

IN SEARCH OF EQUITY: AN EXAMINATION OF LOCALITY PAY

HEARING

BEFORE THE
SUBCOMMITTEE ON FEDERAL WORKFORCE,
POSTAL SERVICE, AND THE DISTRICT
OF COLUMBIA

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JUNE 26, 2008

Serial No. 110-144

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: <http://www.gpoaccess.gov/congress/index.html>
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

48-588 PDF

WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HENRY A. WAXMAN, California, *Chairman*

EDOLPHUS TOWNS, New York
PAUL E. KANJORSKI, Pennsylvania
CAROLYN B. MALONEY, New York
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio
DANNY K. DAVIS, Illinois
JOHN F. TIERNEY, Massachusetts
WM. LACY CLAY, Missouri
DIANE E. WATSON, California
STEPHEN F. LYNCH, Massachusetts
BRIAN HIGGINS, New York
JOHN A. YARMUTH, Kentucky
BRUCE L. BRALEY, Iowa
ELEANOR HOLMES NORTON, District of
Columbia
BETTY MCCOLLUM, Minnesota
JIM COOPER, Tennessee
CHRIS VAN HOLLEN, Maryland
PAUL W. HODES, New Hampshire
CHRISTOPHER S. MURPHY, Connecticut
JOHN P. SARBANES, Maryland
PETER WELCH, Vermont

TOM DAVIS, Virginia
DAN BURTON, Indiana
CHRISTOPHER SHAYS, Connecticut
JOHN M. McHUGH, New York
JOHN L. MICA, Florida
MARK E. SOUDER, Indiana
TODD RUSSELL PLATTS, Pennsylvania
CHRIS CANNON, Utah
JOHN J. DUNCAN, Jr., Tennessee
MICHAEL R. TURNER, Ohio
DARRELL E. ISSA, California
KENNY MARCHANT, Texas
LYNN A. WESTMORELAND, Georgia
PATRICK T. McHENRY, North Carolina
VIRGINIA FOXX, North Carolina
BRIAN P. BILBRAY, California
BILL SALI, Idaho
JIM JORDAN, Ohio

PHIL SCHILIRO, *Chief of Staff*

PHIL BARNETT, *Staff Director*

EARLEY GREEN, *Chief Clerk*

LAWRENCE HALLORAN, *Minority Staff Director*

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF
COLUMBIA

DANNY K. DAVIS, Illinois

ELEANOR HOLMES NORTON, District of
Columbia
JOHN P. SARBANES, Maryland
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio, *Chairman*
WM. LACY CLAY, Missouri
STEPHEN F. LYNCH, Massachusetts

KENNY MARCHANT, Texas
JOHN M. McHUGH, New York
JOHN L. MICA, Florida
DARRELL E. ISSA, California
JIM JORDAN, Ohio

TANIA SHAND, *Staff Director*

CONTENTS

	Page
Hearing held on June 26, 2008	1
Statement of:	
Grimes, Charles, Deputy Associate Director, Office of Personnel Management; and Hank Kashden, Deputy Chief for Business Operations, U.S. Forest Service	51
Grimes, Charles	51
Kashden, Hank	63
Hansen, Kathrene, executive director, Federal Executive Board	24
Kelley, Colleen, president, National Treasury Employee's Union; Jacqueline Simon, public policy director, American Federation of Government Employees; and Art Gordon, national executive vice president, Federal Law Enforcement Officers Association	72
Gordon, Art	90
Kelley, Colleen	72
Simon, Jacqueline	81
Letters, statements, etc., submitted for the record by:	
Cummings, Hon. Elijah E., a Representative in Congress from the State of Maryland, prepared statement of	103
Davis, Hon. Danny K., a Representative in Congress from the State of Illinois:	
Prepared statement of	3
Prepared statement of Hon. Barney Frank	8
Prepared statement of Hon. Neil Abercrombie	10
Prepared statement of the Federal Managers Association	14
Prepared statement of the Foreign Service Association	12
Fortuño, Hon. Luis G., a Resident Commissioner in Congress from Puerto Rico, prepared statement of	105
Gordon, Art, national executive vice president, Federal Law Enforcement Officers Association, prepared statement of	92
Grimes, Charles, Deputy Associate Director, Office of Personnel Management, prepared statement of	54
Hansen, Kathrene, executive director, Federal Executive Board, prepared statement of	27
Kashden, Hank, Deputy Chief for Business Operations, U.S. Forest Service, prepared statement of	65
Kelley, Colleen, president, National Treasury Employee's Union, prepared statement of	75
Marchant, Hon. Kenny, a Representative in Congress from the State of Texas, prepared statement of	22
Simon, Jacqueline, public policy director, American Federation of Government Employees, prepared statement of	83

IN SEARCH OF EQUITY: AN EXAMINATION OF LOCALITY PAY

THURSDAY, JUNE 26, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL
SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:30 p.m. in room 2154, Rayburn House Office Building, Hon. Danny K. Davis (chairman of the subcommittee) presiding.

Present: Representatives Davis of Illinois, Norton, Sarbanes, and Marchant.

Staff present: Lori Hayman, counsel; William Miles, professional staff member; and Marcus A. Williams, clerk/press secretary.

Mr. DAVIS OF ILLINOIS. The subcommittee will come to order.

Welcome Ranking Member Marchant, members of the subcommittee, hearing witnesses, and all those in attendance to the Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia's hearing on locality pay and other Federal pay concerns.

Hearing no objection, the chair will ask unanimous consent to allow the testimonies of Representatives Barney Frank, Neil Abercrombie, the American Foreign Service Association, the Federal Managers Association, and the COLA Defense Committee of AHU, Inc., to be added to the record.

The chair, ranking member, and subcommittee members will each have 5 minutes to make opening statements, and all Members will have 3 days to submit statements for the record.

Hearing no objection, so is the order. I will begin.

Again, thanks to all of you who have come. This hearing entitled, "In Search of Equity: An Examination of Locality Pay," serves as a followup to a hearing the subcommittee previously held in the first session of the 110th Congress that broadly examined issues related to Federal pay and administration policies.

Today's hearing, however, will focus on concerns associated with locality pay, including calculation, geographical application, and the determination of an employee's primary duty station for locality pay purposes.

Keeping in line with the subcommittee's efforts and interests in enhancing the Federal Government's ability to recruit and retain a highly qualified work force that can operate and function in a manner that meets the challenges of the 21st century, it is my hope that the testimony presented today will help us better under-

stand the formula for which locality pay payments are based and to determine if this basis serves as the most practical methodology to reflect the realities that Federal employees, particularly those in high-cost area, face in providing for their general welfare and that of their families.

Adding locality pay to the base salaries of nearly 2.7 million civilian workers in over 800 different occupations throughout the country, the Federal Government has committed itself to making sure that its employee compensation systems accommodate workers fairly. However, the question we are examining today is whether the calculation of locality payments as currently prescribed actually meets this objective. This is in addition to the pay levels and benefits Federal agencies currently have in place.

In addition to locality pay issues, this hearing is also intended to explore other recently introduced Federal pay-related proposals put forth by my colleagues in both the House and the Senate, as well as by the Office of Personnel Management. These include Senate 3013, the Non-Foreign Area Retirement Equity Assurance Act of 2008, which converts white collar Federal employees in the non-foreign areas to a locality pay system. Second, OPM's Locality Pay Extension Act of 2007, which aims to extend locality pay to white collar employees in non-foreign areas.

H.R. 1786, introduced by Representative Faleomavaega, would amend Title 5 U.S.C. to all Federal employees stationed in American Samoa to receive non-foreign area cost of living allowances as if stationed in Guam or the Commonwealth of the North Mariana Islands.

H.R. 2375, the Southeastern Massachusetts and Rhode Island Federal Worker Fairness Act of 2007 seeks to improve pay parity in the Federal wage system at the prevailing rate for blue collar Federal employees in certain high-cost areas.

And H.R. 3202, the Foreign Service Overseas Pay Equity Act of 2007, would amend the Forest Service Act of 1980 to extend comparability pay adjustments to members of the Foreign Service assigned to posts abroad and for other purposes.

I would like to thank Representatives Barney Frank and Neil Abercrombie, as well as the Foreign Service Association and the Federal Managers Association for submitting their valuable testimony for the record, and I look forward to hearing the testimony of the other witnesses joining us today as we discuss a wide range of Federal pay-related issues.

[The prepared statements of Hon. Danny K. Davis, Hon. Barney Frank, Hon. Neil Abercrombie, the Foreign Service Association, and the Federal Managers Association follow:]

STATEMENT OF CHAIRMAN DANNY K. DAVIS
AT THE
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE,
AND THE DISTRICT OF COLUMBIA
HEARING ENTITLED

“In Search of Equity: An Examination of Locality Pay.”

June 26, 2008

This hearing, entitled, **“In Search of Equity: An Examination of Locality Pay,”** serves as a follow-up to a hearing the Subcommittee previously held during the first session of the 110th Congress that broadly examined, issues related to federal pay and administration policies.

Today’s hearing, however, will focus on concerns associated with locality pay, including calculation, geographical application and the determination of an employees primary duty station for locality pay purposes.

Keeping in line with the Subcommittee’s efforts and interests in enhancing the federal government’s ability to recruit and retain a

highly qualified workforce that can operate and function in a manner that meets the challenges of the 21st century. It is my hope that the testimony presented today will help us better understand the formula for which locality payments are based and to determine if this basis serves as the most practical methodology to reflect the realities that federal employees, particularly those in high cost areas, face in providing for their general welfare and that of their families.

Adding locality pay to the base salaries of nearly 2.7 million civilian workers in over 800 different occupations throughout the country, the federal government has committed itself to making sure its employee compensation systems accommodate workers fairly. However, the question we are examining today is whether the calculation of locality payments, as currently prescribed, actually meets this objective. This is in addition to the pay

levels and benefits federal agencies currently have in place.

In addition to locality pay issues, this hearing is also intended to explore other recently introduced federal pay related proposals put forth by my colleagues in both the House and Senate as well as by the Office of Personnel Management (OPM). These include:

- S. 3013, the “Non-Foreign Area Retirement Equity Assurance Act of 2008”, which converts white-collar federal employees in the non-foreign areas to a locality pay system;
- OPM’s “Locality Pay Extension Act of 2007”, aims to extend locality pay to white-collar employees in the non-foreign areas;

- H.R. 1786, introduced by Rep. Faleomavaega, would amend title 5, U.S.C. “to allow Federal employees stationed in American Samoa to receive non-foreign area cost-of-living allowances as if stationed in Guam or the Commonwealth of the Northern Mariana Islands;
- H.R. 2375, the “Southeastern Massachusetts and Rhode Island Federal Worker Fairness Act of 2007,” seeks to provide pay parity in the Federal Wage System’s prevailing rate for blue collar federal employees in certain high-cost areas; and
- H.R. 3202, the “Foreign Service Overseas Pay Equity Act of 2007” would amend the Foreign Service Act of 1980 to extend comparability pay adjustments to members of the

Foreign Service assigned to posts
abroad and for other purposes.

I'd like to thank Representatives Barney Frank, Neil Abercrombie as well as the Foreign Service Association and the Federal Managers Association for submitting their valuable testimony for record and I look forward to hearing the testimony of the witnesses joining us today, as we discuss a wide range of federal pay related issues.

###

BARNEY FRANK
4TH DISTRICT, MASSACHUSETTS

2252 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2104
(202) 225-5831
29 CRAFTS STREET
SUITE 375
NEWTON, MA 02458
(617) 332-3920

**Congress of the United States
House of Representatives
Washington, DC**

558 PLEASANT STREET
ROOM 308
NEW BEDFORD, MA 02740
(508) 999-8462
THE JONES BUILDING
29 BROADWAY
SUITE 310
TAUNTON, MA 02780
(508) 822-4796

TESTIMONY OF CONGRESSMAN BARNEY FRANK

**SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE,
AND THE DISTRICT OF COLUMBIA**

"IN SEARCH OF EQUITY: AN EXAMINATION OF LOCALITY PAY"

JUNE 26, 2008

Thank you, Mr. Chairman, for your continued concern about very important equity issues associated with the locality pay system. I appreciate the opportunity to submit testimony to the Subcommittee on this matter, specifically on a question of equity that is of special concern to federal hourly wage workers in parts of Massachusetts and Rhode Island.

The federal government has over the years developed mechanisms by which employee compensation can be adjusted to reflect the significant economic differences that exist in various regions around the country. The locality pay system is one of these systems, and it has clearly promoted fairness by accounting for the reality that a dollar goes quite a bit further in some parts of the country than it does in others.

But, the lack of synchronization between the local pay adjustment mechanisms that apply to different categories of employees has contributed to at least one inequitable outcome of which I am aware. I refer to the differential treatment that can occur between "white-collar" and "blue-collar" federal employees living in the same city or town, given that locality pay area boundaries for GS employees do not generally correspond with the prevailing wage rate boundaries of the Federal Wage System (FWS) that covers federal hourly employees.

In the Narragansett Bay, Rhode Island Wage Area (which includes many federal workers from Southeastern Massachusetts), GS employees under locality pay justifiably receive the same compensation as their counterparts in the Boston, Massachusetts Wage Area, while FWS workers under prevailing rates do not. I have joined with Congressmen Patrick Kennedy, McGovern, and Langevin in introducing legislation (H.R. 2375, a copy of which is attached) that calls for Southeastern Massachusetts and Rhode Island prevailing rate workers – federal employees who could be described as "blue collar" – to be treated in the same way as their white collar counterparts for the purposes of calculating their pay.

This Southeastern Massachusetts and Rhode Island region that my three colleagues and I represent for all intents and purposes is a part of the Greater Boston economy, and this is reflected in commuting patterns, job opportunities and housing trends. Indeed, this level of integration is recognized by the federal government, in that we compensate Rhode Island and Southeastern Massachusetts salaried federal employees the same as other salaried employees in Greater Boston.

I first heard about this matter from constituents of mine who work as mechanics – paid on an hourly basis – repairing U.S. Navy Vehicles. Under the current system, they make less than they would if the guidelines for determining local pay adjustments for hourly workers in the region where they work were the same as for salaried workers. To me, this is a matter of basic fairness – hourly rate workers who do important and often very demanding work, also live in the same regional economy and face the same economic difficulties as their salaried colleagues. They ought to also be paid the same, under a mechanism that accounts for the regional conditions they live under.

The Federal Prevailing Rate Advisory Committee (FPRAC) is directly responsible for all questions related to the FWS and prevailing wage rates, and we have brought this matter to their attention. After a long and unfortunate delay occasioned by a nearly two year vacancy in the position of Committee Chair, FPRAC as you are aware has begun to consider taking action on some of these issues. I am pleased, as a result in particular of Congressman Kennedy's efforts, that the Financial Services and General Government appropriations subcommittee included language in the report accompanying its Fiscal Year 2008 legislation urging OPM to consider changes in law to bring federal prevailing rate employees in the Narragansett Bay, Rhode Island Wage Area within the coverage of the Boston Wage Area. In part as a result of this urging, we have received word that FPRAC will apparently be issuing recommendations on proposed changes to regulations for determining FWS wage area boundaries, including whether the boundaries of GS locality pay areas should be used to define the boundaries of FWS wage areas.

In this regard, the bill that I have introduced pertains solely to the hourly workers in the Rhode Island and Southeastern Massachusetts area, and I certainly urge your support for it. I would think, however, that it would also be good for the Subcommittee, as part of its investigation of equity issues, to push to bring locality pay areas for salaried workers and prevailing wage areas for hourly workers into alignment nationwide, in order to promote equity for both groups of federal employees.

I thank you very much again for the opportunity to submit this testimony.

NEIL ABERCROMBIE
1ST DISTRICT, HAWAII



COMMITTEE ON
ARMED SERVICES
COMMITTEE ON
NATURAL RESOURCES

Congress of the United States
House of Representatives
Washington, D.C. 20515

STATEMENT OF
HON. NEIL ABERCROMBIE
OF HAWAII

FOR THE HOUSE OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL
SERVICE AND THE DISTRICT OF COLUMBIA HEARING ON "IN
SEARCH OF EQUITY: AN EXAMINATION OF LOCALITY PAY."

Thursday, June 26, 2008

Chairman Davis and Ranking Member Marchant, thank you for the opportunity to submit my comments to the subcommittee regarding a pressing issue affecting many federal government employees in Hawaii.

Equitable retirement pay for federal employees outside the contiguous 48 states is a concern shared by many civil servants living in Alaska, Hawaii and the U.S. territories. The current system provides a tax-free cost of living adjustment (COLA) to federal employees in positions outside of the continental United States. However, unlike locality pay (which is taxable income) that money is not included in the determination of the "High Three" or three highest consecutive years of pay averaged to determine the baseline for their retirement annuity. As a result, senior federal employees are returning to the mainland U.S. for their final years of service in order to avoid a cut in their retirement pay.

If federal service in the non-contiguous areas such as Hawaii is seen as a drawback to one's future financial well-being, we will have an increasingly difficult time attracting and retaining quality personnel. Further, federal workers should not have to resort to completing their final years of service on the mainland just to earn adequate retirement pay.

I am very concerned about the Office of Personnel Management (OPM) proposal as it may reduce the actual take-home pay received by an individual federal employee. The current proposal suggested by OPM would use complex formulas to compute the transition from COLA to locality pay based on 85 percent of an employee's salary, which will not fully address the financial impact of the added taxable income created by the

ORIGINATED FROM:

WASHINGTON OFFICE: 1502 LONGWORTH HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20615 (202) 225-2726 / 225-4580 FAX
HOME OFFICE: ROOM 4-104, 300 ALA MOANA BLVD., HONOLULU, HAWAII 96850 (808) 541-2570 / 533-0133 FAX
Homepage: <http://www.house.gov/abercrombie/> E-mail: neil.abercrombie@mail.house.gov

100% recycled



switch. However, the proposed Senate legislation incorporates a formula based on 65 percent of an employee's salary, which I think more accurately captures the effect increased taxable income will have on the take-home salary of current employees. Moreover, the length of the OPM proposed transition period – seven years – also negatively impacts more senior personnel who are closer to retirement.

I support S. 3013, the Non-Foreign AREA Act of 2008, which was recently introduced by Senators Akaka, Inouye, Stevens and Murkowski. This bill provides retirement equity for federal employees outside the 48 contiguous states, such as Hawaii. It proposes a better formula for the conversion. In addition, it provides a solution by converting COLA to locality pay by 2011, which increases the retirement annuities earned by the affected workers while protecting actual take-home pay.

In addition, legislation on this issue should address federal retirees and personnel who will retire prior to the completion of the three year phase-in period by including a "buy in" provision that would allow affected employees to pay a certain amount based on the appropriate retirement system they belong to (Civil Service Retirement System, Federal Employee Retirement System) plus interest for the locality pay in effect at the time their 36-month period is calculated to determine their "High Three." This issue came out during a field hearing by the Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia held in Honolulu, Hawaii on May 29, 2008 and is not resolved by S. 3013.

I think this bill is an important step in addressing the inequality between those serving in the continental United States and those serving in remote locations such as Alaska, Hawaii and the territories. Federal employees throughout the nation are making an equal contribution to the health, well-being and security of our nation. Regardless of where they live, they deserve equal treatment and should not be penalized in their retirement for choosing to contribute to the local communities outside of the 48 contiguous states.



Written Testimony of John K. Naland
President, American Foreign Service Association

*Committee on Oversight and Government Reform
The Subcommittee on Federal Workforce, Postal Service and the District of Columbia
Chairman Danny K. Davis (D-IL)*

Hearing on:
"In Search of Equity: An Examination of Locality Pay."

June 26, 2008

Mr. Chairman, thank you for accepting this brief written statement as part of the record for this hearing. The American Foreign Service Association (AFSA) appreciates the support you and your colleagues provide the Foreign Service. Early this year, I had the opportunity to orally testify before Chairman John Tierney's Subcommittee on National Security and Foreign Affairs in reference to effective diplomacy and the future of U.S. Embassies.

Mr. Chairman, as you know, locality pay is a pay adjustment intended to raise federal salaries to the level of salaries paid in the private sector for comparable work. It is not a cost-of living adjustment. Locality pay for Foreign Service personnel serving in Washington, DC is currently 20.89% and increases annually. Those serving abroad do not receive this adjustment, so they effectively take a 20.89% pay cut when they transfer overseas. As a condition of employment, Foreign Service personnel must serve abroad, and on average employees spend two-thirds of their careers on overseas assignments. This ever-growing financial disincentive to serve abroad is undermining diplomatic readiness and morale. Foreign Service members now take a pay cut to serve at 20 percent differential posts such as Damascus, Tripoli, Sarajevo, Chisinau, Libreville, Cotonou, La Paz, and Ulaanbaatar. All tolled, Foreign Service members now take a pay cut to serve at 183 of 268 overseas posts (68 percent). At this rate, within three years, another 42 posts -- those at the 25 percent hardship level without an additional danger pay supplement -- will be passed unless this overseas pay disparity is corrected by Congress. The Senior Foreign Service no longer suffers from this inequity due to the 2004 implementation of pay-for-performance for senior executives government-wide.

