earlier stages of one's career.

When a person is hired, we look at the totality of his or her experience. If he or she has 18 years' experience in a general medical hospital in the community, we're not required to start him or her at step one of the grade, as in Title 5. You can set a grade or you can set a step within a grade to recognize the achievements of that specific individual. One of the reasons we do that is because in healthcare there are measurable, demonstrable outcomes of the quality of the people that you have working for you. For example, if you have nursing wards staffed by nurses with a B.S. degree in nursing, as opposed to an AA degree or an older diploma, you will have measurably lower mortality and morbidity rates. The quality of your care is better. We will pay people for specific education that we can correlate to better outcomes. That's a very strong part of how we do business.

Obviously, as one gets further academic credentials and experience and as we get into the more senior levels, we also have to consider the complexity of the assignment. If a nurse on a ward really wants to deliver care and receives a Ph.D. in nursing, we are not going to recognize that credential in that setting to the same extent

we would if he or she were to move on and accept a leadership position, such as a nurse executive, or accept program responsibility – perhaps in a nursing education curriculum. The complexity of the assignment plays an increasingly important role in compensation as one goes higher.

In terms of our advancements, we do that, again, through professional standards boards. They're not mere promotion announcements. You are considered for advancement and promotion by a board of your peers. In the early years of your career, you are considered annually on your anniversary date. The board of your peers will look at your educational credentials, your supervisory appraisals, anecdotal notes, what you have achieved within the profession and the complexity of your assignment, and they recommend that you be given either step advances within a grade, or you can be advanced from grade to grade.

"If you believe that you've been treated unfairly, you can request reconsideration."

Requests for reconsideration

If you believe that you've been treated unfairly, you can request reconsideration. With 39,000 nurses, we had 40 requests for reconsideration at the headquarters level last year. Over an extended period of time, we have implemented a system in which we make the rules and expectations clear to everyone. We have boards of peers, which usually have rotating memberships. It's not three people who are the king or queen makers at a given facility, but rather a cadre of individuals, and can include experienced senior staff nurses or physicians. But they're not all management officials. They understand the kinds of credentials, experiences and behaviors that we want to recognize and in what way. It's a very transparent system. People's sense of professionalism is bound by how they relate to one another and treat one another. So we think that the merit aspect of this is demonstrated in the product; that is, that the results are well-understood and well-received.

The ability to compete for talent

Within this system, being able to hire people quickly is enormously important. In fact, when we worked with the Office of Personnel Management, Congress and the Office of Management and Budget 2 or 3 years ago, we were able to get 21 new occupations made hybrid. The reason that we were able to do that was by presenting a business case that showed that for most of the occupations in question, we were the primary user in the Government. We in fact employ 90 percent of the social workers in the Federal Government, and more than 90 percent of the audiologists and speech pathologists. So we were the single-biggest user and we are competing against ourselves. The biggest problem that we had was in making job offers to people over time. We lost more than 60 percent of the well-qualified candidates we identified

through our recruitment efforts. By the time we were able to get them through the examining process and get a properly constructed certificate, usually with their name as the only one on it, they had long since gone to work somewhere else.

As all of you know, the healthcare labor market is white hot and very competitive. If you've had a family member in a medical center, you know that the nursing crisis is not academic; it's not theoretical. Hit a call button and you'll find out it really exists. Having said that, within the last 3 years we have increased the number of nurses on board in the Department of Veterans Affairs from 36,000 to 39,000, and we do that by trying to be an employer of choice. In terms of attracting people and being able to appoint them, the whole fabric of your work relationship and your work situation is important.

Training potential recruits

Let me say, quickly, we have 101 of 163 medical centers affiliated with medical schools. We train more than half of the physicians in the United States each year. Those in residency programs receive all or part of their training at VA medical centers. And we're able to attract a cadre of physicians who are interested in being able to do clinical care, participate in academic medicine and have the opportunity to do research. We have two current Nobel Prize winners for medicine on VA staff. It gives physicians a well-balanced quality of life. Congress has just given us a revised pay plan under which we can survey our markets every year by specialty and offer people competitive rates of pay.

Retention strategies

"We can never be a pay leader, but we can always be competitive."

In 1991 we were divorced from the General Schedule. We now survey for salaries in the local community. We can never be a pay leader, but we can always be competitive. We are able to do innovative things like pay a nurse who works three 12-hour shifts – 36 hours as full-time – 40 hours. We're able to do that if they work two 12-hour shifts on the weekend. We're able to do something that we think will entice mothers with young families: work nine months a year, take the summer off and have a steady paycheck prorated for 12 months of the year. We spent $93 million in recruitment and retention allowances for nurses last year. We spend about $20 million a year sending our nurses with AA degrees and diploma degrees to get the BSN degree, because we think it provides better care. And we have the advantages of having a national system. People can transfer around, follow a husband or wife if he or she works for a big company. You have reciprocal licenses; you don't have to get a license in every state. And the VA – if you have a license in any state – can employ you anywhere. And you have opportunities in a big system for executive development if you would like to go into administrative medicine.

That's the back end.

The VA's turnover rate for nurses is a little less than half that of the private sector. It's under 10 percent and we think that's the second half of the battle. So if you manage to get an employment system that gives you advantages, I will tell you that is only half of your problem, ladies and gentlemen. I'll be glad to take questions and let the panel proceed. Thank you.

The State Department

MS. MYLES: Thanks, Daliza, for your kind introduction. I'm going to cover three topics and I'd be delighted to take questions later, as Tom is. I'm going to give an overview of the State Department and our multiple personnel systems very briefly, then talk about recruitment and hiring practices on the Foreign Service side and then cover some aspects of our promotion and placement or assignment systems, within State.

Composition of the State Department's workforce

On the overview, as is the case of other foreign affairs agencies, State does have multiple personnel systems, and we have many people in different categories. Let me give you some numbers just to give you a flavor for the agency. It is a very small Federal agency, particularly compared to the VA. The total number of State employees is about 51,000. Of those, American Foreign Service, both generalists and specialists, total about 11,000. Civil service employees total about 8,000. And the remaining 32,000 are Foreign Service nationals, or locally engaged staff, at overseas embassies and missions.

As you can see, the foreign national or locally-engaged contingent is the largest, and I'd just like to mention something about that group. We do have practices for hiring and other personnel practices that are standardized worldwide in many ways. There are other practices that are specific to each host country, and there is an office in the State Department that handles those issues. If anybody has a particular interest in overseas employment and the practices that involve locally-engaged staff overseas, I will refer you either to the State Department's Web site or I'll actually give you a phone number, which is always a good thing to have. If you do have questions, the State Department's Office of Overseas Employment is at 202-261-8133.

I'm also going to very briefly mention civil service, because civil service at the State Department does fall under Title 5, and it is handled extremely well by the Office of Civil Service Programs, and you're all very fortunate today to have here with you my colleague, Sharlyn Grigsby, who is the Director of that office.

Recruiting a Foreign Service professional

"We assess many, many people who in the end we are not able to hire…[I]t is a long, laborious process, but we want to make sure that we get the right people, the best people, and the various stages that we have to go through…do take time."

So moving on to the Foreign Service side and the issue of how we recruit and how we hire. I think many of you know a lot about our Foreign Service hiring mechanisms. Let me start by talking a little bit about our recruitment methods. Starting in 2001, we had a revolution at the State Department in terms of recasting, reengineering our recruitment methodologies to make sure that we get the people that we need with the skills that we need, the diversity that we need, and to bring them on board more quickly. Hiring delays, as Tom mentioned, is also a significant factor for us. We assess many, many people who in the end we are not able to hire because of the delays in the hiring process. I'm happy to say that we have reduced those delays; we haven't totally fixed that problem because of the hiring process that I will outline for you. You will see that it is a long, laborious process, but we want to make sure that we get the right people, the best people, and the various stages that we have to go through to make sure that that is the end result do take time.

So let me mention a couple of aspects of our recruiting strategies. The first thing that we did in 2001 was to double our marketing budget and to hire an ad agency. That has allowed us to establish a brand, and also, through the efforts of the ad agency, we were able to upgrade our Web site to what is now an award-winning Web site, www.careers.state.gov. There is, of course, the overall State Department Web site, state.gov, but the careers.state.gov is the recruitment Web site that contains all of the information about employment opportunities at the State Department.

The other tools that we use for recruitment include Washington-based recruiters who go out to fairs, schools, conventions and so forth. In addition, we also have 17 diplomats-in-residence who are located on campuses around the country and who are basically our campus recruiters, if you will. Sometimes they teach foreign affairs courses, and thereby talk about or educate people about foreign affairs issues. For the most part, however, they are recruiters who help identify who the folks are who would make the best State Department employees. All of the people who are occupying those positions around the country are senior Foreign Service officers.

We work with targeted schools. We have a list of targeted schools and we have a list of targeted organizations. We are able to partner with these entities to share databases, send out broadcasts on events, make known the different types of people we're looking for. And of course, the Foreign Service written exam that is given on an annual basis is one of the biggest announcements that we make each year. It's given in April, as I think many of you know, and we generally have about 30,000 registrants for the exam. And those 30,000 registrants – actually this year it was 32,000 – generally find out about the exam either through the Web site, through the recruiters, or through the diplomats-in-residence on the campuses.

The practice of merit

How can we ensure that we apply merit principles? I think that the answer to that question is very similar to the Veterans Affairs in the sense that, like the VA, we have an embedded culture that respects the merit principles, and we all work together. We don't have civil service and Foreign Service working in separate areas. We work together, and so we have civil service supervising Foreign Service and vice-versa. And that's also true in the recruitment operations and in the testing operations. The Office of Recruitment that I direct has both civil service and Foreign Service employees, and both groups work together to identify the folks that we want to hire and bring in.

Assessing qualifications

On the Foreign Service side, we have both generalists and specialists. The generalists are the people who are located in embassies doing policy-related work in one of five areas: economics, politics, administration, public diplomacy and consular work. People who aspire to those career tracks come in through the Foreign Service written exam and the Foreign Service oral assessment. We don't have a resume-based system; we have a testing-based system. The tests judge job knowledge, English expression, bio data, and there is a written essay portion as well. The result of the testing is rank-ordered registers which the VA doesn't have. And placement on the rank-ordered registers is determined by the test results in the subject matters that I just mentioned, and by language skills. People who are bringing a critical-needs language to the State Department get a place on the register that is higher up, because obviously foreign languages are of particular interest at State. Once someone is selected from the register – we go down the ranking of the various registers based on which categories of employees we need: political, economic and so forth – the person is offered a place in an incoming class, and that person is sworn in as a Foreign Service Officer.

On the specialist side – Foreign Service Specialists – we have 19 categories. It's also a testing-based system. And we also have registers for each of the 19 specialties. So when we need somebody in the computer field, for example, we go to the top of that register and extend offers.

I see from the controller of the time that I'm not really going to have time to go into placement and promotion issues in more detail. Very similar to the Veterans Affairs, we do promote – and offer tenure – on the basis of both performance and potential. The ability to obtain tenure or the ability to obtain a promotion is based on the findings of panels of peers in a very similar way to the VA. Those panels meet once a year, generally during the summer season, for promotion. For tenure, they meet

multiple times a year to allow the newer employees to move forward in their careers and not be held to an annual process that potentially might hold them back. And we also have a rank-in-person system that allows people to take on a variety of positions or assignments regardless of the grade of the assignment. We have a flexible situation that does not limit how a person can be placed or where a person can be placed based on the grade of the position. If the person has the skills needed, that person can be placed regardless of the grade. We have flexibilities there.

I'm going to stop there. I would like to offer one additional phone number. I think we've all had experiences where we leave a conference or a symposium and have unanswered questions and then don't know how to get those questions answered, so let me give you my phone number, and please feel free to give me a call should you have things that you'd like to follow up on. It is 202-261-8849. Thanks very much.

The intelligence community

DR. SANDERS: Like my colleagues here, let me give you a little bit of a background. My office was created as a result of the Intelligence Reform Act of 2004 and the recommendations of various commissions – the 9/11 Commission and the President's Commission on the Intelligence Capabilities of the United States With Regard to Weapons of Mass Destruction – also known as the WMD Commission. What they recommended was, among lots of other things, that the Director of National Intelligence begin forging a much stronger intelligence community. One way to do that is through human capital strategies and policies. So that's where I come in, trying to weld together what is now 16 separate intelligence components that range in size from a couple hundred to many, many thousands. I can't tell you how big we are because that is classified, but we are one of the largest Federal employers if you consider us a single employer, and that's certainly one of our themes.

We are in four different titles of the United States Code 5, 10, 30 and 50, and probably sprinkled in other places as well. For the most part, we are excepted service. A small minority of the IC, intelligence community, workforce is still in the competitive service, and quite candidly, we're doing what we can to move them out of that into the excepted service, for reasons that I think will become apparent.

The IC workforce

We can literally hire somebody direct if we so chose. We do not; we cannot. The screening process that includes clearance is certainly the most rigorous in the Federal government; it may be the most rigorous in the world.

Our workforce is very imbalanced, as many of your workforces are. In our case, we're blessed because we have lots and lots of young folks. In some parts of the community, as much as 30 percent of our workforce has five years or less of service, brought on by the hiring surges that followed 9/11. We also have a significant percentage of employees who are retirement-eligible. Our problem, like everyone else's, is the middle, those who have 5 to 15 years of service. And I would argue – because I've seen the shape (and that too is classified) that the intelligence community has been hollowed out. Because we are largely a closed system, we are very military-like, not unlike the Foreign Service, and it is very difficult to fill that trough, the in-between 5 years or less and the 25 years or more group. Literally, the paradigm has been, "Start at the bottom and work your way through." Whether we can change that paradigm or not is a different matter.

The practice of merit

We also recruit for some of the most esoteric and scarce skills around, like foreign language speakers and knowledge of very, very arcane technologies. Even for our quote "run-of-the-mill" unquote – because they aren't run-of-the-mill – analysts, we really, really do need the very best and brightest. And I think that's one of the reasons we're in the excepted service. The proposition here today is whether excepted systems can still follow the merit principles. And I think the answer is an unequivocal, "Yes," especially if you step back and look what those principles mean. We truly do operationalize merit differently. It is not process oriented – if you take these steps and fill these squares, you will have achieved merit. It is far, far more the result.

"The proposition here today is whether excepted systems can still follow the merit principles. And I think the answer is an equivocal, 'Yes,' especially if you step back and look what those principles mean."

And just think of the rigor. I'll speak for the intelligence community; though I think my colleagues have to deal with this to varying degrees. We can literally hire somebody direct if we so choose. But we do not; we cannot. The screening process that includes clearance is certainly the most rigorous in the Federal Government; it may be the most rigorous in the world. It includes things like full-scope polygraph and full background investigations and psychological testing for some of our jobs. Again, we're blessed because we get thousands and thousands of resumes from the nation's best and brightest. They still want to work for us. And we've seen no slacking off in both the number and the quality of candidates that want to work for the various parts of the intelligence community, from the FBI[6] and CIA[7] to the Defense Intelligence, National Security Agency, what have you.

Our problem is sort of the opposite – how do you sort through all of that? How do you identify the best and brightest? How do you identify those that can be cleared from among that population? I'll come to clearance in a minute. But my proposition

[6] Federal Bureau of Investigation.
[7] Central Intelligence Agency.

is that the sum total of those assessment and evaluation processes does include very, very rigorous clearance standards that get at character and suitability, trust. If that's not merit, I don't know what is. It's certainly is merit, in my view. Having spent most of my life in the competitive service, at the end of the day, it is more merit-based than simply following a bunch of process rules.

Requirements for hiring an intelligence professional

Let me take you very quickly through the requirements of recruiting, on-boarding and career advancement – and how they work in this collection of excepted service systems. One of the things we're trying is to bring about greater homogeneity where it makes sense, not-one-size-fits-all as a rule. Where we can leverage the community's assets to achieve our objectives, then we will. On the requirements side, one of the things we're doing is becoming far more rigorous in identifying and validating the competencies we use to determine our requirements. The competencies we use in turn translate to qualification standards, assessment instruments, promotion standards, training standards, even performance standards. And we're starting to implement this functional community by functional community across the entire IC.

We've just completed validating a competency model for intelligence analysts that is – I'll have to say – way cool. And it's going to lead to, again, even greater rigor in assessing and promoting analysts from entry through the rest of their career. We're also getting far more rigorous in terms of the quantitative side, trying to project our requirements against intelligence priorities that are set by the President and the National Security Council, et cetera. Those projections have actually been translated into the competency model so that we can begin to do gap analysis. And here is where it gets very targeted, because if we find we have gaps of expertise in a particular foreign language or in a particular regional area, then we go out and try to hire for that particular expertise. Our intention is to get very, very precision-guided.

"We've just completed validating a competency model for intelligence analysts that is – I'll have to say – way cool. And it's going to lead to…even greater rigor in assessing and promoting analysts…"

Recruiting an intelligence professional

As far as recruiting is concerned, in part because clearances take so long – and while we're not going to compromise on the clearance standards, I will talk later about how we're going to try to change the clearance process paradigm – we have begun focusing our efforts upstream, before someone graduates. We have a substantial campus presence, like that of the State Department, that ranges from representatives of the community who are on campus teaching and serving other functions, to more formal programs.

We have something called Centers for Academic Excellence, which has established teaching relationships primarily with minority-serving institutions. We give those institutions grants to fashion curricula that meet our hiring needs. Then, they teach kids and we hire them. There is no service commitment associated with the Centers for Academic Excellence. We're about to graduate our first cohort after a couple of years of investment. Our first cohort graduates in June, and I have my fingers crossed that we'll snap up the bulk of them. We're also piloting a ROTC-like[8] program on four campuses.

I also have as many as four different scholarship authorities. In fact, I think I have too many, because they're not all consistent. But if we identify scarce skills on campus – again, foreign languages, technologies, analytic skills – we can give a full four-year scholarship with a service commitment or payback requirements. We've got several million dollars invested in scholarships, and several hundred kids in the pipeline.

We're also working with State, and the Departments of Education and Defense on the President's National Strategic Language Initiative. This too is a supply-side strategy. This initiative will help increase the national supply of individuals who can speak critical foreign languages by teaching them foreign languages from K through 12 through college, and hopefully then into our employ. And again, this is in partnership with those four agencies, and the President has put a proposal on the table with a $100 million-plus price tag, to focus on the supply side before they even think about working for the intelligence community.

Addressing the issue of clearances and background checks

That's the campus presence. Now, we get all of these thousands of resumes, we have to clear them; we have to keep them on the line while they go through this rigorous assessment and clearance process. We're attacking that in a number of ways. First, part of the national intelligence strategy calls for a risk-management approach to clearance as opposed to a risk-elimination approach. And we've had to do that in part because the world has changed, and one of the changes involves immigration patterns. It used to be that you were disqualified from clearance if you had family members overseas because that could be used against you. Well, we're going to have to rethink that because where the past immigration pattern was whole families would pick up and emigrate, now part of them do and part stay. And the skills are so critical that if we can't find a new paradigm, our supply of candidates is going to shrink dramatically.

[8] Reserve Officer Training Corps.

We're also looking at what we euphemistically call a research park as a place to literally park new hires before they've been cleared to do what we call open-source analysis, that is, things on the Web or in foreign communications broadcast, TV broadcast, radio broadcast, et cetera. It is unclassified work that contributes to classified analyses. And if we can figure out how to set up this research park as a way station for people who are now in the clearance process but not yet cleared, that would be yet another way of making sure that we keep them online.

The CIA is also experimenting with an on-boarding process that is soup-to-nuts, and we're anxiously watching this to see if it will work. From recruiting to clearance to initial training – so that it's one seamless pipeline – we're using the leverage of cohorts to bring people together and start teaching them about the intelligence community. We're hopeful that that's going to improve retention as that pipeline progresses.

Retention and advancement

Last but not least, we are a rank-in-person system for the most part across the community – or systems, I should say. We've tried to force-fit the general schedule into that paradigm. It is an awkward fit. As some of you may know, we've also embarked upon a pay system modernization effort. We are looking at broadbanding and other things, and frankly, broadbanding will be a much better fit for a community that promotes people through boards that use rank-in-person in part for the flexibility and in part because it's a better way of developing people over their entire careers, and also offers lots of other advantages that we can talk about.

And one of the things that we will announce in a matter of days is our implementation of an intelligence reform act mandate to develop a civilian version of the military's joint duty, which says that unless you've served in more than one component of the intelligence community, you're not going to be admitted to one of the several senior services, and the DNI[9] has the statutory authority to do just that. That's going to dramatically change the career path and career development paradigms for our employees. We're also putting in place the infrastructure to manage it. We're looking at promotion boards that are not just focused on a single organization, but maybe more community-based – professional and functional communities, essentially developing their own ranks across those organizational lines, as opposed to the stovepipes within.

[9] Director of National Intelligence.

"We don't normally advertise vacancies. But people go before boards… [J]ust a different way of thinking about merit than the traditional Title 5 way."

So at the end of the day, those promotion boards are very, very rigorous. Again, I would argue that it is simply a different way of operationalizing merit, because it's rank-in-person. We don't normally advertise vacancies. But people go before boards. It is an unbelievably rigorous assessment. Everybody gets assessed almost every year, and people are promoted from it and awarded rank as a consequence. Again, just a different way of thinking about merit than the traditional Title 5 way. Again, given our entry requirements and our progression requirements, I would argue that it is as merit-based as anything else, maybe even more so. Thanks.

Practicing veterans' preference in the intelligence community

MS. SALAS: Ron, I have a question for you. How do you handle veterans' preference in your particular system? What have you formed to take care of this?

DR. SANDERS: We focus more on the result than the process. We look at veterans as a major source for linguists and language analysts, because many of them were trained in the military. They are also a major source for cryptologists and our clandestine service. So at the end of the day, we are more than representative when it comes to veterans, but it's because of the skill sets we seek and not so much a process rule that we follow.

MS. SALAS: Are there any questions? Yes, sir.

The issue of diversity

AUDIENCE: This is for the entire panel. Considering the time to hire and given the testing – psychological testing – how does that affect any particular protected groups or does it?

DR. SANDERS: I don't know if it has any particular effect. I mean, as a matter of fact, I can tell you that the intelligence community isn't as diverse as it should be. I don't think it's a result of those processes so much as a lack of a coherent set of strategies to deal with it. We've been attacking this for a couple of years. We're about to issue our report for 2005 on diversity in the IC, and it's going to show improvement.

MS. SALAS: Marianne?

MS. MYLES: On the State side, the Foreign Service written exam had a history

of challenge on the basis that there was adverse impact resulting from it. And the changes that were made were to make the exam based on job knowledge and have the job knowledge questions verified by subject matter experts. We have subject matter experts enter the process at several different points. The Foreign Service is also not as representative of the face of America as we would like it to be. But, as in the case of the intelligence community, it's not a result of the hiring process or of the exams, but rather, other factors.

MS. SALAS: Tom, would you address diversity in your Title 38?

MR. HOGAN: Yes, to answer the gentleman's question directly, we don't do any form of written testing, and probably for the same reason many of you have shied away from it; because it gets away from your core competencies and of questions of validity and reliability and predictability, and of disparate impact. We typically rely, rather than on our own testing, on the healthcare profession's rigorous educational and certifying and credentialing process that is well accepted.

AUDIENCE: In that particular credentialing process, is there any propensity to consider graduation from one school versus another? Is that looked upon as a disadvantage in the process? Because I know some organizations pay a high premium on the particular school that someone graduates from and/or where they interned.

MR. HOGAN: I think the answer to that question is, if you look at the number of physicians working for the VA, there would be a disproportionate number from among those who did much of their training at a VA facility, that is, at one of the 101 affiliated medical schools. As all of us know, propinquity breeds. And actually, that's a good recruiting tool. And we in fact have these kinds of internship and training programs exactly for that. Among nurses, sir, we will hire any nurse wherever we can find a nurse who meets our credentials. We in fact have gone to the Philippines, San Juan, Puerto Rico and Guam to recruit for nurses. But we make sure that they meet our requirements. If you're a nurse or a pharmacist from an accredited school, we are not engaged in elitism because it is such a competitive and desperate struggle to have quality staff on board.

AUDIENCE: The reason I ask is I'm considering testing for some form of assessment up front, because it's obvious that the GAO has specific competencies that are very critical to our organization – and I'm thinking of writing and critical thinking. I've had history in other employment where we use a number of examining processes, and always found that psychological testing and other testing practices may have an adverse impact on selections of particular groups.

Requests for reconsideration of peer review results

AUDIENCE: Can the panelists whose agencies use peer-review panels or peer-review boards as part of their advancement and promotion process give us a little more of their experience with those boards? One of the questions I have is how those people are selected to perform the function, and what happens if the person who is being reviewed is dissatisfied with their recommendation or their conclusion?

"…[W]e try to have participation on a professional standards board be broadly representative with the idea that we don't want it to be seen as an exclusive club nor one that is dominated by management"

MR. HOGAN: Within the Department of Veterans Affairs, sir, we try to have participation on a professional standards board be broadly representative with the idea that we don't want it to be seen as an exclusive club nor one that is dominated by management. A board typically would have one management official and then perhaps a staff nurse or even two staff nurses. We do allow union members to serve as long as they are not 100 percent union members. And at a given VA medical center, you might have 15 or 18 nurses who are qualified to serve in a three-member board. In this case, they would serve in rotating and reconfiguring groups. The idea is that your chances for promotion – or mine – don't relate to being part of a clique or part of a group, but rather a very clear set of requirements, a very clear set of standards. Over time, we have developed a very large body of precedents about how similarly situated employees doing the same type of work and the same type of supervision at the same level of skill have been treated by the board. So we make great efforts to make the boards transparent, and not seen as closed or privileged bastions where no one knows what goes on.

And as I said earlier, there is the opportunity for reconsideration. You can request reconsideration if you believe the board did not properly consider your education or experience or your demonstrated performance. And we actually have an extraordinary, in my view, level of participation in that people may not agree with the board's results, but they understand where it came from.

MS. SALAS: Tom, to follow up on that a little bit, how closely does this mirror the private sector process for these types of positions?

MR. HOGAN: Daliza, in some private sector facilities, it mirrors exactly what they do. And in other private sector facilities – and they have much more variability in the way they do business – they actually will have a nurse recruiter or physician recruiter who will interview, meet, select, offer commitments and establish a salary. So in that case, it's one person doing it, probably to fulfill corporate requirements about cost control. But we take the peer review process seriously, sir, and with the clinicians, we find that that is such a central part of their makeup as professionals that they take it very seriously.

AUDIENCE: Just to follow up, if I may. After the reconsideration process, if the employee is still dissatisfied with what comes of this, are those decisions subject to an administrative review or the negotiated agreements procedure?

MR. HOGAN: They're not subject to a negotiated agreements procedure or an administrative review. The selections of the board are final. If the individual believes, of course, that he or she was not advanced or selected for reasons of race, religion, so forth, then he or she does have access to the EEO complaint process, but nothing administrative on either advancement or promotion.

MS. SALAS: Marianne?

MS. MYLES: The State Department system is very, very similar to that. There is one element that may be different, and that is that we look at promotion possibilities on a class-wide basis. So you take an economic officer at the FS-02 level, you look at all economic officers at the FS-02 level at the same time.[10] You look at all economic officers at the FS-03 level at the same time, and so on. And so the comparison between the performance and potential factors that are revealed in the performance files result in a rank-ordered list of those eligible to be promoted. Our promotion numbers, of course, are always smaller than the number of people who might merit promotion, and so the rank-ordered list is used to establish who is promoted and who is not. We do not have a review system at all. The decisions of the panels are final. However, if, as in the case of the Veterans Affairs, there is a problem with the file, and there is either information missing from the file or there is information in a performance appraisal that is inappropriate, the person does have the ability to submit a grievance to have that information removed or to have additional information added in. And then the file will be looked at again. But the grievance is based on what is in the performance evaluations, not on the outcome of the selection process.

MS. SALAS: Very good. Someone over here had a question. Yes?

Criteria for assessment/evaluation

AUDIENCE: I just wanted to make sure that you had pre-determined evaluation criteria and that each candidate was evaluated against the criteria instead of against each other, and then it would result into a rank order.

MS. MYLES: That is correct.

[10] FS is the Foreign Service's grade and pay scale, which has 9 grades (or Classes) and 14 steps. Class 9 is the lowest level, while Class 1 is the highest level.

AUDIENCE: And then you would have a written paper trail of how this person was evaluated?

MS. MYLES: That is correct. Our evaluation criteria are called core precepts and our core precepts for promotion are negotiated with our union.

MS. SALAS: Very good. Yes? Right here.

Whistleblower protection

AUDIENCE: Hi. I was interested in the whistleblower protections for employees hired under these new authorities. As I understand it, Title 42 employees[11] were found not to have traditional Title 5 whistleblower protection rights. I wonder if Title 38 or the Foreign Service has made changes to traditional Title 5 whistleblower protections? And for Ron, when you said you are moving certain employees out of the civil service, will that change their whistleblower rights?

MS. SALAS: Ron, do you want to start?

DR. SANDERS: Frankly, it's not so much moving them out. What we are seeking is fairly standard excepted appointing authority for some parts of the community, something that OPM commonly grants, so it's not anything as radical as I may have made it sound.

In terms of whistleblower protections, I know there is legislation moving on the Hill that attempts to address that. I won't comment on that. I think there are protections in place. We have a very strong inspector general in the intelligence community and that is typically where those issues are raised.

MR. HOGAN: Our Title 38 employees have exactly the same whistleblower protections as Title 5 employees.