Some say the Foreign Service already gets hardship pay and housing allowances so there is no need to fix this pay disparity. That position does not hold up to detailed scrutiny. Congress enacted the hardship and danger pay differentials long before locality pay ever existed in order to acknowledge the difficulties and dangers that Foreign Service members experience at our most difficult and dangerous posts. The pay disparity that has

widened over the past 13 years because of locality pay subverts that congressional intent. Today, when a Foreign Service member serves at a 20 percent hardship post, that individual actually receives only a 1.4 percent increase instead of the intended 20 percent. Going to a 15 percent hardship post means that the member of the Foreign Service actually suffers a 3.6 percent cut in pay. Housing has been provided at overseas posts since 1926 because of the huge variations in local housing standards and values and to offset the dislocations that come with family transfers occurring every couple of years.

The U.S. Foreign Service must have all the tools it needs to implement our diplomatic and national security priorities around the globe. One vital tool that this Congress can provide the men and women of the Foreign Service and their families is to remove this financial disincentive to overseas service. Unfortunately, a legislative solution remains allusive although we appreciate the sensitivity of many of your colleagues to this issue. Disappointment and frustration in the ranks are deepening. While I do not doubt the fact that the House and this Congress are deeply grateful for the work and sacrifices of Foreign Service, I ask for that genuine support to be channeled into securing practical personnel policy initiatives such as brokering a solution to modernizing the pay system for the Foreign Service and putting to rest the pay disparity problem.

What AFSA seeks, and the Secretary of State fully supports, is a legislative correction of what is now a 14-year old unintended inequity in the worldwide Foreign Service pay schedule which widens every year. Ending this pay disparity would help validate the significant efforts and sacrifices made by the men and women of the Foreign Service and their families who serve our country abroad, instead of unintentionally penalizing them for that service by reducing their pay by 20.89% when they transfer abroad. If we don't act now, the pay gap will only widen. We are hopeful the 110th Congress will be the session which solves this problem.

Thank you for considering this written testimony. AFSA looks forward to serving as resource as you try to understand this significant problem.



Testimony for the Record
Before the House of Representatives
Committee on Oversight and Government Reform
Subcommittee on the Federal Workforce, the Postal Service and the District of Columbia
June 26, 2008

In Search of Equity: An Examination of Locality Pay

Transitioning from COLA to Locality Pay: A Vital Step to Recruiting and Retaining a Qualified Workforce in Hawaii

**Statement Submitted for the Record by
The Federal Managers Association**



Chairman Davis, Ranking Member Marchant and Members of the House Subcommittee on the Federal Workforce, the Postal Service and the District of Columbia:

On behalf of the 200,000 managers, supervisors, and executives in the federal government whose interests are represented by FMA, I would like to thank you for allowing us to express our views regarding proposals to change the pay system for federal employees in Alaska, Hawaii and the United States Territories.

Established in 1913, FMA is the largest and oldest Association of managers and supervisors in the federal government. FMA originally organized within the Department of Defense to represent the interests of its civil service managers and supervisors, and has since branched out to include some 35 different federal departments and agencies. We are a non-profit, professional, advocacy organization dedicated to promoting excellence in government.

Since 1948, federal employees outside of the contiguous U.S. have received a non-foreign cost of living adjustment (COLA) to ensure that their pay reflects the high cost of living in these areas. In Hawaii, this non-taxable payment can be up to 25 percent of an employee's basic pay; however, COLA is not credited towards an employee's retirement annuity. At the time of its inception, COLA was viewed as "hardship pay" for federal employees. Today, however, we are faced with a much different population and a situation where a COLA no longer makes sense.

Since the passage of the Federal Employee Pay Comparability Act (FEPCA) in 1990, there has been much discussion and consternation that employees in Hawaii and Alaska have not been included in the locality pay pool authorized by FEPCA. In the beginning, locality pay was rather low and a cost of living allowance seemed to offer reasonable compensation for the high cost of living in these remote states. As time went on, it became apparent that COLA recipients were at a disadvantage because locality pay is tied to basic pay for retirement purposes. This practice denies residents of Alaska and Hawaii substantial benefits for no other reason than that their residence is outside the contiguous U.S.

High locality pay in the continental 48 states lures managers, high-level technicians, and engineers to leave Hawaii and Alaska to seek higher pay and an increased annuity towards the end of their careers. With the Los Angeles area offering a 25.26 percent locality adjustment and the San Francisco area offering 32.53 percent, it is easy to see why employees nearing the end of their careers would be looking to complete their final three years in these cities. Specific data to document this migration is hard to come by, but the stories are endless. In one such instance, a husband and wife have



separated for their careers. The wife has gone to San Francisco to finish up her career with the government while her husband continues to work in Hawaii. They both plan to retire in Hawaii, but must endure a long distance relationship in order to properly plan for their retirement.

Backfilling vacant positions in Hawaii, especially managerial and supervisory positions, which by their nature are held by older workers, becomes increasingly difficult with COLA not contributing to retirement annuity calculations. Qualified workers are reluctant to accept positions in Hawaii and jeopardize their retirement. At the Pearl Harbor Naval Shipyard, vacancies remain open for months and delays in hiring at this level undoubtedly impact agency mission. Similar refusals spread across all of the federal agencies in Hawaii and Alaska negatively affect the federal government.

Over the years, we have seen that annuity payments for residents of Hawaii were as much as 30 percent less than their counterparts on the west coast. By 2003, there was enough interest that a working group was put together in Hawaii to study this issue and the group subsequently submitted a request to the Office of Personnel Management (OPM) to look into converting non-foreign COLA to locality pay. With each passing year, the voice for locality pay grew louder and in 2006, the Hawaii State Legislature passed House Resolution 47 in support of locality pay for Hawaii federal workers. In May 2007, at the urging of the President, OPM issued the Locality Pay Extension Act of 2007 and submitted the legislative proposal to the Senate for consideration. In his fiscal year 2008 and 2009 budget request, the President also proposed to phase-in locality pay and phase-out the non-foreign cost of living allowance.

We at FMA appreciate the support and attention the Administration is placing on this problem. For too long, federal employees outside the continental U.S. have been punished for their residence in these areas. However, we have serious concerns about the OPM proposal as submitted to Congress. In short, the Locality Pay Extension Act would transition federal employees in non-foreign COLA areas to locality pay over seven years by adjusting their pay every year. This would be done by increasing the locality pay component and decreasing the COLA component each year. For computation purposes COLA would be "frozen" at the first year of inception and reduced by 15 percent of the difference between the original COLA rate and the yearly locality pay rate. It is our understanding that in the eyes of the Administration, the proposal offered by OPM would do three things:

- Reduce the cost of litigation associated with the COLA program;
- Lessen the budget impact that a full first year of locality pay would bring; and,
- Apply contemporary compensation practices to all federal workers.



FMA believes that the Locality pay Extension Act does not go far enough to recognize the needs of today's hardworking federal employees outside the contiguous U.S. In fact, it is our belief that the OPM proposal continues the discriminatory, illogical and possibly unconstitutional denial of full locality pay for federal employees in Alaska and Hawaii for seven years. In short, the Act would needlessly stretch out the transition and not do enough to protect the take home pay of employees. The time for a seven year phase-in was seven years ago. Today we are facing real retention and recruitment issues and we need to move up the timetable on any COLA to locality pay conversion in order to compete with not only the private sector, but also our federal counterparts on the mainland. As such, it is our belief full locality adjustments should be added to pay the first year it is authorized.

For the federal government to remain the employer of choice, we must offer a competitive salary. Locality pay takes into account the cost of labor in a given area and was originally enacted to close the gap between public and private sector wages. The OPM proposed actually *reduces* net take home pay for most federal employees in Hawaii and Alaska, since the added locality pay component also brings with it a tax burden. OPM recognizes this with a 15 percent "offset" to adjust for the added taxes, but most employees in Hawaii and Alaska fall into the 25 or 28 percent tax bracket. By applying a 15 percent offset, most employees will see less money in their paychecks than if we left the system as is. Simply put, this is unacceptable and will only exacerbate our growing recruitment problem. The federal workers in the contiguous 48 states were not asked to take a cut in pay for increased retirement benefits when FEPCA was enacted; they were given both - increased pay and increased annuity. It is only fair we do the same in this situation.

We at FMA request Congress work with OPM to develop a fair and equitable conversion from non-foreign COLA to locality pay focusing on two key features to help with recruitment and retention:

- Implement full locality pay the first year it is authorized; and,
- Apply an offset to COLA that is at least 25 percent to minimize adverse affects to take home pay.

The Federal Managers Association proposed an alternative to the OPM plan, but one based on similar calculations. Under our proposal, the Rest of the United States (RUS) locality pay should be applied to the basic pay of federal workers in the first year of implementation, since no Hawaii locality rate currently exists. COLA for these employees would be reduced by the RUS rate multiplied by 75 percent, not 85 percent as proposed by OPM. For example, if the RUS rate was 15 percent and COLA



was frozen at 25 percent as it is now, the employee would receive 15 percent taxable locality pay and a 13.75 percent COLA in the first year. Workers between GS-6 step 2 and GS-12 step 9 would see no change to their take home pay under this plan if they took the standard deduction on their taxes. Workers below the GS-6 level would see slightly more in their pay than under the current COLA system. Conversely, workers above the GS-13 level would see a manageable decrease in pay. The FMA plan targets the majority of workers in Alaska and Hawaii. Taking budgetary matters into consideration, the FMA proposal likely would not cost the federal government any additional money as the same Locality Pay Pool would be spread over a slightly larger population while increasing the amount of federal taxable income for Alaska and Hawaii federal employees.

After the first year of implementation, a Hawaii area locality pay should be established and the proper amount of compensation applied. We have seen some preliminary studies that put Hawaii's locality pay around 20 percent and Alaska's at 28 percent. With these rates applied in the second year, COLA should be eliminated in Alaska and greatly reduced in Hawaii. The additional taxes collected as a result of locality pay conversion would help offset increased annuity amounts and the cost of administering the pay conversion.

We would like to take a moment to address recently introduced legislation, S. 3103, the Non-Foreign Area Retirement Equity Assurance Act, introduced by Senators Akaka, Inouye, Stevens and Murkowski. We were encouraged to read that several of our concerns were addressed in the bill and we congratulate the fine Senators from Alaska and Hawaii on developing this critical piece of legislation.

The bill proposes a three year phase-in of locality pay combined with an annuity buy-in aimed at stabilizing the current retirement eligible workforce. The legislation also advises a 35 percent offset to COLA to protect the pay of all federal employees as they transition to locality pay. This is critical to retaining younger employees who have told us they would not support any change that could adversely affect their pay check.

Additionally, we are supportive of the phase-in process of locality pay as laid out in S. 3103. During the phase-in, non-foreign COLA is adjusted based on the amount of locality pay phased in. Under the legislation, in the first year of conversion, employees would receive one-third of the locality pay percentage for the Rest of U.S. and still receive a sufficient amount of COLA to pay the additional taxes they will incur. In the second year, when a locality pay area could be established for each non-foreign area, two-thirds of the locality pay percentage approved by the President for the area would be applied, with the percentage of COLA being lowered but still offsetting increased taxes and mandatory



payroll deductions. In the final, third year, full locality pay would be implemented, but a COLA portion of pay would still be authorized. This process would continue after the third year until the locality pay surpasses the offsetting COLA rate. We are encouraged that the bill expresses the sense of Congress that employees should not have a decrease in take home pay due to enactment of the legislation.

FMA's plan calls for full locality pay in the first year based on the assumption current employees would be less likely to transfer out of state to take jobs as they near retirement. They would be able to retire on their own terms, in their own homes and in their own communities. While S. 3103 would implement locality pay over three years, we believe the outcome would remain the same due to the provision which would allow employees to pay into the Civil Service Retirement and Disability Retirement Fund to cover the amount of what they would have paid if they had been covered under the legislation.

However, we have serious concerns regarding the buy-in provision in the legislation. As written, the buy-in would allow an employee to pay the retirement fund the amount that would be collected if COLA was credited towards retirement. This would only be possible during the transition and would allow that employee to then collect a pension based on his/her high three including COLA, not locality pay. While we are a supportive a buy-in process, the bill would grant employees who retire during the three year phase-in a benefit that no other employee in history has ever or will ever get.

One can reasonably assume that this could cause further litigation. Additionally, the bill encourages employees to retire during the phase-in, which could cause the very same retirement wave we are looking to prevent. For employees who are retirement-eligible, retiring during the third year of transition will benefit them more in retirement than if they retired after the phase-in. We at FMA propose that employees who retire after the bill is enacted be the only people allowed to buy-in. Those who buy-in would pay back the government the amount that would have been withheld if they were still working during the transition and their annuity computation adjusted by the additional locality pay.

For example, employees who retire in year one could buy-in to one-third RUS locality pay retirement withholdings. In the second year, they could buy-in to two-thirds the Hawaii locality pay (if one is determined) and in the third year, buy-in to full Hawaii locality pay. The high three would be adjusted every year that an employee bought in so that the annuity would go up accordingly. At the end of the transition, a buy in would no longer exist. We believe this approach would work well to meet our goals of stabilizing the current retirement eligible workforce and protect take home pay.



OPM has stated that a significant retirement wave would occur after if full locality pay was introduced right away. We at FMA believe the “retirement tsunami” has already begun. By implementing locality pay right away, agencies can prevent what otherwise would have been a mad scramble as senior leaders shuffle around and jockey for advantageous retirement positions. Implementing full locality pay sooner rather than later will allow these outgoing leaders to focus more on succession planning and less on how they will be planning for their own retirement. Eliminating an arbitrary phase-in period will stabilize the current retirement eligible employees who make up nearly half the workforce.

The other half of the workforce, those just entering civil service, is less concerned about high three and more concerned with take home pay. By increasing the offset to COLA to 65 percent, these younger workers will not be adversely impacted by a change in the pay system. Additionally, employees in the Federal Employee Retirement System (FERS) will see increased eligible matching funds for their Thrift Savings Plan (TSP) because their base pay will be increased by the locality pay amount. In fact, over a career, these matching funds can amount to an estimated \$31,000 for a GS-9. The resulting compensation package will make the federal government more competitive in the current tight labor market. This is essential if the highly critical missions of the federal agencies in Hawaii and Alaska are to be met. Currently, the Defense Intelligence Agency employees are given a compensation package that includes the Washington D.C. locality pay *and* a COLA for the Honolulu area. Please note we are not advocating for both COLA and locality pay. We are simply asking for the tools that allow us to be competitive in the job market.

In recent months, we have been advised that COLA will be decreased to 24 percent for Honolulu in the next cycle. This is not because the cost of living is decreasing in Hawaii, but rather the cost of living in Washington D.C. is increasing faster. This is particularly important for our friends in Alaska who see a huge disparity between their COLA at 18 percent and the estimated locality pay of 28 percent. COLA served its purpose half a century ago. It is now outdated and acts as a barrier to federal employment. By acting now and implementing this market-oriented approach to determining local salaries, Congress can arm Hawaii and Alaska managers with one more tool to attract and retain today’s highly mobile and talented workforce. Thank you for your time and consideration of our views.

Mr. DAVIS OF ILLINOIS. At this time I would like to yield to the ranking member, Mr. Marchant, for any opening remarks that he may have.

Mr. MARCHANT. Thank you, Mr. Chairman. Thank you for holding this hearing on locality pay.

As this committee continues to look at ways to recruit and retain the best employees for Federal service, I believe it is important that we address each of these longstanding concerns.

One issue before the committee today is whether Congress should pay the way pay is calculated in Alaska, Hawaii, and the territories. The Office of Personnel Management has suggested that switching from the older cost of living allowance system to a more modern locality pay system could provide more equal treatment between all Federal employees.

One interesting thing about the increasing favor of the use of locality pay is that it confirms that market-based measurements that respond to private sector changes appear to work once again better for citizens than Government-based statistics or congressionally mandated across-the-board pay adjustments regardless of the market or performance factors. This is a lesson that I believe needs to be applied to other parts of Government, as well.

I understand that there are some differences between the Senate legislation, Senate 3013, and the original Bush administration proposal, and I will be interested in hearing our witness explain the difference and recommend improvements.

Thank you very much, Mr. Chairman.

[The prepared statement of Hon. Kenny Marchant follows:]

**OPENING STATEMENT OF
KENNY MARCHANT, RANKING MEMBER
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL
SERVICE
AND THE DISTRICT OF COLUMBIA
June 26, 2008**

Thank you, Mr. Chairman, for holding this hearing on locality pay and the way it affects the federal workforce. As this Committee continues to look at ways to recruit and retain the best employees for federal service it is important that we address such longstanding concerns.

One issue before the committee today is whether Congress should change the way pay is calculated in Alaska, Hawaii and the territories. The Office of Personnel Management has suggested that switching from the older Cost of Living Allowance system to a more modern Locality Pay system could provide more equal treatment between all federal employees.

One interesting thing about the increasing favor of the use of locality pay is that it confirms that market-based measurements that respond to private sector changes appear, once again, to work better for citizens than government based statistics or Congressionally mandated across the board pay adjustments, regardless of market or performance factors. This is a lesson we

need to be applying in other areas of government as well.

I understand that there are some differences between the Senate legislation S. 3013 and the original Bush Administration proposal. I'll be interested to hear our witnesses explain these differences and recommend improvements. So I look forward to the testimony we are going to hear today as we study this challenge. Thank you, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Marchant.
Mr. Sarbanes, do you have any opening comments.
Mr. SARBANES. No, sir.

Mr. DAVIS OF ILLINOIS. Well, thank you very much. Then we will proceed with our witnesses.

I would like to call our first witness, Ms. Kathrene Hansen. Ms. Kathrene Hansen is the executive director of the Greater Los Angeles Federal Executive Board. The Federal Executive Boards are responsible for strengthening the management and administration of Federal activities. Ms. Hansen is also a co-author of a report entitled, "Imperfect Storm," a Federal Executive Board white paper issued in July 2006 addressing daunting challenges in determining Federal pay.

We welcome you, Ms. Hansen. It is the custom of this committee to swear in all witnesses.

[Witness sworn.]

Mr. DAVIS OF ILLINOIS. The record will show that the witness answered in the affirmative.

Thank you very much again. You have 5 minutes in which to summarize your statement. Of course, the lights just simply indicate that is time to go, it is time to wind down, and then it is time to stop.

Thank you very much. We are pleased to have you.

**STATEMENT OF KATHRENE HANSEN, EXECUTIVE DIRECTOR,
FEDERAL EXECUTIVE BOARD**

Ms. HANSEN. Good morning, Chairman Davis and members of the subcommittee. Thank you for the opportunity to appear before you today to discuss the white paper entitled, "Imperfect Storm: The Looming Human Capital Crisis in California's High-Cost Cities," which was prepared in July 2006 by the Greater Los Angeles and San Francisco Bay Area Federal Executive Boards.

The views in this testimony are my own and do not represent the views of the administration, the Department of Homeland Security, or the Federal Executive Boards.

Although she is not testifying today, I would like to acknowledge Dianna Louey, my counterpart from San Francisco.

In 1988 the FEBS in New York City and Los Angeles published reports on the recruitment and retention crisis experienced in those high-cost cities. These reports captured the attention of policymakers in Washington, DC, and the result was the passage of the Federal Employee Pay Comparability Act. The creation of locality pay was a major breakthrough, but it did not solve the problems identified 20 years ago.

Stories we hear in California's high-cost cities are not the reality for the Federal worker in most parts of the country. It is surprising that Federal employees at the GS-13 and -11 and -12 levels qualify for HUD Section 8 rental assistance program. We hear about employees who sleep in their cars to save up to get into an apartment, employees who get their dental work done in Mexico, and employees who share an apartment based on their shift assignment.

With the gas price hike, we are seeing an increase in the number of employees who sleep on a co-worker's sofa or in a camper in a

nearby park because they can't afford both rent and the gas to drive to work each day. They do all this so they can stay in California because of family obligations or to keep their jobs while they desperately await a transfer to a lower-cost city.

The key here is that they do their jobs well while they quietly struggle to survive. That is dedication.

The failure of the current locality pay formula to consider cost of living and extremely high housing costs has resulted in tremendous variation in the quality of life for the Federal worker. In many parts of the country the Federal worker is adequately compensated; however, in high-cost cities that is not the case. I am not an economist or a statistician, so I cannot tell you why or exactly how the current locality pay formula creates these inequities, I can only testify that it does.

We learned that there are five aspects of the current locality pay system that prevents equity: the calculation of the rest of the United States, not including cost of living in the formula, the composition of the locality pay areas, not closing the pay gap, and not including the State tax rate.

Based on OPM's response, we know that they believe that Federal agencies would fully implement the human resource flexibilities available to them so the recruitment and retention problems could be eliminated; however, that does not appear to be the reality in the field.