AUDIENCE: So you have OSC involvement in the investigations?

MR. HOGAN: If the Office of the Special Counsel wished to exert its authority to investigate a claim made by a physician or a dentist, or a nurse in our facilities, absolutely; they would have a full right to do so.

AUDIENCE: On appeal to MSPB?

[11] 42 U.S.C. covers public health employees.



L-R: Ronald Sanders, Bernie Rosen, Steve Cohen and Chairman McPhie.

MR. HOGAN: On an appeal to MSPB. Let me not overly complicate this. If we disciplined a physician for something he or she did, he or she would go through our disciplinary board process. If the physician then made the claim that the reason for disciplined was because she or he had made a protected disclosure and OSC came in and exerted their authority, OSC would make a decision and we would abide by it. But the physician's initial right of appeal for the underlying action is to the disciplinary appeals board under their Title 38 procedure.

But MSPB and the Special Counsel – when they render decisions and they direct VA to comply, we comply. The jurisdiction is absolutely understood.

MS. SALAS: Right. That's right.

Our timekeeper has indicated that we are out of time. I'm very sorry; this was fascinating information, and I thank the panel members very much for their participation and the audience for your wonderful questions.

Thank you very much.

Panel 2

Paying the Best: Pay Management Practices in a Flexible System A Conversation About Pay Management

Moderator: **Max Stier**
President
Partnership for Public Service

Members: **Robert Kirkner**
Acting Chief Human Capital Officer
National Institute of Standards and Technology
Department of Commerce

Cynthia T. Petitt
Deputy Comptroller for Workforce Effectiveness
Comptroller of the Currency
Department of the Treasury

Alton Ressler
Human Resources Officer
Non-Appropriated Funds Instrumentality – Fort Belvoir
Department of the Army

Introduction

MR. NELSON: Our moderator for this panel is Max Stier, who will introduce his panel. Max.



L-R: Max Stier, Robert Kirkner, Cynthia Petitt and Alton Ressler

MR STIER: It is a great pleasure to be here. For those who have not taken a serious look at the latest report from the MSPB, please do because I think it is a terrific and very user-friendly effort on a very important issue. I don't think – if you look at the landscape of change going on in the Federal environment right now – that you can identify any issue of greater

Max Stier is the president and CEO of the Partnership for Public Service. He has worked previously in all three branches of the Government. He served on the personal staff of Congressman Jim Leach. He clerked for Chief Judge James Oakes of the U.S. Court of Appeals for the Second Circuit and for Justice David Souter of the U.S. Supreme Court. Mr. Stier also served as Special Litigation Counsel to Assistant Attorney General Anne Bingaman at the Department of Justice.

import in the management of Government than the way pay is structured, although I would probably expand on that to say it's really the performance management piece and not just the pay piece that is so essential.

And you are quite lucky to have Bob Tobias later on this afternoon leading a discussion on that issue. Bob is one of the most thoughtful people I have had the pleasure working with in this arena and I look forward to hearing what he has to say – and his panelists as well.

We are joined by a great group here – a great group because frequently when we talk about pay issues there is often the comparison with the private sector. Later on, I have some interesting data in terms of perceptions of Federal workers versus the private-sector workforce. But there is a tendency to forget that the Federal Government is a big place, a place in which a lot of innovative work has been done. We are joined here today by representatives from three agencies that have been out of Title 5 and are doing very interesting work around pay and other issues.

The idea of this panel is to make it a very open dialogue with all of you here. We will hear a couple of minutes from each of the panelists, just to give a little bit of grounding on the work that they have done individually. Then I will toss out some questions, but don't be shy; jump in, raise your hands and let's make this an interesting give-and-take because I think there is a lot to be learned from these three folks.

We have Rob Kirkner, who is the Acting Chief Capital Officer of the National Institute of Standards and Technology, an amazing organization in many ways. For those who have participated in the Service to America medals, one of our career achievement winners, Katharine Gebbie, is an employee there, and they continue to excel in some of the most challenging, interesting, scientific professions that exist.

We have Cynthia Petitt from the Comptroller of the Currency. Again, they are doing very interesting things outside of the context of Title 5. For both of these agencies, if you take a look at our best-places-to-work ranking that we do in conjunction with Bob Tobias at American University, these organizations not only are doing innovative work, but have results that show that they are doing it well.

If you look at our best-places ranking, among the 218 small agencies, the Comptroller of the Currency's Office ranks number six – very, very close to the top – and NIST ranks in the top quartile of agencies overall. On the issue of performance-based rewards and recognitions and paying benefits, both of these agencies do in-

credibly well. If you want more details, check out the Web site, bestplacestowork.org. And again, I think it's a useful metric because it's across the Government, but it also includes private-sector benchmarks. It is useful to see how these agencies' activities are being understood by their employees. And that is data that I think we need to be paying a lot more attention to.

And finally we have Al Ressler here whose agency is not ranked in the best places yet.

MR. RESSLER: Not yet anyway.

MR. STIER: Exactly. We don't actually currently address non-appropriated funds, and it would be an interesting comparison for us to do. But Al is somebody who has been there and done it all. I have had the pleasure of working with him more recently when he was at NAPA and he has been a great voice on human capital issues, and I am happy to see that he is staying in the parade.

"Each time we have revised our compensation program, it has been a strategically driven decision where we had something that was changing with the organization and we needed our compensation program to be revised to support that change."

So with that, I will turn it over for each of our panelists to tell you just a bit about their organization, their history and then we will launch into some questions. We will start with Cynthia.

Background

MS. PETTIT: At the Office of the Comptroller of the Currency, we have complete independent authority on compensation, benefits and FTEs.[12] We first implemented our own pay-for-performance system in 1981. We are now on our third compensation program. Each time we have revised our compensation program, it has been a strategically-driven decision where we had something that was changing with the organization and we needed our compensation program to be revised to support that change.[13] Each one of the compensation programs is based on pay-for-performance. We have not given any across-the-board increases since 1981 to our employees. All increases are either through merit or promotion or special increases. That is a starter in terms of where we are.

MR. KIRKNER: Good morning.

[12] Full-time equivalent positions.

[13] See "Creating a Performance-Based Culture" handout in Appendix B.

Let me begin by telling you a little bit about NIST and about our alternative personnel management system. The National Institute of Standards and Technology is a non-regulatory institute within the Department of Commerce. We have about 2,600 full-time permanent employees at campuses in Gaithersburg, which is our main campus, and Boulder, Colorado. About 60 percent of our workforce are scientists and engineers.[14]

The NIST alternative personnel management system began as a demonstration project in 1988. The NIST demonstration project was intended to improve our ability to recruit and retain high-quality scientists and engineers. We also intended to give our managers more authority over human resource management, and to provide a more flexible and efficient personnel system.

So we went under the demonstration project in 1988. It was extended twice, in 1991 and 1995. In 1995, the Office of Personnel Management came in with a team of personnel psychologists, evaluated the NIST demonstration project, and found that, by and large, it had achieved all of the objectives it set out to achieve. OPM found that it had improved NIST's ability to recruit top-quality scientists and engineers, and fewer high-performing people were leaving for reasons related to pay and compensation.

Retention was significantly improved. Management officials reported satisfaction in having more control over hiring authority and pay setting. They also said that the personnel system had more flexibility. NIST's demonstration project was authorized to become a permanent alternative personnel management system. It features pay banding, pay-for-performance and certain hiring and pay-setting flexibilities.

That is all for now. Hopefully we'll get to more information through the questions.

MR. RESSLER: Good morning, everyone.

I am currently with the Department of the Army at Fort Belvoir, and manage an HR program for a non-appropriated funds instrumentality. Not many of you have been involved with NAFI activities. You probably have not heard much about them over the years. But DoD agencies, the Army, Navy and Air Force operate with NAFIs on their installations, basically to provide morale, welfare and recreation-type programs.

In the Department of the Army, we have many standardized MWR programs. We have an agency called the Installation Management Agency that runs all of these installations throughout the world. We get most of our generic policy in the operation of our personnel and human capital programs and our pay management programs from DoD, but it is broad operational guidelines and guidance.

[14] See "NIST Alternative Personnel Management System" handout in Appendix C.

I have provided in your folders a backgrounder that gives some generic information about our pay banding system.[15] We operate several pay scales. We operate a pay scale for our white-collar workers. We have a separate set of pay scales for our trades and crafts, which are determined every year by the Department of Defense. DoD has wage-fixing authorities where it goes out and meets with businesses in the private sector in each of the communities and collects raw data about what they pay their employees for certain occupations in the trades and crafts or the blue-collar work.

The department then brings this data back and crunches out what constitutes the annual pay increase for all of the blue-collar workers of the Department of Defense and, I think, for some of the other organizations in the Government as well.

We also have a separate pay scale in the Department of the Army for our child youth service programs. We operate daycare centers, dependent-care centers and things of that nature, and we have separate pay scales for employees in that organization.

The pay in the white-collar NF series bands is linked to the General Schedule.[16] We have six bands in that particular pay schedule/pay scale, and it equates in minimums and maximums to the General Schedule. There is an annual increase that is provided to the NF-3 through NF-6 in that schedule, very similar to what is given to the annual increase for white-collar GS workers. The NF-1 and NF-2, and the minimum for the NF-3, is based on the DoD wage scale. The band itself covers a range of grades and gives managers a lot of flexibility in determining pay for in-hire rates.

We operate with three fundamental principles. We operate on what the labor market demands are in that particular geographic area. Fortunately for many of our installations, we don't have a lot of competition for several of the white-collar jobs for certain types of skills. We also operate with some managerial flexibility for annual pay setting tied directly to performance. Employees get productivity increases. They do not get step increases. They do not get quality step increases. They do not get longevity increases. They get performance-based pay increases.

The third is our macro-economic models that we run, one of which we run in this particular geographic area. Many of you know about Base Realignment and Closure and the decision that will make Fort Belvoir grow by approximately 15,000 additional employees. The population of that installation will double. It will have a tremendous impact and pressure on the Northern Virginia corridor for everything, including our workforce.

[15] See "Pay-Band Pay System for White-Collar Non-Appropriated Fund (NAF) Employees of the Department of Defense" handout in Appendix D.

[16] See Appendix D for a description of the NAFI's payband system.

And so we are now beginning to start to look at how that will impact the trades and crafts as well as the white-collar workers that we are going to have to hire in order to support that installation. I will turn it back to Max.

Impact of alternative pay system on recruitment

MR. STIER: Great. Well, I will start with a question, but line yours up and we will hear from you shortly.

My first question would be to tie this conversation to the purpose of the first panel and think for a second about recruitment. In your experiences, is the fact that you have these alternative pay systems something that is attractive when recruiting not only in the external labor market, but with employees from other Federal agencies that are under Title 5's traditional pay system? And we might start it with Rob.

"…[W]e don't have any trouble recruiting for our science and engineering career paths."

MR. KIRKNER: Sure. Actually, we don't have any trouble recruiting for our science and engineering career paths. Most of our scientists and engineers come in at the pay-band 3 level, which equates to GS-11 and 12 under the General Schedule. They come in typically as post-doc employees and then are promoted to pay band 4, GS-13 and 14, and pay band 5, GS-15, through the merit system.

For the administrative career paths, we hire pretty substantially from other Federal agencies. And because we can hire anywhere – we can set pay anywhere within our pay band when bringing an employee in – we usually don't have too much trouble recruiting, either internally or externally, for our pay band 4, GS-13 and 14, and pay band 5, GS-15. However, our pay band 3 has proven to be a little problematic because it equates to GS-11 and 12. For most of the administrative professional occupations, the journey level grade in the DC area is GS-13. So it is difficult because pay band 3 is our journey level pay band on the administrative career path.

MR. STIER: Cindy?

MS. PETITT: As an introduction, the Office of the Comptroller of the Currency has nine broad pay grades, and that starts with what is typically a GS-1 and goes up to SES,[17] so we do not have a separate executive service. All of our employees fit within those nine pay bands so they are quite broad, and bringing people in from the private sector gives us a tremendous amount of flexibility in terms of where we set their pay.

[17] Senior Executive Service.

Seventy percent of our organization are national bank examiners. We do a great deal of our recruitment at the entry level. We set very competitive entry-level salary hiring rates and so we really don't have much difficulty recruiting. I think that probably for every nine people who apply, we select one of those individuals. We have a very rigorous recruitment process.

"…[O]ur organization has a great reputation – particularly if you are associated with the financial services industry – so we don't have a tremendous difficulty in getting people to come to us."

At the experienced level, our organization has a great reputation – particularly if you are associated with the financial services industry – so we don't have a tremendous difficulty in getting people to come to us. Occasionally we have some difficulty with some of the areas of expertise, like mortgage banking or securitization. But in general, I think we do a relatively good job recruiting.

Within the Federal Government is another issue. The OCC is not well known. Most people apply because they see a vacancy announcement, not because they know the organization by reputation. When we talk to people about the broad grades, we stress to them that in January, when the rest of the Federal Government is going to get an increase, we don't do anything, and that any increase they get will be based on merit. So if they come at the middle of a pay cycle, they may get a pro-rated merit pay increase. This is a hard sell for some people.

I don't think that people come flocking to us necessarily, but we can offer them increases as incentives to come even if it is not a promotion.

We also have a geo-pay program, which is very different from the rest of the Federal Government. It has a cost-of-labor with a cost-of-living component to it. Our geo-rates are much, much lower than the rest of the Federal Government's. When we looked at this, we decided we want to spend most of our pay dollars on performance, not on where you live, and that is another issue. In Houston, for example, the Federal Government's locality pay is over 30 percent, ours is five. So we run into that problem as well.

MR. RESSLER: In our recruitment strategies, we rely on about three sources. We have a career referral process that is managed centrally by an Army activity. We have a spousal-preference program that gives military spouses preference for certain jobs at the NF-3 level and below. And then we have open source. Again, a non-appropriated fund instrumentality generates all of its own revenue. We do not get an appropriation; we do not draw from a central fund; we sell products and services. It really, truly does become a law of supply and demand.

We recently recruited for a chef. We started out at a salary range of between $45 to $60K – no takers. We had to go to the $65 to $80K range and we had about four pages of applicants. And so each of these skills finds in our particular area a certain dollar amount that the traffic will bear.

We hire and retain golf professionals. We run and manage three golf courses. We have got to have seven or eight professionals on staff at all times. A PGA-ranked professional that comes out of Q school looking for employment is expecting to make between $60 and $75K.[18] Every once in a while we can get somebody for $40 or $45K, but after two years or so they need to grow in that profession, and sometimes we just can't afford to pay what the market will demand, and so we generate a lot of throughput. Our small personnel office spends probably a third to almost half of our work-hour time doing staffing, recruiting and career placement.

MR. STIER: Great. Again, any hands? We'll take them. Here, we got one.

Controlling costs

AUDIENCE: The talk about the ability to pay reminds me that this would be less of a management issue in your organization than it would be in organizations that rely upon direct congressional appropriations, FTE, and what have you. But how do you assure that, one, you stay within budget, and two, that you don't find your people are at the end of the pay band within in a few years that perhaps you can't afford?

MR. RESSLER: We do have a lot of that problem and that is both a grade or a band compression and a pay compression, particularly for the highly skilled professionals that we employ. Fortunately, turnover does help us. When we do get turnover, it's usually for people in the middle salary range to the upper salary range because they know they can't advance. Yes, that has a degradation effect on the mission, but it also generates some salary dollars and allows us to recruit at the lower ranges. Fortunately, we have been successful with that kind of model. However, I think that is going to change as our geographic area grows and the demand for some of these skills becomes greater than it has been in the past.

MS. PETITT: We have learned a lot from the first two compensation programs that we have implemented. In fact, we had a lot of internal controls in the second program we had. There were pay-for-performance stops so that if you were fully successful, you could not be paid beyond the 67th percentile of your salary range. If you were a superior performer, you couldn't be paid beyond the 80th percentile. If you were promoted, you could never be promoted beyond the 67th percentile. You

[18] Q School is the qualifying tournaments golfers must compete in to earn a Professional Golf Association (PGA) card that would enable them to play in the elite ranks of the PGA tours.

wouldn't lose pay. If your current salary was already above the performance stop, that was fine, but any further increases would be given to you as a lump-sum payment. If you were hitting up against one of those ceilings, you would get half of the merit increase in a lump-sum payment; the other half would be lost. This was really way over-controlling and it was a real, real de-motivator for our workforce.

With the current program, we actually have no controls in the structure of the compensation program, but we measure pay compression every year. After we finish our merit pay cycle, we give a report to our executive committee that gives a lot of statistical data on what happened as a result of this merit pay process, and we look at the issue of compression.

One of our pay controls is education. When we find that compression is inching up, then that means we get on the road. We go out and we start talking to managers; we show them the data for their organizational unit; we communicate to them what happens when there is pay compression and they don't differentiate pay; and we tell them they can no longer use pay as a motivator. So that is what has worked for us up to this point.

MR. KIRKNER: Performance pay increases, as well as the annual comparability increases, come out of an organization's operating budget. Typically, those amounts are included in their budget at the beginning of the budget cycle. Managers have to then manage according to their budget. About a third of our workforce right now is salary capped. And so we have just recently modified our pay-for-performance system so that it is based on a percentage of mid-point salary in the pay band rather than a straight percentage of salary. We did that to provide more transparency in the system, to create a stronger link between pay and performance and to make it less likely for employees to cap out so quickly.

MR. RESSLER: I think, Max, I would like to add one thing if I could.

MR. STIER: Please.

MR. RESSLER: We also have some flexibility that we have capitalized on, which is, that we can introduce new products and services in what we offer. If we know that we are going to have a budget shortfall, it's not unusual for us to increase the amount of merchandise that we sell, for example, in our sporting events. We can also increase our price or activities fees. The price of golf goes up, the price of range balls goes up, the price of childcare services goes up, et cetera.

And so we periodically add things to what we offer. For example, we just opened up two new carwashes on the installation and it's unbelievable how much revenue a carwash generates.

MS. PETITT: Could I add something also to that? I neglected to mention that we do set a merit pay budget; it's a merit pay pool. For example, if the average increase is going to be five percent, every manager has a 5-percent merit-pay budget, and they have to work within that budget. But they can, within some broad parameters, pretty much decide what to give under what circumstances.

We also have a program called special increases. It is really pay for the person as a person gains new skills and takes on new responsibilities. It may not be enough responsibility to justify a promotion, but it does reinforce the concept of continuous learning and taking charge of your career. We give about 10 percent of our employees a 5-percent pay increase each year. If we are running into budget problems, we can cut that back. If we run into budget problems, we can lower our merit pay budget. We are completely non-appropriated as well, but other than getting banks to take on a national bank charter, it is a little hard to increase our revenues.

MR. STIER: No carwashes.

MS. PETITT: No carwashes, right.

MR. STIER: Rob, can I just clarify something? Cindy mentioned that they set an overall merit pool. You said that your money was coming out of the operating funds. Are there any centralized limits that are set? At what management level is it decided that a certain sum of money would go for pay versus operating expenses?

MR. KIRKNER: We started at the NIST level to set aside about 2.1 percent of our aggregate salaries for performance pay increases and about 3.1 percent of aggregate salaries for bonuses. So an employee can get a pay-for-performance increase and a bonus, as well as the annual comparability increase in any year.



Allocations are then distributed down to pay pools. Our pay pool managers have to manage their allocations for performance

pay increases and for performance bonuses. They can also withhold part of an allocation for solvency reasons. In other words, if their operating unit or their division is having trouble sustaining solvency, then they can withhold some of the allocation to cover those expenses.

MR. STIER: Steve, you're on.

AUDIENCE: For our expert from NIST, it sounds like your employees can get pay raises in three components. And if that is the case, how many employees did not get a pay raise last year for performance reasons?

MR. KIRKNER: In a given year, probably 10 to 15 percent of our eligible staff do not get a pay raise. Now, that doesn't count the 33 percent of our workforce that is salary-capped. Our capped employees don't get pay-for-performance increases. They can get bonuses, but they can't get pay increases that would raise their salary above the salary cap. So of the non-capped employees, probably 10 to 15 percent wouldn't get a pay increase.

MR. STIER: Sir.

AUDIENCE: I just had a question for Cynthia regarding your pay ranges. So there is really no gate or speed bump that would control the movement from minimum to maximum?

MS. PETITT: Right.

AUDIENCE: That is pretty fast-paced, depending on what you're allowing for maximum increases for every year. That is the change from your second iteration. So the third iteration has no controls within the ranges at all.

MS. PETITT: Right. The control is really the budget and the education. It is something that we track very rigorously, and we track it OCC-wide and by organizational unit. Also, when you have a pay band that, for example, is a 50 percent range – and you're giving 5-percent increases every year – it is going to take about 20 years to get to the top of that pay band. So it is not as easy to move up as one might think.

AUDIENCE: Well, it seems like you are paying above the competitive rate then.

MS. PETTIT: Our legislation requires that we maintain comparable salary compensation and benefits with the other financial services organizations. Prior to the FIRREA legislation,[20] comparability was required to make us competitive with the national banking industry, and so we do surveys every year. As part of the survey, we compare our compensation for benchmark positions with the compensation of other financial services organizations for those benchmark positions. We look at what their increases will be for the coming year, and that is the basis upon which we set what we will pay.

AUDIENCE: Is it all base pay changes or no cash?

MS. PETTIT: We did introduce a bonus program two years ago. The bonus pool this past year was 2 percent. There is a limit that only 50 percent of our employees can receive a bonus because the first year we offered them, people were getting $500 bonuses and $250 bonuses. And what is important is to differentiate between a strong performer and a not-strong performer. That is another metric that we look at every year, and so the bonuses really helped us make that differentiation.

MR. STIER: Cindy, if I could ask just a point of clarification there. Is the comparability with other Federal agencies that are in the financial services?

MS. PETTIT: Right.

Public sector vs. private sector

MR. STIER: So you moved from comparability with the industry in the private sector that you're in to one that is just comparable to Federal agencies. Do you suspect that the FIRREA agencies are underpaying their employees compared to the private sector? Where would you place the whole Federal component versus the private sector?

MS. PETTIT: I think it really depends on the kind of job that you are looking at. If you're looking at our experts or people who have a strong experience in a specialty area, I would say that we are grossly underpaying because these people can make a million dollars a year in the private sector. It is amazing the number of people who come from the private sector and will take a $100,000 or $200,000 pay cut to work for us. But we know that there are certain kinds of jobs that we would never be able to pay competitively. Most of the people who work for us are not there primarily because of the pay; they are there because of the mission.

[20] Financial Institutions Reform Recovery and Enforcement Act of 1989.

MR. STIER: Can I follow up? There is another question from the audience, but I want to follow up on the point that you just made. It seems to me that there are at least three important distinctions between the private sector and the public sector with respect to motivation and performance pay systems. One of those is motivation; why are the people there? I think another important issue is measurement, and the third is merit, the three Ms. We can focus on motivation for a second. The question for the panel: Do you find tension between your system that recognizes more the accomplishments of your workforce through pay as a reward and the motivation that Cindy just described that a number of folks come to your organization because they believe in your mission – that it is most important for them?

MS. PETITT: I think the mission, in my view, comes first and the pay comes second. If our pay didn't allow people to live a decent life, of course they wouldn't come for the mission. We work very hard to be as competitive as we can. We also offer a range of benefits that are pretty competitive. And offering flexible work schedules is amazing. There are not nearly as many opportunity for flexible work schedules in the private sector as there are in the public sector, and this is a real big draw for people. You give somebody a flex day and it's amazing what a difference that makes in terms of quality of life.

So they compliment each other. You have to have competitive pay, but I think the mission is really our driver.

What motivates an applicant or employee

MR. STIER: Great. And could we hear from Al and Rob? Again, the question is: Is there any tension in your systems that you see between making pay more aligned with performance and the mission so that many public sector employees have them as their primary motivation?

MR. RESSLER: We do have that tension. Fortunately, again, employees come to work for us – at least initially – because of the cultural issues that the organization offers. The Department of the Army is steeped in culture and tradition for the mission that it carries out. Many of the employees that work in our organizations, even in the morale-welfare-recreation-kinds of jobs, feel a sense of contribution, a sense of value, a sense of belonging to that organization and a sense of American pride in being connected to a soldier and a war fighter.

We have also found, particularly in my organization, that we have a very diverse kind of workforce, and that workforce tends to develop its own cultural dynamics. We have a large Hispanic population in our employ. We have a large Asian population. They tend to recruit people that they know in their community, their religious organizations and their social organizations.

Pay does get to be an issue when we don't pay competitively and comparably with other jobs in the outside where they can go out and seek traditional work. But they will make tradeoffs to have that culture, that sense of community, that sense of contribution and that sense of being able to be part of a larger organization.

One other positive that we have is retired military who end up in our workforce and who are there because they like being there and staying connected with where they were in the past.

MR. KIRKNER: I think NIST is an employer of choice. NIST has a pretty good brand in the scientific community, not only in the national but in the international scientific community. We currently have three Nobel Prize winners on staff, if I can one-up Tom Hogan from this morning's presentation. We have a National Medal of Science winner, and many of our folks are internationally renowned fellows and experts in their particular area of discipline.

Compensation: I think our alternative personnel management system, our flexible pay-setting practices and our pay-for-performance system are all useful tools for getting employees in the door and retaining them. In some cases, we offer retention allowances to some folks. The engagement, I think, comes from the work that they do. The commitment that they have to the organization and to their work comes from the intrinsic rewards that they receive. But it could also be from the quality of work life they could have from things that we offer like flexible schedules and Flexiplace, the onsite athletic facility that we have, the childcare center that we have onsite – those kinds of things.

MR. STIER: There is a question in the back.

Pay increases

AUDIENCE: My question deals with migrating your folks from the annual increase. I think all three of you said that you provide a base-pay increase on an annual basis based on merit and then you provide to the outstanding employees a significant bonus. But I think NIST was the only one that said they still give the Federal annual increase.

MR. KIRKNER: That is right, yes.

AUDIENCE: I guess I would like a comment from each of you on how you move your folks from expecting an annual increase to not getting an annual increase at all, or do you give, except for NIST, some form of annual increase?

MS. PETITT: We started this way back in 1981. Fortunately, when we converted to our own compensation program, there was a huge gap between what we were paying and what the banking industry was paying. When we went off the General Schedule and the annual increases, we actually were able to pay much more than they would have gotten if we had stayed in that system. Of course, that is different now. If we were converting right now, it would be a whole different proposition, but for several years they actually could do much better being off the General Schedule.

MR. RESSLER: We still give the annual increase based on the wage survey that the Department of Defense does annually. That is not always in January; it's staggered throughout the United States by various time frames. But so few of our employees get an annual bonus and/or an annual pay adjustment.

If an employee gets a top rating, the maximum percent increase that he or she can get is 15 percent. If they are rated at the next highest level, the maximum increase that they can get is 5 percent. And so it's linked to performance, but there just isn't a lot of extra dollars to go around for those kinds of increases.

MR. STIER: Please, question in the back.

Lessons learned

AUDIENCE: The three of you are from relatively contained industries. I'm wondering if you could comment on lessons learned in your industries – in your agencies – as there is discussion of DHS and DoD, these massive organizations moving to pay-for-performance and pay banding. Are there lessons learned that these bigger entities can take from you guys?

MS. PETITT: Because we have gone through this three times, we have learned a lot of lessons, quite frankly. I would say the number-one lesson is that you have to balance employee impact with technical purity when you're designing a new compensation program. When you convert to a new compensation program, you can expect about 10 to 15 percent of your organization to file appeals because they don't like where they landed, and then you'll spend the next six months to a year in court trying to deal with those issues. In my view, that is oftentimes the result of technical purity.

For example, when you are moving people to different bands, sometimes you want the linear relationship of the caps of the bands when they are mathematically constructed. But sometimes when you do that, people whom you place in that band are now making $500 more than the cap, so they are going to view this as stepping down in grade. So if you look at the population that is going to a band – and it isn't really going to make a material difference to increase your pay band to encompass those salaries – you might as well do it because you haven't lost anything, and those people won't think they have lost something.

"A lot of mistakes that organizations make is that they are way too focused on the technical purity of the plan and not enough focus on the impact of the decision they make on employees."

A lot of mistakes that organizations make is that they are way too focused on the technical purity of the plan and not enough focus on the impact of the decision they make on employees. The other thing that we have learned is we were very inclusive. When we developed the current compensation program, we conducted 4-hour focus groups with up to 15 to 20 people per session, and we conducted them with one-third of the organization. We ran every decision by employees as we were making them. What do you think of this? What do you think of this? What do you think is bothering you the most about our current compensation program? What would you like out of the new compensation program?

So it was a very inclusive process. We were very open. We asked, "How do you think we should collapse the grades? Do you think we should put these two grades together into one? Or, do you think we should take these other two grades together and put them in one?" Our employees basically told us how they thought the grades should fold into the broadbands.

I think that that is an issue: to include employees. As with any change, the extent to which you take fear out of change, it enables you to make changes very, very easily. As you approach the process, as you're developing the process, you have to do it in a way that does not cause employees to be fearful.

MR. KIRKNER: You have to tailor the pay banding and the pay-for-performance system to the mission of your organization and to the culture of your organization. The best way to do that is to involve stakeholders in the design and the implementation of the system.

We were under the same pay system since 1988. We just modified it this year and we used an inclusive process. We used focus groups to find out what they didn't like about the current system, what needed to be improved. From that, we came up with a design proposal, went back out to another round of focus groups to see if the design had met the concerns raised in the initial round of focus groups. And then,

before we rolled out the new system, we surveyed our workforce. We did an online survey to compare the current system with the proposed system and asked the general workforce for input.