In anticipation of today's hearing, Dianna and I conducted a quick e-mail survey of our members to assess what had changed in the 2-years since we conducted our study. We had about a 17 percent response rate. We found that most agencies continue to experience the same recruitment and retention challenges, and in many cases the situation has worsened.

Many of the Nation's most critical infrastructure exists in California's high-cost cities. To protect them and the millions of residents in these mega cities, the full complement of the Federal agencies is needed to keep them safe and secure; however, there is no incentive within the existing Federal pay system for employees to serve in these high-cost cities.

If the locality pay formula were changed to consider the cost of living, it would negate the need to explore other options and to ease the financial strain on the Federal work force in high-cost cities.

In the event of this wholesale formula change, our report highlighted an alternative. Even with the current housing market, housing is still not affordable for many Federal employees at all grade levels. In Los Angeles and San Francisco it takes 67 to 85 percent of the average Federal employee's salary to afford a median-priced home.

DOD has a proven model to reduce the impact of personnel transfers to high-cost cities. In addition to their base pay, active duty personnel are given a basic allowance for housing commensurate with their rank based on the housing costs of their assigned city.

Another factor that creates recruitment and retention problems at the other end of the pay chart is pay compression. The amounts at issue are not trivial. For each of the past several years, several

GS-15 employees in San Francisco and L.A. have been prevented from receiving thousands of locality pay dollars. In most parts of the United States the Federal employee is well compensated and able to live the lifestyle of a typical middle class family. It is heart-wrenching to see the financial and quality of life sacrifices that Federal employees in California's high-cost cities must make in order to survive because they have chosen to work for an employer who by statute is unable to compensate them fairly and equitably in comparison to their out-of-State peers. In essence, they are penalized for serving in California.

As our survey has clearly confirmed, when a current or prospective employee is trying to decide whether to move or to stay in California, I guarantee they don't look at cost of labor, they look at cost of living. The title of this hearing is, "In Search of Equity: An Examination of Locality Pay." I applaud the committee for looking into this matter, because I can assure you that the current locality pay system is far from equitable.

Thank you.

[The prepared statement of Ms. Hansen follows:]

**Statement of
Kathrene Hansen, Executive Director
Greater Los Angeles Area Federal Executive Board**
**Before the
House Committee on Oversight and Government Reform
Subcommittee on Federal Workforce, Postal Service and the District of Columbia**
On:
“In Search of Equity: An Examination of Locality Pay”
June 26, 2008

Good morning Chairman Davis and Members of the Subcommittee. I thank you for the opportunity to appear before you today to discuss the White Paper titled *“Imperfect Storm: The Looming Human Capital Crisis in California’s High-Cost Cities”* which was prepared in July 2006 by the Greater Los Angeles (GLA) and San Francisco Bay (SFB) Area Federal Executive Boards (FEBs). The views in this testimony are my own and do not represent the views of the Administration, the Department of Homeland Security, or the Federal Executive Boards.

I am Kathrene Hansen, the Executive Director of the Greater Los Angeles FEB. Although she is not testifying today, I would like to acknowledge Dianna Louie, my counterpart with the San Francisco Bay Area FEB. We work collaboratively together to resolve state wide issues because between our two FEBs, we represent over **80,000** Civilian employees who work for more than 300 regional, district and area Federal agencies and Department of Defense commands (Postal and active duty military employees which accounts for an additional 86,000 employees in our jurisdiction). The State of California has more Federal employees than any community outside of the District of Columbia. Although our focus was on Los Angeles and San Francisco localities, we can only conclude that the rest of the Federal workforce in our state is impacted by many of the issues raised today.

Why the Federal Executive Boards are Involved in this Issue:

FEBs were created by President Kennedy in 1961. The purpose of the Board is to provide a vehicle for Federal agencies in the field to work together on common issues, identify common problems and concerns that cannot be solved from the local level and to bring them when appropriate, to the national level. We were created for this very purpose which is to highlight and provide insight into issues that may potentially become of national significance. FEBs have a rich history of supporting Federal agencies in the field especially in the areas of disaster preparedness and human capital development. Specifics about the FEBs’ origin, regulatory and administrative authority to participate in the dialogue on issues such as locality pay can be found in Appendix A.

In 1988, the FEBs in **New York City and Los Angeles published reports on the recruitment and retention crisis experienced in those high-cost cities.** These reports captured the attention of policymakers in Washington, D.C., and the result was the passage of the **Federal Employee**

Pay Comparability Act of 1990 (FEPCA). The creation of locality pay was a major breakthrough, but it did not solve the problems identified 20 years ago.

For many years it has been increasingly difficult for Federal departments and agencies located in California to hire and retain qualified personnel. By early 2001, it was evident that staffing problems were approaching crisis proportions. The Greater Los Angeles Area FEB published a report that year titled: *The Federal Employee Recruitment and Retention Crisis: The Failure of the Federal Employee Pay Comparability Act of 1990* which **highlighted the need to include cost-of-living in the locality pay formula.** On September 11th of that year the attack on America and the global war on terrorism rightly became an all-consuming concern within the Federal sector; therefore, Federal staffing problems seemed of less importance temporarily.

With recent skyrocketing increases in the cost of living, the issue has indeed become critical for some Federal agencies. Stories we hear often in California's high-cost cities are not the reality for the Federal worker in most parts of the country. It is surprising that Federal employees at the GS 13 and GS 11/12 level and below qualify for HUD's Section 8 rental assistance program in SFB and GLA respectively. We hear about employees who sleep in their cars while they save up to get into an apartment, employees who get their dental work done in Mexico, employees who share an apartment based on their shift assignment. With the gas price hike we are seeing an increase of employees who are staying on a co-workers sofa or sleeping in a camper in a near-by park during the week because they can't afford rent and the gas to drive to work each day. They do all this so they can stay in California because of family obligations or to keep their jobs while they desperately await a transfer to a lower cost city. The key here is that they do their jobs well while they quietly struggle to survive – that is dedication!

Federal Locality Pay Methodology

The reports published by the FEBs in 1988 called for a restructuring of Federal pay based on **cost of living.** And although these reports are credited as the genesis of the FEPCA, the call for locality pay to be based on cost of living was not heard. Instead the formula is based upon the cost of labor. The failure of the current locality pay formula to consider cost of living and extremely high housing costs has resulted in tremendous variations in the quality of life for the Federal worker.

In many parts of the country, the Federal worker is adequately compensated; however, in high-cost cities that is not the case. I am not an economist or a statistician so I cannot tell you why or exactly how the current locality pay formula creates these inequities. I can only testify that it does.

I am a proud Federal employee based in Los Angeles, daily I witness the Federal agencies - against all odds – heroically perform their missions. I am also a compassionate person who sees the adverse impact of this formula and the struggles of the Federal employees in California's high-cost cities as they try to put a roof over their heads, food on their tables and gas in their cars. The workforce is stretched to their limit, employees face extreme challenges, yet they do their jobs well and keep us safe. California employees are often required to work more than one job to make ends meet. Employees are also doing more than their share of the workload to

compensate for prolonged high vacancy and turnover rates. This also requires that they work a disproportionate amount of overtime and many drive 75 miles to and from work because they had to move that far out to find “affordable housing.”

Based on the input received from Federal managers, there are five aspects of the current locality pay system that prevents equity:

- (1) The creation of the Rest of U.S. Category
- (2) Not including Cost-of-Living in the formula (to include housing)
- (3) Composition of Locality Pay Areas
- (4) Not Closing the Pay Gap
- (5) Not Including the State Tax Rate

The Creation of the “Rest of U.S. Category” raised the base pay for all Federal employees in the Continental United States (CONUS) and diluted the financial relief so desperately needed in high-cost areas. The difference in pay between high and lower-cost areas hasn’t been enough to draw employees and retain employees in the high-cost areas.

To illustrate this point: when reviewing the Locality Pay Charts it appears that Federal employees in San Francisco are receiving 32.53% more than employees in low-cost locales and Los Angeles employees are receiving 25.26% more; however, since all Federal employees in the CONUS receive 13.18% locality pay, the net increase for SFB and GLA respectively is 19.35% and 12.08% (*A chart showing this calculation for all locality pay areas is included as Attachment B*)

Not Including Cost of Living in the Formula - Although the current locality pay formula does not factor in the cost-of-living, employees certainly do when they consider where they can afford to live. Locality pay rates that are out of sync with the cost-of-living result in Federal employees being able to sustain a significantly higher standard of living in some parts of the country. **For example, a Federal employee could move from Los Angeles to Houston and make 44% less and still maintain the same lifestyle. The anomaly is that this Federal employee making the transfer would also see a 2.13% increase in their Federal salary and pay no state income tax (compared to the current 9% paid in California) and pay 72 cents less per gallon of gas.** This occurs because cost of living is not considered in establishing locality pay rates.

Composition of Locality Pay Areas – There is great variation in the size of locality pay areas. The Los Angeles Area locality pay area is 36,000 square miles - almost the size of the State of Maine – the largest in the Nation. Throughout this massive area, there are six different counties with significantly different economies and demographics. Representatives from the Los Angeles FEB have made two presentations to the Federal Salary Council to request that the geographic boundaries for our locality pay area to be changed so that the “cost of labor” surveys conducted would more accurately reflect the reality of the different communities that are now part of the same pool. Ironically one of the highest labor markets (Santa Barbara County) is not surveyed as part of the Department of Labor process, yet one of the lowest labor markets in the United States (San Bernardino County) is included. Our request was denied by the Council.

Not Closing the Pay Gap - In 1990 a stop-gap “emergency” measure was implemented to ease the staffing crisis in New York City, San Francisco and Los Angeles; Federal employees in those locations were given an immediate Interim Geographic Allowance of 8%. Despite the President’s Pay Agent reporting that the pay gap in these locations has continued to increase in these intervening 18 years, the net increase in salary for that period to these employees is only 3.18% in New York City, 4.08% in Los Angeles; and 11.35% in San Francisco.

Not Including the State Tax Rate – Obviously working in a state where there is no state tax income is more affordable than the 9% we pay in California. Also, states differ in taxing retirements. I mention this because there are a lot of military retirees who take civil service jobs and since California does tax those individuals they are another recruitment pool not available to us because they avoid living here because of the high-cost of living and lack of a tax incentive.

Top Four Reasons We Published the Report in 2006:

1. Managers and employees voiced concerns to the FEBs
2. Assist with future succession planning
3. Disclose research findings
4. Identify potential solutions

Every year when the new pay schedules are published, employees would contact the FEBs with questions about pay compression, not enough pay and the belief that the way locality pay is calculated is not adequate. The Federal managers who are members of the California FEBs asked that we do a survey to capture legitimate pay issues in both localities.

Each FEB conducted surveys of Federal agencies to gauge the extent of the staffing problem, assess the potential implications of the problem from a National and public safety perspective, and identify best-practices and lessons-learned that could be transported to other agencies to remedy the problem.

After the results were analyzed we convened an intergovernmental task force in both Los Angeles and San Francisco to review the findings. We did not know where our findings would lead us. What we found is that the current pay schedules adversely impact employees in ways we never imagined. The next step was to propose possible solutions to these macro/micro problems.

What has Changed since the Report was Published?

Although many human resource flexibilities were in place when we prepared this study; in the last few years, the Office of Personnel Management (OPM) has worked diligently to develop even more to assist the Federal agencies with recruitment and retention problems. Based on their response to our report, we know that OPM believes that if Federal agencies would fully implement these flexibilities that the recruitment and retention problems would be eliminated. However, that does not appear to be the reality in the field.

OPM's menu of human resource flexibilities includes a number of non-compensation options such as telework, flexible work hours, etc. Even these are difficult to implement for many of the agencies in high-cost cities who are experiencing record vacancy rates and significantly high turnover. In addition, many of the occupations that are experiencing the most serious recruitment and retention challenges do not lend themselves to these alternative work options.

In anticipation of today's hearing, Dianna and I conducted a quick e-mail survey of our member agencies to assess what had changed in the two years since we conducted our last survey. We again specifically asked the agencies if they are using the flexibilities available to them and what level of success they have had with them. The majority of agencies who responded stated that their agency either would not authorize the flexibilities or that there was no funding to support the flexibilities; so, they were not being used. Only forty percent of those who responded have used the flexibilities and only one-third of those found the flexibilities to be successful.

In addition to the lack of funding to implement the human resource flexibilities, there were four additional concerns raised about relying on these flexibilities as the means to resolve our recruitment and retention challenges:

1. An **inconsistent application of the flexibilities** within the commuting area would result in simply transferring the vacancies between agencies
2. The **remedies** that affect pay are mostly **time-limited** and won't solve the permanent problem of the cost of living being significantly higher than the pay collected
3. The salary enhancements only **exacerbate the pay compression** situation.
4. In the **Los Angeles Area** due to a lack of usable mass transit, the **transportation subsidy** available to many Federal employees Nationwide is **not an option** for workers in the L.A. Basin

A few agencies have migrated into new pay-for-performance systems since our 2006 report was published. As we reported, financial hardships not only take a personal toll on Federal employees, but they have a serious negative impact on job performance. When people don't have the basics of life (food, shelter and safety) it is impossible for them to perform at high levels. Pay for performance maybe an excellent pay formula, but only if employees nationwide have parity regarding these basic needs. A disproportionate number of employees in high-cost cities are consumed with simply acquiring the basics of life; therefore, these pay systems further discriminate against Federal employees in high-cost cities.

In addition, one long-term consequence of employees struggling to meet their monthly bills is that a considerable number of Federal employees in high-cost cities are currently **not participating** fully in the **Thrift Savings Plan (TSP)**. I applaud Congress's recent proposal to require employees to contribute a minimum amount to the TSP unless they "opt-out", however in California most employees do not have sufficient discretionary income after they pay their rent or mortgage and fill their cars with gasoline to allow them to participate in this very important benefit.

The California High-Cost Cities Recruitment and Retention Problem:

The results of **this month's** survey showed that most agencies continue to experience the same recruitment and retention challenges, and in many cases the situation has worsened. In 2006, Federal agencies reported that recruitment and retention of talent were their number one priority and number one challenge.

- 64 percent reported having significant problems recruiting qualified staff, especially in the GS-5 to GS-9 grade range.
- 37 percent of agency vacancies take more than six months to fill in large part due to an inability to attract applicants from outside California.
- Low salaries in relation to our high-cost areas were reported as the primary obstacle to recruitment and retention.
- Federal jobs in the Los Angeles and San Francisco areas were reported as being the training grounds for employees who stay with the Federal Government but then they quickly leave for lower cost areas.

Turnover costs are estimated to be 150% of an employee's annual salary. When this is multiplied times the reported turnover rates experienced in our locales, failure to retain Federal employees is costing the Federal government a significant amount of money.

Since the Federal Law Enforcement Officers Association is participating in this hearing, I will not elaborate on the unique challenges facing law enforcement in these high cost areas, but I will explain that most California Federal Law Enforcement Offices report that the only way they are able to staff their offices is by using their mandatory transfer authority. A useful, albeit unpopular, staffing tool that is not available to other civilian agencies.

This committee has heard a great deal about the impending retirement "tsunami," so I will not repeat those numbers; however, California will be hit particularly hard because of our current vacancy levels. Vacancy levels are in great part due to a large number of Federal employees at all grade levels leaving the state because of our high-cost of living and non-competitive salaries.

California's Economy:

Given the regional complexity, national economic significance and large population, California is critical to the security and economic health of the nation. Many of the Nation's most critical infrastructures exist in California's high-cost cities. To protect them and the millions of residents in these mega-cities, the full complement of Federal agencies is needed to keep them safe and secure. However **there is no incentive within the existing Federal pay system for employees to serve in these high-cost cities.**

A consequence of the recruitment and retention problems in California's high-cost cities is that many Federal jobs have left the state. One agency filled a human resource director position at the GS-15 level; three times only to have each candidate decline the job after their house-hunting trip. So, ultimately the office was relocated out of state. In our 2001 report, we highlighted the Harvard study which reported on funds paid by residents into the U.S. Treasury versus Federal

domestic spending returned to the state. In 2001 it was reported that **Californians' paid in \$23 Billion more than came back into the state** by way of Federal dollars, jobs and programs.

Some may think that the downturn in the economy may be a boom for Federal agencies to recruit. Although the growth in our economy has slowed, we are not seeing the major downturns experienced in other parts of the country. According to the Los Angeles Economic Development Corporation's February 2008 forecast the current business situation for the state and region is a two-track economy, rolling backwards are housing and its related industries and financial services on one track. Other segments of the local economy are seeing slow and steady growth. It is projected that in 2008-2009 the region's tourism industry should see positive growth trends due to the declining U.S. dollar and agreements allowing more leisure travel from China. Professional, scientific and technical services will also see decent growth. The legal profession can expect an onslaught of lawsuits over the next few years from the sub-prime loan debacle. The forecast also looks for a light pickup in international trade with a 2.8% increase in containers handled at the LA/Long Beach Port.

Gas prices have always been higher in California than in other parts of the country. But now Federal employees have been dealt a "double whammy." In pursuit of more affordable housing, employees are living farther out from the metropolitan areas where they work and now have to pay a minimum of two times as much for gasoline than in 2005.

Just this week we found the lowest prices for regular gas also varies dramatically by location. Ironically the same community that has a very high locality pay rate also has one of the lowest gas prices in the country.

City	Lowest Gas Price Available as of June 18, 2008 Source: www.californiagasprices.com
National Average	\$4.08
Houston, TX	\$3.69
Los Angeles, CA	\$4.41
San Francisco, CA	\$4.89
Washington, D.C.	\$4.05

Another anomaly in California is that for most occupations, local governments pay more. The methodology used by local governments to calculate salaries includes Consumer Price Index (including housing costs) and the Employee Cost Index, which was the methodology recommended in the LA FEB's 1988 report. That same report stated that local government when surveyed about the mechanism used to set their salaries confirmed: "The Federal Government is not taken into consideration by any of the state and local government branches which were surveyed because Federal salaries are considered totally unrealistic for the Los Angeles labor market." Twenty years later, this is still an accurate statement.

The Root Cause – The Cost of Housing

Even with the recent decline in housing values, the single biggest factor affecting the cost-of-living in California is housing costs (owning or renting), which are and will remain among the highest in the nation.

If the locality pay formula were changed to consider cost-of-living since that would include the cost of housing, it would negate the need to explore other options to ease the financial strain on the Federal workforce in high-cost cities. In the event this wholesale formula change cannot be made, our report highlighted an alternative.

Our survey analysis concluded that the root cause of the recruitment and retention crisis in California's high-cost cities is the formula currently used in establishing locality pay – it doesn't provide equitable compensation for employees. The formula is based on cost-of-labor instead of cost-of-living. Normally, the former is a direct reflection of the latter, but this isn't the case for many high-cost areas where the difference between cost-of-labor and cost-of-living is **extreme**.

In California, many Federal salaries are considered "low-income" and "very low-income" and would qualify for Section 8 (rent subsidies) of the Public Housing Program under the Department of Housing and Urban Development (HUD). HUD sets the income limits for eligibility for these programs based on the median household income, in high-cost areas; they also factor in rental costs for the community. Examples of HUD income requirements for selected communities are listed below. The eligibility begins with GS-1 and up to GS-13 in San Francisco. Income limits are based upon a four person household.

City	Median Rents 1st Quarter 2008 <i>Source: HUD</i>	Section (8) Housing Eligibility Income <i>Source: HUD</i>	GS-Level <i>(Compared to OPM 2008 Locality Pay Charts by locale)</i>
National Average	\$895	Nationally the eligibility rate is based on the median housed income by County; rental rates are only factored into the eligibility equation in high-cost locations	N/A
Houston	\$802	\$48,900	GS-8/Step 3
Los Angeles County	\$1,794	\$60,650	GS-11/Step2
Orange County <i>(LA Area)</i>	\$1,858	\$74,400	GS-12/Step 6
San Francisco	\$1,990	\$90,500	GS-13/Step 1
Washington, D.C.	\$1,302	\$61,500	GS-11/Step 3

In California's high-cost cities, we see Federal managers relocating to accept a promotion and suddenly find that they must dramatically alter their living standards in order to survive. One manager who relocated to Los Angeles to accept a promotion and reported that he went from living on a country club with his wife not having to work, to living in a duplex and a second income now being required to pay the bills.

As the housing market skyrocketed, we heard stories of senior managers taking on interest-only loans. We also heard about two GS-13 employees whose combined income could not qualify them to purchase a modest home. Many Federal employees in California's high-cost cities who were desperate to achieve the American dream of homeownership have now fallen victim to the creative financing prevailing in the news today.

The "new housing market" which has resulted in lower prices nationwide doesn't mean that housing in California is now affordable to a typical Federal employee. Everything is relative and California's home prices are still the highest in the nation. In addition, the credit crunch that has resulted from the past practices in the mortgage industry has made it even more difficult to purchase a home on a Federal salary. Even with the volatile housing market, housing is still not affordable for many Federal employees at all grade levels. In Los Angeles, a single income household at the GS-13 level cannot qualify to purchase even a modest condo and in San Francisco, our Federal managers at the GS-15 level often don't qualify either.

In 2006 the average Federal employee nationwide was a GS-9, Step 3. We used this salary (adjusted by locality pay area) to illustrate how out of reach home ownership is for Federal employees living in high-cost areas. Financial planners advise that a household should not spend more than 30% of gross annual salary on mortgage or rent. As this chart shows, the "Rest of U.S." Locality Pay Area is right where it should be - 23% of gross salary is required to pay for a median-priced home. **In Los Angeles and San Francisco, it takes 67% and 85% of salary, respectively, to afford a median-priced home.**

LOCALITY AREA COMPARISON					
	Los Angeles	San Francisco	Houston	Wash. D.C.	National Average
Median Housing Prices	\$528,650*	\$701,700	\$148,400	\$317,800	\$196,300
Fed. Pay. GS-9/3	\$53,172	\$56,258	\$54,076	\$51,317	\$48,044
Locality Pay %	25.26%	32.53%	27.39%	20.89%	13.18%
% of gross income required for a mortgage*	67%	85%	17%	38%	23%

(Source National Association of REALTORS, 2008)

* - Loan assumptions – 20% down 6.5% Interest Rate for conforming loan (\$417,000 or less); 7.6% for jumbo loans for Los Angeles and San Francisco.

** - LA area housing rate includes LA County \$459,400 and Orange County \$597,900.

Proposed Solution – Variable Housing Allowance (VHA):

The Department of Defense (DOD) has a proven model that they have used for years for their active duty personnel. In addition to their base pay, active duty personnel are given a **Basic Allowance for Housing (BAH)** commensurate with their rank based on the housing costs of

their assigned city. I know first hand the effectiveness of this recruitment and retention tool; I was raised in an Air Force family – my Father retired as a Technical Sergeant (E-6) with six children. Because the military has an effective tool to assist their employees by offering a housing allowance, although we moved a great deal and lived in both low and high-cost areas, our standard of living didn't change.

The following chart shows how BAH works. This chart was developed in 2006 so although the actual dollar amounts have changed, the concept remains the same. We used a 1st Lieutenant with three years experience as our active duty equivalent to the GS 9, Step 3 civilian employee salary with current locality pay rates. We also assumed the active duty officer and Federal civilian both have a dependent.

LOCATION		Salary	BAH	Total monthly	Annual
San Francisco	Military (1st Lieutenant)	3,541.20	3,135.00	\$ 6,676.20	\$ 80,114.40
	Fed. Civilian (GS-9/3)	4,200.58		\$ 4,200.58	\$ 50,407.00
Los Angeles	Military (1st Lieutenant)	3,541.20	2,010.00	\$ 5,551.20	\$ 66,614.40
	Fed. Civilian (GS-9/3)	4,043.00		\$ 4,043.00	\$ 48,516.00
San Diego	Military (1st Lieutenant)	3,541.20	1,990.00	\$ 5,531.20	\$ 66,374.40
	Fed. Civilian (GS-9/3)	3,872.83		\$ 3,872.83	\$ 46,474.00
Houston	Military (1st Lieutenant)	3,541.20	1,683.00	\$5,224.20	\$ 62,690.40
	Fed. Civilian (GS-9/3)	4,146.75		\$ 4,146.75	\$ 49,761.00
Washington, DC	Military (1st Lieutenant)	3,541.20	1,250.00	4,791.20	\$ 57,494.40
	Fed. Civilian (GS-9/3)	3,854.58		\$ 3,854.58	\$ 46,255.00
Rest of U.S.	Military (1st Lieutenant)	3,541.20	666.00	4,207.20	\$ 50,486.40
	Fed. Civilian (GS-9/3)	3,713.00		\$ 3,713.00	\$ 44,556.00

The yellow lines are the GS salaries for these six locations. Although the active duty officer's base pay is less than the GS's, when the BAH is added in, the monthly income is considerably higher. DOD implemented this system to reduce the impact of personnel transfers to high-cost areas.

These charts demonstrate dramatically the inequality of Federal compensation when compared to actual costs incurred by the employee in the community where they work. The BAH is adjusted annually based on changes in costs by location. This allowance is not taxable and does not count toward retirement or the salary cap.

In our report we suggested that the Rest of U.S. (RUS) Locality Pay Rate be made the new CONUS pay rate, and the current Locality Pay Rates for non-RUS areas be replaced with a VHA which would be similar to the DOD's BAH. Like the DOD model, the VHA would not be taxed and would not count toward the pay cap. This would create some room for performance pay without having to raise the pay cap.

The bulk of the cost could be off set in several ways:

- (1) **Not all areas in the country would be eligible for a VHA.** Compensation would be shifted from areas not needing the additional pay to those that do.

- (2) A true housing allowance would be a more accurate indicator of local costs than the current flawed system of locality pay, so overpayments would be avoided.
- (3) Improving recruitment and retention in high-cost cities would result in significant cost savings in hiring, training, transferring, temporary reassignments of employees on per diem to fill vacancies, long commutes in government vehicles, etc.
- (4) Current costs associated with the data collection and management of an ineffective locality pay system could be saved by using DOD's paid contractor who collects the data to set the BAH each year.

The Pay Cap – A Contributing Factor

Another factor that creates recruitment and retention problems at the other end of the pay chart is salary compression. By law, General Schedule salaries cannot rise higher than the salary for **Executive Level IV** personnel (5 U.S.C. § 5304(g)(1)). Most new personnel systems use this same cap. Currently, this amount is **\$149,000**. Unfortunately, Executive Level salaries rise each year only by the general cost of living increment; they are not augmented by any locality pay component. Accordingly, as the **GS-15 salaries** in high-rate geographic areas reach the Executive Level IV cap, the locality pay increment of the annual compensation increase is no longer fully paid. This phenomenon, often referred to as “**compression**,” is the reality in our region. Indeed, “compression” has persistently eroded salaries for the last several years. This unfortunate situation is exacerbated each year as the lower steps on the GS-15 ladder rise to hit the Executive Level IV cap and beginning at the GS-13 level for many Federal Law Enforcement Officers who receive Law Enforcement Availability Pay.

The amounts at issue are not trivial. For each of the past several years, senior GS-15 employees in San Francisco and Los Angeles were prevented from receiving locality pay worth several thousands of dollars. What is more disturbing is that, if this situation is not addressed, employees at the cap will never receive any future locality pay increments, which could result in **all GS-15s making the same pay eventually**. This, of course, produces an anomaly whereby mid-level employees, and even employees at the lower rungs of the GS-15 ladder, receive the full locality pay differential, but the most seasoned Federal employees in our area receive no or partial locality pay.

In California's high-cost areas, the salaries of Federal managers and senior staff do not come close to matching the compensation of their peers in the non-Federal sectors. On July 31, 2007, Curtis W. Copeland, Specialist in American National Government for the Congressional Research Service, testified before this subcommittee and stated that reviews by top compensation experts in academia and elsewhere have found consistently that Federal pay lags behind the private sector by as much as 50% in some locations.

One suggestion proposed by a California Federal manager is the possibility of participating in a **pilot program that un-links GS salary from the Executive Level pay cap**. The following chart demonstrates the number of GS-15 employees in six different locations, who are currently experiencing pay compression.

Locality Pay Area	GS 15 Employees Steps Impacted by Compression**	FY 2008 Number of Employees Affected*
Los Angeles	9-10	41
San Francisco	7-10	172
Chicago	9-10	89
Boston	9-10	52
New York	8-10	154
Houston	8-10	221
TOTAL		729
<p>* - Source: Office of Personnel Management, September 2007 – at that time 2007 numbers and 2008 projections were provided; this chart added both since we are now in FY 2008. Number of employees covered by GS pay schedule; actual number higher if include civilian employees in alternate pay systems ** - Does not include Federal Law Enforcement who also receive Law Enforcement Availability Pay (LEAP) with that additional pay differential, they are affected at a lower grade and lower steps.</p>		

Pay compression presents a formidable challenge to those agencies which must recruit for senior professional staff positions. Copeland further testified that there has been a call for Congress to examine the Executive Level pay system to avert even more pay compression problems in the future.

Conclusion:

In most parts of the United States, the Federal employee is well compensated and able to live the lifestyle of a typical middle-class family. It is heart-wrenching to see the financial and quality of life sacrifices that Federal employees in California's high-cost cities must make to survive because they have chosen to work for an employer who by statute is unable to compensate them fairly and equitably in comparison to their out-of-state peers. In essence, they are penalized for serving in California.

We didn't know where this report would take us. The picture I have painted is of stark contrasts and mass hardship for Federal employees in California. Much of our current workforce is composed of employees that have family obligations in the state or are tied to their employment based on the Civil Service Retirement Plan. We can also recruit at the entry level (in most cases) because in your 20s, it maybe okay to share an apartment with three or four roommates, but as soon as that employee reaches the age when he or she starts thinking about the future, which may include marriage and having a family, which is also about the same time they become a highly trained contributor to the workforce, they either move to the private sector or they flee to lower-cost areas.

As our survey has clearly confirmed, when a current or prospective employee is trying to decide whether to move to or stay in California, I guarantee **they don't look at cost-of labor - they look at cost-of-living and associated quality of life factors.** If we cannot change FEPCA, can

we at least implement it the way it was **originally intended**? All the bypasses and band-aids have created this hybrid system with unforeseen consequences.

I truly believe that we are all here today to help ensure that the U.S. public receives the quality service it deserves from the Federal Government. This includes some of the most vital government functions – protecting our ports, borders, air travel, and food supply. The public deserves a well-trained, highly competent, and dedicated Federal workforce to serve them. This demands a fairly compensated Federal workforce.

The title for this hearing is “In search of Equity – an Examination of Locality Pay”. I applaud the committee for looking into this matter, because I can assure you that the current locality system is far from equitable.

Appendix A – FEB’s History, Regulatory and Administrative Authority

The Executive Memorandum which created FEBs signed by President John F. Kennedy in 1961 he expressed his desire that Federal agencies in the Field work together – he stated:

“Although each Executive agency and its field organization have a special mission, there are many matters on which the work of the departments converge. Among them are management and budgetary procedures, personnel policies, recruitment efforts, office space uses, procurement activities, public information duties, and similar matters. There are opportunities to pool experience and resources, and to accomplish savings. In substantive programs, there are also opportunities for a more closely coordinated approach in many activities, as on economic problems, natural resources development, protection of equal rights, and urban development efforts.”

The regulation that directs FEBs is Title 5; Part 960 dated September 28, 1984 and revised January 1, 2007. Under Authorized Activities, it states:

Sec 960.107 (a) . . .Each Federal Executive Board shall consider common management and program problems and develop cooperative arrangements that will promote the general objectives of the Government and of the several Executive agencies in the metropolitan area. . .

Sec 960.107 (b) Each Federal Executive Board shall:

- (1) Provide a forum for the exchange of information between Washington and the field and among field elements in the metropolitan area about programs and management methods and problems;
- (2) Develop local coordinated approaches to the development and operation of programs that have common characteristics;
- (3) Communicate management initiatives and other concerns from Washington to the field to achieve mutual understanding and support; and
- (4) **Refer problems that cannot be solved locally to the national level.**

Since 1982, the Office of Personnel Management has provided oversight of Federal Executive Boards. In OPM’s Federal Executive Board Strategic and Operational Plan 2008-2012 it states:

“The Board’s role as a conduit of information and a meeting point for a variety of agencies – each with a different mission – is critical to a more effective government.”

As part of this plan, the FEBs were assigned two lines of business and a foundation function. Under the line of business #2: Human Capital Readiness, each FEB is required to **“Respond to member agency requests for recruitment and retention assistance.”**

Attachment B – Actual Locality Pay Rates

Table prepared by the Greater Los Angeles Federal Executive Board

Source: www.opm.gov

Locality Pay Area January 1, 2008	% Reported	% Increase from 2007	% Actual >Rest of US
* - Locality Pay Area Moved to Rest of U.S Locality Pay Area in 2006; ** Locality Pay Area Created in 2006			
San Francisco-Oakland-San Jose, CA	32.53%	4.23%	9.35%
Houston-Galveston-Brazoria, TX	27.39%	3.10%	14.21%
Los Angeles-Riverside-Orange County CA	25.26%	3.52%	12.08%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	26.36%	3.97%	13.18%
Hartford, CT	23.97%	3.78%	10.79%
Chicago-Naperville-Michigan City, IL-IN-WI	23.16%	3.65%	9.98%
Detroit-Ann Arbor-Flint, MI	22.53%	3.34%	9.35%
Boston-Worcester-Lawrence, MA-NH-ME-CT-RI	22.51%	3.80%	9.33%
Denver-Boulder-Greeley, CO	21.03%	3.36%	7.85%
San Diego, CA	22.00%	3.91%	8.82%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	20.14%	3.61%	6.96%
Seattle-Tacoma-Olympia, WA	19.75%	3.51%	6.57%
Sacramento-Arden-Arcade-Truckee, CA-NV	20.25%	3.59%	7.07%
Miami-Fort Lauderdale, FL	19.11%	3.20%	5.93%
Washington-Baltimore-Northern Virginia, DC-MD-VA-WV	20.89%	4.49%	7.71%
Minneapolis-St. Paul-St. Cloud, MN-WI	19.43%	3.59%	6.25%
Portland-Vancouver-Beaverton, OR-WA	18.72%	3.45%	5.54%
Cincinnati-Middletown-Wilmington, OH-KY-IN	17.77%	2.84%	4.59%
Dallas-Fort Worth, TX	18.74%	3.72%	5.56%
Raleigh-Durham-Cary, NC	16.82%	3.06%**	3.64%
Cleveland-Akron-Elyria, OH	17.11%	3.52%	3.93%
Atlanta-Sandy Springs-Gainesville, GA-AL	17.30%	3.75%	4.12%
Columbus-Marion-Chillicothe, OH	15.80%	3.21%	2.62%
Milwaukee-Racine-Waukesha, WI	16.73%	3.56%	3.55%
Richmond, VA	15.40%	3.39%	2.22%
Dayton-Springfield-Greenville, OH	15.26%	3.39%	2.08%
Pittsburgh-New Castle, PA	14.93%	3.19%	1.75%
Kansas City, MO-KS	*	.99%	NA
Buffalo-Niagara-Cattaraugus, NY	15.37%	3.60%**	2.19%
Huntsville-Decatur, AL	14.23%	3.07%	1.05%
St. Louis, MO-IL	*	.43%	NA
Indianapolis-Anderson-Columbus, IN	13.51%	2.96%	3.3%
Orlando, FL	*	.77%	NA
Phoenix-Mesa-Scottsdale, AZ	14.74%	3.88%**	13.18%
Rest of USA	13.18%	2.99%	0%

Mr. DAVIS OF ILLINOIS. Thank you very much. Again, we appreciate your testimony.

Let me just ask you, in your written testimony you suggest that locality pay be based on the cost of living versus the cost of labor. Could you tell me the difference between the two?

Ms. HANSEN. I am not a statistician. I will do my best to explain it to my understanding.

The employer cost index [ECI], is the basis of the cost of labor, and they use a national compensation survey to find like positions to compare to the Federal sector. The intention of FEPCA was to get within 5 percent of the non-Federal sector. We have no illusions that we will ever be comparable with the private sector, nor is that what we seek.

The cost of living is based on the consumer price index, which is the actual expenditures that a household must spend in order to survive. It includes housing, it includes fuel cost. I know in the Los Angeles area a number of private sector companies actually give their employees every 6 months a cost of living adjustment. And depending on what is going on with the cost of living, it either goes up or it goes down. It is something those employees feel like they understand when their salary goes down because their expenses have gone down, and so it doesn't hurt as badly when the salary is based on cost of living, because that is something that we live with every day. Cost of labor, there are so many variables. Illegal immigration is something that we believe has suppressed the salaries in the California area.

The size of the locality pay area makes it so that you are comparing salaries and occupations in radically different economies. For instance, we appeared before the Federal Salary Council twice and asked that they make our locality pay area smaller. Even though the Federal Salary Council admitted that if we just looked at the coastal counties, the salaries are almost 20 percent higher in their national salary compensation survey, they have included the two inland counties, and one of them is actually one of the lowest-cost labor counties in the Nation. So, it dilutes our locality pay calculation based on cost of labor.

We think cost of living based on a county-by-county basis would be a lot more realistic.

Mr. DAVIS OF ILLINOIS. You have suggested a variable housing allowance for employees in high-cost areas. Are there other recommendations that you would make to try and rectify the inequities that you cite relative to these areas?

Ms. HANSEN. Well, the variable housing allowance was one of the best practices that we learned from the Department of Defense when we did our survey, and the reason we proposed it was because there is existing data. It is something that we thought could be done quickly as a stop-gap measure.

In the absence of something like that, if you are talking about a wholesale revamping of the pay system, of course, we would take the position that we would prefer the cost of living to be considered, and if that is not a reality then just implementing FEPCA and closing the gap within the 5 percent, as the law requires, would be a welcome change to Federal employees in high-cost cities.

Mr. DAVIS OF ILLINOIS. You cite high-cost areas in California. Do you see this kind of problem existing in other areas, other parts of the country?

Ms. HANSEN. I think what we see in California, is that we are on the front end of where the issue of locality pay may be going nationwide. Talking to my co-workers and my colleagues nationwide, a couple of them have had me send copies of our survey because they have similar challenges. I know Boston is extremely expensive. They are having struggles in Key West, FL. Chicago is an expensive town. We are just a little ahead of the curve because our expenses have gone up so quickly, but I do think that what we are seeing in California is inevitably going to roll out to other high-cost cities.

Mr. DAVIS OF ILLINOIS. Well, thank you very much.

I will yield to Mr. Marchant.

Mr. MARCHANT. Thank you.

Ms. Hansen, do you have any sense of how the Federal pay compares? Do you have a survey or do you have a study that shows what a lawyer with the Justice Department would make as opposed to a lawyer with the same standing in a private firm?

Ms. HANSEN. I don't have those exact numbers. One thing that was interesting in trying to capture, when we did our survey in 2001, was private sector salaries, our salaries are so transparent everybody knows what you make, and so I was calling one of the want ads, and one of them actually was for a paralegal. I said, hi, I work for such-and-such, and I was just wondering what you are paying for this position. It was amazing how subjective it is in the private sector, and there are so many variables, depending on where you went to school, who you know, where you live, that is a hard number to get to.

The Bureau of Labor Statistics collects information in that National Compensation Survey, and I know that lawyers are one of the positions they looked for, and they have acknowledged when you look at the pay gap that in the Los Angeles area it is about 44 percent. So on average I guess you could make an assumption, based on those principles, that they would make 44 percent more, but that is not a universal.

Mr. MARCHANT. How does the State of California deal with these same issues with its employees?

Ms. HANSEN. The State of California actually has some challenges, as well. The State of California is a little bit unique in that we are one area where local government and State government frequently pay more than the Federal salary. That is not typical in most parts of the country, based on our analysis. And they use the cost of living variable, and it is a formula that includes both the ECI and the CPI. But they also look at cost of living.

Within the State I know, for instance, the California State University system, they have a really hard time recruiting at, like, Cal State Dominguez Hills, which is right in Los Angeles, but Cal State, somewhere in the San Joaquin Valley where it is cheaper to live, they don't have as hard a time recruiting in that facility. So even within the State there are some variations. There are specific high-cost pockets.

This is not a problem that is unique to the Federal Government. One of the advantages, though, is that in the private sector they have all kinds of latitude, but within the State of California they do typically pay better than their Federal counterpart, but they have some of their own internal challenges throughout the State.

Mr. MARCHANT. So it would be your testimony that a Federal employee in California is worse off than a similarly situated, similar job, similar benefits, just across the board?

Ms. HANSEN. I can't say that with 100 percent surety. I know that when you can find a comparison, for instance, law enforcement, with fire fighters, with a number of administration positions that we have looked at, particularly with local government—and, again, I think part of that is because California is Statewide. They have sort of the same issue that we have. With the Federal perspective you are worried about the national work force, and so, a problem we are having in a big city in one State is not as pressing. And in the State of California they are dealing with the whole State work force, and they don't want to create inequities within the State.

So in some parts of the State, absolutely they make more; in other parts of the State I don't know is the comparison is that dramatic. I do know that with law enforcement and fire fighters they can make as much as three times more. Irvine Police Department, a friend of mine, her son just got out of college and he is a starting police officer, absolutely no experience, started at \$75,000. That is the labor market we are competing with. I was talking with the sheriff of Los Angeles County about our recruitment and retention challenges, and he said, I don't know how you do it. He said, we pay so much more and we are having a hard time getting talent.

This is not a unique Federal problem in the State of California, but I do think it is a trend that we are going to start seeing in all high-cost areas.

Mr. MARCHANT. And when you try to recruit a Federal employee into your system from another city, are you having a huge problem with that?