I think it's really important to involve stakeholders in the design of the system. If I were in DHS or DoD, one size doesn't fit all, and I think the way to go is to begin in a component and kind of incubate pay banding and pay-for-performance and then expand it from there.

MR. RESSLER: I'm a flexibility advocate. I think the maximum flexibility that you can provide to the lowest managerial level that you can afford is the approach that I would advocate.

Unfortunately, with the way our budget cycle works, we don't always know what our budget is going to be until the February-March timeframe. Then we've got seven months, eight months of execution, and so we are forced to execute a year-long cycle within a half or two-thirds period. That's the frustrating part of how we manage our budgets. But to the extent that you can provide flexibility to those managers and supervisors, you should provide it because they can get very creative. I'm just amazed every day, every week, about how creative some of our managers and supervisors can be about how to execute budgets, and how to take care of people at the same time and do a pretty good job at both. It's when we start imposing higher-level artificial constraints about how they should manage that the process gets frustrating.

Supervisory responsibilities and accountability

MR. STIER: We have a couple other questions from the audience, but let's jump off of the comment that Al just made about pushing the decision down, and focus for a second on those managers that are actually making these pay decisions. I think one of the great challenges in these transitions is the increased responsibility placed on individuals in a supervisory capacity to make distinctions on performance that have a compensation effect.

Also, from the perspective of the employee, one of the challenges, based on our best places rankings, is a sense that their leadership and their supervisors, are not up to a lot of other tasks, and there's a lot of skepticism about whether they're up to this kind of task. So if we could get, very briefly, some comments about how you provided supervisors with the kind of training that they need. The second part of the question would be: Are those supervisors evaluated with consequence on using these systems well?

MS. PETTIT: Our compensation program has a lot of accountability built in the managers' own performance appraisals. For example, if a manager had a unit that was not really performing at a higher level than other units, but gave 100 percent of his or her employees high performance ratings, that manager would get a low performance appraisal because that meant he or she was not managing performance within the unit. It didn't take long for them to become a little more conscientious about that. It wasn't that people can't have a skewed performance system, but it has to correlate with the performance of the organizational unit.

When we first implemented our compensation program, even when we entered our second one, our managers were not ready to make a whole lot of pay decisions, so we created fixed merit pay matrices that calculated increases off the mid-point, for example. So if you were a superior performer and you were at this grade, it was predetermined what your merit pay increase would be. Now it's a completely free, open merit-pay pool. We have ranges for each performance level but it's up to the managers to decide how their employees will fall within that performance level.

"We are very rigorous about education; every year we look at what's happened after each pay cycle. We look at adverse impact. We look at pay differentiation. We look at pay compression. Then we get on the road, meet with managers, and give them feedback."

We are very rigorous about education; every year we look at what's happened after each pay cycle. We look at adverse impact. We look at pay differentiation. We look at pay compression. Then we get on the road, meet with managers and give them feedback. When it comes time to start the process again and we feel they haven't done a good job, we again get on the road and give managers data on what's happening within their organizational unit. We create an incentive for them to do better based on the performance data.

And there's one other thing that we do: during the merit pay pool process and during the performance appraisal process, we have a required reconciliation process. Within an organizational unit, peer managers have to come together to share the ratings and the increases that they plan to give to their employees. We call that a calibration exercise; one manager may say, "My employee is the highest rated person." But the other manager may say, "But I work with that individual and he's not nearly as good as you think he is." There has to be a consensus among the managers on the rating that they give, a consistency on how they apply the performance standards and determine pay.

MR. STIER: Al, do you want to take next?

MR. RESSLER: The training of supervisors on the process obviously is critical. And for our organizations – and I think for most of the Federal services – it's a constant, constant challenge. There is no magic answer to the right processes that can be used to train and to educate supervisors to do these things correctly. This is a different kind of skill than what they are used to doing, and so it takes a different kind of training, and we just have to stay on top of it and stay diligent with that process.

AUDIENCE: And are your supervisors evaluated on their effective use of your pay system?

MR. RESSLER: Yes. They are evaluated on how they manage their business enterprise, and part of that business enterprise is what kind of financial goals they have and how they execute those financial goals.

MR. STIER: Rob?

MR. KIRKNER: Our supervisors are held to managing the allocations that they have. Pay pool managers have to manage the allocations that they have. They are responsible for operational results, leadership and management, and customer and client services through their performance plans. And it begins at the beginning of their performance cycle.

We just completed a round of training for all of our supervisors on writing effective performance plans because employees have to know what's expected of them in order for the system to have credibility.

Then, at the end of the performance cycle, we have a calibration process as well within the pay pools, and that rolls up to the laboratories. We have a personnel management board made up of our senior leadership and chaired by our Deputy Director. The Deputy Director reviews the ratings distribution, the payout distribution and the bonus distribution, and then signs a document authorizing the release of funds to pay out everything.

We then publish that information on our Web site so that any employee in the institute can go to the HR Web site and pull up the average rating and range of ratings for their organization and for the laboratory and for NIST. They can look at the average payout and the range of payout in their organization. Same thing with the bonus; they can see the average bonus and the bonus ranges within their organization. We started that about three years ago to add transparency to the system. That's also an accountability feature because they can compare organizations and see how their group compares with others across the institute.

MR. STIER: All the way in back had a question.

Insuring transparency in the system

AUDIENCE: I was wondering if your agencies compile data by race, national origin, gender and disability?

MS. PETITT: We do. I mentioned earlier that at the end of every cycle in October, managers do the performance appraisals, do performance plans for the next year and make their merit pay decisions. Then in January, we process all the actions. In February we send the data to our economics department, and they conduct a statistical analysis of adverse impact. We don't look at it just for race, but we look at it by grade, by occupation and by location. We definitely look at the merit pay distribution as we do awards and promotions by RNO[21] as well as a lot of other factors. That tells us whether or not one category of employees was possibly not been treated fairly.

"The more flexibility you provide to your managers in a system such as yours, the greater the need for transparency, the greater the need for employee acceptance, credibility, integrity…"

MR. RESSLER: We do not have that kind of data.

MR. KIRKNER: We do collect that data. We look at it after the cycle, and periodically we look at salary regression for different groups to see how they are progressing in their careers through the different career paths.

MR. STIER: Question here.

AUDIENCE: Rob mentioned something that I think is really critical. The more flexibility you provide to your managers in a system such as yours, the greater the need for transparency, the greater the need for employee acceptance, credibility, integrity and all of that. And Rob, you mentioned the types of data that you make available to your employees as a way of assuring them. What it is that you are really trying to achieve? Cynthia, you talked a lot about the data that you are collecting, and I'm just wondering, what do you – and Al –do to communicate that to your employees? What do you do to try to ensure that employees are comfortable with the system, and that there is credibility in what you really need to achieve?

MS. PETITT: We define transparency as being clear up front on what the expectations are. But what we've discovered is that all some employees care about is how their increase compare with someone else. I mean, we can put all the data up there, but they still want to know what kind of pay increase they got versus this person down the hall, and they'll never get that kind of information.

During our first year, we did publish the information and we put out what the average merit pay increase was, and everybody who got less than that thought that they were not a good performer. But there are modifiers that go in when deciding merit

[21] Race and national origin.

pay increases in addition to performance. For example, where are they in the range? What other pay increases have they gotten during the year? And so we spent a lot of mop-up time trying to talk to employees and getting them comfortable with the fact that just because they received less than the average, that did not mean they were a below-average performer.

We have a relatively new union and this is an issue that comes up. They would love for us to publicize the data and put it up there, but we basically said, "When we can do this constructively, we'll do it." But right now, we're not there yet.

MR. RESSLER: It's not a problem at our activity. Our supervisors communicate generally what takes place in their organization but not specifically with what individuals got. I'm sure amongst the employees they talk and that's good. We deal with the problems that come up, but there are so few. I might get one or two grievances a year on pay issues and that's with a workforce of about 850.

MR. STIER: Yes, Steve.

AUDIENCE: Rob, can you talk a little bit about what kind of mopping up or grievances that you get because of your different approach?

MR. KIRKNER: We didn't have any mopping up. In fact, we published the data in response to our bi-annual employee survey. Also, our research advisory committee, which is a group of representative bench scientists, gets together every year and issues a report to the NIST director on issues that are important to the bench scientists. In 2002, one of the issues that they raised was the transparency of the pay-for-performance process. They actually suggested that we publish this information on our Web site.

Again, we don't track it back to any individual. It's just average score, payout and bonus by organization, and then what the ranges were within that organization as well, and what the concentrations were. It was in response to a request from a significant portion of our workforce.

Challenges now and in the future

MR. STIER: I think it's time for at least one final question if anyone has one from the audience. If not, I will throw out one from myself, which is: Thinking about work and systems that have maintained their flexibility and have changed over time, what would you identify as your current greatest challenge in making these systems work better now and for the future? Al, if you want to start.



MR. RESSLER: I think our biggest challenge is learning the National Security Personnel System.

MS. PETITT: What we're finding is the workforce of the future has a very different pay expectation than the workforce that's here now.

I did some focus groups with some entry-level employees who have been with us for a year and had gotten a $1,500 bonus, which we thought was pretty generous, and I asked if they compared salaries with their friends and shared information about bonuses and they said, "I would never share my bonus information with my friends." And I asked, "Why?" And they said, 'Well, because it's so small." And I said, "What do you consider small?" And they said, "It's got to be a least $5000." And these are people who are just one year out of college. So that's scary to me in terms of the expectations for the future.

MR. KIRKNER: I think our biggest challenge is making sure that our systems line up with our mission and our organizational objectives. We want to make sure that the pay-for-performance system and the pay banding systems are managed consistently and in a way that enhances our ability to meet our organizational goals and objectives.

MR. STIER: I wanted to thank the three panelists. We sometimes overlook the successes in our own backyard. These are three organizations that have, for many, many years, been laboring in a very complicated and challenging environment of lining up pay against performance in a way that effectively motivates both existing workforces and also attracts new talent. And as you can see, they're doing it well. I mean, the impact has been a positive force among their workforce and kudos to all of them. And if we could give them a round of applause – that would be terrific.

Keynote Address

Transformation Challenges

David M. Walker
Comptroller General of the United States



David Walker

Introduction

Thank you. It's good to be here. I appreciate the opportunity. My very capable staff has put together the obligatory PowerPoint. I am not going to cover every slide, but it will be there for you later on when you have a chance to refer to this material in more detail.[22] What I would like to do is make some comments about several of these slides, and then save time for Q and A.

The Government is on a burning platform. The United States faces large and growing structural deficits. Much of the United States Government's spending programs, tax policies, and regulatory approaches are based upon conditions that existed in the United States and in the world in the 1940s, '50s, '60s, and '70s. Most have never been subject to fundamental review, reexamination, reengineering and reprioritization. That has got to change.

"The Government is on a burning platform."

We have serious challenges, but we also have a number of opportunities. The bottom line is that we are going to have to transform, including in the human capital area.

This is how the budget has changed in the last 40 years – namely, a significant percentage of the budget has moved from Defense to Social Security, Medicare and Medicaid. Our total liabilities and unfunded commitments have gone up from about $20 trillion to about $46 trillion in the last 5 years. If you look forward into the future, depending upon the scenarios you want to go by, we have to either raise taxes by two to three times today's levels or fundamentally reengineer the Government, or some combination thereof.

David Walker is the Comptroller General of the United States and head of the Government Accountability Office. He has helped to bring human capital issues to the forefront and identify the human capital crisis that generated workforce planning efforts in agencies. Mr. Walker instituted a pay-for-performance system at GAO to align individual performance with organizational performance. He is about half way through a 15-year term, and is hitting his stride very well as far as influencing the Government.

[22] See "Transformation Challenges" presentation slides in Appendix E.

This document was published on February 16th, 2005.[23] I recommend it to you if you care about the future of the country, if you care about your kids and your grandkids, and if you want to get a sense for the type of transformational challenges that we face and need to be re-examined. Look at this document; it raises 200 illustrative questions that need to be asked and answered to reengineer the Government.

It involves all of these different dimensions,[24] and includes several questions, such as how should the Federal Government update its compensation systems to be more market-based and performance-oriented? There are lots of questions, including the Government's organizational structure, classification and compensation systems.

Think about the Federal Government's organizational structure. We have about 13 regions in the Federal Government. There aren't 13 regions of the United States; there are not 10 regions of the United States; there are not 6 regions of the United States.

"People are the key to successful transformation efforts starting from the top of the organization."

The GS system is a very hierarchical model. Eighty-five-percent-plus of the GS system's pay increases have nothing to do with skills, knowledge or performance. It might have made sense in the 1950s, but it sure doesn't make any sense today. So why do we have an organizational model that has all of those many regions, all of those levels that are not skills-, knowledge-, or performance-oriented?

This is the definition of transformation.[25] It comes from Webster's. Many words are used in Washington that don't have the same meaning as Webster's, including merit. What are we trying to achieve in transformation? To create a more positive future by maximizing value and mitigating risk within current and expected resource levels. Notice I didn't say "minimizing risk." You cannot maximize value and minimize risk; it's an oxymoron. You can't do it in investments and you can't do it in the transformation area.

Keys to successful human capital transformation

Now let's get to human capital. People are the key to successful transformation efforts starting from the top of the organization. If you don't have a committed, sustained, visionary, capable and credible leadership at the top, you will not be

[23] 2 Government Accountability Office, "21st Century Challenges: Reexamining the Base of the Federal Government," GAO-05-325SP, February 2005.

[24] Ten mission areas: defense, education and employment, financial regulation and housing, health care, homeland security, international affairs, natural resources, energy and environment, retirement and disability, science and technology, and transportation; there are 2 cross-cutting areas: improving governance and reexamining the tax system.

[25] "An act, process, or instance of change in structure, appearance, or character; a conversion, revolution, makeover, alteration, or renovation."

successful. That is not enough by itself. You also have to have a number of key players and key stakeholders involved in order to be successful, and like any change management effort, you start at the top, you start with the new people, and you move to the middle.

However, the current system is outmoded, and it's a major barrier to transformation. We put human capital on our high-risk list in 2001; a lot of good things have happened since then. For example, there have been several legislative reforms, the President's Management Agenda added human capital to its top areas, and there are a number of individual agencies trying to move forward to create a more positive future, some doing a better job than others.

*"Our way is not **the** way; it is **a** way. We are not perfect and we never will be, but we're trying hard to lead by example . . ."*

There are tailored flexibilities that have been provided for a number of agencies: DHS, DoD, NASA,[26] and GAO, for example. We are trying to share our knowledge and experience with others to help them avoid mistakes. Our way is not *the* way; it is *a* way. We are not perfect and we never will be, but we're trying hard to lead by example and we are committed to continuous improvement.

These are some of the things that we have done over the last several years that didn't take any legislation, and I'll just mention a couple. You need to have a plan, not just a strategic plan, but a strategic human capital plan. If you don't have a plan, you're going nowhere fast. You also need to have modern, effective and credible performance appraisal systems that are tied to that plan. Those systems must be focused on achieving positive outcomes that balance results, clients, people and partnership factors, because if you don't have a performance-oriented system that is effective and credible, then you cannot implement a pay-for-performance system. Most Federal agencies don't have such an infrastructure in place.

". . . [Y]ou must have credible internal reconsideration processes and external appeal processes."

Another critical component is you must have credible internal reconsideration processes and external appeal processes. That is where the MSPB comes in. We have the Personnel Appeals Board, which is a statutory body that was created in 1980. We are in the legislative branch; the MSPB is in the executive branch. There was concern about separation of powers, about potential independence issues, and so we created our own. But you absolutely and positively have to have appropriate internal reconsideration processes and independent, credible and capable external independent appeal processes. You need to have it, period, but especially when you go into this new type of system – absolutely, critically important.

[26] National Aeronautics and Space Administration.

GAO's transformational efforts

We achieved some changes in legislation in 1980 that gave us the ability to move to broadbanding. We also achieved legislation in 2000 and 2004 that, among other things, decoupled us from the executive branch's across-the-board adjustments. It allowed us to make a number of important revisions that helped move us towards a more market-based skills-, knowledge-, and performance-oriented classification and compensation system.

We have adopted modern, effective, credible and validated performance appraisal and management systems. We have adopted modern classification and compensation systems that use pay bands that are market-based. To get any pay adjustment in GAO, you have to meet a certain standard of performance, and the better you perform, the more pay you get. But if you don't meet the minimum standard of performance, you don't get a pay increase.

We only have about 20 people out of 3,250 last year who didn't meet the minimum standard of performance. We try to help them so that they can improve. But if they can't improve, then we try to help them find another opportunity or take whatever actions are necessary. You always have to treat people with respect and you want people to leave with a positive opinion of your organization – even if it didn't work out. It doesn't make sense to burn bridges.

We've also incorporated a number of safeguards, including appropriate transparency and accountability mechanisms, because this is dramatically different from the old system. In the old system, everybody was basically treated about the same. You knew pretty much what you were going to get. But, quite frankly, in my opinion, you don't get to equal pay for work of equal value under the old system. And one of our objectives is to achieve equal pay for work of equal value over time.

We wanted a new system where performance appraisals were linked to our strategic plan, consistent with our professional standards, tied to our protocols and core values. Appraisals that were honest, accurate and non-discriminatory, and focused more on performance. We picked a competency model using our core competencies. We use the results of our performance appraisal system for all types of decision-making.

Our performance ratings have changed dramatically. The average rating when I came was 4.62 out of 5.0. Fifty percent of the people were rated 4.7 or higher. Eighteen percent of the people were rated 5.0. I have never seen a person that is 5.0; they don't exist. We tried to do a better job with the current system, and we did do a better job applying the standards as they were written and got better dispersion, but we scrapped it and went to the competency-based system.

Now the average rating is going up a bit, and one of the reasons that it has is because of a very difficult decision we made last year that encouraged people to give better ratings.

Our ultimate objective for our classification and compensation systems is to attract, retain and motivate top talent. We are only as good as our people. We want to have equal pay for work of equal value over time. We want to make sure that our classification and compensation systems are reflective of the roles and responsibilities that people perform; that they are performance-oriented; that they are affordable and sustainable over time; and they conform to applicable laws.

Our pay ranges, even when we went to broadbanding, followed the GS pay ranges. The assumption was the GS pay ranges reflected the market. I don't believe they do. I believe the system that is used to create and index the GS system is flawed. When we created our broadbanding system in 1989, we piggybacked on the GS ranges under the assumption that they reflected the market. They may or may not have in 1989. Our market-based query shows they did not in 2004 and 2005.

Under the GS system, everybody advances to the pay cap, irrespective of their performance. It is a not a matter of "if"; it's a matter of "when." And in fact, in many cases we found there was a negative correlation to performance for people who are at the pay cap because they were the people who didn't get promoted to the next level. That is not equal pay for work of equal value.

There is also a significant overlap between the GS ranges. You can justify paying a person as much as somebody at the lower ranges of the next level of responsibility if they are a top performer. You can't justify paying a below-average performer as much or more than somebody at the next level of responsibility who may be a good performer. That just doesn't make sense. It clearly violates the concept of equal pay for work of equal value over time.

So our new approach is to set pay ranges based upon competitive labor markets for organizations that we compete with for talent: in the Government, the private sector and the not-for-profit sector. We don't compete with Goldman Sachs and we don't compete with the major law firms, but we do compete with a number of public and private organizations. Everybody has a chance to make the pay cap, but for people who are at the upper end of the higher pay ranges, they have to perform in excess of a certain level to continue to progress. We do have overlaps in the pay ranges, but as I said, the better performers are the ones who have the opportunity to make as much or more than people at the next level of responsibility.

We hired a firm to help us conduct the competitive compensation study. This was the result. For our professional staff below the senior executive service level, we have four pay ranges and three levels and titles. For example, Band 1 is our first level analysts, while our senior analysts, auditors, investigators and evaluators are in Band 2A and Band 2B pay ranges. There are assistant directors and then above that, SES or directors or managing directors.

The bottom line is if you look at the 2A and 2B ranges, what you'll find is that under our old system, we had one pay range that went from about the upper $60,000 range to about $118,000. Once you got into that pay range, then you had the opportunity to make up to $118,000, no matter what. When the study came back, it said we really had three kinds of people in that category. We had people who were leaders consistently; we had people who were never going to be leaders but who were doing a good job – that is, good people doing valuable work – and we had people who were occasionally leaders. And you shouldn't pay all of them the same amount of money.

Impact of transformation on GAO employees

Therefore, we had to determine separate compensation ranges based upon that finding and there was good news and bad news. The good news was that for people who were consistently leaders and who performed well could make up to $10,000 more than under the old system. However, for people who weren't leaders and didn't perform as well, we were paying them too much.

So what did we do? The toughest thing we will ever do. One thousand two hundred and thirty-eight people out of 3,250 had to apply for a consideration to be placed in the higher pay range, and we made an individual-by-individual determination, based on three criteria, whether they would go in the higher range or the lower range. We had internal reconsideration processes culminating with an appeal directly to me.

We based placements on three factors: What were your actual roles and responsibilities for the past several years? What was your actual past performance relative to your peer group? And what was your performance potential regarding the competencies on which you would be evaluated – for the first time – if you were placed in the higher range?

The result? Out of 1,238 people, 433 were placed in the higher pay range, including 24 of the 78 who applied for reconsideration with me. We have 14 cases pending before our Personnel Appeals Board – about 1 percent of Bands 2A and 2B, which to me is a minor miracle.

This is by far the toughest thing we will ever do. When you're talking about classification and compensation, you don't get closer to the bone than that. And this is not just an issue of pay – this is an issue of status. This is an issue of how people perceive they are valued, and there is not an easy way to do it.

Looking to the future

"... [W]e need to make sure that the agencies that have been given the authorities to reform their systems do it the right way"

As far as going forward – we need additional human capital reforms, but we need to make sure that the agencies that have been given the authority to reform their systems do it the right way. It is not just the policies that they employ; it's the process that they employ to get to where they need to be. Process matters.

Again, you need to have the infrastructure in place before you can go to a market-oriented, performance-based compensation system. You also need to have effective internal reconsideration mechanisms and external and independent appeal mechanisms in place. And if you don't, you're in trouble.

You need to do it in installments, which is what we did, and obviously for huge organizations, there is even more reason to do it in installments. A one-size-fits-all approach does not make sense, and given the diversity and complexity of the Government, we need to take a phased approach. People need to make use of the existing authorities that they have. They need to do what they can do within the confines of current law.

Most of what we did in the first few years that I was at GAO did not require changes in law. Having a plan; redefining success; flattening the organization; creating a modern, effective and credible performance appraisal system – those things don't take changes in the law. You can do it, but most people haven't.

In the short term, reforms need to be targeted. The Government needs some broader reforms, but those broader reforms need to be informed by a uniform set of principles such as the merit principles: a uniform set of criteria for getting the authority and exercising the authority. And people should have to meet a show-me test. You cannot implement new pay-for-performance systems until the agency and an independent entity, like OPM, certify that the agency is ready.

I think we ought to provide broad-based authorization for people to move forward with these reforms at some point in the future. But they should not be authorized to execute and operationalize these reforms until they have affirmatively demon-

strated that they are ready to do it because over the long term, we need to create a level playing field. Right now, we have a little over half of the Federal workforce that is authorized to be on the kind of system that GAO has. I fully believe that a vast majority of the Government will have the same system over time. But the key is not doing it fast, but doing it right.

Conclusion

In summary, we are not the way; we are a way. We have done some things that are complex and controversial. Not everybody is happy, but there is no organization where everybody is happy. We are clearly on a positive path. Our best years are ahead of us, and with the very real budget challenges that we face, which will get tougher unless things change dramatically, every dollar we spend where the market and performance do not justify it is a dollar we won't have to give somebody where the market and performance do justify. It is that simple.

We need to make sure that we are doing it the right way. I am pleased to say we have great people and we have a lot more people who want to work at GAO than we have positions. Furthermore, our turnover has not increased. I look forward to getting through this, especially this 2A, 2B decision-making process within the next year.

I tell our people, look, it's important that if you are disappointed because you didn't get placed in the higher pay range to maintain a positive attitude. Make sure you work hard; make sure you stay focused because if you do that, then your disappointment will be temporary. If you don't do that, it may be permanent because we have so many bright and capable people coming up. You are all competing with your peers. And so you need to stay focused and you need to do the best you can, and if you do, things will work out over time.

Thank you. I'll be happy to take your questions.

Any questions? Yes. Tim, all right.

AUDIENCE: David, a couple questions about the 2A, 2B process. How long will it take to get it done? Where do you see the best opportunity to do this kind of thing elsewhere in the Federal Government?

MR. WALKER: Well, first, the initial 2A and 2B placement process is done. We made the decisions in the early part of 2006. We are through the internal reconsideration process. We have those 14 cases pending at our Personnel Appeals Board. They will have to be dealt with in whatever way they are going to be dealt with within whatever timeframe the PAB takes. But we have basically done our part.

We have tried to help ease some of the disappointment. We have decided that rather than moving from 2A to 2B once a year, that for this year we are going to do another placement in June and then another placement in January, and so there will be two more opportunities for people to be placed in the higher pay range within the next year. We think that will address a lot of the concerns because there are a lot of people who were close and that over the next two cycles hopefully they ought to be able to make it.

Lessons learned

It's important to keep in mind that the reason we found ourselves in this situation is that when we created our broadbanding system in 1989, we did not adequately assess the differences in roles and responsibilities in determining how many pay bands to set up. In hindsight, we should have set up four, not three, pay bands in 1989. So the lesson learned here is: make sure you do your homework to understand how many different levels of roles and responsibilities you have, and therefore, how many bands and pay ranges should you have.

The second lesson learned is: don't assume that the GS system is market-based. Do your own market-based compensation study and decide what those pay ranges ought to be. So those are the two big lessons learned. Do I think that this applies broadly? Yes, I do think it applies broadly. But each agency has a different mission and has a different workforce, and you need to make adjustments based on that.

AUDIENCE: Can you describe how objective your performance appraisal system is? That is, pay-for-performance based on objective, identified goals and objectives?

"…[N]o performance appraisal system in the history of mankind is without some kind of subjectivity"

MR. WALKER: First, we're not in the manufacturing business; we're in the knowledge business. Secondly, no performance appraisal system in the history of mankind is without some kind of subjectivity. So what we tried to do – and we involved our employees in this because it is very, very important – was to use competencies as the common denominator. We had our employees validate the competencies and agree that they are necessary to be successful at GAO. There are pros and cons to taking that approach.

Some are more objective than others. We have results, and for us that means financial and non-financial benefits. We have other things that require more judgment. Even communication skills require judgment.

We also have a number of internal procedures to help assure consistency, equity and avoid discrimination. We have each person do self-assessments, then the rater does

one. Then there are reviewers: we have our Office of Opportunity and Inclusiveness – it used to be called Civil Rights – and our Human Capital Office. They both look at the data independently and try to look for any anomalies before final decisions are made.

So, there is some degree of subjectivity, but there has got to be a degree of subjectivity, especially when you're in the knowledge business.

Thank you very much.

Keynote Address

The Role of Merit in a Decentralized Personnel System

Dan G. Blair
Deputy Director
Office of Personnel Management



Dan G. Blair

Introduction

Good afternoon, everyone.

You know, I was struck listening to David Walker earlier. There is not much I can say I disagree with you on anything you said today. And what also strikes me is how far we have come in the last 7 years. Think about that: where the debate is today and where the debate was at that point – the idea of pay-for-performance cascading through the Federal pay systems not as a question of *if*, but of *when*. That strikes me as just a monumental shift in the way that we think about America's civil service.

Today, I was asked to speak about the role of merit in a decentralized personnel system. The system – this monolithic General Schedule system that we all talk about and its foundations – has major cracks, and the changes that have been taking place just didn't take place with DHS and NSPS. I think it's interesting to kind of track those changes, how they took place and what the conditions were if we are going to chart the course of future reforms.

A brief history

If you look at the 1940s when the General Schedule was first formed, the workplace was dramatically different than it is today. The General Schedule was born of an industrial era where many civil servants performed rote types of work. The educational levels were markedly different. If you look at pictures of the workforce at that time

Dan Blair has a great deal of civil service knowledge and experience. He served for nearly 17 years on the staffs of both the House and Senate committees charged with civil service oversight. On the Senate side, he served as Senior Counsel to Senator Fred Thompson on the Governmental Affairs Committee. On the House side, he served as Staff Director for the Subcommittee on the Postal Service, where he directed comprehensive postal reform legislation, and was involved in designing the Federal Employees' Retirement System.

comparing them to today, it is striking how much the Government has changed from that era. I think that it's important to know that as business, as the environment, as everything changed, we still basically have a General Schedule system that is reminiscent of that industrial era.

What is also interesting to see is when we went through the monolithic changes of the Civil Service Reform Act of 1978, what didn't change in that Act was the General Schedule. I'm sure there were many reasons. It was kind of interesting. I was going through the hearings that took place on the old House Post Office and Civil Service Committee in 1977 during the consideration of that Act, and it was interesting to see what the debates were at that time.

Well, what struck me and what I thought was prescient about that was the idea of breaking out the Civil Service Commission into what became the Merit Systems Protection Board, the Office of Special Counsel, the Office of Government Ethics and the Office of Personnel Management.

And the role of OPM was envisioned even by its founder, Scotty Campbell, to be the premier advisor, the central advisor to the President of the United States on human resources issues – on what we call human capital issues today. The premier advisor was intended to be an independent office to reflect the independence of the civil service. Nevertheless it was understood that there would be a political component as well as an institutional component, and that is where we find ourselves today.

"What hasn't changed is the role of merit in our system."

If we look at what has taken place in terms of the changes, it is also important to understand what hasn't changed. What hasn't changed is the role of merit in our system.

A few years ago at OPM, we updated and republished a book called *Biography of an Ideal*, and that ideal is the merit system in the American civil service. It talked about how the American civil service was born. It was born of a presidential assassination by a disgruntled job seeker. We saw the civil service go through many changes. We saw Theodore Roosevelt, one of the most instrumental founders of the system serving as a Civil Service Commissioner and later President, promote the ideal of merit in a merit-based system.

The merit system principles

But when we talk about merit, what exactly do we mean? Do we mean the *Webster Dictionary* definition? I think that would be important. But I think what is more important is to look at Title 5 and what those merit system principles are and see if we're following merit today, and how we will continue to follow merit even as these human resource management systems change in the future.

I have pulled for today those nine principles, and let me go through these briefly with you. It is interesting when we talk about merit system principles because at OPM we talk about merit system principles and veterans' preference. While veterans' preference isn't specifically referenced among the nine principles, it's the law, and one of the foundations of American civil service. We have required agencies to follow the merit system principles and veterans' preference that we so rightfully adhere to. Veterans' preference, which honors veterans and gives them preference in hiring, is very important and is one of the foundations of what we consider to be the modern American civil service.

But of the merit system principles that are in 5 USC 2301(b), let's look at those and see how they apply today and how we can continue to apply those to agencies that underwent structural and transformational changes. First, recruitment should be from a body of qualified individuals. I kind of combine that together. But think about that: open recruitment from qualified individuals. That is a key aspect of what we consider to be merit.

I have had the opportunity to go down and talk to the Mexican Government as they undergo substantial civil service transformation themselves. And one of the first things that they have focused on in undergoing this transformation is how to have an effective hiring system that eschews the idea of the spoils system, and have one based on merit. So I think it's interesting that the first merit system principle revolves around hiring; hiring based on merit.

The second: All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age or handicapping condition with proper regard to privacy and constitutional rights. Wow, that is an amazing tenet, which we abide by, that says we are going to treat people based on merit and not for the groups that they come from, or what they espouse, or their political affiliation.

"The Federal Government was one of the first to offer workplace protections across the board, and so this is just an amazing tenet that has withstood the test of time."

The Federal Government was one of the first to offer workplace protections across the board, and so this is just an amazing tenet that has withstood the test of time.

Third, equal pay should be provided for work of equal value with appropriate consideration of both national and local rates paid by employers in the private sector – and I'm emphasizing here – and appropriate incentives and recognition should be provided for excellence in performance. That says a lot. What about locality pay? Is locality pay consistent with the idea of merit? I would argue strongly, yes it is. Is giving pay raises across the board in accord with the concept of merit? I would argue that there is a compelling case that it is not.

And so does our General Schedule system today comport with that tenet of merit? I would argue that maybe in 1940s, it did; today it does not. Another tenet: employees should maintain high standards of integrity, conduct and concern for the public interest. The Federal workforce should be used efficiently and effectively. Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees who cannot or will not improve their performance should be separated – a strong tenet right there, and does our system today comport with that?

I think if you talk to managers and supervisors in the Federal system today, they would argue that this is one of their largest frustrations; their inability to deal with poor performers. But is it a question of the individual or is it a question of the system? I think that we have a lot of things to learn and a long way to go if we are going to be meeting that tenet as well.

Employees should be provided effective education and training in these cases. Think about that. As we move through the National Security Personnel System experience and through the DHS experience, what will be one of the key factors of success is training. Everything that we can do to train managers, supervisors and employees about the workplace, about what their responsibilities are, how to better manage, how to be more effective and efficient leaders, we should do. That will be in unison with that tenet of the merit system principles.

Employees should be protected against arbitrary action, personal favoritism or coercion for partisan political purposes; prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for election. I see Scott Bloch here. I think you probably know those words by heart because that is really one of the chief missions of your office, the Hatch Act, in making sure that the civil service is free from partisan political influences.

And then, employees should be protected against reprisal for the lawful disclosure of information which employees reasonably believe evidences a violation of law, rule or regulation; whistleblower protection. Again, this is where the Office of Special Counsel comes in. But OPM has an oversight role as well.

The merit system principles as the foundation for a transformed civil service

If you look at those principles today and you look at the changes that are taking place in the civil service today, you have to ask, are we following the merit system principles? Are these principles timeless in their application, and are they timeless enough that they can form the foundation for a transformed civil service?

Well, if we look at the changes that have taken place, let's evaluate those changes. We saw in the 1990s the breaking away of a number of agencies from the General Schedule. We saw the FIRREA agencies, the banking agencies, break away, and that was for the purpose of dealing with the savings and loan crisis of the late 1980s. They couldn't recruit and retain the employees they needed. They needed to have more and better pay flexibilities. So they got out from under that monolithic General Schedule.

"The lesson to be learned is that when you do give flexibilities to agencies, it needs to be done within a coherent framework"

Then we saw the FAA[27] do the same thing. We saw that in the legislation that was enacted in 1996, the FAA – because of program and operational problems – got the flexibility that they claimed they needed in order to operate more effectively. But was it done in the right way? I would argue that it was done in a very inarticulate way. Merit system principles didn't even apply to that transformation, and they are still struggling in many ways today. The lesson to be learned is that when you do give flexibilities to agencies, it needs to be done within a coherent framework.

When the IRS[28] got that flexibility, what was the coherent framework in which they received their authorities? Well, one, it was working with OPM; two, it was within the merit system principles. I think that set a course, a new direction, for Congress when they said, if we are going to give an agency these types of authorities, we are also going to provide these safeguards and counterbalances. One of them is to make sure that there is a central role for the Office of Personnel Management. I'm touting OPM, but I think what is key here is that there is a central role for an authority to make sure that merit and sound management practices are adhered to.

Then we saw another handful of agencies also getting out of Title 5. We saw the FCC;[29] we saw the Commodity Futures Trading Commission. We saw these agencies seeking flexibilities, both in pay and in management, in order to address specific concerns and mission operations.

But then we have the Department of Homeland Security, and then later, the Department of Defense coming through with NSPS.[30] We saw with those transformational efforts a key decision by Congress that said, "Develop your own systems, but you have to do it in conjunction with OPM and you must adhere to certain key tenets and values, including the merit system principles."

[27] The Federal Aviation Administration under the U.S. Department of Transportation.
[28] The Internal Revenue Service under the U.S. Department of the Treasury.
[29] Federal Communications Commission.
[30] National Security Personnel System, the name of DoD's new personnel system.

Maintaining accountability

As this was going on, there was a question of how you could maintain accountability, and how you could maintain merit in a transformed and fragmented civil service system. Well, that question was raised and in many ways answered before DHS and NSPS. One of the last actions of President Clinton was to take pen to paper and sign Executive Order 13197, the Governmentwide Accountability for Merit System Principles and Workforce Information. That gave OPM broad latitude to go into those systems that are outside of Title 5, and make sure they are merit-based. That Executive Order is a foundation for our oversight efforts today.

"It is now understood across Government that the idea of managing your people – of managing your single greatest asset – is a core function of the executive leadership of the agency…"

Building on those oversight efforts was the President's Management Agenda, and the strategic management of human capital initiative, in which we were charged by President Bush to go in and rate agencies – the well-known red, yellow and green scorecard measurement. I think it was telling that the authority was given to the Office of Personnel Management. The President's Management Agenda also recognized that the strategic management of human capital was a core function of the Government and that the Government was not going to be successful on any of the President's management initiatives, or in anything else it did, if it didn't have the single most foundational of all assets: the right people.

So building on the Executive Order, you have the President's Management Agenda, the strategic management of human capital, and the rating and evaluating of agencies, and we have seen great progress. A number of agencies are now green in both status and progress, and you have seen successes. We pushed the bar higher, and we expect more from agencies, but the bottom line is that there is now a senior-level leadership in each of the agencies who focuses on an area that before was always considered to just be a human resources issue.

It is now understood across Government that the idea of managing your people – of managing your single greatest asset – is a core function of the executive leadership of the agency, and the executive leadership of the agency will be held responsible. But in this decentralized environment, other issues come up: how do you maintain accountability, and how do you maintain merit? And that is one of the areas which I want to talk about today. At OPM we are going to ensure that the systems of the future continue to be based on the foundation of merit. How are we going to do it? Is it going to be in the same way in which we have done it in the '70s, '80s, and '90s, or are we going to have to do it in a different format, in a different way?

One of the areas that we wanted to do is make sure that agencies do better self-evaluations of their own merit system accountability and practices. OPM's goal is to have eight of the Chief Human Capital Officer agencies fully implement a new hu-

man capital accountability system by October 1, 2006. You'll notice I'm referencing specific dates with specific numbers. Well, this is the new OPM under Director Linda Springer. If you have had a chance to look at her strategic plan, you'll know that it is rife with specific dates, specific numbers and action plans in which things are supposed to be done. This is one of them.

"Our goal is to have 8 of these agencies fully implement a new human capital accountability system by October 1, 2006; 16 by October 1, 2008; and all of them by October 1, 2010."

Our goal is to have 8 of these agencies fully implement a new human capital accountability system by October 1, 2006; 16 by October 1, 2008; and all of them by October 1, 2010. We want to make sure that agencies do this self-assessment because we no longer see ourselves as providing value by going in every 4 years and doing a massive audit of their human resources management systems. By having them self-evaluate, we can have a better angle, a better charge, a better feel for how agencies are functioning and be better able to target our resources on areas that need our attention and help in making sure that there is compliance.

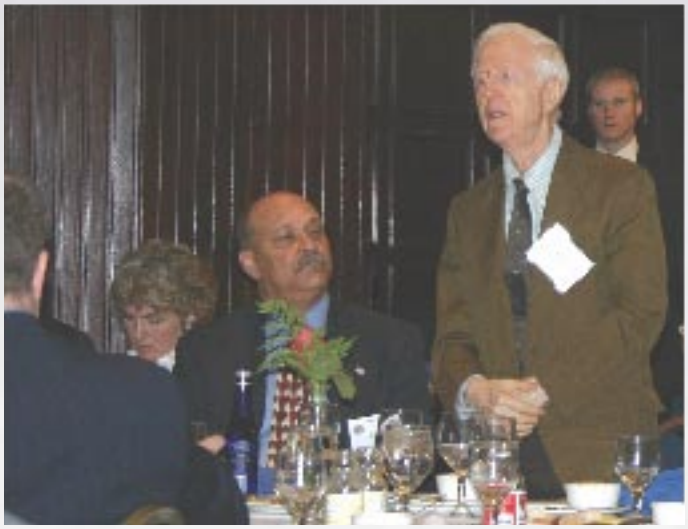
So today, we are talking about having a new system of accountability. We are talking about having new personnel systems in Government. We are talking about Government reform taking place, but it's all done according to a core central tenet, and that is the merit system principles.

So with that, I would like to open this up to some questions and then I can wrap up. Mr. Rosen.

AUDIENCE: Will OPM, as it emphasizes accountability, continue an independent vigorous oversight program as it has in the past, or decentralize and delegate it to agencies?

MR. BLAIR: What you will be seeing is a balance. We are not going to be decentralizing and delegating that core function, but what we are saying is that it's up to each agency and their leadership to take this on as their responsibility as well. We think that going in and auditing every four years isn't the way of doing that, that the better way is to make sure that we are alerted to problems early on and that we have these self-assessments done every year rather than every four years.

And so in the new era of decentralized personnel management, we think that that strikes the most appropriate balance. It's interesting that you raise that issue because I think OPM speaks very much towards this type of accountability system. As you know, we have an associate director devoted to human capital leadership and merit system oversight. I think that that shows you the tone and tenor with which OPM faces this issue. Merit system oversight is a core function and it's a core value of what we want to do at OPM.



Any other questions? Mr. Walker.

OPM's transformation

AUDIENCE: How is OPM's transformation going?

MR. BLAIR: You know, that transformation has been taking place over time. It has been taking place since Director James first came in. It's taking place under Director Springer, and it's reflecting the transformation that is taking place in Government. I can tell you that the place is far different than when I first came in October 2001, and I think we are light years ahead of where we were.

Transformation just doesn't take place; it's an evolving event. Are we going to be at the same place that we are today in 5 years? Absolutely not. Will we be able to perform functions in 2 years that we can't today? Absolutely. I think the bottom line is that you have to have a dynamic leadership and a commitment to managing this change, if you are going to transform the rest of the Government.

Any other questions, comments?

I just want to wrap up by saying I appreciate the opportunity to speak here today. I see many friends and familiar faces in the audience. One of the things which we do feel very passionately about is making sure that we have an American civil service system that works. If we don't have a civil service system that works, Government can't work.

"We may have disagreements, and we may have differences of opinion …But one thing is clear… [T]he best way of doing things is to do it together and reach a consensus."

And the responsibilities and duties of Government today are far too important in order to let anything lapse. We may have disagreements, and we may have differences of opinion on the directions that we want to go. But one thing is clear: that the current system is outmoded and in need of change, and that the best way of doing things is to do it together and reach a consensus. But the bottom line is things do have to change if we are going to have an American Government that is responsive to the American people, and that is responsive to the challenges of today.

On that note, I look forward to working with everyone as we guide and navigate these waters of civil service transformation in an atmosphere of merit and productivity. So thank you very much.

An Interview

Preserving Merit and Avoiding PPPs An Interview on Merit and the Prohibited Personnel Practices

Moderator: **Neil A. G. McPhie**
Chairman
Merit Systems Protection Board

Members: **Scott J. Bloch**
Special Counsel
Office of Special Counsel

William L. Bransford
Vice-Chair, Public Employees Roundtable, and
General Counsel, Senior Executives Association

Introduction

MR. McPHIE: I'm pleased to be the moderator of this panel. To my right is a litigator and to my left is a prosecutor. Let me tell you a little more about these two esteemed gentlemen.

Scott Bloch, the gentleman to my left, was confirmed to a 5-year term as Special Counsel at the U.S. Office of Special Counsel in December 2003. From 2001 to 2003, Mr. Bloch served as Associate Director and then Deputy Director and Counsel to the Task Force for Faith-Based and Community Initiatives at the Department of Justice. Before serving at Justice, he was a partner with Stevens & Brand in Lawrence, Kansas, practicing in the areas of civil rights law, employment law and legal ethics. Mr. Bloch earned his undergraduate and law degrees from the University of Kansas, where he served on the Boards of Editors of the Kansas Law Review and the Kansas Criminal Procedure Review.

Mr. Bransford, who is to my right, is a partner in the law firm of Shaw, Bransford, Veilleux & Roth, where he has practiced since 1983. He concentrates his practice in the representation of Federal executives, managers and employees before the United States District Courts, the MSPB, the EEOC,[31] the Office of Special Counsel and the Offices of Inspec-



L-R: William Bransford, Neil McPhie, Scott Bloch

[31] Equal Employment Opportunity Commission.

tor General. He is currently General Counsel and lobbyist for the Senior Executives Association. He also advises several small Federal agencies on personnel and employment law, and represents private sector employers on employment law issues. Prior to joining Shaw, Bransford, Veilleux & Roth, Mr. Bransford was a Senior Attorney in the Office of the Chief Counsel of the IRS. He graduated from the Cleveland-Marshall College of Law at Cleveland State University and received his Master of Laws from my alma mater, Georgetown University.

"Managers very often, I think, don't really understand what they need to do in the area of whistleblower reprisal. I think managers are perplexed by the EEO system because it works so inefficiently."

Gentlemen, welcome.

SCOTT BLOCH: Thank you.

BILL BRANSFORD: Thank you.

The most misunderstood civil service values

MR. McPHIE: I'm going to ask these gentlemen some questions, and I'm hoping to get from them a full exposition of how they see some of the current events based on their unique viewpoints. Let me start with Mr. Bransford, if I may. Based on your experience, sir, and your representation and familiarity with the merit system principles or prohibited personnel practices, which of those have been most misunderstood by agencies and employees and why?

MR. BRANSFORD: I think the ones that are the most misunderstood are the two biggest ones, and they are (b)(1) and (b)(8).[32] And (b)(1), of course, is EEO; and primarily (b)(8) is whistleblower reprisal. I think most of the violations occur with those two prohibited personnel practices. Employees don't understand them. First of all, very often the EEO system gets used as a super-grievance procedure because, very often, agencies have no other adequate grievance procedure. (b)(8), the whistleblower reprisal, is a very complicated law to deal with, and the law is made even more complicated by constantly changing decisions from the court, and also some iterations in the law by Congress.

Managers very often, I think, don't really understand what they need to do in the area of whistleblower reprisal. I think managers are perplexed by the EEO system because it works so inefficiently. About the merit system principles: the thing that I hear the most from individuals who come to my office is, they look at the merit

[32] 5 U.S.C. 2302(b)(1) prohibits discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation. 5 U.S.C. 2302(b)(8) prohibits retaliation against a whistleblower, whether an employee or an applicant.

system principles and they recognize that, hey, this is part of Federal law. And they say, "I think I've been mistreated because of this reason or that reason, and I want you to do something about that." And I say, "Well, sure it's the law but it can't be enforced." Even the Special Counsel can't enforce it unless the Special Counsel can find some regulation or statute that's designed to implement a merit system principle.

So these things are there, they exist, they're great guidelines, but if you violate them, the employee can't enforce them. But I think the agencies are risking a great deal of loss in their credibility and ability to be effective. Again, they are very important laws, but they're not enforceable laws.

MR. McPHIE: Let me ask a follow-up question, if I may. Is the resolution to change the law or to change the implementation efforts to enforce the law, both with respect to EEO and the WPA,[33] an issue?

MR. BRANSFORD: The Senior Executives Association actually made a proposal to consolidate all of the EEO and Federal employee appeals issues into one consolidated court. We think that would be better; it would be simpler, and it would be faster. Managers would understand it better. Employees would get a clearer, faster decision on issues that now hang out there for years and years. But with respect to the implementation, as we move toward agencies leaving Title 5, I think it's very important to implement systems, as the Comptroller General said, that can pass the show-me test.

If the agencies simply implement these new systems where the performance appraisal is the determining factor on what your pay is going to be, and the manager has not effectively communicated the expectation, then the employee is going to be driven to the EEO system. If they think they're a whistleblower, they're going to go to the Office of Special Counsel. They're going to inundate the system with grievances, and so you need a system that makes sense, that's proven, that's credible, that's transparent, where the managers are trained to carry it out – and if you don't have that, I think you're going to have a breakdown in the system.

Even though I heard both of our luncheon speakers say that they think the GS system is not equal pay for equal work, the fact of the matter is, as a lawyer, if I've got two GS-13s, step 3s being paid the same and I go to court and prove they're doing very different work, I get nowhere. The law presumes that those two are equally placed and they're getting equal pay for equal work. But as a matter of reality, as a matter of what's right, it's not equal pay for equal work. Some of these reforms are necessary, but when done, the systems to validate them, the systems to let employees have outlets, and the systems for oversight have to be in place or everything else, in my opinion, is going to break down.

[33] Whistleblower Protection Act of 1989.

Preserving merit and avoiding prohibited personnel practices

MR. McPHIE: Scott, what should agencies be particularly aware of as they gain more flexibility in managing their workforce to preserve merit and avoid prohibited personnel practices?

"…[E]mployees need to be reassured, and managers need to be aware and reassure their employees, that due process has been preserved.."

MR. BLOCH: Thank you, Neil. The key for everyone to remember is that due process has been preserved in the National Security Personnel System and the DHS pay-for-performance system. And employees need to be reassured, and managers need to be aware and reassure their employees, that due process has been preserved. The prohibited personnel practices that I enforce at the Office of Special Counsel, throughout the executive branch, have been preserved and in some cases even expanded in these new personnel systems.[34] So employees are losing a certain amount of due process structurally, but it's just being changed to a different kind of more streamlined system for adverse actions.

"With regard to the prohibited personnel practices, what we do is we prosecute, we enforce, we investigate. But we also educate, and that's a key factor."

With regard to the prohibited personnel practices, what we do is we prosecute, we enforce, we investigate. But we also educate, and that's a key factor. As Bill has stated emphatically, we have to have training. Employees need to be aware that they retain their whistleblower protections under Title 5, U.S.C. 2302(b)(8). They're supposed to retain their (b)(1) protections, of course, which are EEO non-discrimination provisions, and their (b)(9), which is a corollary to (b)(8), which is reprisal for exercising appeals rights. Managers need to be aware that these rights are preserved. The prohibited personnel practices are going to be retained. The merit system principles are going to be retained. And so as they look to that, they need to be aware that the same kinds of problems that we see in the enforcement of these statutes are going to be present in their systems as well.

I agree with Bill that most of the cases that we see are whistleblower reprisal cases – a very complicated area of the law. Even if you really feel that you're a whistleblower, and 9 out of 10 people are going to agree you're a whistleblower, and I think of you as a whistleblower, and the outside world thinks of you as a whistleblower, the courts may say, "Well, you reported it to the wrong person;" or, "It was on your off-day." There may be many exceptions and hoops you have to jump through, which is unfortunate because, really, what you are is a whistleblower. But the law says you're not going to have those protections. A lot of time and energy and resources are spent figuring out whether a case is really a whistleblower reprisal case. Was there knowledge on the part of the supervisor? Was there a failure to report it? Was there constructive knowledge?

[34] Implementation of the DoD and DHS appeals systems are currently on hold pending court appeals in NTEU v. Chertoff and AFGE v. Rumsfeld. On June 27, 2006, the United States Court of Appeals for the District of Columbia rendered its decision on DHS's appeal.

Additionally, we see areas such as unauthorized preference where employees, in their gut, again, feel that somebody got an unfair advantage; they got a leg up. But not every preference that someone receives for a job is unauthorized or illegal. And so sorting out which ones are authorized and which ones are not can be laborious and difficult to understand. Some of these things, again, can be weeded out in training and we try very hard to do that. Some of them are going to remain regardless because they're just complicated things, and even lawyers have a hard time understanding them sometimes and keeping them all straight in their heads. So it should be no wonder that employees misunderstand them or managers misunderstand them.

Due process

MR. McPHIE: Let me ask a follow-up question for clarification. As you know, due process is used by everybody and may mean different things. Constitutional due process is minimum due process. When you talk about due process being structurally changed, which due process are you referring to – minimum due process or the due process-plus which Federal employees enjoy?

MR. BLOCH: There's clearly been a shift in the new personnel systems that DHS and DoD are implementing, and the major one is that there's a streamlined process for having adverse actions determined within the agency. The rights that employees would normally go to MSPB, which are full-bodied, full-throated due process rights, are going to be streamlined in the agency. They will retain appeal rights to MSPB, but not on a de novo basis – only on the basis of the improper application of law or internal inconsistency with the fact-finding of the internal review board. So that is a significant change. But the emphasis I wanted to make is that due process rights are there, the merit system principles are required to be applied there, and so are the prohibited personnel practices. In any event, all employees retain their existing rights under (b)(1), (b)(8), and (b)(9).

Whistleblowing

MR. McPHIE: Let me ask you one follow-up question and then I'll turn it over to the audience, who may have some questions of their own. From time to time there's been some indication of dissatisfaction with the whistleblowing process in the Government, and from time to time that has manifested itself in an attempt to change the law around whistleblowing. From your case process and trial attorney standpoint, do you find the law as it presently exists to be a hindrance in representing your client, a whistleblower, or do you find it to be helpful in representing your client?

MR. BRANSFORD: It depends on who my client is, whether he or she is a whistleblower or a manager accused of reprisal, and it depends on what it is she or he is accused of. To some extent it's a help because without the law you wouldn't be able to do anything. But I will tell you quite frankly, if you just complained to your supervisor or if you only complained because you're doing your job, I'm not sure that the law is really helpful and really protects whistleblowers. Most managers and most executives can work effectively and understand their obligations to not retaliate against a whistleblower. For that reason, the Senior Executives Association has actually supported the whistleblower reform in the Senate on those two points.

The SEA[35] also raised a concern about an area that most managers have a concern about, and that's: What about the employee who just disagrees with policy? For example, you make a policy decision – and the policy decision has legal aspects to it. The employee knows you are a whistleblower if you report a violation of law, rule or regulation. The employee thinks that management has incorrectly interpreted the law, but management has a reason for their interpretation. The employee then blows the whistle on what he or she views as an illegal interpretation – and it becomes a policy dispute. Then the employee becomes extraordinarily difficult to manage. Basically, the employee thinks that he or she is right, and doesn't want to listen to the supervisor. The supervisor needs to do something about that and it looks like whistleblower reprisal. Of course, all of you recognize that's *White v. Lachance*. That's the irrefragable-proof case by the Federal Circuit Court of Appeals that was so criticized; but when it came back, the right decision, I think, was ultimately reached. If the agency has a basis for its legal finding, then the employee is wrong. The employee can be disciplined in that situation, and yet the employee may very well feel like, "I'm just a whistleblower." So in the current version of the legislation that I think is pending in the Senate, there is a provision in there about policy disagreements not being protected as whistleblower reprisal.

So I think I would like to see those reforms. One bill that's in the Senate has a provision that would allow employees to go, I think, to any Circuit Court of Appeals for a 5-year trial period. The SEA does not agree with that because we think the law's complicated enough. If you have different Circuit Courts of Appeals issuing different decisions on what the whistleblower law means, I don't think Federal managers will ever know what's expected of them.

MR. McPHIE: I think my time for this segment is up, although, you know, this is a very interesting area, and one, I suppose, that lots of you have interest in. At this point I invite you to direct your questions to either of these gentlemen.

[35] Senior Executives Association.

Educating employees about their appeal rights

AUDIENCE: I wanted to ask Mr. Bransford – you were talking about employees not understanding their rights under (b)(1) and (b)(8) – and I know Mr. Bloch mentioned training programs that you use. There's also a 2302(c) program that requires agencies to educate their workforce about their appeal rights.[36] Could each of you talk about that program? Mr. Bransford, do you think the agencies are doing a good enough job with that? What else needs to be done? And, Mr. Bloch, could you talk about the educational process, what you look for and how we can get certified? Because I've looked on your Web site and found a list of agencies that have applied for certification under the program but they were on there for like 4 years and never got certified. So can you talk about that as well?

MR. BRANSFORD: Sure. I think there is real inconsistency in how agencies inform their employees of their rights. I also think that for many employees, even when they are constantly told over and over what their rights are, very often it doesn't sink in. They still don't understand that they have to prove discrimination to file an EEO complaint; they have to disclose outside their immediate supervisor some violation of law, rule or regulation. So I think that we can constantly improve on that. I also think that in a simpler system it will be easier to do the training.

MR. BLOCH: Well, we're very proud of our 2302(c) certification process, and we do have about 24 agencies that are in process pending. Our most recent certificate awardee – we had a ceremony, in fact, at their agency – was none other than Neil McPhie and the MSPB. So we do have the opportunity and the privilege to go to agency heads and present them with certificates that certify that they have gone through a lengthy process of thoroughly educating employees on whistleblower protections, the Hatch Act, all of the various protections people have under our statutes. And it's a worthy program. It is true some agencies have a lot of different priorities and a lot of requirements that have been placed on them, and so maybe they have shifted resources and haven't quite completed their training. Maybe. But really, by and large, I sign probably a couple of certificates a month. Maybe I get a couple more than that; sometimes a little bit less in any given month.

So I'm pretty well satisfied that agencies are taking this seriously. We have put out DVDs recently to increase the number of people who can get training in whistleblower protections, the PPPs and the Hatch Act. This is in addition to the live training that we do. We're also getting a lot more reach with GoLearn.[37] We have training programs that are utilized there.

[36] 5 U.S.C. 2302(c).

[37] The Government's e-learning portal at http://www.golearn.gov.

So this is a very good program, but I think there's always more that can be done and we're trying to find new and improved ways – innovative ways – to get the word to employees. I try to get as much exposure as I can about whistleblower cases that come down and try to get people to be aware of their rights, but also the fact that they're going to receive appropriate protections if they're entitled to them. There is a bit of a rub in there. I mean, to know if you're entitled is difficult, and if you're not, then you can be exposed. But even if you aren't right about being a whistleblower or you don't get everything perfectly right but you are reprised against, you still are entitled to protections if there's a good-faith belief there, and/or if the manager perceived you to be a whistleblower. Now, that law hasn't been fully developed; it's been developed a little bit, but it hasn't been fully developed. But this is something that we take very seriously and so we want employees and managers to be aware that just because somebody doesn't get through all the hoops properly and figure out the law just right, that you're still going to be entitled to a level of protection.

MR. McPHIE: I think we have time for one more question. Anybody have a question? Oh, well, two more questions.

A common role

AUDIENCE: What do you think agencies should be doing more of to avoid having cases come to your attention?

MR. BLOCH: Well, I think the first thing we all have to acknowledge is that when you manage, there's a certain fear that if I start telling people about their rights that they're going to file against me – that they're going to have power over me. And we need to get beyond that. We need to start feeling more positive about the merit system and about our common role. I'm a manager, but I'm an employee as well. We are in this together. To a large degree, we have to pull together. And so, the more education you do – the more that you, as a manager, are seen as active in this and really engaged in the process and really desirous to get to it right and to do a better job – the more employees are going to fear you less and have a better sense of the idea that there's a common goal that we have and there's a common good that we're trying to achieve together. More education, more seminars and allowing employees to ask questions – I think these are important issues.