Ms. HANSEN. Yes. For a number of positions, the advertisement will be a national recruitment, so somebody applies for a job and they don't know where they are going to end up. Oftentimes at the end of the training that is one of the things they have looked at doing, is maybe we need to tell them before we spend the money training them where they are going to go, because what has been happening, at the end of their training they are told they can either go to L.A. or San Francisco. We benefit in L.A. because we are cheaper than San Francisco. But that is when you end up with people saying, I wanted to get into the Federal system. I took this job. I can't afford to live here, so three buddies and I are going to share this apartment. They start immediately trying to transfer out to a lower-cost city.

We really are the training ground. Our public is really more in the retention area. We can keep the people at the end of their career, in part because they may have some retirement restrictions. FERS is making that harder, because that retirement system is more portable. We can get people at the beginning of their careers,

because when you are in your 20's it is OK to share an apartment. It is kind of cool living in California.

But when they get to the point where they are an effective journeyman employee, when they have developed all the training and they are actually going to make a significant contribution to the effectiveness of their organization, they start thinking about getting married, having children, buying a house, and then they look around and say, I can't do that here. And they flee to lower-cost cities. It is that portion in the middle that I would argue is the most essential and we are having the hardest time keeping. And also at the GS-15 level.

A number of agencies have, because of pay compression, had a hard time getting people to take positions. There are many, many GS-15 vacancies that have been vacant for over a year because they can't get people to reduce their standard of living dramatically enough to afford living in Los Angeles or San Francisco.

Mr. MARCHANT. Thank you, Mr. Chairman.

Thank you.

Ms. HANSEN. Thank you.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Marchant.

Mr. Sarbanes.

Mr. SARBANES. Thank you.

Could you hazard a guess at what percentage of the locations across the country would you say are paying at a level that properly accounts for the cost of living there? I mean, is it 25 percent, is it 50, is it 70, is it 10?

Ms. HANSEN. I don't know the numbers. I know from our perspective the rest of U.S. category is probably pretty equitable, or maybe even somewhat overpaid in some parts of the country commensurate with the cost of living. You know, I personally have family that live in some pretty rural areas, and when I see their cost of living and their standard of living and they make considerably less than even I do, and yet they can afford to do things that I can't. I know in some parts of the country the Federal employee is one of the highest-paid employees in town.

Mr. SARBANES. So, in other words, somebody might argue that this discussion is like a trojan horse for just across-the-board pay increases for Federal employees, and there may be another discussion we can have about pay equity vis-a-vis what the private sector offers.

Ms. HANSEN. Yes.

Mr. SARBANES. Many of us feel strongly about that. But you are really getting to the question of there are certain places where the cost of living is such that the Federal Government is at a severe disadvantage in terms of being able to hold on to people.

Ms. HANSEN. Yes.

Mr. SARBANES. What I wanted to ask about, I was intrigued by your discussion in the written testimony about the OPM's response to the concerns expressed that the Federal agencies have flexibility to address some of these concerns, but that you view that as not solving the problem. The reason I am interested in that is because we have been doing a lot of talking recently around different pieces of legislation, last week with the 4-weeks of paid parental leave, the telework bill that the chairman and others on this committee

worked on getting through. And a lot of our argument for that is this is going to make the Federal Government more competitive in recruiting and retaining people.

What you are suggesting is that we may be fooling ourselves in areas where the cost of living isn't being taken proper account of, so maybe you could just talk about that a little bit more.

Ms. HANSEN. OK. Just this week the Partnership for Public Service did a news release on their survey. This is the first time that it has shown that salary is the No. 1 variable for young people to decide whether or not they want to come work for the Government. Over the years we have heard we want to be the employer of choice.

Now I am a 24-year career Federal employee, and you all have taken very good care of us, and the Office of Personnel Management has worked tirelessly to come up with innovations and flexibilities, and we do have, particularly in the area of leave, one area that I think our benefits exceed many. But even that is a struggle in the high-cost areas because we can't use our leave because we have an average of an 18 percent vacancy rate at most of our agencies. That is even excluding two agencies that reported an 85 percent vacancy. The average would have been a lot higher if I had put in those numbers, but I did not.

What happens with the HR flexibilities that do not adequately compensate? In our report we talked about Maslow's hierarchy of need. A lot of that—the parental leave, the telework—are nice to have. It is like you are moving up the scale on Maslow's hierarchy of need, but you are not too concerned about those issues when you really are struggling to put a roof over your head and food on your table. You are concerned about basic survival. You can't think about optimal performance. You can't think about the nice to have's, because all you really care about is getting a roof on your head, a tank of gas in your car, and food on your table.

Most of our employees are in that survival mode.

Mr. SARBANES. Did you just say there were some things you left out of this study where it was an 85 percent?

Ms. HANSEN. As far as the vacancy rate?

Mr. SARBANES. What was that you said?

Ms. HANSEN. We have two agencies that reported an 85 percent vacancy rate.

Mr. SARBANES. What does that mean?

Ms. HANSEN. That they had 85 percent of their positions were not filled.

Mr. SARBANES. How do you function?

Ms. HANSEN. That is why I didn't roll them into the average, because I thought it would skew it. Our work force is really stretched.

Mr. SARBANES. How many positions were there in one of those agencies?

Ms. HANSEN. I didn't ask that question. We just did a quick, five-question survey when we got this invitation.

Mr. SARBANES. OK.

Ms. HANSEN. Most people indicated, I am a small office, but those particular ones did not.

Mr. SARBANES. OK. Thank you.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Sarbanes.

Ms. Norton.

Ms. NORTON. Thank you, Ms. Hansen, for this testimony. I couldn't be more sympathetic to you, to tell you the truth. Mr. Sarbanes and I live in another very high-cost area where recruiting is difficult. Indeed, we have to fight very hard just to get the annual cost of living increase and get that not driven back. But it is not enough to sympathize with it. You would like the cost of housing to be taken into effect but you indicate that with labor costs, basing this matter on labor costs, you say, results in pitting what amounts to a lot of extremes.

Well, I have a couple of questions about that. I couldn't imagine that there wouldn't be huge extremes in housing costs, or else nobody would be living in California any longer. I am not sure if we would be jumping from the frying pan into the fire. One would have to look very closely at that one. That certainly is one question for me.

They go to labor cost because most of the time that is more closely related, of course, to the cost of living. It is very hard to get the Federal Government to do anything even mildly reforming, much less as radical as moving to an index that would help some areas but not others.

Have you any confidence that the extremes you speak of in the labor market are not also to be found in California's housing market, where you have some of the poorest people in the United States and some of the richest people in the United States and all across the board because it is such a diverse population? Has anybody investigated that?

Ms. HANSEN. Well, housing numbers we looked. One of the things that using the DOD basic allowance for housing model is it is very narrow. If you are assigned to this base, you get a housing allowance based on the cost of housing around that base. One of the issues—

Ms. NORTON. The cost of housing for who? I mean, you know, in the same community you can have very rich people living in houses, and at the opposite extreme you have some version of what we do with labor costs, to do with housing costs, and you have confidence that would straighten California out? Who has done it?

Ms. HANSEN. The Department of Defense contracts with an organization called Runzimer. In fact, Runzimer has the contract for multiple Federal agencies that use housing allowances. It is not commonly used by anyone except the Department of Defense, but there are some agencies, for national security purposes, that have a requirement to have a certain person live in a certain city, and it is above their grade level.

I met with this gentleman from Runzimer and he was extremely confident in the surveys that they do.

Ms. NORTON. Housing allowances for any Federal employee?

Ms. HANSEN. Well, they do it for the Department of Defense active duty employees, and they have been doing it for several years.

Ms. NORTON. Any active duty employee?

Ms. HANSEN. Yes.

Ms. NORTON. In a high-cost part of any city?

Ms. HANSEN. Any city. Every active duty—

Ms. NORTON. From the lowest, they give them something?

Ms. HANSEN. Yes, and they have done it for several years, and it solved the retention problem the Department of Defense was having until the last few years.

Ms. NORTON. For civilian employees?

Ms. HANSEN. No. Active duty. And we have a chart in our report that, although the active duty base pay is lower, when it is supplemented with the housing allowance they consistently make more. It is on page 10 of the written statement. And I personally was raised in a military family. My father was a tank sergeant. We had six kids and my mother never worked, and we lived in high-cost cities and lived in low-cost cities. Our quality of life never changed. It really was the great equalizer in allowing you to move at the need of the agency.

Ms. NORTON. So are you recommending housing allowances or replacement of labor cost figure?

Ms. HANSEN. What we recommend in our report is that the rest of the United States become the new base. Let's stop pretending that is not the new base. That really is the base, our base pay, with the exception of Alaska, Hawaii, and the territories, which you guys will be talking about later. Make the rest of the United States the new base and then add a housing allowance for the communities that it is required. What we speculated was, based on our research, that there are going to be some cities that aren't going to need a housing allowance, that it may already be getting locality pay above the rest of the United States. And there are other cities that might need a housing allowance.

We had another chart on cost of housing, financial planners recommend that you spend about 30 percent of your household income on cost of housing. We took the median priced home, we took the average employee, based on a locality pay, and in Washington, DC, it takes 38 percent of a GS-9, Step 3 Federal employee to afford the median-priced home. These are numbers we got from the Housing and Urban Development. In Houston, it takes 17 percent. Nationwide it takes 23 percent.

So if you look at the rest of the U.S. category, they are right where they are supposed to be according to financial planners. They are spending 23 percent of their income. Washington, DC, is spending considerably more than they should. Houston is spending considerably less. San Francisco and Los Angeles, we don't even bring home 67 or 85 percent of our income.

I also found a report by the Bureau of Labor Statistics for 2004 in Los Angeles, the average household spent 18 percent of their income on gas. That was when gas was \$2.14. So if you look at our GS-9s who are trying to afford housing, not just buying a house, but even renting, and it is taking 67 percent of their gross income and they are spending at a minimum 18 percent of their gross income on fuel, I don't know how they are surviving.

Ms. NORTON. I think that is what the next proposal will be, that it should be based on how far you have to go to get to work.

Again, my own sympathy for it, nevertheless, drives me to—well, the closest that you have come to making this sound realistic to me is what you say about DOD employees. Of course, we have been successful in getting the cost of living pay to be the same as military employees.

Ms. HANSEN. A couple of your subcommittee members I noticed are on the House Armed Services Committee Readiness Subcommittee, which deals with housing issues for active duty military.

Ms. NORTON. And because we have been successful, that is an analogy that is very important. Of course, while we can see the distinction between active duty personnel and Federal workers, we have also argued successfully that distinction has been blurred, if not disappeared, by the nature of the global situation today, when Federal employees are doing often more vital work related to national security.

My own sense is always to drive down my preference and to drive down my bias and to think more largely of what is more likely to happen, and right when I came to Congress locality pay was to be instituted. I was very much a part of that. Instantly it got driven down in times that were very different, very much better than this.

These are the kind of figures that are going to be hurled at us. Everybody will look at the cost to the Government. That is what they do just to get what we promised every year.

Ms. HANSEN. I know.

Ms. NORTON. And what we promised every year is ridiculous, and the American people wouldn't allow it. If, in fact, the average net pay increase, if the cost of living and the locality pay comparability payments were granted the way the law says, the employees would have been gotten an almost 20 percent raise in 2009. So we are fooling ourselves, we are fooling employees, and we have to come up with something that works.

I'll tell you one thing: Nobody is going to give Federal employees, nor should they, a 20 percent increase in their wages. This is very much a failed promise, and it may be, Mr. Chairman, that what we need to do is to get the housing figures from the Defense Department, see where it covers and who it covers. Obviously, it is easier to sell when you are talking about our active duty military.

Then, of course, the next thing, we have a lot of military bases here, so that serves my purposes. But the next thing you would have to deal with is the rest of the country objecting to housing.

Ms. HANSEN. Yes.

Ms. NORTON. About the only thing I can say for labor costs is that in most places, that is what we are talking about. We are talking about the cost of labor, and we are not even meeting that standard—cost of labor there, cost of labor here. If you go outside of that, I expect more controversy than agreement. I am always driven to something that, notwithstanding the differences you are likely to get, won't look like it is favoring some of us over others of us.

That is why we go through the Civil Service system, for example. A lot of us are against pay parity because we don't know any way to draw the distinctions between the folks who are supposed to be doing so much better than others, because there are too many employees. So what people do when they can't come up with a system that sounds to me far more rational, the kind of system you have, they fall back on something that is the lowest common denominator.

I appreciate your testimony, because it moves us forward to looking at a practical example of having moved beyond the lowest common denominator and an example that is analogous to one we have insisted upon using for Federal employees with active duty military.

Thank you, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Thank you very much, Ms. Norton.

Let me just ask you, Ms. Hansen, how would you respond to recent arguments that the rest of the U.S. locality pay rates and actual locality rates for certain high-cost areas are incongruent, giving the varying cost of living or labor between different areas?

Ms. HANSEN. Well, I know in Los Angeles, when we look at the rest of U.S. category—I first moved to Los Angeles in 1990, and it was when we got the interim geographic allowance of 8 percent because of the emergency that had been documented in Los Angeles, San Francisco, and New York with regards to recruitment and retention. I never had heard of the Federal Executive Boards, but everybody in Los Angeles knows that FEB has them locality pay. That is the perception. That is part of why we have all this information, because whether we were seeking it or not we were getting this information. At that time it felt pretty good.

When you look at the actual locality pay chart, the thinking is, in Los Angeles what are they complaining about? They are getting 25.26 percent, but when you back out the rest of the United States, the 13.18 percent, we are really only getting 12 percent more than the people who live in some place where you can buy a house for \$60,000.

When we did our analysis, even the price of gas varies as much as \$1.25 a gallon, depending on where you are living. So the fact that we are now only 4 percent above where we were 18 years ago when we had an emergency and had to get that 8 percent, you know, we have only made 4 percent progress in 18 years. We can feel it in our pocketbooks in California.

I hope that answered your question.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Mr. Marchant, do you have any other questions?

Mr. MARCHANT. No, thank you.

Mr. DAVIS OF ILLINOIS. Thank you very much. You are excused.

Ms. HANSEN. Thank you.

Mr. DAVIS OF ILLINOIS. Our next panel consists of Charles Grimes, who is the Deputy Associate Director of the Office of Personnel Management's Policy Division. Mr. Grimes previously served as Assistant Director of Compensation Policy in the Internal Revenue Service's Strategic Human Resources Division, where he developed and implemented the senior manager performance based pay system. Mr. Grimes has over 25 years of operational and policy compensation experience.

Mr. Hank Kashden is the Deputy Chief for Business Operations for the U.S. Forest Service. Mr. Kashden started his career with the Forest Service in 1973 and has worked in a variety of positions, including Survey Technician, Forest Administrative Officer, Assistant Director in Law Enforcement, and Director of the Budget Department.

Gentlemen, thank you very much. If you would, stand and raise your right hands with me.

[Witnesses sworn.]

Mr. DAVIS OF ILLINOIS. The record will show that the witnesses answered in the affirmative.

Gentlemen, thank you very much. Of course, you know the 5-minute procedure that we use to summarize your testimony. Your full written statement is in the record, if you would take 5 minutes and summarize. The yellow light is an indication that you have a minute left and hopefully would wind up. The red light indicates it is time to go.

Mr. Grimes, we will begin with you. Thank you very much.

STATEMENTS OF CHARLES GRIMES, DEPUTY ASSOCIATE DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT; AND HANK KASHDEN, DEPUTY CHIEF FOR BUSINESS OPERATIONS, U.S. FOREST SERVICE

STATEMENT OF CHARLES GRIMES

Mr. GRIMES. Mr. Chairman and members of the subcommittee, my name is Chuck Grimes and I am here today on behalf of Linda M. Springer, Director of the Office of Personnel Management, to discuss how locality pay is determined and recent proposals to extend locality pay in lieu of cost of living allowances to Federal employees working in Hawaii, Alaska, Guam, Puerto Rico, U.S. Virgin Islands, and other U.S. territories and possessions.

Over the years the focus of Federal pay policy has evolved from simply keeping pace with the overall labor market to effectively competing within that market. In response to perceived recruitment and retention problems in some high labor costs markets, Congress enacted the Federal Employees Pay Comparability Act of 1990. Implemented in 1994, FEPCA provides for an annual locality pay adjustment to narrow the gap between Federal and non-Federal salaries. Locality pay is a single percentage adjustment within each locality pay area determined to have a Federal/non-Federal gap greater than 5 percent.

The Federal Salary Council recommends establishment of particular locality pay areas, and the President's pay agent approves the areas. There currently are 32 locality pay areas, including a catch-all rest of the United States [RUS].

The Bureau of Labor Statistics conducts annual salary surveys in each locality pay area, private sector and State and local governments, for white collar jobs similar to General Schedule jobs. On behalf of the President's Pay Agent, OPM's staff compares the survey results to GS pay to get a pay gap for each area. The President's Pay Agent considers these pay gaps, along with recommendations from the Federal Salary Council, and submits an annual report of recommendations to the President.

The President, after considering the Pay Agent's report, establishes locality pay percentages for each area based on the pay gaps. However, FEPCA excluded the non-foreign areas from locality pay coverage, leaving the 50-year-old COLA program in effect. The COLA program was originally designed to address recruitment and retention issues resulting from higher cost of living in the non-for-

eign areas. Accordingly, COLA rates are based on cost of living differences between each non-foreign area and Washington, DC.

COLA has tangible effects on employees' take-home pay and retirement annuity. For instance, some employees like the fact that COLA payments are not subject to Federal income tax. On the negative side, given that COLA payments are allowances, they are not considered base pay for retirement purposes. There is a growing perception that pay and retirement of white collar civilian Federal employees in non-foreign areas are gradually eroding in relation to those in the lower 48.

In May 2007 the administration sent a proposal to Congress to address these issues. We are pleased that Senators Akaka, Inouye, Stevens, and Murkowski have recently introduced S. 3013, the Non-Foreign Area Retirement Equity Assurance Act of 2008, to stimulate discussion on how best to transition from COLA to locality pay. Also, the Federal Managers Association has put forth a proposal.

The administration's proposal would phase in locality pay over a 7-year period to limit the impact of locality pay on retirement behavior. During the phase-in period, decreases to COLA would be limited to 85 percent of the increase in locality pay in order to reduce the impact on take-home pay of increased deductions for retirement contributions and tax liability.

S. 3013 would reduce the phase-in of locality pay to 3 years, and would set that offset of COLA at 65 percent of the increase to locality pay. The FMA proposal would phase locality pay in over 2 years with an offset of 75 percent.

In both the administration's proposal and S. 3013, the RUS rate subject to their differing phase-in rates, would apply in all areas in the first year of phase-in, while data are collected, pay gaps are determined, and recommendations for pay rates made.

The FMA's proposal would implement the full RUS rate in the first year and the full rate for Hawaii and Alaska in the second year. We believe that Hawaii and Alaska would be established as separate locality pay areas by the Federal Salary Council and the President's Pay Agent. Puerto Rico, Guam, and the Virgin Islands would likely be covered by the RUS locality pay area.

We estimate rates for Hawaii and Alaska would be 20.38 percent and 27.68 percent respectively. The current rate for RUS is 13.18 percent.

We believe the administration's proposal addresses the issues in a responsible fashion with regard to cost. S. 3013, welcomed as a step forward in resolving these issues, would cost significantly more due to the shorter phase-in period and reduced offset. The FMA proposal would cost even more.

The time is upon us to extend locality pay to the non-foreign areas. Locality pay provides employees in the non-foreign areas a retirement benefit comparable to employees in the continental United States. Additionally, locality pay has increased about 1 percentage point over the last few years, unlike COLA, which has a history of fluctuations, with most areas currently trending downward.

Mr. Chairman, thank you for the opportunity to discuss this important issue with you today and for your support as we work to-

ward a more market-based pay system in our non-foreign areas which will benefit both employees and agencies. I would be happy to address any questions you may have.

[The prepared statement of Mr. Grimes follows:]

STATEMENT OF

CHARLES D. GRIMES III
DEPUTY ASSOCIATE DIRECTOR FOR
PERFORMANCE AND PAY SYSTEMS
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE, AND
THE DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

on

IN SEARCH OF EQUITY: AN EXAMINATION OF LOCALITY PAY

June 26, 2008

Mr. Chairman and Members of the Subcommittee:

I am here to discuss how locality pay is determined and recent proposals to extend locality pay in lieu of cost-of-living allowances (COLA) to Federal employees working in Hawaii, Alaska, Guam, Puerto Rico, U.S. Virgin Islands, and other U.S. territories and possessions.

Background

Over the years, the focus of Federal pay policy has evolved from simply keeping pace with the overall labor market to effectively competing within the labor market. In response to perceived recruitment and retention problems in some high labor cost areas, Congress enacted the Federal Employees Pay Comparability Act (FEPCA) of 1990, a

tangible manifestation of that change in focus. Under this market-based policy, the Federal Government, as an employer, has achieved greater comparability and competitiveness with the private sector by paying a locality-based pay adjustment based on non-Federal pay data collected by the Bureau of Labor Statistics (BLS). However, FEPCA applies only in the 48 contiguous states. In the nonforeign areas noted above, we have a conflicting compensation policy that provides for a cost-of-living allowance (COLA). The conflicting policies create real differences in employee take-home pay and in retirement benefits.