"We need to start feeling more positive about the merit system and about our common role. I'm a manager, but I'm an employee as well. We are in this together."

I hear a lot of feedback from managers. When they finally get it and they figure out that this is good for the agency, and that it's going to make us more productive – there is a lower incidence of misunderstanding. And a lot of what we see has elements of misunderstanding between management and employees, and I think the more communication about these issues there is, the better.



MR. BRANSFORD: I would agree that the training/education of the managers regarding what's expected of them, coupled with a leadership commitment can reduce misunderstanding. But quite frankly, human beings, being human beings, can't eliminate these workplace problems, which is why you need an Office of Special Counsel and MSPB to monitor these things constantly.

MR. McPHIE: We're out of time but we have one final question.

DoD's streamlined due process

AUDIENCE: I think it's kind of a loaded question specifically for Special Council Bloch. I apologize beforehand. You indicated under the new DoD system that due process is preserved but the system is more streamlined. I was wondering what elements that you found were streamlined under the new process that DoD has proposed?

MR. BLOCH: Well, my understanding is there's a 15-day notice requirement. That's a much quicker timeline for employees to get a decision about their adverse action. This is by far quicker because if you go into the special counsel system, and even though we've totally improved our timelines for cases, it still takes a while; it takes a matter of months. In the new DoD system, employees can get a decision in 15 days, and then if they want to appeal that, they can go to the MSPB. And I know for a fact the MSPB is much better with its timelines. There's a much more streamlined process that is contemplated there. Now, in practice, what will happen is anyone's guess, but I think it's going to be a lot quicker.

There's more streamlining of the process, but I don't know what exactly it's going to look like. It's not fully developed, but I will venture to guess that you're not going to have as much in the way of depositions and hearings; fewer procedural, due process kinds of things are going to be involved there.

MR. McPHIE: See what I mean? Due process means different things to different folks, and you always have to ask people first, "What do you mean by due process?"

Thank you very much, Scott. Thank you very much, Bill. And thank you very much, audience.

Panel 3

Getting the Best to Perform Their Best: Practicing Merit in Performance Management

Moderator: **Robert M. Tobias**
Director, Institute for the Study of Public Policy Implementation
American University

Members: **Mangala P. Gandhi**
Manager for Selection, Evaluation and Recognition
U.S. Postal Service

Jesse E. Hoskins
Human Capital Officer
Government Accountability Office

Introduction

MR. TOBIAS: I found the title of this panel kind of interesting: "Getting the Best to Perform Their Best: Practicing Merit and Performance Management." One might say, does that mean there's a juxtaposition between these two ideas, that there's tension between these two, or that they flow together? We'll let our panel enlighten us about this. It seems to me from what I heard this morning that we have these discussions about pay-for-performance in the Federal Government, and it's assumed that pay-for-performance is necessary to attract the best and stimulate them to perform their best. That's sort of the underlying assumption.

What I hear is a real emphasis on pay but little emphasis, struggle or definition on what constitutes performance. What does performance mean? What does it mean to stimulate



L-R: Steve Nelson, Mangala Gandhi, Robert Tobias and Jesse Hoskins

Bob Tobias is currently the Director of Public Sector Executive Education at American University. Prior to his time at American University, he worked for 31 years with the National Treasury Employees Union, serving as its President from 1983 through 1999.

the performance of the best to perform at a high level? Is performance something we know when we see it? Is performance hard work? I often hear people say, "I work hard; I come in at seven, I leave at seven, I'm working hard. Where's my five on my performance evaluation? Where's my five? I'm in on Saturdays, I'm in on Sundays; you can rely on me, boss. I deserve a five on my performance evaluation. Where's my five?"

"We heard this morning, and I think it's true, that without a clear definition of performance, it is not possible to bolt on a pay-for-performance system."

Is performance proven competencies? We heard David Walker talk at lunch about the hard work that GAO did to identify competencies in their positions. If we prove that we have these competencies, is that performance? Is performance the measurable use of these competencies? Is that what performance is, or is it a balance between the acquisition of competencies and the measurable achievement of the use of those competencies? Is performance individual outcome goals that are aligned with agency outcome goals, or is performance a combination of output and outcome goals? Or is performance simply that which is defined by a person's manager? And once we defined performance, is what we've defined consistent with the merit principles?

We heard this morning, and I think it's true, that without a clear definition of performance, it is not possible to bolt on a pay-for-performance system. If we don't know what performance is, it is impossible to have a pay-for-performance system that is transparent, that is credible. It will indeed be perceived as arbitrary because people will not be evaluated against the same test, and against the same criteria. Very few agencies with whom I'm familiar have done the hard work of defining what performance means in the context of their organization. They haven't decided whether they can actually do outcome goals. They haven't decided the combination by which they'll measure themselves in terms of output or outcome goals. And I suggest, if agencies have not done that hard work, there's very little chance of retaining the best, stimulating those in the middle to perform at a higher level, and/or identifying the non-performers and dealing with them. What is performance? That is the fundamental, unanswered question that we have, I believe, today, and it is question that has to be addressed and satisfactorily answered before we even begin to think about a pay-for-performance system.

So with that, we have two people with us today whose agencies have wrestled with this question about what performance is, how will it be measured and how will it be rewarded. We have Jesse Hoskins, who's the Chief Human Capital Officer at the U.S. Government Accountability Office. Jesse has been at GAO for many years, but he has 30 years of human capital experience. He has 13 years with OPM. He's also worked in the city of Baltimore, the city of Detroit, and the city of Chicago. He has the scars to prove his presence in all of those jobs.

And we also have with us Mangala Gandhi from the Postal Service. In 1984, she started with U.S. Postal Service as a distribution clerk and has had what I would describe as a significant increase in duties and responsibilities in a very short period of time, to where now she's the Manager of Selection, Evaluation and Recognition at the Postal Service headquarters. She's responsible for testing, job evaluations, recruitment, screening, hiring and promotion policies, employee opinion surveys for 700,000 people, and, of interest to us, the pay-for-performance program.

So these two folks are going to enlighten us about the questions that I've raised and the questions I haven't thought to raise. So why don't we start?

The U.S. Postal Service

MS. GANDHI: Good afternoon. As Mr. Tobias said, the Postal Service did have considerable challenges and we wrestled with the problems of how do we really capture pay-for-performance. And given that we have an organization that is spread far and wide from DC all the way to the other side, San Francisco, and everything in-between, including the remotest places of South Dakota and the bottom of the Grand Canyon, how do we get every last person to be on the same page and follow the mission of the Postal Service?[38]

Measuring Performance

Our purpose was to emphasize the organization's success through objective, measurable performance indicators that are linked to the mission of the Postal Service. And we have this one mission, which is delivery and service. That's what we're there for and that's what we strive to do. So we have to align the performance indicators at all levels: at the corporate level, at the functional level – and by that I mean the individual's work unit, like a post office in Richmond or a facility somewhere in Columbus, Ohio – and then to the individual level. How does that person contribute to the organization? We have to look at all three because if we just left it at corporate, then the individual doesn't feel any sense of value or contribution, and if we left it at the unit, then it's like, "Oh, let everyone else do something and I'll just sit back and watch." So we have to break it down to these different levels.

"Our purpose was to emphasize the organization's success through objective, measurable performance indicators that are linked to the mission of the Postal Service."

To do that, we established some performance indicators and numeric targets at and around the business plan. Our business plan is fourfold. It's to improve service, enhance a performance-based culture, generate revenue and reduce costs. Those were our strategies, and we didn't want to sacrifice one for the other. We didn't want to say that we'll reduce costs, but we don't care how employees are treated; or that we'll have a performance-based culture and we'll reduce costs, but let service suffer.

[38] For more information about the U.S. Postal Service's pay-for-performance system, see Ms. Gandhi's slide presentation in Appendix F.

We did not want that; we keep all these four balls juggling. We needed to calculate an overall rating from the results on the indicators and to provide pay actions for each of the possible ratings.

Our overarching strategy was the enhancement of a performance-based culture, and we took two different indicators at the corporate level. One was to reduce OSHA's cases,[39] which are illnesses or injuries, pretty much to enhance our safety. We wanted to make sure that we didn't have any employees injured while delivering or processing mail. The other one was to improve our employee opinion survey and to improve the workplace environment. So those were our corporate strategies. We then made them unit indicators, although it is important at the corporate level to meet these indicators and targets at each level. At the area level, which is the next level down from headquarters, we found some indicators that would tie into the reduction of that goal.

For example, we picked the MVA rate, which is the motor vehicle accident rate. People would ask, "Why would you pick something like that?" Well, folks, we have 216,500 vehicles on the street. If we have one accident, it'll not only cost us, but it injures an employee and that affects the unit; it affects the individual, and productivity. So we felt that that was a very important corporate goal. Therefore, each level, including the lowest level post office, is responsible for reducing the motor vehicle accident rate.

Managing pay-for-performance

The other corporate indicator is the employee opinion survey. We have a survey that we give all 700,000 employees once a year, divided into four quarters. Each quarter we survey 25 percent of the people. The indicators that we target are EEO conversion rate and grievances that go to arbitration. As in OSHA and MVA rates, the EEO conversion rate and grievances also flow down to the lowest level in the organization because we wanted to hold everyone responsible for achieving all measurable targets.

We have two systems that manage our pay-for-performance. One is our national performance assessment – and we'll be talking about that in a few minutes – and then the performance evaluation system. The national performance assessment measures the corporate goals, and the performance evaluation system manages the individual objectives.

The performance indicators, as I mentioned before, are customer service, improved service, improved workplace environment, financial performance and productivity. This is how we measure performance: at the corporate level, officers or executives are measured on achieving corporate goals. Therefore, most of their pay-for-

[39] The Occupational Safety and Health Administration under the U.S. Department of Labor.

performance benefit comes from the corporate goal. As they go further down the organization, the core requirements, which are the individual objectives, get added, so that individuals feel that they have something to contribute and that it's not just a big corporate strategy that they cannot contribute to.

"We wanted to make sure that everyone had a line of sight of the indicators that we chose."

We wanted to make sure that everyone had a line of sight of the indicators that we chose. For example, in order to improve service, we need to improve our first-class overnight delivery, our two-day delivery, the three-day delivery and priority mail. We want to make sure that what we've promised the public is what we will deliver. In order to enhance a performance-based culture, we need to improve employee opinion and reduce injuries. So we measure ourselves on these things.

Finally, we concentrate on generating revenue and making sure we have a total productivity factor. How do we do this? We have an annual performance plan, which establishes the numeric targets on all national indicators. These targets are established by our leadership – stakeholders from our law department, our government relations, marketing, finance, human resources and operations – who get together to determine what the targets are going to be and how each of the targets is linked. These targets are established in the beginning of the year. Then management determines the numeric performance levels on a 15-point scale. We expanded our scale from 1-to-5 to 1-to-15 so that there's more clarity and distinction for each level of performance. And what this also does is help individual employees not only to meet a goal, which is essential, but to ensure that the goal is a stretch goal. That is, if they did better than the stated goal, they would be rewarded.

As an example, we guarantee that 95 percent of the time we will deliver first class mail overnight. If something is mailed and it's due in a one-day area, we expect 95 percent of the time that you will achieve it. If you do, you will be at cell 6. We call each of the 1-to-15 scales, a cell. Based on the 1-to-15 scale, if you deliver your first class mail 95 percent of the time you will be at cell 6. Later I will explain how this translates into something else.

If you're in cell 1, 2 or 3, it means you really have not met the goal. It means that you're a non-contributor, which means in terms of pay, you would get nothing more because you haven't contributed to the success of the organization. If you go beyond 95 percent and make it to a 97.0, which is an exceptional performance rating, then you will get rewarded accordingly for this particular indicator. So all employees understand from the beginning where their priorities lie. Every employee knows what the indicators are and how they're going to be measured. They have a discussion with their supervisors at the beginning of the year about what the national and unit indicators are. They sit and talk about what their core functions are as an individual, and those are also set so that they know from the beginning, if they achieve this, this is what it will translate to.

We have 10 corporate indicators and each one has a different weight, and that depends on what our priority is, and how well we've done in something. If we really need to push performance in, say, revenue generation, we would give it a higher weight because then we get people to think, if you achieve this, you'll benefit and your salary is going to increase because the organization needs you to be concentrating on this.

But we realize that not everyone can work on everything; not every person can work on revenue. So we've broken it down where we have different algorithms for different levels of people in the organization. For example, for EAS[40] postmasters, 80 percent of their salary or their pay-for-performance is based on the corporate indicators and 20 percent on what they do individually. For area and field executives, it is 70 and 30 because we believe there is more that they can contribute on their own because of the programs they can put in place.

These are the 10 corporate indicators and their weights, which translate to 100 percent.[41]

This is an example of a unit indicator – not at the corporate, but at the functional level – for an area human resources manager.[42] The example shows that the human resource manager is now responsible for the safety programs, for EEO, grievances, injury compensation costs and for total operating expenses and deliveries. Someone may ask, "How does an HR manager have any control over deliveries?" Well, they don't have a direct connection to actual mail delivery, but training, hiring the right people and making sure they give support to managers who want to take certain kinds of adverse action against people who are not working have an indirect relationship. This will differ from a finance manager's algorithm because financial managers have some statistical programs. They have retail revenue and so on, so the algorithm we use for an area HR manager is different from that of a finance manager. So each individual pay-for-performance program is almost tailored to individual groups.

This is how we calculate the final rating for a hypothetical field executive. For the corporate indicators, the weight is 35 percent, that is, on a scale of 1-to-15 the

[40] EAS is USPS's executive and administrative salary structure, which applies to executives, professionals, supervisors, postmasters, and technical, administrative, and clerical non-bargaining employees. Salary grades range from EAS-1 through EAS-26.

[41] Corporate indicators: first-class overnight – 10 percent; first-class two-day – 5 percent; first-class three-day – 5 percent; priority mail – surface – 7.5 percent; priority mail – air – 7.5 percent; express mail – 5 percent; OSHA illness and injury rate – 10 percent; employee opinion survey score – 10 percent; national total revenue – 20 percent; and total factor productivity – 20 percent.

[42] Human Resources Unit indicators: motor vehicle accident rate – 15 percent; safety program evaluation – 10 percent; EEO conversion rate – 10 percent; grievances appealed to – 15 percent; cases pending arbitration – 15 percent; injury comp chargeback costs – 15 percent; total operating expense percentage to plan – 10 percent; and deliveries per hour percentage plan – 10 percent.

executive achieved a cell of 9. That translates to a score calculation of 3.15. For the unit indicators, the weight was, again, 35 percent; the executive got a cell 6. That translates to a score of 2.10. This particular individual's contribution was a cell 5, and since individual indicators are equal to 30 percent, it translated to a score of 1.50. The total score is 6.75, which then gets converted to a 7, a cell 7. I will explain what happens afterwards in a minute.

Now, as another example, if this hypothetical executive got a score of 11 on his or her individual contributions, he or she can get a score of 9 since the individual indicators are worth 30 percent. This particular individual moves up two cells for being an exceptional contributor or a high contributor. That's what makes people want to do their jobs and meet their goals as well as the corporate goals.

I have talked about cells that go from 1 through 15. These cells translate to a zero percent salary increase for cell 1 to a 12 percent increase in salary for a cell 15. Cell 15 is not easy to achieve. We have very, very, very few people – I can probably count them on one hand – who get a cell 15 because each year we raise the bar; each year our standards increase.

The final step of our pay-for-performance system is, depending on what category you're in and where you are on your pay scale, you can get up to the maximum allowed. If you're at the maximum, then we pay a lump sum, just like all the other agencies that talked before. There is a differentiation for executives. They can get up to a certain point so they don't get the max the very first time they get into the system. Their raise depends on what quartile they're in.

"I don't think you can have a credible pay-for-performance unless you've got a grounded foundation based on merit and a performance management system that will give you some differentiation of individual performance…."

I have to do some bragging here. The *World at Work* journal said that the United States Postal Service has reached an important milestone. We've had some kudos given to us by different organizations because we spent a lot of time to get this going, so I'll let you read the rest of it and I'll turn it over now to my esteemed colleague.

MR. TOBIAS: You're on, Jesse.

The Government Accountability Office

MR. HOSKINS: Let me address Bob Tobias's question about how we measure performance by saying that there are important aspects of pay-oriented performance management systems. I don't think you can have a credible pay-for-performance system unless you've got a grounded foundation based on merit and a performance management system that will give you differentiation of individual performance throughout your organization.

Establishing a competency-based performance management system

In brief, in 2000, the Government Accountability Office, GAO, established a competency-based performance-management system. Today, the system covers all employees at GAO. There are five different pay plans. What's really important is something that Dave Walker covered quickly. When we rolled out this performance-management system, 85 percent of our employees validated that each one of the competencies was essential to their work – 85 percent.

Not only did we vet the competencies, we also vetted the work activities and performance standards with the entire population. At GAO, we post and communicate significant changes in human capital programs. Like OPM, we post regulations for comment and consider those comments when effecting any changes in our human capital policies and programs. It can sometimes be very time-consuming, but it's really not and it's worth it. I mean, it's better that you get employees' input and ownership of the process before you install it.

We applied our system in 2002, '03, '04 and in '05, but we started performance-based compensation only last year. Prior to that, we used the time for transition purposes, to ensure that managers and employees got accustomed to using the system. In 2003 and 2004, we gave across-the-board raises similar to the rest of the Government. This year was the first time that we used labor cost for GAO employees' across-the-board raises. Our performance management system uses performance standards that are identified by pay band. As you move up the band structure, there is a different set of expectations described for "Meets Expectations" at each band level. Our system has four rating levels that range from Below Expectations, Meets, Exceeds, to Role Model. So the bar is raised as you progress up the band level.

Annually, employees and managers discuss expectations. At the beginning of the rating cycle, employees must meet with their rating official and actually discuss what the expectations are for the annual rating cycle. Even though the standards represent a set of expectations – and there are identifiable links between organizational and unit goals that can be tied into someone's specific job – they still must be discussed annually. After each iteration of a performance appraisal cycle, there's a post-evaluation. We post the results of the ratings throughout the organization.

GAO has an Employee Advisory Council, which is a 26-member council that represents every level and location within GAO. The EAC meets with the Comptroller General quarterly. We provide data on rating results, on promotion results and on pay results. We share the information with the EAC, as well as with the managing

directors at GAO. Once the Executive Committee, the Managing Directors and the EAC have reviewed the data, we post the results on our internal Web site. We try to be very transparent about our performance management and pay system.

Safeguards

Safeguards. The Human Capital Office and the Office of Inclusiveness review just about every major event that takes place at GAO. Whether it's the annual awards ceremony, performance cycle, performance-based compensation decisions, or promotion decisions, we independently review all demographic data. We review it across teams; we review it within teams. Actually, the Human Capital Office looks at the data at the macro level. The Office of Inclusiveness also conducts its independent analysis and review within teams and units. As Dave Walker mentioned earlier, you can see the ratings going up, and I think, maybe we need to tweak the standards a little bit more. Maybe we ought to raise the standards a little bit higher than we have them written now, but they have served us very well.

We also have the Personnel Appeals Board. I've got to tell you how important that is for us. It's an independent agency. We are not under Title 5, but our personnel legislation provided similar entitlements that Title 5 provides for the Merit Systems Protection Board. It is very important for us to have that independent body so that employees can go out and actually get access to an adjudicatory process or system that will afford them employment protection. We have two grievance procedures. We also have an internal IG office.[43] So there are a number of safeguards built into our processes whereby employees can – if they want to – have the opportunity to air their grievances. They can also consult with the Human Capital Office independently and/or with the Office of Inclusiveness. So the safeguards are very important. A validated and credible performance management system with safeguards and an extensive communication processes and system ensure a great degree of fairness, transparency and consistency.

MR. TOBIAS: Thank you. Here's what struck me. I've been here pretty much all day and I've listened to the presentations. And I've listened to the two presentations now, and what we've heard, at least from my perspective, are systems – pay-for-performance systems that have been in place for a period of time – is yours 10 years in the Postal Service?

MS. GANDHI: This particular one for 3 years –

MR. TOBIAS: Three years.

MS. GANDHII: – but 10 years for pay-for-performance.

[43] Office of the Inspector General.

Managing Change

MR. TOBIAS: Ten years total. And what strikes me is there hasn't been much discussion about change management. What strikes me is in the Federal Government – as Dan Blair said, we've had this GS system for 60 years – and people are familiar with it, warts and all. They're comfortable with what they object to, they're comfortable with their knowledge about the system, and now we're talking about creating something new where people don't know how they might be hurt. They will expect to be hurt unless they're disabused of that fear, which is part of an effective change management system. So my question to each of you is, in addition to the regulations, in addition to the processes, in addition to the protections that are in the regulations, and in addition to the vetting, did either one of your organizations look at this as a significant organizational change effort?

"…[T]hrough orientation, education and transition time, we continue to provide information and continuously have a dialogue with the entire population … about where we're going."

MR. HOSKINS: Yes.

This year we installed our first market-based compensation results for all of our positions at GAO. As Dave showed you, for the analyst community, which represents two-thirds of our employees, we have different rates for minimums and maximums. And through orientation, education and transition time, we continue to provide information and continuously have a dialogue with the entire population at GAO about where we're going. We have had a banded system since 1989. We had what was called pay buckets, but it resulted in some folks making more money who had lower scores than others with higher scores. So you had a very inconsistent application of dollars in terms of merit pay, and what we've done is build in some consistency.

The CG is very good at having a dialogue through meetings and in presenting information on video. He telecasts his chats about the changes that are going to occur. And, although I said vetting, it's more than that; it's about a dialogue and an acceptance of any idea or suggestion on a proposal that actually affects everyone.

MR. TOBIAS: What about the Postal Service?

MS. GANDHI: We started this very slowly. We started it in stages because we had to get this message through to 75,000 employees. Initially we started with the executives. We wanted to get the executives on board to find any of the creases that might be in the system, in the process. For the first year, it was only executives. The next year we included the EAS, or the other managerial and supervisory levels. Each time, we started with lots and lots of communications. We talked about it; we included the management organizations and the postmaster associations, and we had a lot of dialogue. We asked them to partner with us in getting this system through. Before we took the first step, we talked about it and talked about it.

Since we wanted it to be all online – and not everyone is excited about working with computers – we did it very slowly. We started it by putting just the objectives in and then the mid-year and the final evaluation. That gave us time to communicate again. It wasn't done in one shot shoving it down someone's throat. We got feedback – what was working and what wasn't working – and we incorporated the feedback. We had coordinators at different levels. We had a coordinator at headquarters, and then we had regional or area coordinators who took it down further. We had special ambassadors at the district levels who explained this procedure. We walked everyone through the process.

I mean, when you say communications, communications, we did so much of that, and even now, today, we do it. Anytime something comes up, we have this mass communication to everyone saying this is going to happen, these are the dates, watch out for these dates, this is when you have to do your mid-years and this is how you will evaluated. And we have focus groups and we take into account what they say to us very seriously. Then we take it up to our leadership to make a decision because not everything is a really good idea. But this change, we did it very gradually.

MR. TOBIAS: Organizational culture is basically "the way we do things in an organization." And most organizations create a culture that they define as successful. People don't get up in the morning and come to work and say, "I'm going to behave in a way that's going to get me fired;" or, "I'm going to behave in a way that's going to undermine the goals and objectives of the organization." They behave in a way that's consistent with the way their organization behaves. To wit, culture is the way we behave, the way in which we get things done. So what we're talking about here is changing from one set of behaviors to a different set of behaviors, from announcing in advance what performance goals are, having regular conversations, and then having a meaningful conversation at the end, to e-mailing evaluations. Right? [Mangala and Jesse,] you have the right to remain silent; you don't have to admit to that. There are a lot of agencies where you slip the evaluation under the door and hope the person on the other side is on leave.

MR. HOSKINS: That does not happen at GAO.

MR. TOBIAS: Right? So you have to have a conversation about the evaluation.

It seems to me that what is being said here about communications and about changes in processes and procedures is that the goal is a significant change in organizational culture. I wonder – and I'm going to ask the audience – if your agencies are looking at changing their current performance management system to include pay-for-performance. Or are your agencies thinking in terms of simply an implementation of regulations or a significant organizational change effort?

Anybody? How are your organizations thinking about this? Or are they thinking at all?

"…'I'm going to lead by modeling the changes I would like others to use.'…It seems to me that that's a significant change in behavior of those who lead organizations. It means, 'What do I need to do differently,' as opposed to, 'What you need to do differently…"

AUDIENCE: I think part of it is a cultural change because if you're moving from the traditional way of doing business, you're going to have to get everyone onboard to move in a different direction. The panel members stressed the importance of education. I think we've heard – that's pretty much been a theme through the day – that getting your managers and employees to buy into the process, getting them trained on what the end goal or the benefit is, is a major task. I think that until you can get people to change their way of thinking from "this is how we've always done business" to "this is how we need to change the way we do business," you're not going to make any progress.

MR. TOBIAS: One thing that struck me about GAO and the Postal Service – which sometimes does not happen in organizations – is their leadership said, "What must I first change?" as opposed to "How must I change those I lead?" Both of them said, "I'm going to start this at the top. I'm not going to start it at the bottom. And I'm not going to start it at the top by dictating what the bottom is going to do." Rather, "I'm going to lead by modeling the changes I would like others to use." Would that be right?

MR. HOSKINS: I agree with that, definitely.

MS. GANDHI: Absolutely.

MR. TOBIAS: It seems to me that that's a significant change in behavior of those who lead organizations. It means, "What do I need to do differently?" as opposed to "What you need to do differently to get our goals," right? Does that make sense?

AUDIENCE: I think there is an issue, though. This need to have a pay-for-performance system is not one that many governmental leaders embrace personally.

MR. TOBIAS: Right.

AUDIENCE: This is a system that, for whatever reason, we have been told by organizations that control our budgets, or by the legislature, that pay-for-performance is the answer to our troubles. Whereas it's the seasoned Government executives and managers' job to listen to the policy and translate the policy, the truth is, because it comes so close to home, it's a very hard thing to adopt. There is a period of adjustment where top presidential appointees and senior executives – senior executives more than presidential appointees – have to absorb and incorporate that policy. Truthfully, we do change all the time in program areas, mission areas. That's very

natural, very instinctive. But when you're talking about personnel matters, most m anagers are engaged in mission-oriented things, and they depend on HR to take care of them.

MR. TOBIAS: That's right.

AUDIENCE: And when your HR guy knocks on your door and says, "We've got this regulation," you know, that's a very different thing. I think one of the struggles of pay-for-performance right now is that I don't think that the senior executives believe that this is the answer to improve the Government, and that this is no more than the various reorganizations that we have experienced in the past.

MR. TOBIAS: How about others?

Functions of pay

AUDIENCE: Is there some inherent tension between a pay-for-performance system that's focused heavily upon pay and the notion, as some people said early on, that people come to the Government for reasons other than pay? Now, if your motivation is not pay, but the reward is pay, is there sort of a disconnect? Maybe in some organizations, the expectations of their employees are quite different. As I understand it, the experts are split or at odds as to whether pay is a motivator or a de-motivator. I don't know what it is. I'm not an expert, but I wonder based on what people were saying here today.

MR. HOSKINS: I think people do want to work for the Government for a higher purpose. I think that's the bottom line. I just think that for the sake of the taxpayers whom we serve and Congress, we need to make sure that individuals do meet a standard, a high standard. Compensation is just one piece. We offer other things that are just as attractive for retention purposes. That includes training, learning experiences, development and max-flex telework.

"... [T]he number one factor which, if improved, would improve organization performance is effective leadership. Number two is skills-mission match."

MR. TOBIAS: I don't know whether this is true, but as Max Stier mentioned this morning, the Partnership for Public Service and my Institute at American University do the Best Places to Work in the Federal Government analysis.[44] Of the 230 organizations in a statistically valid sample, the number one factor which, if improved, would improve organization performance, is effective leadership. Number two is skills-mission match. It can be argued that if an agency effectively created, designed and implemented a performance system, those in the workplace would sense a greater connection with their leadership, and if competencies were part of the effort, they may end up having their skills more closely aligned with organizational results.

[44] See http://www.bestplacestowork.org.

So it can be argued that the exercise – if an agency actually did what's required and did it well – would result in significant increases in leadership scores, skills-mission match and employee engagement. That might happen; at least it could be argued.

Steve?

AUDIENCE: I totally agree with that, Bob, and I think the question that Chairman McPhie raises – or observes – is a very, very important one. I've never been convinced that pay or compensation is a major motivator at all, but it sure can be a de-motivator. In an organization where people do not perceive that there is fairness or in an organization where managers simply ignore poor performers or reward everyone exactly the same – and I think that's part of the problem with our General Schedule – those issues can surface and can serve as de-motivators. But I totally agree that pay in and of itself, if everything else is relative, is certainly not one of the major motivators, but it certainly can be a de-motivator.

MR. TOBIAS: Would you agree with this, Steve? If we accept your thesis here that pay can be a de-motivator, and if done right at least it achieves some level of neutrality where the best might come and work, isn't there a risk that a badly designed performance management system – a badly implemented pay-for-performance system – will drive down productivity and employee engagement? Wouldn't that be right?

AUDIENCE: Yes, I agree. And I think that's why I totally agreed with Dave Walker when he said it's one thing to have the authority to implement; it's another thing to be certified or to be prepared to implement. And as so many of our speakers have said, if you don't have a credible, transparent, accepted performance-management system – that is, a foundation for what you need to do with adequate training and communication – you're better off not doing it, I think.

MR. TOBIAS: Let's have questions from the audience for the presenters.