Market-based Pay

Implemented beginning in 1994, FEPCA provides for an annual pay adjustment, called locality pay, to narrow the pay gap between Federal and non-Federal salaries. Under FEPCA, locality pay is paid as a single percentage adjustment within each locality pay area determined to have a Federal – non-Federal pay gap greater than 5 percent. The Federal Salary Council recommends establishment of particular locality pay areas, and the President’s Pay Agent, the Secretary of Labor and the Directors of OMB and OPM, approves the areas. There currently are 32 locality pay areas, including a catch-all area called Rest of the U.S. (RUS). FEPCA excluded the nonforeign areas from locality pay coverage.

BLS conducts annual salary surveys in each locality pay area. The surveys collect information on pay rates in the private sector and in State and local governments for white-collar jobs similar to General Schedule jobs. OPM staff compare the survey results

to rates of pay under the General Schedule on behalf of the President's Pay Agent. This comparison yields a "pay gap" for each area. The President's Pay Agent considers these pay gaps, along with recommendations from the Federal Salary Council, and submits an annual report of recommendations to the President. The President, after considering the Pay Agent's report, establishes locality pay percentages for each area based on the pay gaps.

The COLA Program

The COLA program, which pre-dates locality pay by nearly 50 years, covers white-collar civilian Federal employees in the nonforeign areas noted above. Enacted in 1948, the COLA program was originally designed to address recruitment and retention issues resulting from higher costs of living in the nonforeign areas. Accordingly, COLA rates are based on OPM surveys measuring the differences in the cost of living between each nonforeign area and the Washington, D.C., area.

Beyond being philosophically different from locality pay in terms of being based on cost of living rather than cost of employment, COLA has tangible effects on an employee's take-home pay and retirement annuity. Employees view some of these effects positively and some negatively. For instance, some employees like the fact that COLA payments are not subject to Federal income tax because they are not intended to increase income, but to stabilize buying power.

On the negative side, given that COLA payments are non-taxable allowances, they are not considered base pay for retirement purposes. Therefore, when an employee retires, his or her retirement benefit, under either the Federal Employees' Retirement System (FERS) or the Civil Service Retirement System (CSRS), does not reflect COLA payments. In addition, COLA is capped at 25% of base pay by law. As locality pay continues to increase, particularly as it approaches or even exceeds existing COLA payments, agency recruitment and retention efforts in the nonforeign COLA areas could suffer.

Given these negative effects, there is a growing perception that total pay and retirement benefits of white-collar civilian Federal employees in the nonforeign areas are gradually eroding in relation to the pay and retirement benefits of similarly situated employees in the continental United States. The disparities between the pay and retirement benefits of the two groups of employees create staffing problems for Federal agencies in nonforeign areas, especially with regard to retaining experienced employees who are near retirement. As employees in the COLA areas near retirement, many consider and seek short term employment in the continental United States, where their "high 3" salaries are boosted by locality pay.

The Administration, FMA, and Senate Proposals

For several reasons, the Administration believes that these disparities are best addressed by extending locality pay in lieu of COLA to the nonforeign areas. First, locality pay is retirement creditable. Although it is taxable, locality pay increases an employee's "high-

3” average salary used in retirement calculations. For employees covered under CSRS, locality pay increases the monthly annuity payments significantly. For employees covered under FERS, locality pay increases base pay for the defined benefit aspect of the FERS package as well as the matching contribution paid by the Government into employees’ Thrift Savings Plan accounts.

Second, locality pay is not capped at 25%. In high cost-of-labor areas like San Francisco, locality pay has risen to more than 32% and will likely continue to rise. Over the past few years, locality pay has increased about 1% per year on average, although the increase amounts have been higher in the higher cost of labor locality pay areas. We expect locality pay to make similar gains going forward.

Finally, because of subjective elements in measuring relative living costs, the COLA program has been the subject of litigation numerous times since its inception. The most recent settlement, reached in the *Caraballo* case, topped \$230 million. We expect the bill, once finalized, to reduce the ongoing litigation risk associated with the COLA program.

In May 2007, the Administration transmitted a legislative proposal to Congress to address these issues. We are pleased that Senators Akaka, Stevens, Inouye and Murkowski, (this is the order of names on the bill itself) have recently introduced S. 3013, the “Non-Foreign Area Retirement Equity Assurance Act of 2008,” to stimulate discussion on how best to transition from pay based on the relative differences in cost of living to pay based

on the labor market. Also, the Federal Managers Association (FMA) has put forth a proposal. The Administration's proposal, the FMA's proposal, and S. 3013 would extend locality pay to white-collar Federal employees in the nonforeign areas over time, while reducing COLA payments gradually. However, the Administration's proposal differs significantly from the FMA's proposal and S. 3013 regarding the phase-in period, the offset, and employee coverage.

The Administration's proposal would phase in locality pay over a 7-year period. One purpose of the phase-in period is to limit the impact of locality pay on retirement behavior. We believe it is not advisable to exacerbate staffing problems by creating an incentive to retire, as might be the case if there were a shorter phase-in period. The phase-in period also reduces the financial impact on agency budgets caused by higher employer retirement contributions. During the phase-in period, decreases to COLA would be limited to 85% of the increase in locality pay in order to reduce the impact on take-home pay of increased deductions for retirement contributions and tax liability. S. 3013 would reduce the phase in of locality pay to three years, and would set the offset to COLA at 65% of the increase in locality pay. The FMA proposal would phase in locality pay over two years, with an offset of 75%.

In both the Administration's proposal and S. 3013, the RUS rate, subject to their differing phase-in rates, would apply in all areas in the first year of phase in while data are being collected, pay gaps are determined, and recommendations for pay rates are being made. That is, under the Administration's proposal, the first year locality payment would be one

seventh of the RUS rate, and under the Senate bill, one third of the RUS rate. The FMA's proposal would implement the full RUS locality pay rate in the first year, and the full locality pay rate for Hawaii and Alaska in the second year. We believe that Hawaii and Alaska would likely be established as separate locality pay areas by the Federal Salary Council and the President's Pay Agent, with locality rates based on BLS data from Honolulu and Anchorage, respectively. Puerto Rico, Guam and the Virgin Islands would likely be covered by the RUS locality pay area rather than become separate locality pay areas. Based on existing data, we estimate the locality pay rates for Hawaii and Alaska would be 20.38% and 27.68%, respectively. The current rate for RUS is 13.18%.

The Administration's proposal would permit OPM to promulgate regulations for various categories of employees such as those on special rates. With the concurrence of OPM, certain other agencies like the Transportation Security Administration and the Federal Aviation Administration would promulgate their own regulations to comply with the proposal and OPM regulations. Finally, Postal Service employees would receive a frozen COLA rate, set at the COLA rate effective at the time of the draft bill's passage, since Postal Service employees are not eligible to be paid GS locality pay. S. 3013 specifies in statutory language what employees are covered, and further gives employees a chance to opt out of coverage and keep a frozen COLA rate. One result of this specificity is that Senior Executive Service (SES) members in the non-foreign areas would be granted locality pay, which SES members currently do not receive, regardless of location.

We believe the Administration's proposal addresses the issues in a responsible fashion, particularly with regard to cost and reduced litigation risk. S. 3013, though welcomed as a step forward in resolving these issues, would cost significantly more due to the shorter phase in period and reduced offset. The FMA's proposal would cost even more, since it would establish the RUS locality pay rate for all areas immediately, followed in year two by full locality pay for Hawaii and Alaska. In addition, we believe the opt-out provision S. 3013 could lead to further litigation, rather than reducing litigation risk.

Mr. Chairman, we have provided Senator Akaka with a list of Frequently Asked Questions, as well as a calculator to help individuals determine the effect of phasing in locality pay. These tools are available on Senator Akaka's website. Additionally, at the request of Senator Akaka, we recently met with employees in Hawaii and provided testimony at a hearing with the Senate Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia. In Puerto Rico, we joined Resident Commissioner Luis Fortuño for a townhall meeting with his constituents last August. We also joined Senator Ted Stevens this past March for similar meetings with his constituents in Alaska.

We believe the time is upon us to extend locality pay to the nonforeign areas. Locality pay provides employees in the nonforeign areas a retirement benefit comparable to employees in the continental United States. Additionally, locality pay is uncapped and traditionally has increased about one percentage point a year over the last few years,

unlike COLA, which has a history of fluctuations with most areas currently trending downward.

Conclusion

Mr. Chairman, thank you for the opportunity to discuss this important issue with you today and for your support as we work towards a more market-based pay system in our nonforeign areas which will benefit both employees and agencies. We will continue to work closely with your subcommittee. I would be happy to address any questions you may have.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Grimes. We will proceed to Mr. Kashden.

STATEMENT OF HANK KASHDEN

Mr. KASHDEN. Thank you, Mr. Chairman, for the opportunity to appear before this subcommittee to talk about how the Forest Service applies pay and other flexibilities to managing and retaining its work force. In talking about this subject, I will talk about how we apply those incentives and pay procedures, and will defer to Mr. Grimes for policy discussions that may be under consideration.

Recognizing that it is very rare for the U.S. Forest Service to appear before this subcommittee, let me just give you a brief overview of what the Forest Service is about in terms of our mission.

The mission of the Forest Service is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. We tend to distill that in our work force around a model that involves caring for the land and serving people.

The national forests of America are highly disbursed. We have 155 national forests and 20 national grasslands in 44 States and in Puerto Rico. We have other major branches of the Forest Service, including a premier research and development branch that is involved in a wide variety of natural resource and related sciences. We have a State and private forestry program that supports non-industrial private landowners, as well as States and tribal areas. We also have something that is seldom known in the Forest Service. We, through the Department of Labor, administer 22 Job Corps Civilian Conservation Centers with around 900 employees that support over 4,000 teenagers and young adults in giving them vocational training with a conservation basis for that education.

The Forest Service has a wide variety of job series, and those include forestry technicians, professional foresters, scientists, teachers, guidance counselors, a variety of ologists—that being geologists or wildlife biologists—administrative personnel, etc.

We cover a wide geographic area across the entire country. We have employees in major metropolitan areas around the country. We have employees in very rural areas. We have employees in very high-cost resort towns and we have employees in areas that might be considered to be the end of the Earth.

I think that geography and wide array of job series is one reason that we might be here today to talk about how we apply pay policies and flexibilities. We have a variety of recruitment and retention challenges.

The foresters in the Forest Service, if you are a graduate forester you probably have had an aspiration to work for the Forest Service for many years, and once you are in the Forest Service you will stay there for your entire career, in all likelihood.

Contrast that with contract specialists, a very high-demand series. Many of our contract specialists have worked for multiple agencies. They are constantly in demand with other agencies and even the private sector.

Overall, the Forest Service has a very stable work force. Since 2005, our attrition rate has been 8.6 percent, and that compares to a nearly equivalent Federal Government-wide rate of 8.4.

The Forest Service uses a broad suite of OPM-delegated flexibilities and authorities to manage and recruit its work force. A specific example that I think is relevant to Ms. Hansen's area is the special pay rate authority that we use to recruit and retain employees in targeted occupations where there is a tremendous challenge in offsetting a disparity between a competing employer. This particularly occurs as a major example for the Forest Service in southern California, where we apply locality pay and special pay rates to our wildland fire fighters, classified as forestry technicians. That is an effort to offset the pay disparity found between the Federal salary and those received by the California Department of Forestry and Fire Protection for their structural and wildland fire fighters.

We also have other areas that require different incentives. We use the tool we call in-house the three-Rs dealing with recruitment, relocation, and retention that allows us to provide incentives in those categories to attract or retain employees in geographic areas that are difficult to get employees to, and those are areas that are not necessarily metropolitan. Clear examples are the high-cost areas like Glenwood Springs, CO; Jackson Hole, WY; Steamboat Springs, CO. There we will use a retention or relocation bonus process to try and bring employees into the system.

I have a couple of examples in the testimony that I can talk to later should you have any questions about that.

In closing, let me just say that generally speaking, we in the Forest Service are able to staff most of our organization effectively. I think that is a combination of a reasonable pay rate and a mission that we are all very, very proud to be part of, and that is caring for the land and serving people. It is one of the reasons I have been in the Forest Service for 35 years, and it is one of the reasons that many of our long-termers are there.

I do acknowledge certainly that there are areas where keeping that tight hold on the mission is offset by some of the challenges of locality cost, such as in southern California or in some of those special high-rate geographic areas such as small towns.

With that, I will close my testimony and be happy to answer any questions.

[The prepared statement of Mr. Kashden follows:]

**STATEMENT
OF
HANK KASHDAN
DEPUTY CHIEF
BUSINESS OPERATIONS
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE**

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND
DISTRICT OF COLUMBIA
JUNE 26, 2008**

REGARDING

AN EXAMINATION OF LOCALITY PAY

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify before you today about how the Forest Service applies locality pay and other employment incentives. The Office of Personnel Management (OPM) is the Executive Branch lead-agency for personnel policy formulation, execution, locality pay and other employment incentives. My testimony will highlight our mission and how we cooperate with OPM to recruit, manage and retain a diverse workforce. We otherwise defer to the testimony of OPM Associate Director Grimes regarding how locality pay is calculated and recent legislative proposals to phase-out the non-foreign cost-of-living allowance.

Background

The mission of the Forest Service is to sustain the health, diversity and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. To fulfill this mission, the Forest Service has a land management branch known as the National Forest System; for which there are 155 national forests and 20 national grasslands in 44 states and Puerto Rico. In cooperation with the Department of Labor, the Forest Service also operates 22 Job Corp Civilian Conservation Centers for youth and young adults. The Research and Development branch includes 6 forest research and experiment stations. There are two cooperative forestry assistance areas for International Programs and State and Private Forestry and a Law Enforcement and Investigations staff. Forest Service employees are assigned to duty stations across the United States from Washington, DC; Rio Grande, Puerto Rico; Atlanta, Georgia; Anchorage, Alaska; Missoula, Montana; Fort Collins, Colorado to small rural towns East and West of the Mississippi River and to remote ranger district compounds in the Western United States and Alaska. Forest Service employees are also assigned to the El Yunque National Forest in the Commonwealth of Puerto Rico.

To fulfill its mission, the Forest Service uses a variety of job series that include, but are

not limited to: laborers; research scientists; special agents; foresters; forestry technicians; engineers; teachers; guidance counselors; writer/editors; communication specialists and accountants. The wide variety of professions and occupations comprising the Forest Service workforce experience dynamic and contrasting levels of recruitment and retention. Some series, for example foresters (GS-460), experience minimal attrition, with most foresters typically working their entire career for the Forest Service. Other occupational series, for example, contracting specialists (GS-1102), experience higher attrition rates and are more difficult to recruit from the civilian labor force. The Forest Service has a relatively stable workforce. Since 2005, the attrition rate has been 8.6%, which is nearly equivalent to the overall Federal government rate of 8.39%

Forest Service Personnel Practices

The goal of the Office of Personnel Management (OPM) is to support the federal government's ability to have the best workforce possible to do the best job possible.

The Department of Agriculture ensures that the policy and administrative intent of the Office of Personnel Management for the delivery of personnel programs is complied with for all agencies within the Department. The Forest Service as an agency complies with both the Department and OPM rules regulations and policies to deliver and implement a human resources program to Forest Service employees.

This delegated authority allows the Forest Service to recruit, hire, promote and retain a highly qualified workforce to fulfill its mission. Within this framework, the Forest Service is responsible for the management of its human capital. Human Capital Management at the Forest Service uses the broad suite of OPM flexibilities and delegated authorities to manage, recruit, relocate and retain its work force in a competitive and dynamic labor market.

In some instances, the Forest Service uses special rates for the recruitment and retention of employees. These special rates have been used when private sector salaries were often more than Government could otherwise offer for a group or category of General Schedule positions in one or more geographic areas and there is a continuing problem with inadequate applicant pools. For example, we currently have special rates established through OPM for our wildland firefighters classified as Forestry Technicians in the GS-462 series in grades 2-12 for Southern California area, including Los Angeles and San Diego. It was established on September 14, 1989, and continues today to help equalize the pay disparity found between federal salaries and those received for structural and wildland firefighters who work for the California Department of Forestry and Fire Protection and local firefighting agencies.

Another OPM flexibility the Forest Service implements is recruitment, relocation, and retention incentives. For example, relocation incentives are used when a current employee must relocate to accept a position in a different geographic area and the agency determines that the position is likely to be difficult to fill. Relocation incentives can be up to 25 percent of an employee's rate of basic pay for each year of an agreed-upon service period, not to exceed 4 years or 100 percent of pay. A relocation incentive may be paid in a single up-front lump-sum payment or in installments. There are communities such as

Jackson Hole, Wyoming; Sun Valley, Idaho; and Aspen, Glenwood Springs, and Steamboat Springs, Colorado where there is a very limited inventory of housing that is affordably priced for the federal salary of GS-4 to GS-15 employees.

The ability for the Forest Service to recruit qualified applicants for mission critical occupations in popular and expensive communities in areas that OPM refers to as the Rest of the United States (RUS) is challenging because of expensive property and housing prices. I have some examples that illustrate the problem.

Recently, there was a vacancy on the White River National Forest in Glenwood Springs, Colorado. Management conducted outreach and recruitment to fill a vacant Civil Engineer, (GS-810-12) position. The outreach and recruitment efforts, including relocation incentives, yielded many interested applicants. Ultimately, management selected a GS-11 engineer who at the time was located in South Lake Tahoe and earning \$67,548 per year. This annual salary includes 20.25% locality pay for South Lake Tahoe. Upon starting the new position in Glenwood Springs, the employee's new salary would have been \$67,493; \$55 per year less than his salary at the former grade of GS-11. This result is due to the fact that Glenwood Springs is assigned a locality pay for the Rest of the United States (RUS) of 13.18% which is a lower locality pay percentage than that applicable in the South Lake Tahoe area. All of this is consistent with law and regulations, which provide for a geographic pay conversion when an employee relocates. The geographic conversion rule ensures that all employees at the same grade and step are treated the same in the computation of their pay rate regardless of whether they are already in a given location, are relocating from a higher-paying area, or are relocating from a lower-paying area. The employee spent a week in Glenwood Springs looking for affordable housing. Unfortunately, he was unable to find affordable housing (less than \$450,000) within an hour's drive from the duty station in Glenwood Springs. Despite the fact that the employee's pay potential in the GS-12 position in Glenwood Springs would be significantly higher than his pay potential in the GS-11 position in South Lake Tahoe, he eventually declined the promotion due to the high cost of living and unavailability of affordable housing in the area. The position is still vacant. As we continue our efforts to fill this position, we will explore all possible administrative options, including the options of using the full range of flexibilities for paying relocation incentives and working with the Department of Agriculture to determine whether it would be appropriate to request that OPM establish a special rate for this position.

In another example, there was a vacant Radio Technician position on the Medicine Bow-Routt National Forest. Management conducted outreach and recruitment efforts, including a relocation bonus, which yielded many interested applicants. Management selected a State Department employee who was located in Germany. The employee and his wife moved to Steamboat Springs, Colorado where they lived in a recreational vehicle (RV) for approximately six months while looking for housing they could afford. Eventually, the employee left the Forest Service and returned to the State Department because he was unable to find housing within his income range.

Popular resort communities are commonly adjacent to, or surrounded by national forests and grasslands. It is the land resource of mountain panoramas, recreation opportunities and natural settings that are the features in demand. Forest Service land and resource management enhances the landscape's character that is the attractive draw for people to live in these forest communities. Ironically though, the bucolic town settings, with national forests and grasslands as the back-drop makes it more difficult to attract employees to Forest Service duty stations and for them to afford housing that is within their income means. While we are able to adequately and appropriately staff most positions within the agency, some situations, like those mentioned above provide the Forest Service with some challenges.

Conclusion

In conclusion, Mr. Chairman and members of the subcommittee, we are prepared to seek the guidance from, and to cooperate with, OPM to recruit, manage and retain a diverse workforce. To fulfill its mission, the Forest Service depends on the important flexibilities discussed in the testimony and the continued cooperation of OPM to assure flexibilities for competitive pay and benefits packages for the varied labor markets in which the Forest Service operates. We appreciate your continued interest, support and work as we move forward to staff the Forest Service for the future in a competitive labor market. We are happy to answer any questions you might have.

Mr. DAVIS OF ILLINOIS. Thank you very much. Again, I appreciate both of your testimonies.

Mr. Grimes, let me ask you, you have heard the testimony of previous witnesses in support of locality pay being based on cost of living as opposed to cost of labor and rethinking the way the locality pay areas are defined. How do you respond to these notions?

Mr. GRIMES. The notion of locality pay is based, as you mentioned, on the cost of labor, Mr. Chairman. We believe and the administration believes that it is a very equitable way to pay employees. There are a number of factors that drive private sector and the State and local government pay, and living costs are certainly among those. Private sector folks and State and local government folks have to buy houses, as well.