AUDIENCE: I have a question for Ms. Gandhi. What system do you use to try out these measures that you've put into place for your performance system?

MS. GANDHI: Our measurement system is called the National Performance Assessment System. All the numbers, the scores that we get, are fed into that system and it automatically generates a scorecard each month, if that's how we're measuring certain things, or quarterly, if that's the case.

MR. TOBIAS: Yes, Mr. Adkins?

Confronting employee skepticism

AUDIENCE: There is considerable skepticism about whether the connection of performance to pay is more direct or whether these systems will just be another opportunity for reverting to patronage and favoritism. What did your organizations do to confront that skepticism and to make sure that your system did not result in what people fear – that it is a system based on favoritism and patronage?

MS. GANDHI: The numbers that come out of the system are objective measures, especially for 70 percent of the performance. The management organizations were skeptical about the 30 percent, which is semi-subjective. It's the core goals, the individual goals. What we did for the field was to develop goals and core requirements that are tied to the function of the organization. It isn't something that an individual manager could sit with an employee and say, "I want you to do this." They get a list that they can select from, and there are parameters that actually guide the manager as to what is acceptable or considered good performance. So there is still a little bit of subjectivity. That can never be taken away, but we were able to convince most of the people that these measures were objective and valid.

"... [T]here is still a little bit of subjectivity. That can never be taken away, but we were able to convince most of the people that these measures were objective and valid."

MR. HOSKINS: After the second iteration of installing the performance management system and allowing for performance-based pay, employees were concerned about the consistency of ratings. We found that ratings in one team were different than another team based upon the reviews of team averages. Some teams rated higher and some teams rated lower. To address any inconsistency, the contractor that conducted the market-based compensation survey recommended a solution for us. The solution was to standardize the scores across the teams to eliminate the differences between raters.

What we ended up with is individualized pay decisions. If I were in Team A and someone was in Team B, and if we got the same SRS score (standard rating score), we would get the same value whether it's a change in base pay compensation or a one-time cash bonus or a combination. It would be the same amount.

Some employees were concerned about negative standard rating scores. But we adjusted the scores to represent the results in a positive number.

MR. TOBIAS: Yes, sir.

AUDIENCE: I just wanted to react to Jesse's comment, and that is in standardizing the scores, how does that account for organizational units that are truly out-performing other parts of the organization, and as a result, should have been rated higher? Is standardizing the process then neutralizing that?

MR. HOSKINS: It may. It may affect that. I hadn't thought about it in that context. But as we look at all the data coming from the rating results, the executive committee (EC) is always briefed, and that includes Dave Walker, the Chief Operating Officer, the Chief Administrative Officer and the General Counsel. We brief them on the results stemming from the ratings. They know what the annual goals and results were, and they can see whether a team met or did not meet their goal. So I am assuming the EC considers team goals against the rating results. I am sure the EC compares the performance goals against the rating results and may decide what action to take. I hadn't considered that. It's a good question.

MR. TOBIAS: Other questions? Yes.

AUDIENCE: The managing directors didn't have the authority to lower those scores?

MR. HOSKINS: Oh, no. That would be a prohibited personnel practice on our part if we actually turned around and lowered the scores. I mean, you've got the rater and the reviewer agreeing that those were the ratings, and our PAB can accept prohibited personnel practices. I think what you describe may be one. I don't think we want to be in the business of doing a forced distribution because that's where we might end up, and that's not where we want to be. We want people to apply the standards as they are written.

"We had a real intense. . .series of training sessions on how to have difficult conversations. . . [E]very SESer and director at GAO had to go through this mandatory training, and it was very helpful in the implementation.

The managing director for the Office of Inclusiveness and I have separate conversations with the managing directors about their results. We ask them to review and apply the performance standards as they are written.

That's what some may say, but Bob Tobias gave us our earlier education on the performance management system. We had a real intense – and I just want to give him a commercial here since you spoke up – series of training sessions on how to have difficult conversations. And every SESer and director at GAO had to go through this mandatory training, and it was very helpful in the implementation. But getting to your question, that's kind of like a forced distribution and we don't do that.

MR. TOBIAS: Interestingly enough, now that Jesse raises this, the GAO did invest heavily in what I was talking about before: changed behavior. Folks in GAO, be they analysts, be they lawyers, be they workers in their offices and not working a lot in teams, recognized that the idea of a new performance-management system would require different behavior.



And so they not only did a one-and-a-half-day training, but followed it up with four facilitated sessions in groups of five SES folks applying what they had learned in the training session with the people they manage. So it wasn't just a one-and-a-half-day session and then go-back-to-your-office-and-put-the-material-on-your-shelf kind of thing. There was a follow-up over a period of months that I still hear from some folks in GAO who say, "Yeah, I remember that and I did it, but it didn't work;" or, "I remember that and, boy, I did it and it worked."

Other questions?

AUDIENCE: Jesse, one question. I imagine that there are folks who, despite your best efforts, you cannot satisfy. If they're dissatisfied with what they got, they have a right to, I suppose, go to your Personnel Appeals Board?

MR. HOSKINS: Correct.

AUDIENCE: I know you said the Board was independent. My question is: Is the Board's decision final?

MR. HOSKINS: The Board can order corrective action and can also order discipline in some matters.

AUDIENCE: And that's final.

MR. HOSKINS: That's final.

MR. TOBIAS: Thank you very much for your attention. Thank you very much for hanging around until the very end. We on this panel appreciate it. Thank you.

Closing Remarks

Steve Nelson
Director, Office of Policy and Evaluation
Merit Systems Protection Board

I wanted to say that this was a very fun day for us. We are pleased to be able to host this. And I wanted to say thanks to Chairman McPhie and Tracey Watkins, our Chief of Staff, for supporting this and for their active participation and support all day long. Thanks also to Vice-Chairman Rose and to Member Sapin for staying with us all day. And thanks to all of you for staying with us.

"…[T]hese flexibilities really require us to get our HR systems aligned with what our organizational needs are.."

I realize that the only thing standing between you and getting out to enjoy this glorious day is me, so I won't keep you very long – I won't try to go back and summarize each of these sessions. But I think there were a number of key points that came out of what we heard today: one, that there isn't a certain right or wrong way to practice merit. I mean, we heard from our very first panel of the varied numbers of ways of matching whom we hire to what the organization really needs. And I think that's what we're looking at in all of these sessions. Every one of these initiatives that took us away from Title 5, while many of them were related to pay, their systems still have to address how to attract and retain people and motivate them to perform their best. Now that's true not only in FIRREA agencies, but it's also true everywhere. Therefore, these flexibilities really require us to get our HR systems aligned with what our organizational needs are.

So I will conclude my remarks and say thanks to all of you. If there is anything that we can do for you in terms of follow-up after this conference, please let us know. We plan on making a record of the conference, and we will certainly be in touch with all of you to make sure that you get a copy of it. Any last-minute questions or concerns? All right, well, thank you all very much for coming.

Program

8:00 A.M.	REGISTRATION
8:30 A.M. (First Amendment)	WELCOMING REMARKS *Steve Nelson,* Director, Office of Policy and Evaluation Merit Systems Protection Board
8:45 A.M. (First Amendment)	OPENING REMARKS *Neil A. G. McPhie*, Chairman Merit Systems Protection Board
9:00 A.M. (First Amendment)	PANEL DISCUSSION ON RECRUITMENT AND PLACEMENT **"Hiring the Best: Practicing Merit in Recruitment and Placement"** **Moderator** *Daliza Salas,* Director of Human Resources Department of Labor **Panelists** *Thomas J. Hogan,* Deputy Assistant Secretary, Human Resources Management Department of Veterans Affairs, VA Health Administration *Marianne Myles,* Director of Human Resources for Recruitment, Examination and Employment Department of State *Ronald P. Sanders*, Intelligence Community Chief Human Capital Officer Office of the Director of National Intelligence
10:15 A.M. (First Amendment)	BREAK
10:30 A.M. (First Amendment)	A CONVERSATION ABOUT PAY MANAGEMENT **"Paying the Best: Pay Management Practices in a Flexible System"** **Moderator** *Max Stier,* President Partnership for Public Service

Panelists
Robert Kirkner, Acting Chief Human Capital Officer
National Institute of Standards and Technology

Cynthia T. Petitt, Deputy Comptroller for Workforce Effectiveness
Comptroller of the Currency

Alton Ressler, Human Resources Officer
Non-Appropriated Funds, Fort Belvoir

11:45 A.M. (Holeman Lounge) — LUNCH BUFFET

12:15 P.M. (Holeman Lounge) — LUNCH SPEAKER
"The Merit System Principles and HRM Reforms"

David M. Walker, Comptroller General
Government Accountability Office

12:40 P.M. (Holeman Lounge) — LUNCH SPEAKER
"The Role of OPM in Preserving Merit in a Flexible Personnel System"

Dan G. Blair, Deputy Director
Office of Personnel Management

1:00 P.M. (Holeman Lounge) — AN INTERVIEW ON MERIT AND THE PROHIBITED PERSONNEL PRACTICES
"Preserving Merit and Avoiding PPPs in a Flexible HRM System"

Moderator
Neil A. G. McPhie, Chairman
Merit Systems Protection Board

Panelists
Scott J. Bloch, Special Counsel
Office of Special Counsel

William L. Bransford, *Vice Chair, Public Employees Roundtable, and General Counsel,*
Senior Executives Association

1:45 P.M. (First Amendment) — BREAK

2:00 P.M. (First Amendment)	PANEL DISCUSSION ON PERFORMANCE MANAGEMENT **"Getting the Best to Perform Their Best: Practicing Merit in Performance Management"** **Moderator** *Robert M. Tobias*, Director Institute for the Study of Public Policy Implementation American University **Panelists** *Mangala P. Gandhi*, Manager for Selection, Evaluation and Recognition U.S. Postal Service *Jesse E. Hoskins*, Human Capital Officer Government Accountability Office *Phillip Reynolds*, Senior Vice President for Human Resources Tennessee Valley Authority
3:15 P.M. (First Amendment)	CLOSING REMARKS *Steve Nelson*, Director, Office of Policy and Evaluation Merit Systems Protection Board
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Biographies of

Speakers, Moderators and Panelists

Dan G. Blair

On February 13, 2002, the United States Senate unanimously confirmed Dan G. Blair as Deputy Director of the U.S. Office of Personnel Management.

Mr. Blair was nominated by President George W. Bush on December 20, 2001 to serve as Deputy Director of OPM. In addition to serving as Deputy Director, Mr. Blair was Acting Director of OPM for five months prior to the confirmation of Linda M. Springer as Director in July 2005.

Mr. Blair has OPM-extensive experience in the civil service sector, having worked for nearly 17 years on the staffs of both House and Senate committees charged with Federal civil service oversight.

Mr. Blair served as Senior Counsel to Senator Fred Thompson (R-TN) on the United States Senate Committee on Governmental Affairs. Mr. Blair was responsible for the review of legislation and policy affecting the Federal civil service, the U.S. Postal Service, the Federal budget process, Government ethics and Federal lobbying reform. He served as the principal Governmental Affairs Committee staffer on the House and Senate conference committee charged with developing a new personnel system for the Internal Revenue Service as part of the overall IRS Restructuring and Reform Act of 1998. Mr. Blair also was responsible for Committee work establishing a long-term care insurance program for Federal employees and the uniformed services and reforms for the Federal Employees Health Benefits Program and life insurance programs.

Prior to joining the Committee on Governmental Affairs, Mr. Blair served as Staff Director for the House of Representatives Subcommittee on the Postal Service. Mr. Blair was responsible for directing the Subcommittee's oversight of the U.S. Postal Service and directed the development of comprehensive postal reform legislation.

Mr. Blair also served as Minority General Counsel for the House of Representatives Committee on Post Office and Civil Service from January 1985 until December 1994. While in that position, Mr. Blair was responsible for helping design the Federal Employees Retirement System and for developing legislative initiatives reforming the

Federal Employees Health Benefits Program. He also developed legislation establishing a living benefits program for employees and retirees covered by the Federal Government life insurance program.

As Deputy Director, Mr. Blair represents OPM on a number of important external initiatives and has been responsible for many internal reform efforts. He has headed OPM's effort to "ix the hiring process" for the Federal Government and has been actively seeking ways to provide agencies with the tools to streamline and reform their processes in this area. He chairs OPM's critical outreach program to veterans through his work and meetings with veterans service organizations. In addition, Mr. Blair sits on the President's Council on Integrity and Efficiency, which was established by executive order to increase the professionalism and effectiveness of Inspector Generals personnel throughout the Government. Mr. Blair has testified for OPM before the U.S. Senate and the U.S. House of Representatives committees on a variety of issues.

Mr. Blair was born and raised in Joplin, Missouri. He received a Bachelor of Journalism degree from the School of Journalism at the University of Missouri-Columbia in 1981 and his Juris Doctor from the School of Law at the University of Missouri-Columbia in 1984. He and his wife, Michele, reside in Washington, D.C.

Scott J. Bloch

On June 26, 2003, President George W. Bush nominated Scott J. Bloch for the position of Special Counsel at the U.S. Office of Special Counsel. The U.S. Senate unanimously confirmed Mr. Bloch on December 9, 2003. On January 5, 2004, he was sworn in to serve a 5-year term

Mr. Bloch bringsover 17 years of experience to the Office of Special Counsel, including litigation of employment, lawyer ethics, and complex cases before state courts, Federal courts and administrative tribunals. He has briefed and argued cases before state and Federal appellate courts and is admitted to practice in the United States Supreme Court.

From 2001-2003, Mr. Bloch served as Associate Director and then Deputy Director and Counsel to the Task Force for Faith-based and Community Initiatives at the U.S. Department of Justice, where he worked on First Amendment cases, regulations, intergovernmental outreach and programmatic initiatives. Before serving in the Justice Department, he was a partner with Stevens & Brand, LLP, of Lawrence, Kansas, where he practiced in the areas of civil rights law, employment law and legal ethics. Mr. Bloch tried jury trials before state and Federal courts, representing employees

and employers in cases involving whistleblower and other retaliation claims, as well as civil rights claims. He worked on important cases that set precedents in the field of legal ethics, including a groundbreaking Texas case that changed the way plaintiffs' lawyers handle mass tort cases.

Mr. Bloch served as chair of his county's Bar Ethics and Grievance Committee, investigating cases of alleged breaches by attorneys of ethics rules, and making recommendations to the state Supreme Court on disciplinary action. He also served on the state board of discipline, hearing testimony and legal arguments, and made findings on appropriate discipline of attorneys. For five years, he served as an Adjunct Professor at the University of Kansas School of Law.

Mr. Bloch earned his Bachelor's and law degrees from the University of Kansas, where he graduated Order of the Coif, and served on the Boards of Editors of *The Kansas Law Review* and *The Kansas Criminal Procedure Review.*

Mr. Bloch has published various articles, including "The Judgment of History: Faction, Political Machines, and the Hatch Act," published in the *University of Pennsylvania Journal of Labor & Employment Law* (7 U. Pa. J. Lab. & Emp. L. 225 (2005)), and "Don't Bury the Hatch Act: Hidden Dangers for the Unwary and Politically Active Prosecutor's Office Employee," published in T*he Prosecutor* in the September/October 2004 issue (Vol.38/Number 5, Sept/Oct 2004).

He lives with his wife, Catherine, and their seven children in Alexandria, Virginia.

William L. Bransford

William L. Bransford is a partner in the law firm of Shaw, Bransford, Veilleux & Roth, P.C. (SBVR) where he has been practicing since 1983. His practice concentrates on the representation of Federal executives, managers and employees before the U.S. District Courts, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Office of Special Counsel, the Offices of Inspector General and with offices that adjudicate security clearances.

Mr. Bransford is currently serving as General Counsel and lobbyist for the Senior Executives Association. He also advises several small Federal agencies on matters pertaining to Federal personnel and employment law, and represents private sector employers and employees on employment law issues.

Mr. Bransford is a frequent lecturer, sharing his expertise on Federal employment law at conferences and seminars designed for Federal supervisors, executives and employee relations professionals. Mr. Bransford has written numerous publications on federal employment law, and is co-author of the guidebook, *The Rights and Responsibilities of Your Federal Employment*. He co-hosts FEDtalk, a weekly radio show, on Fridays from 11:00 a.m. to 12:00 (Eastern Time), on FederalNewsRadio.com. On FEDtalk, the law firm presents experts who discuss matters of importance to Federal employees and retirees. Mr. Bransford serves as Vice-Chair for the Public Employees Roundtable and is a member of the Board of the Federal Employee Education and Assistance Fund.

Prior to joining SBVR, Mr. Bransford was a senior attorney at the Internal Revenue Service, Office of Chief Counsel, representing the agency on labor and employment law issues. Mr. Bransford graduated cum laude from the Cleveland Marshall College of Law, Cleveland State University, in 1975, and received his Master of Laws in Labor Law from Georgetown University. Mr. Bransford is admitted to practice in the District of Columbia and Ohio.

Mangala P. Gandhi

Mangala P. Gandhi joined the U.S. Postal Service (USPS) in 1984 as a distribution clerk in Columbus, Ohio. While working in the Eastern Area, her postal career progressed and she became successful in many positions, including EEO Counselor and Investigator, Employee Development Specialist, Manager of Labor Relations and Manager of Human Resources.

In 2000, Ms. Gandhi was selected as the Manager of Human Resources for the Midwest Area, where she was instrumental in assisting with outplacement and transfer of employees with minimal tension.

In February 2002, Ms. Gandhi was named Manager of Human Resources for the Grand Lakes Area. She was responsible for Hiring Administrations, Promotions, Pay and Benefits. In this capacity, she was responsible for more than 110,000 employees at 50 processing and distribution centers in more than 3,500 post offices for a territory covering most of Illinois, Indiana, Michigan, Missouri and Wisconsin. Ms. Gandhi was also responsible for managing Training, Safety, Injury Compensation and Labor Relations Programs throughout the Great Lakes Area.

Ms. Gandhi is also a graduate of the USPS Advanced Leadership Program and HR Executive Development Program. In addition, she has a Bachelor's degree and a Master of Business Administration degree. Ms. Gandhi is also a certified Senior Human Resources Professional, which was awarded to her by the Society of Human Resources Management.

Ms. Gandhi is presently the Manager of Selection, Evaluation and Recognition at the Postal Service Headquarters. She is responsible for Testing, Job Evaluations, Recruitment, Screening, Hiring and Promotion policies, the Employee Opinion Survey for 700,000 people and the pay-for-performance program.

Thomas J. Hogan

Mr. Hogan joined the Department of Veterans Affairs in September 1972 as a Personnel Management Specialist Trainee. He served at the VA Medical Centers in Syracuse, New York; Pittsburgh, Pennsylvania; Miami, Florida; Beckley, West Virginia; and New Orleans, Louisiana until August 1981, when he was assigned to VA Central Office.

Mr. Hogan served as the Director of Management Support for the Veterans Health Administration from December 1990 until his appointment as the Deputy Assistant Secretary for Human Resources Management and Labor Relations in January 2004. He has been actively engaged with VHA's Title 38 employment system for health care practitioners in both roles.

Jesse E. Hoskins

Jesse Hoskins is the Chief Human Capital Officer with the U.S. Government Accountability Office. His strong leadership, management, communications and interpersonal skills made him an excellent choice to head GAO's Human Capital Office. Mr. Hoskins is committed to: (1) maximizing and modernizing GAO's Human Capital programs, policies and practices so that they better align with GAO's strategic plan and core values, and (2) making GAO's Human Capital Office a model organization.

Mr. Hoskins has over 30 years of human capital experience, including over 13 years with the U.S. Office of Personnel Management. Mr. Hoskins served as the Personnel Director for the City of Baltimore from 1988 to 2001. Prior to joining GAO, his executive and professional experience includes all levels of government and areas of human capital and human resources, as well as organizational development. Prior to that position, Mr. Hoskins worked for a variety of government agencies in human

capital positions. From 1985 through 1988, Mr. Hoskins served as Personnel Commissioner for the City of Chicago. Prior to 1985, he was the Detroit Area Manager for the U.S. Office of Personnel Management. In that capacity, he led management studies for various Federal agencies. From 1971 to 1972, Mr. Hoskins was employed by the State of Illinois.

Mr. Hoskins has a Bachelor's degree from DePaul University in Chicago, Illinois, where he also attended graduate school. In addition, he completed the Executive Session at the John F. Kennedy School of Government for Senior Executives in state and local government in Cambridge, MA. He is a member of the International Public Management Association and the Society for Human Resources Management.

Robert Kirkner

Robert Kirkner is the Acting Chief Human Capital Officer at the National Institute of Standards and Technology (NIST), a non-regulatory agency within the Commerce Department whose mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards and technology – in ways that enhance economic security and improve our quality of life.

At NIST, Mr. Kirkner is responsible for providing executive leadership in the areas of human resources, leadership and employee development, organizational design and analysis, and occupational health and safety. He served as project leader for major modifications recently made to the NIST pay-for-performance system.

Before coming to NIST, Mr. Kirkner was the Commerce Department's Employee and Labor Relations Manager. Earlier in his career, he spent many years as an HR manager with the Defense Department, having served as Chief of Employee Relations and Training and then Personnel Officer at Letterkenny Army Depot in Pennsylvania.

Mr. Kirkner is an adjunct instructor in human resources at Wilson College in Pennsylvania, and holds the Senior Professional in Human Resources (SPHR) certification from the Human Resource Certification Institute.

Neil A. G. McPhie

On November 21, 2004, Neil A. G. McPhie was confirmed as Chairman of the U.S. Merit Systems Protection Board. Mr. McPhie had been serving as Acting Chairman since December 10, 2003, when President Bush designated him to be Vice-Chairman. (Under the Board's governing statute, the Vice-Chairman serves as Acting

Chairman when the position of Chairman is vacant.) He was sworn in as a member of the Board on April 23, 2003, following his recess appointment by President Bush. Chairman McPhie's appointment will expire on March 1, 2009.

Together with the other appointees to the three-member, bipartisan Board, Mr. McPhie renders published precedential opinions in personnel cases affecting a Federal workforce of almost three million members. The Board has jurisdiction over appeals of adverse personnel actions involving misconduct or poor performance, whistleblower and discrimination claims raised in appeals, retirement matters and complaints of Hatch Act violations.

At the time of his nomination, Mr. McPhie was a Senior Assistant Attorney General in the Office of the Attorney General of Virginia, serving in a number of senior management positions and supervising teams of attorneys and support personnel. Mr. McPhie was Chief of the Finance and Government Section, having served as the Chief of the Employment Law Section and as an Assistant Attorney General (1982-1988) defending state agencies and officials in jury and non-jury trials in state and Federal courts.

From 1998 to 2002, Mr. McPhie was Executive Director of the Virginia Department of Employment Dispute Resolution (EDR), overseeing the internal management of the agency, including strategic planning, staffing and budgeting. In that position, he directed the implementation of EDR's statewide grievance, mediation, training and consultation programs. From 1976 until he joined the Attorney General's Office, he was a Trial and Appellate Attorney in the Office of the General Counsel at the U.S. Equal Employment Opportunity Commission.

Mr. McPhie received his Juris Doctor from Georgetown University Law Center in 1976. He received a Bachelor of Arts in Economics from Howard University in 1973, graduating magna cum laude. He is a member of Phi Beta Kappa. He is admitted to the bars of the District of Columbia, Virginia, New York and Iowa, the United States Supreme Court, the United States District Court for the District of Columbia, several of the United States circuit courts of appeals and district courts in Virginia.

Marianne M. Myles

Marianne Myles is the Director of the Office of Recruitment, Examination and Employment (HR/REE). She joined the Foreign Service in 1975 and during her 30-year career has served both overseas and in a number of domestic positions.

Ms. Myles's overseas assignments include service as: DCM/Charge' of the US Embassy in Montevideo, Uruguay; Principal Officer of the US Consulate in Naples, Italy; Senior Personnel Officer in Brasilia; Economic Chief in Rio de Janeiro; Principal Officer of the US Consulate in Porto Alegre, Brazil; Assistant Commercial Attaché in Rome, Italy; and Economic Officer in Bogota, Colombia.

In Washington, Ms. Myles has held equally diverse portfolios: Director of EB's Office of Aviation Negotiations; Director of Policy Coordination for the Director General of the Foreign Service; International Economist in the Office of Business Practices; Export Control Officer in the Office of East-West Trade; and until July 2005, Special Coordinator of the Diplomatic Readiness Task Force.

Ms. Myles holds a Bachelor of Arts degree in Economics from the State University of New York at Oswego, a Master's degree in Public Administration from Harvard University and a Master of Science degree in National Security Strategy from the National Defense University. She speaks Spanish, Italian and Portuguese, and she is a multiple recipient of the Department of State's Superior and Meritorious Honor Awards.

Ms. Myles is a native of Lackawanna, New York, and is married to retired FSO Stanley T. Myles. They have one daughter.

Steve Nelson

Steve Nelson was appointed Director, Policy and Evaluation, of the Merit Systems Protection Board in June 2002. In this position, he has overall responsibility for the Board's statutory mission to conduct periodic studies of Federal human resources management policies, programs and procedures to determine if they are operating in accord with the statutory merit system principles and achieving their intended purposes. Reports of these studies are directed to the President and Congress. Mr. Nelson was appointed to the Senior Executive Service in 1998.

Before joining the Board, Mr. Nelson was the Chief Human Resources Officer for the USDA Forest Service, responsible for personnel oversight, policy and direction for the agency's nationwide workforce of nearly 40,000 employees. In that position, he led the re-engineering of the human resources delivery system from 116 personnel offices to a customer-driven model where transactional processes that did not add value to management's decision-making process were automated and centralized. Automated classification, staffing, benefits and employee self-service capability were hallmarks of this effort.

Previously, Mr. Nelson was Director of Human Resources for the National Guard with the Department of Defense, where he had similar responsibilities for 53,000 full-time Army and Air Force National Guard technicians. This workforce is unique because the National Guard plays a combination Federal-State role. It is covered in many aspects of employment by Title 5 civil service rules but is also subject to special exceptions from those Federal rules.

Earlier, Mr. Nelson was Personnel Director for the Defense Logistics Agency in Cleveland, Ohio. He also served two overseas tours – one as labor relations officer for the DoD Dependents Schools in London, England, serving 45 schools in 10 countries (1981-1987), and the other in the Civilian Personnel Office of the Department of the Army in the Panama Canal Zone (1973-1975).

Mr. Nelson holds a Bachelor of Science degree in Economics and has completed graduate work at Harvard University in the Senior Officials in National Security Program. He has served on the Board of Directors of the International Personnel Management Association's Federal Section for the past five years and is a Past President of the Federal Section. He initiated a human resources summit to coordinate the efforts of various agencies in highlighting the importance of "Human Capital Management" and led the summit in meetings with GAO and OPM. He has served as Chair of IPMA's Professional Development Committee. He has also worked with the National Academy of Public Administration in developing future competencies for personnel professionals.

Cynthia T. Petitt

Cindy Petitt currently serves as the Deputy Comptroller for Workforce Effectiveness with the Office of the Comptroller of the Currency (OCC) where she is responsible for overseeing and strengthening OCC's recruitment, compensation and benefits, employee relations, diversity, organizational development, internal executive coaching, labor management relations and overall human resource management and operations programs. During the past several years the OCC has developed and implemented the following programs: new compensation and performance management programs, a reengineered recruitment program, PeopleSoft and human resource data warehouse technology, automated delivery of pay and benefit programs, the OCC's first Collective Bargaining Agreement, an HR service center in Denver, CO, and OCC-wide restructuring that involved the closing of three district offices and the opening of one new district office. These efforts were accomplished with minimal disruption to the organization, adverse employee impact, or employee appeals – in large part due to the implementation strategies put in place by Workforce Effectiveness.

Ms. Petitt first joined the OCC in 1981. Since that time, she has served in a variety of positions in addition to her current position, including Director for Human Resources, Director for Organizational Effectiveness, Director for Quality Improvement, Deputy Director for Strategic Analysis and Associate Director for Human Resources. Ms. Petitt was selected to serve as an examiner for the Malcolm Baldrige Award in 1998 and 1999, the President's Quality Award in 1997 and 1996, and the Veterans Affairs Carey Award in 1997. She served as the Co-Chair for the Financial Services Business Excellence Council for the U.S. Conference Board for two years, and has been a member of steering committees and/or a presenter for numerous externally sponsored national conferences.

Ms. Petitt is currently a member of the Corporate Leadership Council.

Prior to joining the OCC, Ms. Petitt worked in Human Resources for the U.S. Department of Commerce. She has a Bachelor of Science degree from Centre College of Kentucky and a Master of Science degree from American University/NTL.

Alton Ressler

Al Ressler currently serves as the Human Resources Officer for non-appropriated fund employees at the U.S. Army's Fort Belvoir, VA. In this capacity, he is responsible for all human resources and human capital management programs for the morale, welfare and recreation programs at that location. Prior to this, Mr. Ressler was the Director of the Center for Human Resources Management at the prestigious National Academy of Public Administration. While at the Academy, he managed a cadre of over 30 consultants conducting research, performing studies, and engaged in consulting services for Federal organizations in their human resources and human capital management functions.

From 1999 until his retirement from Federal service after 32 years in 2003, Mr. Ressler was the Director for the Office of Human Resources and Statistics, Administrative Office of the U. S. Courts. In this position, he was the Judiciary's senior advisor and policy advocate on judiciary-wide human resources and statistical programs. Prior to joining the judicial branch of government, he served in the Department of Defense for over 20 years as a human resources expert and spent over 4 years as the senior civilian in the Defense Logistics Agency's Senior Executive Service (SES) as their Director of Administration.

Mr. Ressler is a North Dakota native and attended North Dakota State University earning both a Bachelor of Science degree in Social Sciences in l969 and a Master of Arts degree in Political Science in l971. He was commissioned as a military intel-

ligence officer in the U.S. Army in l971 and subsequently entered Federal service in the executive branch in the human resources management career field. His career progression included assignments in the United States and Germany with senior management positions in human resources in the Department of Transportation and Department of Army. He was selected into the Senior Executive Service in 1989 and served in the SES until his retirement from Government service in 2003.

During his career, he has been a key planner and strategist for all aspects of human resources and other administrative support functions. He is acknowledged as a change agent and an innovator in positively dealing with human capital and organizational management issues, particularly during periods of an organization's transformation and change. His professional recognition includes the Presidential Meritorious Executive Rank Award, Dept of Transportation's Excellence in Leadership Award, the DLA Exceptional and Meritorious Civilian Service Awards, multiple Department of Army awards, annual SES bonus awards and other forms of professional recognition.

Mr. Ressler is active in professional organizations, is an avid runner and skier, and plays golf.

Daliza Salas

Daliza Salas has served as the Director of Human Resources, Human Resources Center, since her appointment in November 2002. In this capacity, she serves as the principal advisor to top department executives and senior agency managers on the impact of policies, proposals and decisions on strategic management of human capital, HR policy, labor and employee relations, workforce planning and diversity, worklife, career development, E-Gov HR initiatives and affirmative employment. Through her leadership, the Department of Labor achieved "Green" on the Strategic Management of Human Capital scorecard in March of 2004, the President's Quality Award for Strategic Management of Human Capital in 2004, and the President's Quality Award for overall success (including Human Capital Management) in 2005.

Prior to joining the Department of Labor, Ms. Salas served as the Director of Senior Executive Service Staffing, Office of Personnel Management (OPM), where she managed Government-wide policies and programs surrounding the Senior Executive Service (SES). She also led efforts to ensure that Federal agencies were prepared to select from among the best and brightest in filling their future SES positions. She is especially proud of developing a 30-day model for selecting senior executives that fits in nicely with the strategic management of human capital, one of the key items in the President's Management Agenda.

Before joining OPM, Ms. Salas served in a number of progressively responsible managerial positions, which provided her with diversified technical and managerial expertise in human resources management; prevention of waste, fraud and abuse; and equal opportunity/diversity. She has had experience in six major agencies in the field and at national headquarters, and in operations and policy-making roles. Ms. Salas also developed and conducted EEO Counselor and Investigator training for the Department of Veterans Affairs (VA). In 1994, she was selected as the Team Leader for an HR reinvention team at the VA, and from there went on to direct the HR Policy Division for the Defense Mapping Agency. Ms. Salas also served as Deputy Inspector General at the National Imagery & Mapping Agency (NIMA), where she primarily investigated misuse of government property, such as Information Technology. Additionally, she was part of the team that developed NIMA's Information Technology policy, which was adopted by the DoD. Later, Ms. Salas returned to the VA as the Chief, Headquarters Human Resources Office, where she managed the full range of HR services for about 2,700 employees.

Ms. Salas is a graduate of Madison College in Harrisonburg, Virginia. She is a native of Washington, DC, and resides in Clifton, Virginia, with her husband and two daughters.

Ronald P. Sanders

In June of 2005, the Director of National Intelligence appointed Dr. Ronald P. Sanders to the Senior Intelligence Service as the U.S. Intelligence Community's Chief Human Capital Officer. In this newly-created position, Dr. Sanders leads the design, development and execution of human resources (HR) strategies and policies in support of the men and women who serve in our nation's intelligence agencies. He is also charged with implementing the various HR provisions of the Intelligence Reform and Terrorism Prevention Act of 2004.

From December 2002 until May of 2005, Dr. Sanders served the Office of Personnel Management's first Associate Director for Strategic HR Policy. In that capacity, he was responsible for all policies and programs governing the Federal Government's almost two million employees, and played a key role in designing and developing new HR systems for the Departments of Homeland Security and Defense, the new Senior Executive Service pay-for-performance system and the HR Information Systems Line of Business. Awarded the Presidential Rank of Distinguished Executive in 2003 (his third, in three different agencies), he also received OPM's Theodore Roosevelt Award for Outstanding Public Service and the Department of the Navy's medal for Distinguished Public Service.

From 1998 to 2002, Dr. Sanders served as the Internal Revenue Service's first Chief Human Resource Officer, with HR strategy and policy responsibility for over 120,000 managers and employees working for the IRS. In that capacity, Dr. Sanders played a key leadership role in the Service's historic restructuring efforts, directing the successful realignment of the agency's workforce from a decades-old geographic structure to one based on taxpayer segments – without any interruption in essential agency operations. In recognition of these achievements, he received a second Presidential Rank Award, as well as three Commissioner's Awards, the highest honor that can be bestowed on an IRS employee.

Before joining the IRS, Dr. Sanders served as the Department of Defense's Director of Civilian Personnel from 1990 to 1998, with responsibility for HR policies and programs covering the Department's over 1,000,000 civilians. Dr. Sanders led DoD's historic civilian drawdown, pioneering the use of voluntary separation incentives in the Federal Government. He also founded the Defense Civilian Personnel Management Service (DCPMS), a first-of-its-kind "shared services" organization providing HR support to DoD agencies and employees worldwide. For his work at DoD, Dr. Sanders received his first Presidential Rank Award, as well as the Defense Civilian Service Medal. Prior to his DoD appointment, he served in a variety of senior HR positions in the Department of the Air Force, including Deputy Director of Civilian Personnel (SES); in that capacity, he received the Air Force's prestigious Gen. Robert J. Dixon Award for Leadership, the first and only civilian to be so honored in the 30-year history of the award.

Dr. Sanders earned his Doctorate in Public Administration (DPA) from the George Washington University in 1990. His undergraduate degree is in Business Management from the University of South Florida, where he received the 1993 Alumni Award of Merit. He also has a Master of Science degree in Human Resource Management and Industrial Relations from the University of Utah, and has been inducted into three national academic honor societies. In 1987, Dr. Sanders attended MIT's Sloan School of Management as a Senior Executive Fellow, and in 1989 he completed a Congressional Fellowship on the Senate Governmental Affairs Committee.

Max Stier

Max Stier is the President and CEO of the Partnership for Public Service. He has worked previously in all three branches of the Federal Government. In 1982, he served on the personal staff of Congressman Jim Leach. Mr. Stier clerked for Chief Judge James Oakes of the United States Court of Appeals for the Second Circuit in 1992 and clerked for Justice David Souter of the United States Supreme Court in 1994. Between these two positions, Mr. Stier served as Special Litigation Counsel to

Assistant Attorney General Anne Bingaman at the Department of Justice. In 1995, Mr. Stier joined the law firm of Williams & Connolly where he practiced primarily in the area of white-collar defense. Mr. Stier comes most recently from the Department of Housing and Urban Development, having served as the Deputy General Counsel for Litigation. Mr. Stier is also an adjunct professor of law at Georgetown University where he serves on the Board of Directors of Public Agenda, and is a National Academy of Public Administration Fellow. He is a graduate of Yale College and Stanford Law School.

Robert M. Tobias

Robert M. Tobias is currently the Director of Public Sector Executive Education at American University. He teaches and administers the program that involves 80 Federal leaders seeking Masters degrees in Public Administration. He is also the Director of the Institute for the Study of Public Policy Implementation at American University, which brings together members of Congress, political appointees, career executives, union leaders, academics and the consulting community to discuss and attempt to resolve public policy implementation issues.

The President nominated Mr. Tobias and the Senate confirmed him for a 5-year term as a member of the Internal Revenue Service Oversight Board in September 2000. The Board has broad strategic and budget oversight responsibility for the Internal Revenue Service. Mr. Tobias was selected by Thomas Ridge, Secretary, Department of Homeland Security (DHS) and Kay Coles James, Director, Office of Personnel Management (OPM) to the Human Resource Management System Senior Review Advisory Committee, which was charged with reviewing the work of the Department of Homeland Security/Office of Personnel Management Design Human Resource team and providing options to the Secretary and the Director for their consideration. Comptroller General David Walker appointed Mr. Tobias to the Congressionally created Commercial Activities Panel, which studied privatization in the Federal Government and issued its report and recommendations to Congress on April 30, 2002.

Mr. Tobias is a Fellow in the National Academy of Public Administration and was selected to be the Chair of NAPA's Standing Committee on Public Service. In addition, he serves as the President of the Federal Employees Education and Assistance Fund (FEEA). Mr. Tobias is also a frequent contributor to *Federal Times*, *Government Employees Relations Report,* and *Government Executive* magazine on current federal sector public policy implementation issues.

Mr. Tobias also consults with a number of private sector and government clients on a variety of issues, including strategic planning, leadership development, alternative dispute resolution, interest-based problem solving and training.

Prior to his work at American University, Mr. Tobias served for 31 years with the National Treasury Employees Union (NTEU) and from 1983-1999 as its President.

As NTEU's General Counsel from 1970-1983, Mr. Tobias focused the NTEU on creating employee rights through aggressive negotiation and litigation. After becoming NTEU's President, Mr. Tobias used the newly created rights as the infrastructure for establishing more cooperative/collaborative labor management relationships with Federal agencies.

Mr. Tobias believes that collaborative labor management relationships are critical to a union's ability to address the needs of 95 percent of the organized workforce interested in participating in creating a workplace that is more satisfying, productive, and that delivers better service to the public. A collaborative labor management relationship is also critical to management's ability to enlist and inspire a workforce to transform itself regularly in light of changing goals, new technology and increased demands for performance.

Mr. Tobias served on the Government-wide labor management partnership council that was established to support and nurture collaborative labor management relationships throughout the Federal Government.

Mr. Tobias received his bachelor's degree in Pre-Legal Studies and a Master of Business Administration degree from the University of Michigan. He graduated from the George Washington University Law School where he served as a professor on the adjunct faculty for 22 years.

Mr. Tobias resides in Maryland with his wife Susan and he has three adult children, Rachel, Christopher and Lindsay.

David M. Walker

David M. Walker became the seventh Comptroller General of the United States and began his 15-year term when he took his oath of office on November 9, 1998. As Comptroller General, Mr. Walker is the nation's chief accountability officer and head of the U.S. Government Accountability Office (GAO), a legislative branch agency founded in 1921. GAO's mission is to help improve the performance and assure the

accountability of the Federal Government for the benefit of the American people. Over the years, GAO has earned a reputation for professional, objective, fact-based and nonpartisan reviews of Government issues and operations.

The long tenure of the Comptroller General gives GAO a continuity of leadership and independence that is rare within the Government. Both elements help to allow GAO to consider long-range and cross-governmental issues and alert policymakers to problems looming on the horizon, such as the growing burden of entitlement programs or the nation's deteriorating infrastructure.

Before his appointment as Comptroller General, Mr. Walker had extensive executive-level experience in both the Government and private industry. Between 1989 and 1998, Mr. Walker worked at Arthur Andersen, LLP, where he was a partner and global managing director of the human capital services practice based in Atlanta, Georgia. He was also a member of the board of Arthur Andersen Financial Advisors, a registered investment advisor. While a partner at Arthur Andersen, Mr. Walker served as a Public Trustee for Social Security and Medicare from 1990 to 1995. Before joining Arthur Andersen, Mr. Walker was Assistant Secretary of Labor for Pension and Welfare Benefit Programs from 1987 to 1989, and in 1985, was Acting Executive Director of the Pension Benefit Guaranty Corporation. His earlier technical, professional and business experience was with Price Waterhouse, Coopers & Lybrand and Source Services Corporation, an international human resources consulting and search firm.

Mr. Walker currently serves as Chair of the U.S. Intergovernmental Audit Forum, the Center for Continuous Auditing and as a principal of the U.S. Joint Financial Management Improvement Program. He is on the Board of the International Organization of Supreme Audit Institutions and various educational and not-for-profit entities. He is a Fellow of the National Academy of Public Administration and the National Academy of Social Insurance, and an active member of various professional, public service and other organizations, including the Sons of the American Revolution. Mr. Walker is also listed in Who's Who in the World and Who's Who in America.

Mr. Walker is the author of *Retirement Security: Understanding and Planning Your Financial Future* (John Wiley & Sons, 1996) and a co-author of *Delivering on the Promise: How to Attract, Manage and Retain Human Capital* (Free Press, 1998). He has also written numerous articles and opinion letters on a variety of subjects. Mr. Walker is frequently quoted on a range of government and management issues and has been the subject of several cover stories in various national, professional and governmental journals.

Mr. Walker is a certified public accountant. He has a Bachelor of Science degree in Accounting from Jacksonville University, a Senior Management in Government Certificate in Public Policy from the John F. Kennedy School of Government at Harvard University, an Honorary Doctorate in Business Administration from Bryant College and an Honorary Doctorate of Public Service from Lincoln Memorial University. He is married to the former Mary Ethredge, and they have two adult children – a daughter, Carol, and a son, Andy.

Roster of Attendees

Mr. Christopher Aiello
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Federal Deposit Insurance Corporation

Mr. Napoleon Avery
Director of Strategic Planning and Vision
Department of Energy

Mr. Stephen Barr
Staff Writer
The Washington Post

Mr. Kent E. Baum
Chief Human Capital Officer
Federal Communications Commission

Ms. Janice Bradley
HR Director
Merit Systems Protection Board

Mr. Chad Bungard
Deputy Staff Director/
Senior Counsel (Majority Staff)
House Committee on Government Reform Subcommittee on the Federal Workforce and Agency Organization

Mr. Thomas Burger
National President
Professional Managers Association

Ms. Kathy Burgers
Director, Human Resources Management Staff
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Ms. Lynore Carnes
Director, Office of Appeals Counsel
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Ms. Ella Chatterjee
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Mr. Tim Clark
Editor-in-Chief
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Mr. Steve Cohen

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We would like to specially thank the following MSPB personnel who made the conference a success.

Conference Leaders and Notetakers
DeeAnn Batten
Cynthia Ferentinos
John Ford
Charles Hanclich
Jon Lynn Kerchner
Doug Nierle
Laura Shugrue
James Tsugawa

Photographer
Paul van Rijn

Appendix A.

Department of Veterans Affairs' Title 38 Employment System

1. The Department of Veterans Affairs (DVA) operates an Excepted Service Human Resource Management System (Title 38) to employ healthcare providers and some support personnel.

2. The Title 38 System was originally established after WW II to enable Veterans Health Administration (VHA) to effectively recruit Physicians, Dentists and Registered Nurses. The system addresses appointment, pay, leave, advancement, performance appraisal and discipline. Title 38 employees are eligible for Retirement, Life Insurance, Health Benefits, and OWCP on the same basis as Title 5 employees.

3. VHA currently employs over 15,000 physicians, of whom 8,244 are full time; 39,000 R.N.'s, and almost 700 dentists. VHA is able to pay competitive salaries to these professionals based upon specific legislative authorities.

4. VHA also employs over 20,000 other Title 38 Hybrid Employees in 25 healthcare related occupations, such as Pharmacists, Psychologists, Social Workers, Medical Technologists, Physical Therapists and Occupational Therapists. These individuals may be appointed and advanced without relying on Title 5 procedures, but they are considered to be Title 5 employees for purposes of leave, discipline, performance appraisal and benefits.

5. The Title 38 system uses a Rank-In-Person approach, and all applicants' basic qualifications and credentials are evaluated by one's professional peers. These peers, sitting as Professional Standards Boards, recommend appointment, initial salary rates, and advancements based upon quality of performance, professional credentials, educational achievements, and, at higher grade levels, the complexity of the assignment.

6. The primary advantage offered by Title 38 is that it allows management to offer an applicant a position more quickly than is possible under Title 5 procedures. This element is critical in the highly competitive health care industry, in which the nation as a whole does not produce enough Registered Nurses or Pharmacists, for example, to replace those professionals leaving the workforce.

7. Most recently, Congress authorized VA to convert 18,000 employees in 21 occupations from Title 5 to Title 38 Hybrid status in January 2004, in recognition of the need for a more flexible staffing process.

Appendix B.

Creating a Performance-Based Culture

Slide 1

Creating a Performance Based Culture

Office of the Comptroller of the Currency
Cindy Petitt

Slide 2

About the OCC . . .

- Regulator of the National Banking System
- Revenues from National Bank Assessments
- Employees:
  - 2800
  - 69% National Bank Examiners
  - Average Age 46
  - Average years of service 17
  - 83% have college degrees
  - 26% in Headquarters, remainder in 70 locations
- NTEU Represents 80% of OCC employees

Slide 3

Areas of Independence . . .

- Compensation
- Benefits
- Resources – FTES, Budget

OCC does not negotiate compensation and benefit matters.

Slide 4

About the OCC's Culture

- Performance Based -- seniority/longevity only linked to leave and RIF
- Customer feedback continuously solicited
- 360 conducted annually for managers
- Strong pride in OCC and its mission
- "One of Best Places to Work in the Federal Government"

Slide 5

High Performance Culture

Our Proposition . . .

We have to be a high performing organization in the quality of our programs and management before we can expect our employees to be high performers.

Slide 6

Performance-Based Culture is More Than Linking Pay with Performance

- Performance Focused Operating Philosophy
- Design of Compensation and Performance Management Programs
- Recruitment and retention approach
- How change is implemented
- What employees feel entitled to
- Continuous monitoring and reporting on results

Slide 7

OCC's Compensation Program

- Deviated from program equivalent to GS in 1981 – since then . . .
  - Three separate compensation programs have been implemented
  - Annual pay increases based on performance
  - No across-the-board comparability increases (Pay increases have been awarded)
- Designed compensation programs to support strategic objectives

Slide 8

Three Compensation Programs

1981 – 1989	1989 – 2001	2001 – Present
Goal: [illegible]	Goal: [illegible]	Goal: [illegible]
Structure – Exceptional Professional SES Technical Juniors Classification TDP [illegible] Multi-dimensional [illegible] 65% Improvement Bonuses Survey: Internal Survey, External Survey	Structure Classification TDP Pay Tied to Performance Appraisal Process Pay Increases Bonuses Survey: Federal Financial Regulators	Structure Bonuses Pay Tied to Performance Appraisal Process Pay Increases Bonuses Survey: Federal Financial Regulators

Slide 9

Approximate Grade Comparisons

[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
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[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]

Slide 10

Current Compensation – Merit Pay and Bonus Pools

- Merit Pay Pool set at 5 % of Unit salaries
- Bonus Pool set at 2% of Unit salaries [illegible]

Performance Rating	% Employees	Award Range Merit Pay	Bonus
[illegible]	24%	5.3% -8.0%	to 8%
3	70%	2.1 6.3%	to 4%
1-2	1%	0%	

Slide 11

Current Compensation Program – Special Increases

- Awarded up to 10 percent of OUC employees annually
- Amount of increase to base pay is 5%
- Based on development *and application* of new skills/increased job responsibilities that are significant but not sufficient to warrant a promotion

Slide 12

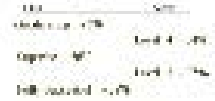
Current Compensation Program – Position Evaluation Plan

- Benchmark Approach
- Designed around strategic competencies
  - Breadth and depth of business and technical expertise
  - Accountability for risk management and business results
  - Requirement to exercise leadership and influence

Slide 13

Performance Management

- Ratings based on two components
  - Achievement of Organizational Objectives
  - Demonstrated Skills and Behaviors
- Conducted on anniversary date
- Converted to 4 level system to establish [illegible]



Slide 14

Pay for Performance

- Performance ratings and merits are anchored to ensure meaningful differences between merits and bonuses of Level 3 and 4 performers.
- Employees with higher ratings receive [illegible]
  - Awards
  - Special Increases
  - Promotions

Slide 15

Recruitment and Retention

We must use fast and flexible approaches to hire the best and be a high-performing organization in terms of both performance and process.

- Highly select [illegible] selection for every 9 applicants based on:
  - [illegible] Interviews
  - Knowledge and Communication Skills Test
  - Career Day with OCC
- Sources are continually evaluated for quality and diversity of referrals

Slide 16

Recruitment and Retention

- Well-managed on-boarding is first step in retention process
- New hires are surveyed every six months to ensure they have what they need to be successful
- New employees:
  - Are on training team for six months
  - Receive 80+ hours of structured training
  - Must pass competency exam to be promoted to Commissioned Notarial Bank Examiner – $1000 bonus given to those who pass the first time

Slide 17

Change Management

Our goal is to build an environment where employees are focused on employee performance and organizational success (Page)

The key is taking the fear out of change by trading employees with respect and compassion and offering them support and many choices

…it took quite a long time to learn this…

Slide 18

Change Management

- Implementation of first two compensation programs – Early 90's and 90's
  - More than 30 appeals each (across the 15% of Unionized employees)
  - Merit or performance dropped for six months to a year – some canceled raises
- Implementation of 2001 program
  - Less than 5 appeals
  - Less than 10 performance recommendation reviews
  - No union organizational disruption

Slide 19

Change Management

What was different?

Technical aspects of plan were balanced with employee perceptions of what is fair

Key components and the implementation plan were designed through employee focus groups

Line managers were designated as process owners

Management agreed to correct shortcomings over time

Employees are told explanation that evaluations were carefully evaluated

Slide 20

A sense of entitlement does not have to be a bad thing . . .

If properly focused . . .

Strong performance will be rewarded

Training will be provided for continuous learning

Employees will have the opportunity to apply their talents and make a contribution

Employees will be treated with respect

Diversity will be valued

Slide 21

Continuous Monitoring

Conduct quantitative analysis of performance management and compensation program decisions and their impact – "retrain" managers where results not consistent with objectives

Deliver State of the Workforce presentation to Executive Committee annually

Appendix C.

NIST's Alternative Personnel Management System

Since 1997, NIST has operated under an Alternative Personnel Management System (APMS). The APMS grew out of the NIST Personnel Management Demonstration Project which was launched in 1987. The APMS waives certain legal and regulatory provisions, and authorizes NIST to use broad pay bands, pay-for-performance, and certain hiring and pay-setting flexibilities.

The NIST Demonstration Project was implemented to: improve recruitment of high quality researchers; increase retention of high performers; strengthen the manager's role in human resource management; and provide a more flexible, efficient personnel system.

The Office of Personnel Management (OPM) evaluated the NIST Demonstration Project for the period covering 1988 through 1995. OPM found that as a result of the Demonstration Project:

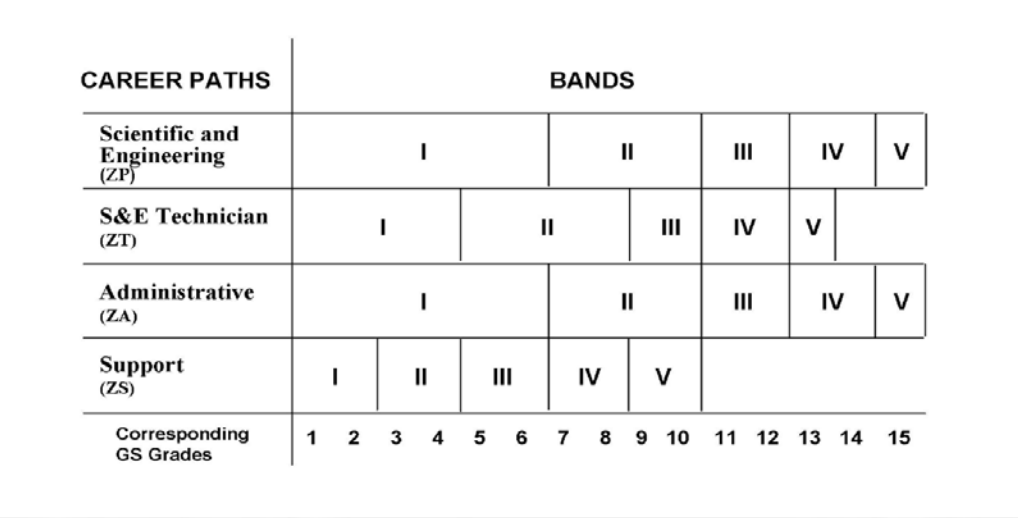
- NIST was more competitive for talent with the private sector;
- NIST retained more high performers than a comparison group; and
- NIST managers reported having more authority over hiring and pay-setting.[1]

The NIST Demonstration Project was extended twice – in 1991 and 1995 – before being made permanent in October 1997 with the authorization of the NIST APMS.

The APMS covers all former General Schedule positions at NIST. The NIST Personnel Management Board (PMB) oversees the operation of the APMS. The NIST Deputy Director chairs the PMB and the operating unit directors are the voting members.

Under the APMS, NIST positions are classified according to career paths and pay bands. Career paths are categories of occupations grouped by similarities in work, qualification requirements, pay ranges, and career progression.

[1] Office of Personnel Management, Summative Evaluation Report National Institute of Standards and Technology Demonstration Project: 1988-1995 (Washington, DC; June 1997).



Note: In response to employee survey feedback, NIST modified its pay-for-performance system (PPS) to strengthen the link between pay and performance and reduce the system's complexity. The modified PPS was implemented in October 2005 and will be evaluated following the close of the 2006 rating cycle.

Appendix D.

Pay System for White-Collar Non-Appropriated Fund (NAF) Employees of the Department of Defense

The DoD Wage and Salary Division establishes the maximum and minimum pay rates for each of the 6 pay-bands (NF-1 through 6) based on several factors.

For the NF-1 and 2 band and for the minimum of the NF-3 band, rates are determined by an annual survey of wages paid to employees in representative retail, wholesale, finance, recreation and other occupational groups in the immediate locality engaged in similar functions to those in DoD NAF activities. There are separate pay schedules for each area surveyed.

The maximum for band NF-3 and the range for Bands NF-4 through NF-6 are based on GS wages that were in effect in August, 1995, the date NAF pay-banding began. The minimum for NF-4 through NF-6 are adjusted annually by a percentage equal to the National Employment Cost Index (ECI) increase for GS employees rounded down to the nearest $500. The maximum rate for NF-6 is adjusted to equal level IV of the Executive Schedule. The maximum rate for a NF-5 is adjusted to the top step of a GS-15, locality pay rate.

Management may determine where within the minimum and maximum rates of the proper band to set an employee's annual rate of pay. In setting pay the following factors are used:

duties and responsibilities, employee performance, budget, Federal/private sector pay competition, rates of pay for others, previous pay adjustments, cash awards, bonuses and other allowances. A pay increase may be granted to an employee within a band and without a position change. Promotion is defined when an employee moves to a position in a higher band. A minimum increase of 5% must be afforded an employee upon promotion, or an increase to the minimum in the band, whichever is greater. Since this is a pay-for-performance based system, an employee must have at least a current "satisfactory" performance appraisal in order to receive ANY pay increase, except for the annual ECI.

GS and NF comparisons are as follows:

NF-1 equates to GS 1 thru 3: Routine clerical, customer service and general administrative

NF-2 equates to GS 4: Senior more complex clerical, specialized administrative support, basic planning, organizing, and applying criteria and regulations

NF-3 equates to GS 5 thru 8: Entry level management, program specialist, full performance technical positions and operational journeyman in all program areas

NF-4 equates to GS 9 thru 12: Management and senior specialist at operational levels with complete program responsibility for delivery systems

NF-5 equates to GS 13 thru 15: Senior level management and staff specialist positions HQ and policy design, development organizations

NF-6 equates to SES: Executive Level and equivalent positions at Agency and primary national agency level sub-division

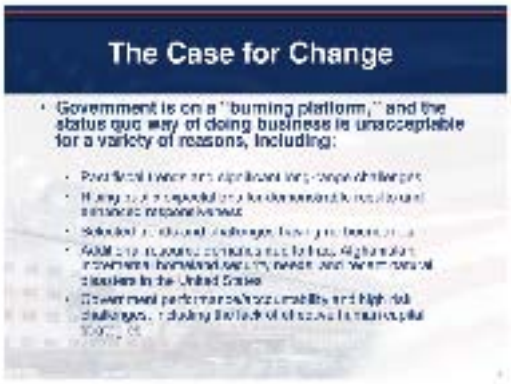
Appendix E.