So when BLS surveys the private sector and the State and local governments and provides that data to us to establish the gaps between Federal pay, private sector, and State and local government pay, we are able to pay a locality pay that is in accord with those gaps. Now it is not perfect, but it is a step in the right direction and we believe that it works.

Mr. DAVIS OF ILLINOIS. OPM has previously suggested that Federal agencies already have wide latitude under the various pay flexibility initiatives to address recruitment and retention issues. If this is the case, why do you think many agencies seem to still have difficulty recruiting and retaining employees in these high-cost areas?

Mr. GRIMES. I am not sure why they are experiencing the difficulties because they do have the tools to use to recruit and retain. In fact, we have a report here that we submitted to Congress on 2006's use of the three-Rs, the so-called three-Rs. There was over 22,000 instances that the three-Rs were used in 2006 amounting to some \$140 million, so those tools do exist and they are being used.

Of course, there is plenty of room to be used more often where they need to be used. Agencies have the authority to pay up to 25 percent of pay, for example, for a retention allowance. And some of the limits on the three-Rs can be exceeded if people come in to OPM and ask. To date, we have been asked once and we granted it. So we stand ready to hear agency complaints and help them work through these issues.

Mr. DAVIS OF ILLINOIS. On the issue of non-foreign COLA, I understand that you have been to Hawaii, Alaska, and several of the territories to discuss the change to locality pay. What have been the main concerns raised by employees in these areas, and what has been OPM's response to these concerns?

Mr. GRIMES. Well, one of the main concerns expressed by a number of employees is that it has taken a long time to address this problem, and they are heartened by the fact that a bill has been introduced. There is a worry among a number of employees that the bill will get too expensive and may not make it through the process. Certain other employees are concerned about the length of time it may take to phase in locality pay. Some are concerned about the offset that we propose being too low and favor the one that is in the Senate bill. But generally speaking, I think employees are in favor of having us extend locality pay to the non-foreign areas and would like to get it done.

Mr. DAVIS OF ILLINOIS. I understand that there is a decision pending on whether Rhode Island and southeast Massachusetts prevailing wage rate workers should receive the same pay rate as those in the Boston area. Is that a correct assessment?

Mr. GRIMES. That is an issue that would be handled by the Federal Prevailing Rate Advisory Committee, and I would be happy to address that question for the record if you would like to submit it.

Mr. DAVIS OF ILLINOIS. All right.

Let me just ask you, unlike their domestic counterparts, the Foreign Service officers do not receive locality pay when they serve overseas. This means that a Foreign Service officer who is transferred to Washington, DC, from another location is given an increase in pay. The Foreign Affairs Committee is considering changing the locality pay for these officers. Of course, our committee will also be looking at various proposals on this issue.

One option is for Foreign Service officers to continue to receive Washington, DC, locality pay. Another option says that Washington locality pay is higher than all but a few places in the United States and for these employees to receive the locality pay for the rest of the United States.

Or yet another option might be for Foreign Service officers to receive pay that is commensurate with the location where they are stationed. So, for example, a Foreign Service officer living in London may receive one rate of pay while a Foreign Service officer living in Guatemala might receive another rate.

Does OPM have a position? And should Foreign Service officers receive District of Columbia locality pay or other locality pay for the rest of the Nation or for the area where they are living?

Mr. GRIMES. Mr. Chairman, this is a complicated issue. When Foreign Service officers or others go overseas, they receive a number of allowances and so forth that help them deal with the local economy.

I am not aware of an OPM position on one option or the other, but, again, would be happy to provide you any technical information for the record if you would like to submit a question.

Mr. DAVIS OF ILLINOIS. You are aware of the fact that the subcommittee has been looking seriously at the whole question of telework and actually promoting further utilization of it as a concept. In your opinion, should a teleworker's locality pay be based on the employee's regular workplace or the telework location? And do you have any opinion as to who should be responsible for the employee's travel, the agency or the employee?

Mr. GRIMES. The travel?

Mr. DAVIS OF ILLINOIS. For the employee who may be teleworking from Chicago but has to come in to headquarters whatever period of time or whenever or however many times. Who should cover that travel expense, the employee or the agency?

Mr. GRIMES. I am not an expert here, but often when someone teleworks it is probably at least somewhat near where their duty station is, and their duty station controls how they get paid. If someone were to telework from a distant city, there probably are existing rules that govern whether someone would get paid to come into the office or not. That is not my area of expertise.

Again, I could get it to the right people if you would like.

Mr. DAVIS OF ILLINOIS. I think that currently the employee is paying. That is sort of a bone of contention that the employee is paying travel expense. Obviously, there are people who would think that this is cutting into the employee's compensation. It is an issue that I think certainly bears a tremendous amount of scrutiny, review, and looking at, if we are going to be able to telework to the extent that certainly the subcommittee would like to see us begin to do.

Mr. Kashden, let me just make sure that I understand. Your testimony basically suggests that there are no super serious concerns relative to locality pay in your agency?

Mr. KASHDEN. What I would say, Mr. Chairman, is that looking across the board at our geography, we are generally in good shape. Where I certainly acknowledge some issues, is that it is a very hot issue, if you will, in southern California. Recently, as much as just a couple of hours ago, I talked to our forest supervisor there in southern California and, while we are managing our work force adequately, if you take fire fighters where you have employees whose roots are in southern California, who are committed to a profession in fire fighting, just candidly, sir, the Forest Service, in terms of its annual compensation, would have a hard time competing with the California Division of Forestry or local agencies.

Now, in southern California where we have employees who see a longer-term career in natural resource management, of which fire is a part of that, and they are more flexible in their duty locations, then we are able to compete quite effectively in terms of keeping them in the organization, although we do acknowledge that the annual compensation package that they receive as part of the fire fighting job in southern California is less than what they are getting from a competitor. So it is a balance between personal preference in terms of your long-term value, whether you are wedded to southern California and you want a career in fire, or whether you want a natural resource career, and those play into those decisions.

Certainly in our contingent of employees in high resort areas it is also tough. We will find long commutes in order to perform the mission there. Obviously, these areas have the benefit of being extremely beautiful and desirable places to work and it is a rewarding career in natural resource management, so you get those things that tradeoff against those economic challenges.

Elsewhere in the country, in San Francisco we have some folks and certainly Washington, DC, there are some challenges for recruiting. But generally across our geography we are doing fine.

Mr. DAVIS OF ILLINOIS. Well thank you, gentlemen, very much. We appreciate your testimony. You are excused.

We will now proceed to our third panel. Our witnesses are Ms. Colleen Kelley, the national president of the National Treasury Employee's Union, which is the Nation's largest independent Federal sector union, representing employees in 31 separate Government agencies. As the union's top elected official, she leads in CEU's efforts to achieve the dignity and respect Federal employees deserve.

Jacqueline Simon is the public policy director for the American Federation of Government Employees [AFL-CIO], a union that rep-

resents more than 600,000 Federal and District of Columbia employees throughout the Nation and around the world. Ms. Simon's area of specialization includes the Federal budget, Social Security, and Federal pay systems.

Mr. Art Gordon is the national president of the Federal Law Enforcement Officers Association, a volunteer organization which represents more than 25,000 Federal agents from over 65 different Federal law enforcement agencies. Mr. Gordon is also the Assistant Federal Security Director for Law Enforcement with the Transportation Security Administration at the Marshall BWI Airport. Mr. Gordon has served in various law enforcement positions for over 29 years.

We welcome all three of you and thank you very much.

[Witnesses sworn.]

Mr. DAVIS OF ILLINOIS. The record will show that the witnesses answered in the affirmative.

Thank you all very much. Of course, your entire statement is included in the record. We would ask that you summarize in 5 minutes and observe the lights. The yellow light is an indication that you have a minute in which to wrap up, and the red light means that it is time to stop.

Ms. Kelley, we will begin with you.

STATEMENTS OF COLLEEN KELLEY, PRESIDENT, NATIONAL TREASURY EMPLOYEE'S UNION; JACQUELINE SIMON, PUBLIC POLICY DIRECTOR, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES; AND ART GORDON, NATIONAL EXECUTIVE VICE PRESIDENT, FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

STATEMENT OF COLLEEN KELLEY

Ms. KELLEY. Thank you very much, Chairman Davis.

I have the privilege of serving on the Federal Salary Council, which makes recommendations to the President's Pay Agent on a variety of issues relating to Federal pay, including locality pay. I know firsthand that employees face challenges in making ends meet, especially in light of recent economic woes that include rising gas prices that affect commuting to work, increased food prices, prices of commodities, and a declining housing market. Regional variations add pressure and weigh heavily on many Federal employees trying to provide a good quality of life for themselves and their families.

Regional concerns over the differing levels of locality pay and overall fairness of the current Federal pay system can best be fixed through full implementation of the Federal Employees Pay Comparability Act [FEPCA]. Congress enacted, as we know, FEPCA to replace the previous nationwide system with a method for setting pay for white collar employees that uses a combination of across-the-board and locality pay adjustments. The raises are indexed to wage increases in the private sector, as measured by the employment cost index.

The locality component of pay adjustment of FEPCA was supposed to be phased in over a 9-year period. In 1994 the minimum comparability increase was to be two-tenths of the pay gap. That

is the amount that was needed to reduce the gap to 5 percent. And for each successive year the comparability increase was scheduled to be at least one-tenth of the pay gap.

For 2002 and thereafter, the law authorized the full amount necessary to reduce the pay disparity in each locality area to 5 percent; however, as we know, the schedule under FEPCA has not been followed. Every year since 1995 the President has exercised his authority under FEPCA to submit an alternative pay plan citing "a national emergency or serious economic conditions affecting the general welfare," and separate legislation enacting a lower pay raise has been enacted by Congress.

The overall average pay gap in 2007, as we have heard, including the average locality rate of 16.88 percent, today amounts to 22.97 percent. If FEPCA had been fully implemented, that gap should be no more than the statute's 5 percent target. In order to catch up, Federal employees in San Francisco should receive a locality adjustment of 17.2 percent for 2008 on top of what they already receive. Los Angeles Federal employees should get an additional 10.2 percent in salary for locality pay.

NTEU believes that by far the biggest problem for Federal employees in large metropolitan areas is this lack of implementation of FEPCA rather than the method that is used to measure the private versus public pay gaps.

NTEU believes it would be a mistake, however, to change from a cost of labor measurement as required under FEPCA to a cost of living measure. The current pay system is based on the concept that Federal pay should be comparable with private sector pay.

The BLS data accurately depicts a huge pay gap in large cities. Fully implementing FEPCA would solve the problem without changing the underlying tenets of Federal compensation, which are based on comparable pay between Federal and private sector employees.

Unfortunately, not all Federal employees in the GS system received the full Federal pay raise that was set by Congress this year, and they may not receive the entire raise again in 2009. These employees' salaries are capped when they bump up against the Executive Schedule and by law cannot exceed it. This pay compression was first seen in San Francisco, but it now affects other cities, including Houston, Boston, Chicago, Detroit, Los Angeles, and Washington, DC. Since Federal retirement is calculated on salary, these caps also can lower retirement amounts, as well.

NTEU recognizes and supports fixing the problem. Federal employees who serve in the Government should not suffer because they worked hard, got promoted, and reached the top of the pay scale.

Finally, NTEU supports the efforts to fix the non-foreign COLAs, the pay system that pertains to Hawaii, Alaska, and the Puerto Rico and U.S. territories. This unique system that was established long ago, as we have heard, is outdated and is in need of reform. NTEU supports S. 3013, legislation introduced in the Senate by Chairman Daniel Akaka, to transition these employees to the locality pay system based on pay comparability.

The provisions of S. 3013 are superior to the administration's proposals that would be phased in over 7 years and that lack employee protections in a number of areas.

In summary, I would like to emphasize that NTEU's continued recommendation is full implementation of FEPCA. NTEU also supports FEPCA's continued utilization of the cost of labor standard, since it reflects the basic tenet of pay comparability with the private sector in a way that cost of living comparisons do not.

Finally, NTEU supports removing inequities caused by pay compression and reforming the non-foreign COLA for Alaska, Hawaii, and the U.S. territories.

Thank you. I will be happy to answer any questions.

[The prepared statement of Ms. Kelley follows:]



**Testimony of
Coll en M. Kelley
National President
National Treasury Employees Union**

Before the

**Subcommittee on Federal Workforce, Postal Service and
The District of Columbia**

**Oversight and Government Reform Committee
U.S. House of Representatives**

on

“In Search of Equity: An Examination of Locality Pay”

June 26, 2008

Chairman Davis, Ranking Member Marchant, and members of the Subcommittee, I appreciate the opportunity to appear again before this distinguished subcommittee to discuss the important subjects relating to federal pay. As you know, the National Treasury Employees Union represents more than 150,000 federal employees in over 31 different agencies and departments throughout the government.

Locality pay is a subject I have worked on for some time. I have the privilege of serving on the Federal Salary Council (FSC) which makes recommendations to the President's Pay Agent on a variety of issues relating to federal pay—including locality pay. The calculations are understandably sensitive in some regions of the country. Employees face challenges in making ends meet in view of legitimate economic woes – rising gas prices that affect commuting to work; increased food prices; prices of commodities; and a declining housing market. Regional variations add pressure and weigh heavily in some or all of these areas of the country for federal employees who simply seek a good quality of life for themselves and their families.

Federal Employees Pay Comparability

My number one recommendation to the subcommittee is this: Regional concerns over the differing levels of locality pay and overall fairness of the General Schedule (GS) can best be fixed through **full implementation of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (PL 101-509)**. Congress enacted FEPCA to replace the nationwide GS system with a method for setting pay for white-collar employees that uses a combination of across-the-board and locality pay adjustments. The raises are indexed to wage increases in the private-sector, as measured by the Employment Cost Index (ECI). The policy for setting General Schedule pay contained in 5 U.S.C. 5301 is that—

- (1) there be equal pay for substantially equal work within each local pay area;
- (2) within each local pay area, pay distinctions be maintained in keeping with work and performance distinctions;
- (3) Federal pay rates be comparable with non-Federal pay rates for the same levels of work within the same local pay area; and
- (4) any existing pay disparities between Federal and non-Federal employees should be completely eliminated.

Before FEPCA, the goal was still comparability with the private sector, but FEPCA introduced locality adjustments to make comparability more sensitive to local labor markets. Before FEPCA, GS employees all received the same annual pay increase, regardless of the cost-of-labor in their locality. While the law has not been fully implemented it does afford additional locality pay to high cost areas including many larger cities. NTEU supports fully implementing the law.

Across-The-Board and Locality Adjustments

Under FEPCA, General Schedule salary adjustments, beginning in January 1994, consist of two components: (1) a general increase linked to the Employment Cost Index and applicable to the General Schedule, Foreign Service pay schedules, and pay schedules established under title 38, United States Code, for Veterans Health Administration employees; and (2) a General Schedule locality adjustment that applies to specific areas of the continental United States where non-Federal pay exceeds Federal pay by more than 5 percent.

The formula for the general increase (defined in section 5303 of title 5, United States Code) provides that the pay rates for each statutory pay system be increased by a percentage equal to the 12-month percentage increase in the ECI, minus one-half of one percentage point. The 12-month reference period ends with the September preceding the effective date of the adjustment by 15 months.

The locality component of the pay adjustment under FEPCA was to be phased in over a 9-year period. In 1994, the minimum comparability increase was two-tenths of the "target" pay disparity (i.e., the amount needed to reduce the pay disparity to 5 percent *according to the methodology required by current law*). For each successive year, the comparability increase was scheduled to be at least an additional one-tenth of the "target" pay disparity. For 2002 and thereafter, the law authorized the full amount necessary to reduce the pay disparity in each locality pay area to 5 percent. However, the schedule under FEPCA has not been followed. This is because in almost every year since 1995, the President has exercised his authority under FEPCA to submit an "alternative pay plan" due to a "national emergency or serious economic conditions affecting the general welfare" (see 5 U.S.C. 5104a), and ultimately separate legislation designating a pay raise has been enacted in Congress providing lower federal pay raises than would have been provided under FEPCA.

Based on calculations provided by the Office of Personnel Management (OPM) staff to the Federal Salary Council, in taking a weighted average of the locality pay gaps, the overall gap between base GS average salaries (excluding any add-ons such as special rates and existing locality payments) and non-Federal average salaries surveyed by the Bureau of Labor Statistics (BLS) was 43.73 percent as of March 2007. The amount needed to reduce the pay disparity to FEPCA's target gap of 5 percent averages 36.89 percent.

Pay gaps are calculated excluding existing locality payments because locality pay is paid on top of the base General Schedule rates. The overall average pay gap in 2007, including the average locality of rate of 16.88 percent, is 22.97 percent. If FEPCA were fully implemented, that gap could be nearly reduced to meet the statute's 5 percent target.

If FEPCA were in effect, federal employees in San Francisco would receive a locality adjustment of 17.2 percent for 2008 on top of what they already receive; Los Angeles federal employees would get an additional 10.2 percent in salary for locality pay.

Pay Methodology Improvements

Through our work on the Federal Salary Council, NTEU supported reforming the data used by BLS at the Department of Labor (DOL) in 1996. Prior to that time, BLS collected private sector survey data under its Occupational Compensation Survey Program (OCSP). It was our position that the data gathered for locality pay determinations was flawed. Subsequently BLS changed and phased in a National Compensation Survey Program (NCSP), which used a different improved methodology. NTEU believes the data collected from OCSP will more accurately depict the gaps in pay, particularly in large metropolitan areas. The new survey was, however, phased in incrementally over a five year period, so we are just now beginning to see the results of the new data. Those results are depicting increased pay gaps in our larger metropolitan areas including cities in California.

Mr. Chairman, some have suggested using a different standard for determining locality pay. As I mentioned earlier, the Employment Cost Index (ECI) which essentially measures the cost-of-labor is an underlying component of both base pay and locality pay, the two main elements of FEPCA. Some have argued for a change to a cost-of-living standard, not cost-of-labor, in determining federal pay. I think that would be a mistake and NTEU would oppose it. The GS system has been based on the concept that federal pay should be comparable with private sector pay for almost two decades as have its pay predecessors. And with the new data I just discussed, we are seeing more accurate depictions of widening pay gaps in larger metropolitan areas. Fully implementing FEPCA would address the particular stresses of large metropolitan areas and makes more sense than changing the underlying tenets and theory of federal pay.

While NTEU does not support changing locality pay determinations from the cost-of-labor standard, it does not oppose government agencies use of existing flexibilities such as special pay or recruitment and retention bonuses in an effort to keep talented and high quality employees. These are particularly relevant in high cost communities like those in California. We need to find ways to address the possible loss of talent in government, and we will be happy to work with the subcommittee and with the Office of Personnel Management to seek ways to make better use of flexibilities available under the law.

Pay Compression

NTEU is concerned with an issue that has surfaced in recent years and appears to be growing for some federal employees in high cost areas of the nation. Some federal employees in the GS system did not receive their full federal pay raise this year, and it is likely they will not receive it in its entirety in 2009. These employees' salaries are "capped" because they bump up against the Executive Schedule, the pay system for senior executives in government. By law, (5 USC 5304(g)(1)) base GS pay and locality pay combined cannot exceed Level IV of the Executive Schedule (EX-IV)—which, for 2008, is set at \$149,000. According to the *Congressional Research Service* (RL34380) approximately 7,100 GS and other GS-equivalent employees in 12 pay areas did not receive all of the pay increases for their pay areas. Those primarily affected have been GS-15 step 10s, but in some high cost areas, those who are Step 9 and even Step 8 could be capped, or only receive part of their pay raise.

While NTEU does not represent large numbers of employees at the top of the GS scale, we do represent some and they are very deserving of their full raises. We recognize—and support—fixing the problem. We fight hard for fair pay raises in the General Schedule each year, and all federal employees who serve in government should not suffer because they worked hard, got promoted and reached the top of the pay scale. While pay compression was first seen in San Francisco, there are now cases in eleven other cities, including Houston, Boston, Chicago, Detroit, Washington, DC and others. Since federal retirement is calculated on salary, these caps have an adverse effect on an employee's retirement benefits as well. The pay compression issue could drive talented people from government at a time when we want to recruit and retain quality employees.

I urge the subcommittee to fix this pay compression problem for those federal civil servants who worked hard, got promoted and are now being penalized.

Non-Foreign COLAs

Mr. Chairman, as you know, we have a different pay system that predates the admission of Alaska and Hawaii into the United States and covers nearly 50,000 federal employees there and in U.S. territories. After World War II, in 1948, a pay system was established when it became clear that federal employees hired or transferred to these then-called outlying territories bore costs that mainlanders did not. At the time, the pay system was a very sensible and necessary action. Rather than being compensated at the then uniform pay rate across the United States, civilian workers in the outlying territories were given an additional payment based on a measure of the increased cost of living in these territories. This cost-of-living adjustment (COLA) was in addition to the employee's base pay. Non-taxable for federal income tax or FICA purposes, it was also not counted towards federal retirement. This was termed the "non-foreign COLA," distinct from pay systems for federal employees living outside the jurisdiction of the United States. This system remained in place following the admission of Alaska and Hawaii into the union and continues as well in U.S. territories and the Commonwealth of Puerto Rico today.