Transformation Challenges: A Presentation by Comptroller General David Walker

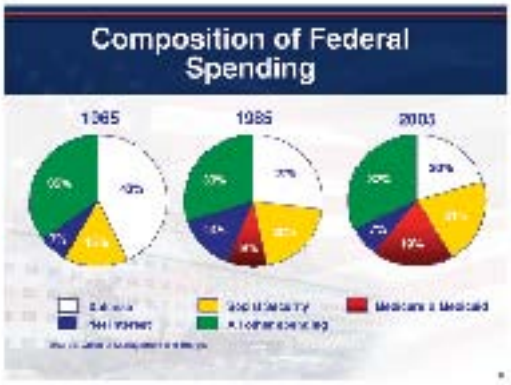
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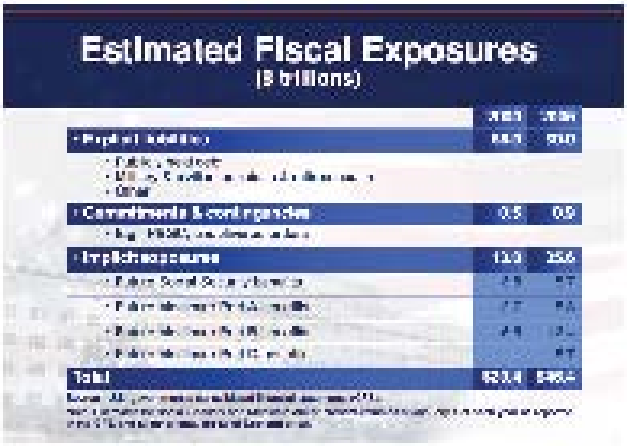
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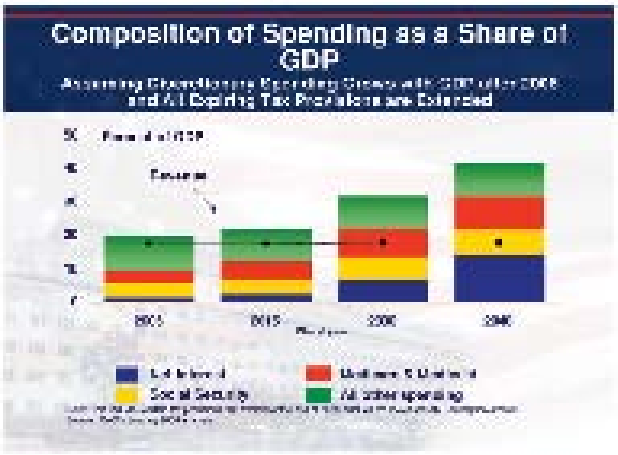
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Slide 4



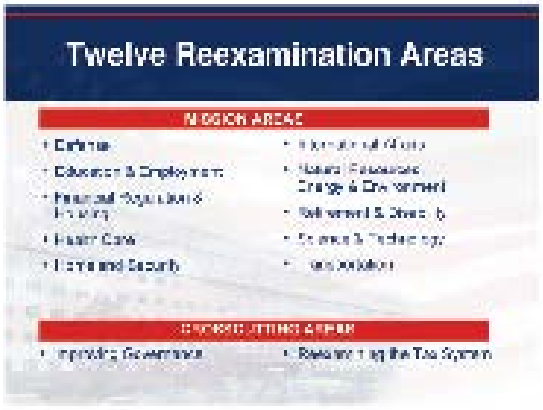
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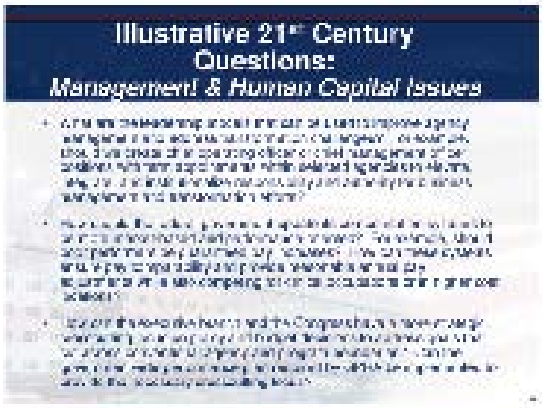
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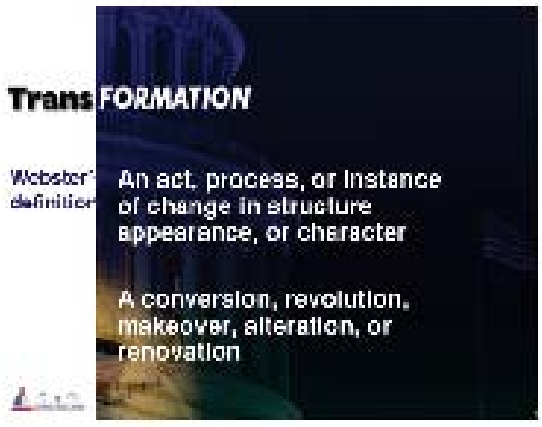
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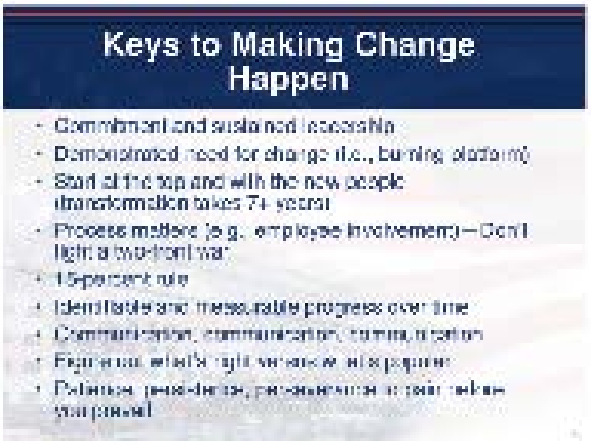
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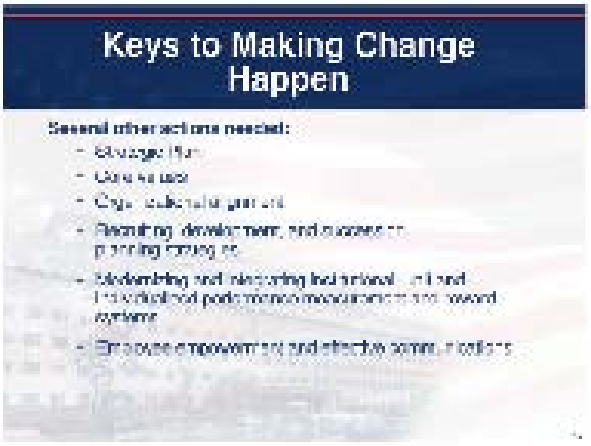
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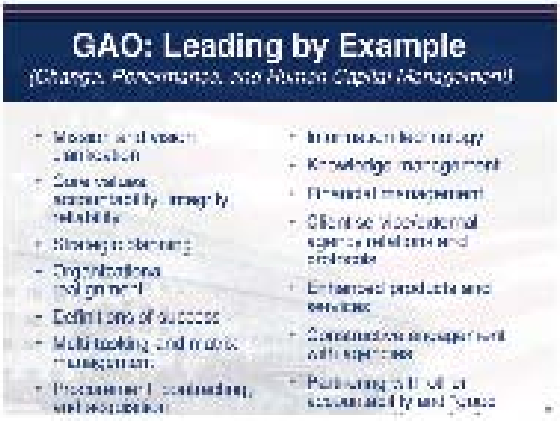
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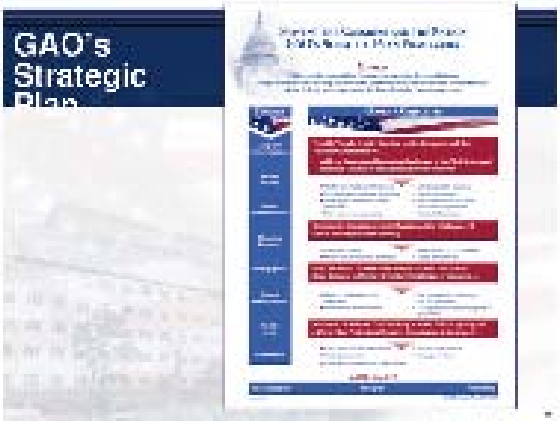
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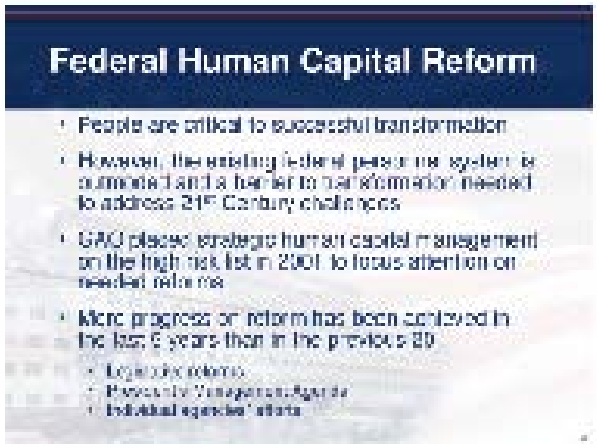
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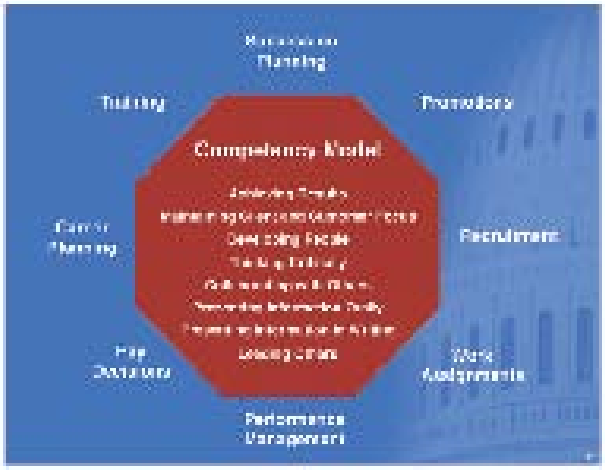
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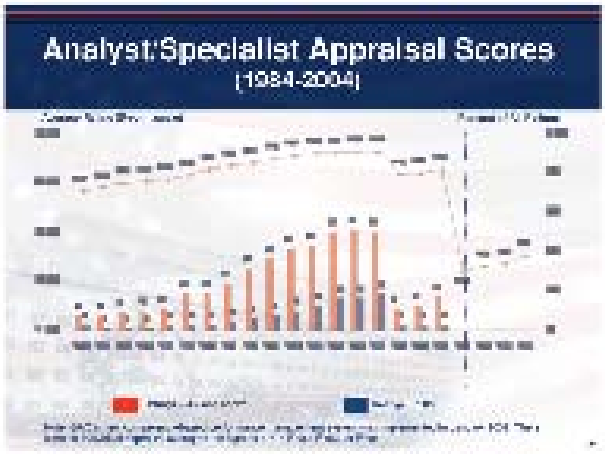
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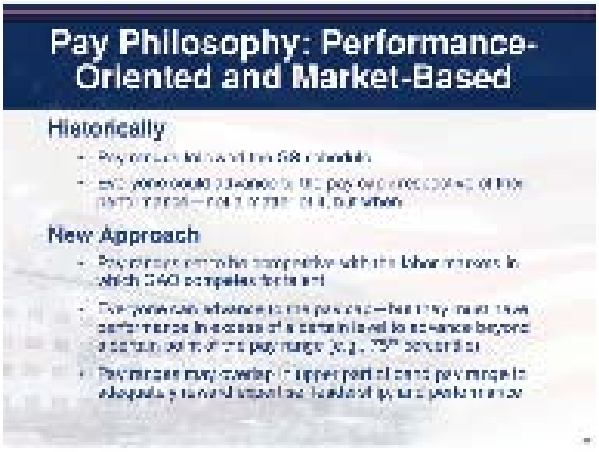
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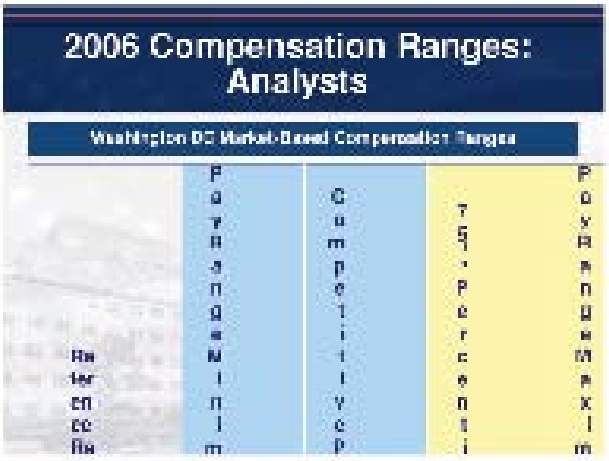
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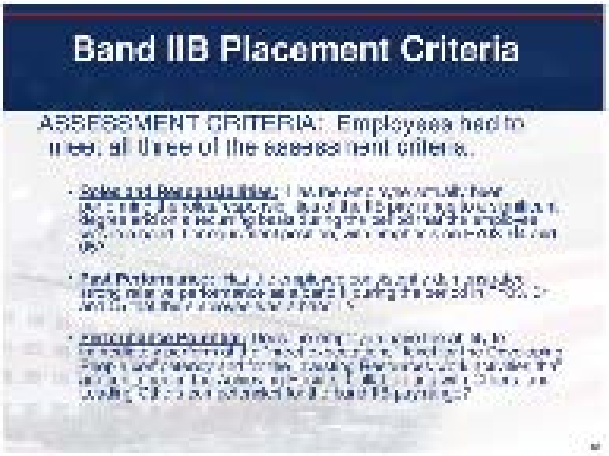
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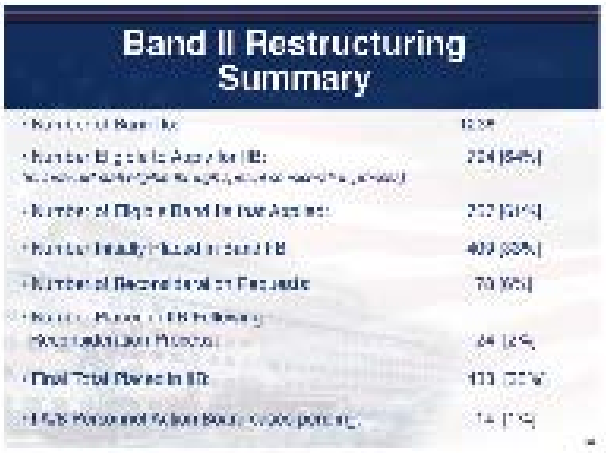
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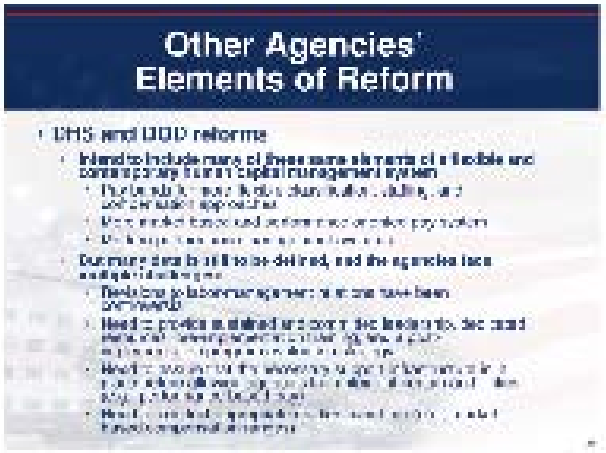
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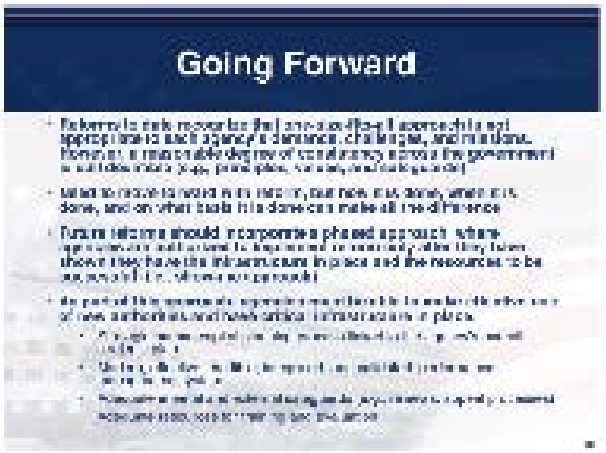
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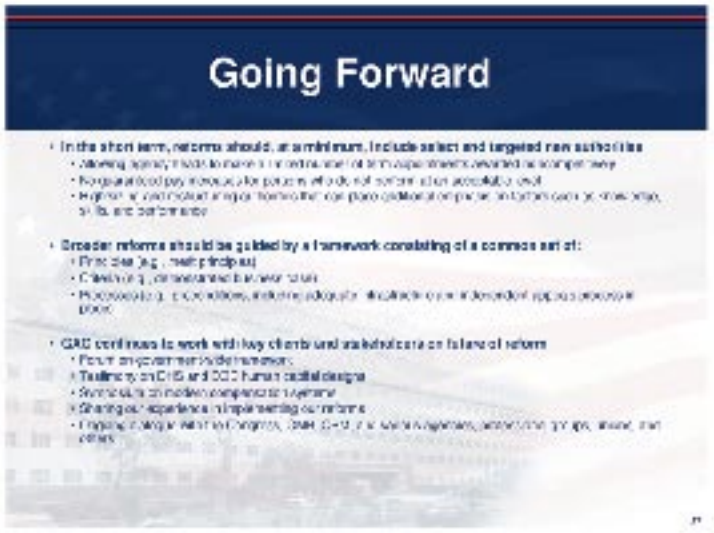
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Appendix F.

Pay-for-Performance: The Employee Evaluation Program of the United States Postal Service

Slide 1



Pay-for-Performance (PFP)

The employee evaluation program of the United States Postal Service

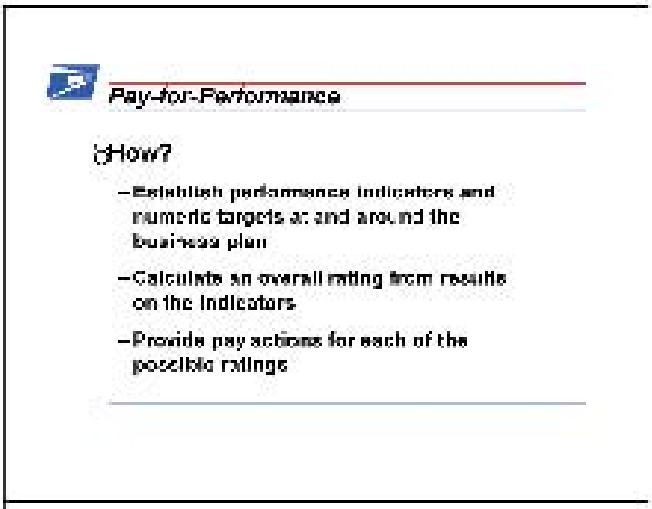
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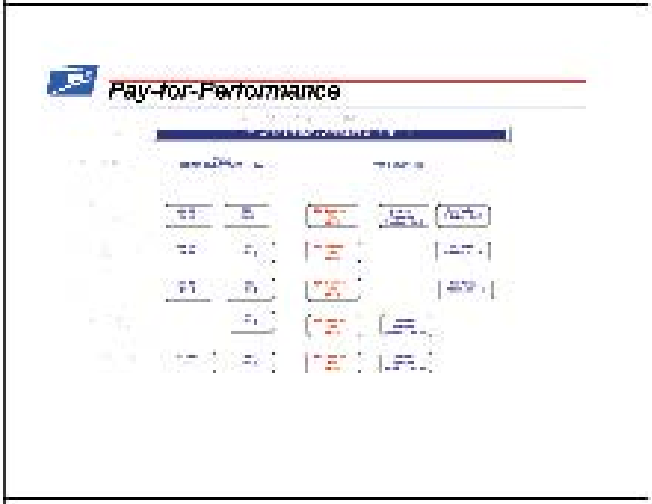
Pay-for-Performance

- Purpose
  - Emphasize the organization's success through objective, measurable performance indicators that are linked to the mission of the United States Postal Service.
  - Align performance indicators at all levels:
    - Corporate
    - Functional Unit
    - Individual

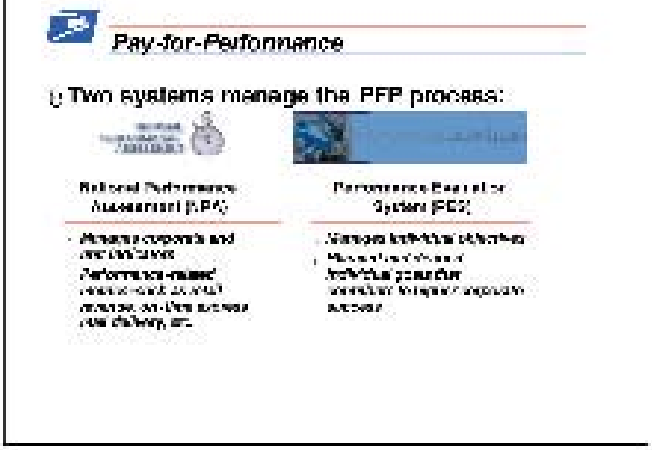
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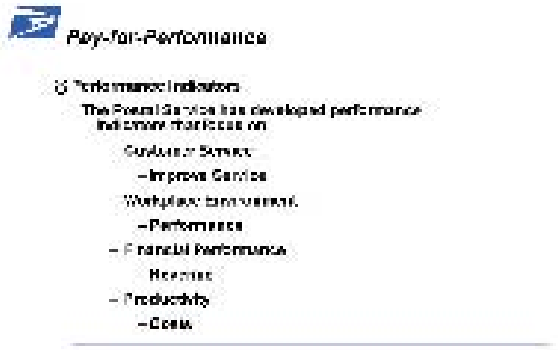
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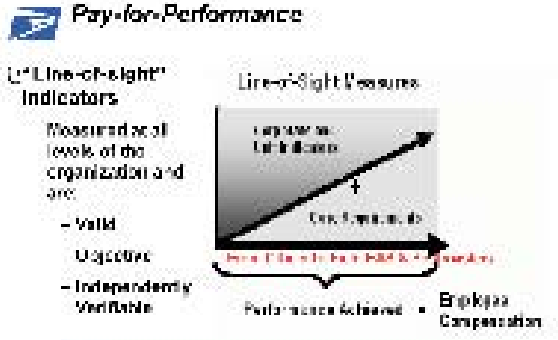
Slide 5



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Pay-for-Performance

- Annual Performance Plan
  - Establishes numeric targets on all national indicators
  - Management defines numeric performance levels on a 15-point scale above and below the plan.
    - Met versus continuous efforts towards this numeric target and performance exceeding the numeric target

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Pay-for-Performance

- Example



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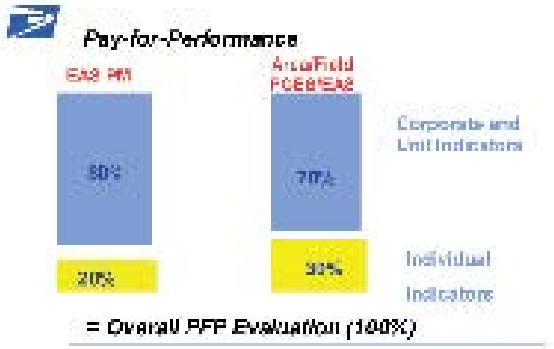
Pay-for-Performance

- All employees understand where their priorities lie, what is expected of them, and how their results impact the organization.
- Employees are evaluated based on their individual contributions toward unit and organizational success.
- The process gives the organization a clearer sense of direction in setting and pursuing its enterprise-wide goals.

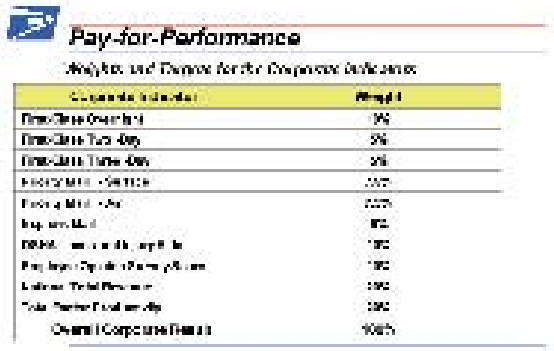
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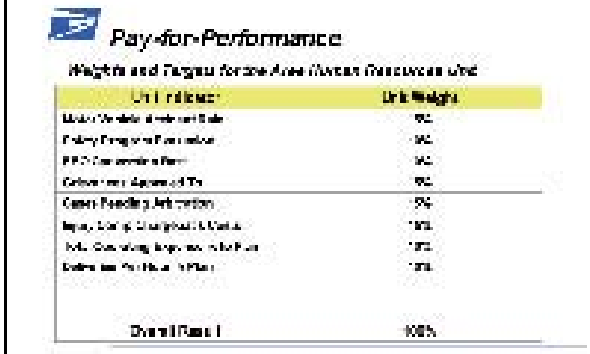
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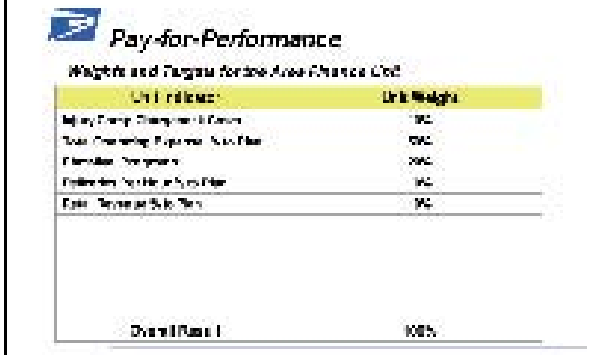
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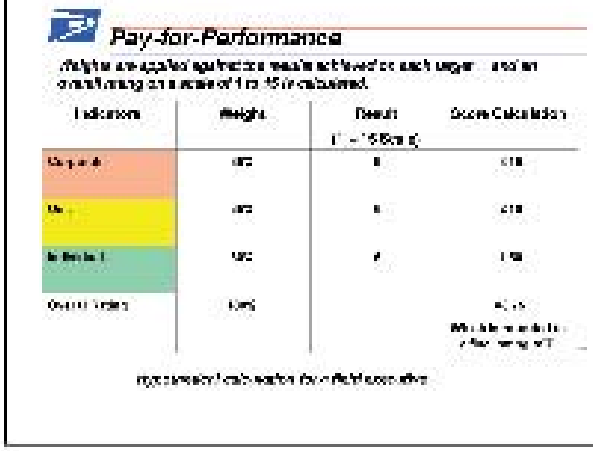
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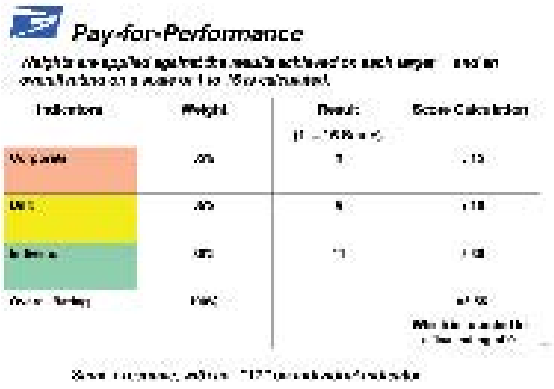
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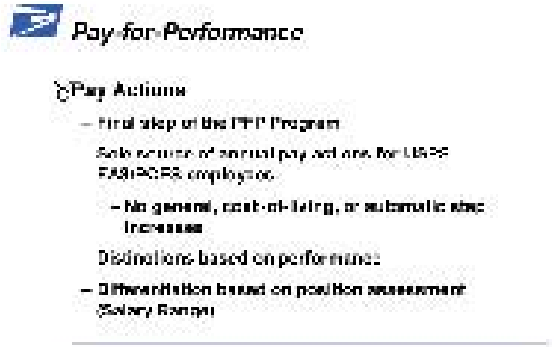
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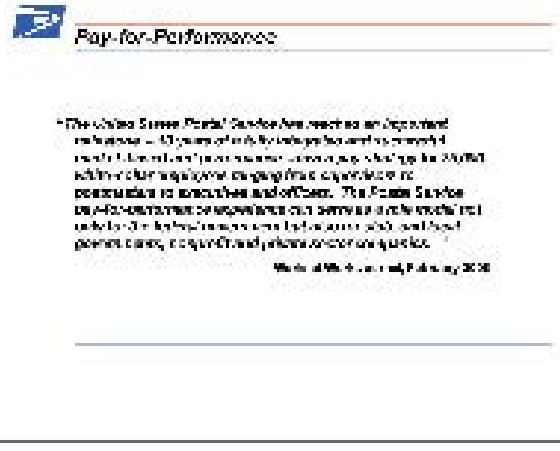
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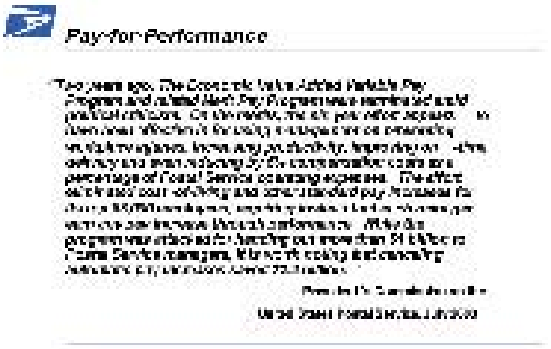
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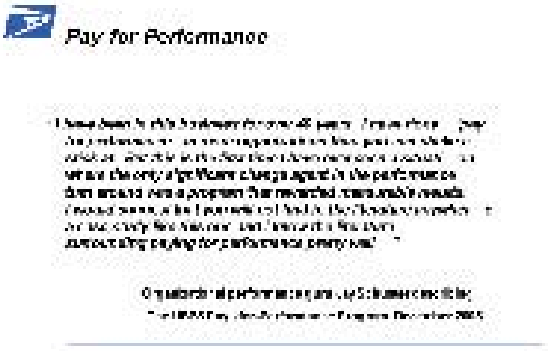
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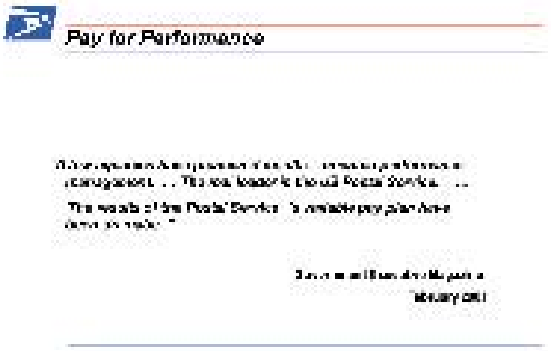
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