Given that FEPCA was a significant departure from the previous geographically uniform pay rates on the mainland, it was not surprising that Congress exempted the areas under the non-foreign COLA, in essence "grandfathering" this program. But it has become increasingly clear that the non-foreign COLA is dated and in need of reform. With 18 years of experience with locality pay, it is now time to extend locality pay and retirement credit to the outlying areas. Such an initiative must be done in a way that is fair to employees and does not make sudden, unplanned and adverse changes in their pay and compensation.

The Administration has asked for legislation that would phase in a conversion from COLA to locality pay over seven years. This proposal has many positive features. It would substantially improve retirement benefits for impacted employees. At the end of the seven year period, if the locality pay rate is less than the amount of non-foreign COLA for a particular area, employees would continue to receive the difference in non-foreign COLA and locality pay until the locality rate reaches the COLA amount. However, the Administration's proposal has several significant shortcomings that need to be corrected. Instead, we believe the Congress should use

as a starting point S. 3013, the Non-Foreign Area Retirement Equity Assurance Act of 2008 introduced by Senators Akaka, Stevens, Inouye, and Murkowski.

S. 3013 is a much fairer and more sensible proposal than the Administration's. Rather than the lengthy seven year phase in period, S. 3013 calls for a three year phase in period. For employees concerned as to the retirement disadvantage under COLA, it allows for a speedier transition. And for federal workers who feel the transition does not benefit them, the bill also allows for a one-time, irrevocable opt-out. The Akaka bill also allows for a retirement credit buy-back for the period of January 1, 2009 to December 31, 2011. The proposed legislation also includes provisions to guarantee that no employee would see an unfair reduction in his or her paycheck by implementing a fairer offset formula than the Administration's proposal, and protect the pay standards of those employees under special rates.

Without the features of S. 3013 that are lacking in the Administration's proposal, some federal employees could actually see their compensation decreased. Cutting the pay of federal workers because they live in these states or territories is unfair and would cause grave harm to employee morale.

Conclusion

In summary, I would like to emphasize that NTEU's continued recommendation is full implementation of FEPCA. NTEU also supports FEPCA's continued utilization of the cost-of-labor standard since it reflects the basic tenet of pay comparability with the private sector in a way that cost-of-living comparisons do not. The reason employees are not receiving adequate pay in high cost areas is because FEPCA is not being implemented, not because of the relatively minor differences between cost-of-labor and cost-of-living indexes. Finally, NTEU supports removing inequities caused by pay compression for GS employees and reforming the non-foreign COLA for Alaska, Hawaii and affected U.S. territories.

Mr. DAVIS OF ILLINOIS. Thank you very much, Ms. Kelley.
We will proceed to Ms. Simon.

STATEMENT OF JACQUELINE SIMON

Ms. SIMON. Mr. Chairman, thank you for the opportunity to testify today.

AFGE is a strong supporter of the market based locality pay systems formed under FEPCA. FEPCA, passed in 1990, promised to take the politics out of Federal pay and base annual salary adjustments on both the national and regional labor market data collected and analyzed by the Bureau of Labor Statistics. The law was passed specifically to address what were and still are enormous gaps between Federal and non-Federal salaries. It affirmed that comparability with the private sector measured objectively by the BLS is the best standard for Federal pay.

The Federal Government cannot pay below-market salaries and expect to be anything other than an employer of last resort, and we believe that market comparability is not only the best way to ensure recruitment and retention of a high-quality Federal work force, it is also the fairest way to set Federal pay.

The case against the locality pay system that has been advanced by proponents of pay for performance centers on the charge that the locality pay system is old and needs to become more contemporary. In fact, the employment cost index and locality pay combination has only been around since 1994. They also like to claim that it is inflexible when, in fact, the current system provides numerous flexibilities.

We know these flexibilities are rarely used because of budget restraints, so it is not that the system itself is either inflexible or antiquated, it is just under-funded. Under-funding is also responsible for the fact that the Government failed to meet FEPCA's promise of closing the Federal/non-Federal pay gap by 2002. Pay gaps in some localities are still strikingly large. Federal salaries remain behind those in the private sector by huge amounts in many high-cost U.S. cities, including Washington, Baltimore, New York, L.A., San Francisco, Boston, and Chicago, to name just a few. Employees in all these cities have difficulty maintaining a decent standard of living and buying even a median-priced house.

The obvious answer is full funding for FEPCA, but in the absence of that AFGE recommends taking on the housing issue head-on. We recommend pilot programs in counties with median house prices that are at least 25 percent above the median house price within the locality. Agencies could experiment with a variety of approaches, including programs modeled after the Federal Teacher Next Door program that allows public school teachers to purchase homes owned by HUD at half price, and California's Extra Credit Teacher Home Purchase program that makes low-interest mortgages and reduced down payments available to teachers.

In addition, agencies should be able to provide lump sum housing allowances equivalent to those provided to the military.

AFGE's proposal for pilot programs to ease housing costs for Federal employees in cities with prohibitive real estate prices is not a proposal to replace locality pay with housing allowances. We strongly oppose efforts to eliminate the FEPCA guarantee of local-

ity pay for Federal employees working in these cities. These experiments are necessary supplements to annual salary adjustments based upon both ECI and locality data, not replacements.

AFGE also strongly supports S. 3013, the Non-Foreign Area Retirement Equity Assurance Act of 2008 introduced by Senators Akaka, Stevens, Inouye, and Murkowski. We support the bill's gradual replacement of COLAs with locality pay over a 3-year period and the fact that it ensures that employees' take-home pay is not adversely affected during the transition.

The Senate bill also wisely makes the transition to locality pay voluntary for current employees. We are pleased that employees who choose to forego locality pay will be permitted to lock in the 2008 COLA rate; however, there are already approved increases in COLAs awaiting the lengthy rulemaking process in OMB and OPM that might not be finalized in time to meet the deadline described in the legislation.

We have requested that language be added to allow the lock-in to include amounts provided in pending increases in non-Foreign COLAs. This will let workers in Puerto Rico whose COLA is scheduled to rise by 13 to 14 percent by next year at the latest to obtain the higher amount if they choose to remain in the COLA system.

Finally, the Senate bill provides an opportunity for both regulation employee Sand those subject to mandatory retirement ages who become eligible to retire during the transition period to pay into the Civil Service Retirement Fund so that their annuities will not be affected by their late entry into the locality pay system. They deserve the ability to pay into the system to make themselves whole, and AFGE strongly supports the provisions of S. 3013 that allow them to do so.

We are also working with the Senate committee to provide two additional protections to the bill. The first would guarantee that no non-foreign area will ever receive locality pay that is less than the rest of the United States. Second, we ask for additional explicit language to create two new localities that cover the entire States of Hawaii and Alaska, since the dawn of locality pay program funding at DOL has been cited by the Pay Agent as an excuse for severely limiting the number of pay localities. In 2006 Orlando, Kansas City, and St. Louis all had to be dropped in order to make room for cities with larger pay gaps because budget limits allowed only 32 cities to be surveyed, no more. It would be wrong to eliminate two existing localities to facilitate the addition of Hawaii and Alaska; likewise, it would be wrong to force Federal employees and Alaska to remain part of RUS when preliminary data show their pay gaps are far in excess of those in RUS.

This concludes my statement. I would be happy to answer any questions.

[The prepared statement of Ms. Simon follows:]



AFGE
Congressional
Testimony

STATEMENT BY

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

BEFORE

THE SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND
THE DISTRICT OF COLUMBIA

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

ON

IN SEARCH OF EQUITY: AN EXAMINATION OF LOCALITY PAY

JUNE 26, 2008

American Federation of Government Employees, AFL-CIO
80 F Street, NW, Washington, D.C. 20001 * (202) 737-8700 * www.afge.org



Mr. Chairman and Members of the Subcommittee, my name is Jacqueline Simon, and I am the Public Policy Director of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the more than 600,000 federal employees our union represents, including thousands who live and work in numerous federal agencies and programs located in the non-foreign COLA areas, and in high-cost cities throughout the nation, I thank you for the opportunity to testify today on the subject of locality pay.

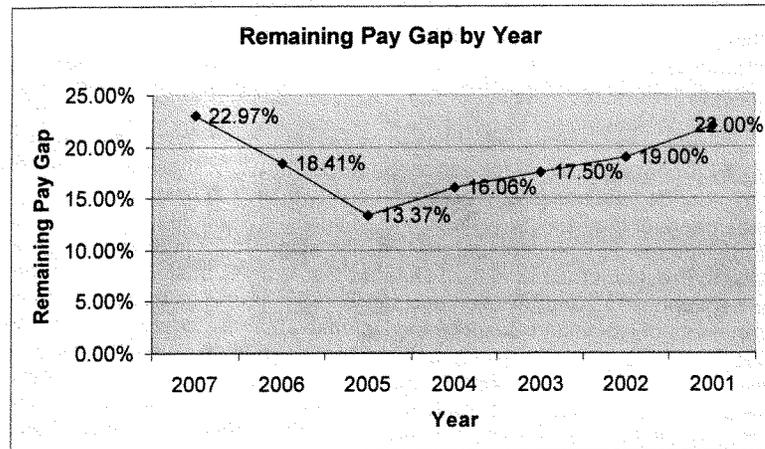
AFGE is a strong supporter of the market-based locality pay system created in 1990 through the enactment of the Federal Employees Pay Comparability Act (FEPCA). FEPCA promised to take the politics out of federal pay, and base federal salaries and annual salary adjustments on both national and regional labor market data collected and analyzed by the Department of Labor's Bureau of Labor Statistics (BLS). The law was passed specifically to address the enormous gaps between the salaries of federal employees and their counterparts in the private sector. We believe that comparability with the private sector, measured objectively by the BLS, is the best standard for federal pay. The federal government cannot pay below market salaries and expect to be anything other than an employer of last resort, and we believe that market comparability is not only the best way to ensure recruitment and retention of a high quality federal workforce, it is also the fairest way to set federal pay.

In recent years, the market-based pay system has come under harsh attack by proponents of pay-for-performance. Fortunately, these advocates have had to resort to falsehoods and exaggerations to make the case for abandonment of the FEPCA system, and as such, have not made much progress toward eliminating market comparability as the standard for federal pay setting. Bowing to President Bush and then-Defense Secretary Rumsfeld in the months after September 11th and "mission accomplished" in Iraq, Congress gave the Departments of Homeland Security and Defense authority to jettison the General Schedule (GS) locality pay system and replace it with highly subjective and highly controversial "pay for performance" schemes. But the sobering realities of those Departments' massive difficulties in implementing new systems that do not run afoul of the Merit System, and do not result in thousands of lawsuits, has made everyone wary of expanding the Rumsfeld pay plan to other agencies.

The case against the locality pay system advanced by proponents of pay for performance centers on the charge that the locality pay system is old and needs to become more "contemporary." Sometimes it's called a centenarian, other times it's referred to as a relic of the 1940's. In fact, the Employment Cost Index (ECI) and locality pay combination has only been around since 1994. They also like to claim that it is inflexible, when in fact the current system provides for numerous flexibilities such as special rates, incentive payments, elimination of time-in-grade, bonuses of up to 100% of salary for recruitment, retention, and relocation; student loan repayment, changes in locality boundaries, and many others. However, even though OPM is often the loudest voice decrying the

current pay system's inflexibility, it also publishes periodic reports to Congress describing the frequency with which the broad array of flexibilities are used. OPM's findings in these reports are that flexibilities are rarely used because of budget restraints. Thus, one cannot say truthfully that the system itself is either inflexible or antiquated. It is just underfunded.

Underfunding is also responsible for the fact that locality pay has failed to meet FEPCA's promise of closing the federal-non-federal pay gap by 2002. As the chart below illustrates, the "remaining gaps" continue to be substantial long after 2002, when the target of 95% of comparability was supposed to have been met. In fact, the size of the remaining gap has actually grown in the past two years, as the data have been improved to provide a more accurate measure of the gap between federal and non-federal pay. These improvements consist of changes to the data that take into consideration the composition of the federal workforce, and thus include larger numbers of supervisory positions than previous years' data did.



The remaining gaps in some localities are strikingly large. The Los Angeles Area Federal Executive Board has approached both the Federal Salary Council and the Congress seeking relief from both high living costs and difficulties in recruitment and retention in Southern California. Yet the Los Angeles-Long Beach-Riverside, California pay locality, which includes the Los Angeles-Long Beach-Riverside Combined Statistical Area as well as the Santa Barbara-Santa Maria-Goleta Metropolitan Statistical area and all of Edwards Air Force Base, has a smaller remaining pay gap than twelve of the current 32 localities. They have proposed splitting their localities between coastal and

inland counties. The Federal Salary Council carefully considered the impact of this proposal in 2006. Its findings were as follows:

Based on the information from BLS that it is not feasible to split the survey sample, an indicator that the effect on the locality pay rate would be modest, demographic information that is inconclusive, high levels of commuting to and from coastal and inland Los Angeles, no representation...from the inland counties, the potential effect on other pay areas, that most of the development in the inland counties is on the western side, closer to Los Angeles, and turnover rates that indicate employees leave the inland counties faster than the coastal counties, the council recommends that the Pay Agent not adopt the proposal to split the Los Angeles locality pay area.¹

This is not to suggest that the 21.82% remaining gap is not a problem that needs to be addressed immediately. The facts presented by the Los Angeles Federal Executive Board are compelling. Federal salaries remain behind those in the private sector by huge amounts in many high cost U.S. cities, including 36.3% in Washington /Baltimore, 26.67% in New York City, 28.62% in San Francisco, 25.35% in Boston, and 23.06% in Chicago – to name just a few. Employees in all these cities have difficulty maintaining a decent standard of living and buying even a median-priced home. That pay gaps have persisted almost seven years after the law's schedule for gradual closure should have been met is extremely frustrating. The obvious answer is full funding for FEPCA.

While full funding of FEPCA remains a top AFGE priority, we are aware that it is likely to continue to be sacrificed to other government priorities. But ignoring the problem while it grows is especially dangerous as the federal government struggles to recruit the next generation of federal employees as the baby boom generation prepares to retire. As such, it makes sense to consider what the government might do to provide relief for federal employees who work in areas with particularly high housing costs.

To assist federal employees and their families who live in particularly high cost cities with large remaining pay gaps, AFGE recommends that the federal government begin to provide a variety of housing assistance programs, under well-defined circumstances. We propose pilot programs that would address the particularly acute problems faced by federal employees and agencies in counties with median house prices that are at least 25% above the median house price within a locality. Agencies could experiment with a variety of approaches to provide relief from high housing costs, including programs modeled after the federal Teacher Next Door program that allows public school teachers to purchase owned by the Housing and Urban Development (HUD) at "half price", and California's Extra Credit Teacher Home Purchase Program that makes low interest mortgages and reduced down payments available to teachers. In

¹ Memorandum for the President's Pay Agent from the Federal Salary Council, October 27, 2006, page 9.

addition to programs that make buying a home more affordable, agencies should be able to provide lump sum housing allowances equivalent to those provided to the military.

It is important to note that our proposal for pilot programs to ease housing costs for federal employees in certain cities with prohibitive real estate prices is not a proposal to replace locality pay with housing allowances. AFGE strongly opposes efforts to eliminate the FEPCA guarantee of locality pay for federal employees working in localities with pay gaps that exceed FEPCA targets. We view experiments with various approaches, including housing allowances, reduced prices on HUD-owned homes, and home purchase incentives involving discounted interest rates and reduced down payments are necessary supplements to annual salary adjustments based upon both ECI and National Compensation Survey (NCS) locality data.

Previous calls for the extension of the military's basic housing allowance to federal employees proposed using it to replace locality pay and varying the size of the allowance according to "rank."² These proposals were put forward prior to the recent decline in housing prices, and were based upon the confounding observation that locality pay was higher in Houston than in San Francisco, but median housing prices in Houston were only about a fifth of those in San Francisco. While AFGE supports all serious efforts to improve the living standards of federal employees, we reiterate our opposition to any proposal that would replace any component of the current pay adjustment formula.

Shifting from Non-Foreign COLAs to Locality Pay

AFGE strongly supports S. 3013, the Non-Foreign Area Retirement Equity Assurance Act of 2008, introduced by Senator Akaka (D-Hawaii), Senator Stevens (R-Alaska), Senator Inouye (D-Hawaii), and Senator Murkowski (R-Alaska). In all respects, it is superior to the legislation proposed by the Bush Administration in the President's FY 2008 Budget which also sought to shift federal employees in non-foreign COLA areas to locality pay.

The Senate's bill phases in locality pay over a relatively brief three-year period. This schedule for replacing COLAs with locality pay allows employees to obtain the benefits of locality pay rapidly, and pay back the federal retirement system in an affordable way. The Administration's proposal, in contrast, draws out the phase in period over seven long years. The stated reason for this lengthy phase in is the fear that a faster transition would exacerbate federal agencies' retention problems by encouraging a rush to retirement. Delaying the implementation of locality pay in order to hold federal employees "hostage" to OPM's preferred schedule of retirement for those eligible to retirement is neither

² "Housing Allowance for Feds? Some Execs Say Yes", by Amy Curl, www.FederalTimes.com, July 7, 2006

fair nor respectful of federal employees. Although other localities that have been found to have pay gaps in excess of the five percent threshold have received the entire locality pay immediately upon the establishment of a new locality, we believe the transition from COLA to locality justifies a short phase in period. As such, we support the three year schedule provided in the Senate's legislation.

The legislation's formula for the gradual replacement of COLAs with locality pay is also far superior to that found in the President's proposal. The Administration would have offset each dollar of locality with a reduction of \$.85 from COLA; S.3013 has a formula that is designed to ensure that employees' take home pay is not adversely affected during the transition. The \$.65 offset per dollar of locality is strongly preferable, and AFGE endorses this approach. In addition to speeding the transition to locality pay, this formula also ensures that no employee's paycheck will actually decline during the transition, an important standard that AFGE members both need and appreciate, especially in light of the recent upsurge in gasoline prices and general inflation.

The Senate legislation also has the important virtue of making the transition to locality pay voluntary for current employees. Under the legislation, employees who choose to forego locality pay will be permitted to "lock in" the 2008 COLA rate. We strongly support making the transition to locality pay voluntary. However, there are already-approved increases in COLA rates awaiting the lengthy rulemaking process in the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) that might not be finalized in time to meet the deadline described in the legislation. We request that language be added to allow a "lock in" to include amounts provided in pending increases in non-foreign COLAs. In that way, federal employees in Puerto Rico, who are scheduled to receive an increase in their COLAs from 13 percent to 14 percent by next year at the latest, will be able to obtain the higher amount if they choose to remain in the COLA system.

Finally, the Senate bill provides an opportunity for both regular employees, and employees subject to mandatory retirement ages who become eligible for retirement during the transition period to pay into the Civil Service Retirement and Disability Retirement Fund amounts, plus interest, that they would have paid if they had been covered by locality pay, so that their annuities will not be adversely affected. We strongly support this provision, which is absent from the Administration's proposal. Federal employees consider many factors when deciding the date on which to retire. In fact, the majority who already receive locality pay do not retire on the day they reach eligibility. There is no reason to deprive federal employees in non-foreign areas, who have long sought locality pay, the ability to neutralize the financial impact on their annuities of their long wait. They deserve the ability to pay into the retirement system to make themselves whole, and AFGE strongly supports the provisions of S.3013 that allow them to do so.

We are working with the Senate Committee to provide two additional protections to the bill. The first is a guarantee that no federal employee in any non-foreign area who chooses to participate will ever receive locality pay that is less than the amount provided to the "Rest of US" or "RUS." Second, we ask that explicit language be added that two new localities be added to the current 32 Federal Employees Pay Comparability Act (FEPCA) localities that cover the entire states of Hawaii and Alaska. Since the dawn of the locality pay program in 1992, funding at the Department of Labor has been cited by the President's Pay Agent as an excuse for severely limiting the number of pay localities. In 2006, the cities of Orlando, Kansas City, and St. Louis all had to be dropped in order to make room for cities with larger pay gaps relative to RUS due mainly to the budget rule that only 32 cities would be surveyed, no more. It would be wrong to "rob Peter to pay Paul" and eliminate two existing localities to facilitate the addition of Hawaii and Alaska. Likewise, it would be wrong to force federal employees in Hawaii and Alaska to remain part of RUS when preliminary data show that their pay gaps are far in excess of those in RUS.

The reports of the Federal Salary Council's Workgroup meetings, as well as the official reports of the Federal Salary Council since 2003 make reference to decisions to drop some localities and add others. <http://www.opm.gov/oca/fsc/index.asp> In these reports, the budget constraints that have been discussed explicitly are implicitly referred to in statements that urge the Bureau of Labor Statistics (BLS) to utilize resources that had been devoted to one set of localities to a new set. The fact that the total number of localities has not been increased since 1998 is also evidence of the fact that BLS budget constraints have limited the number of cities and regions that could become separate localities.³ For these reasons, we support the inclusion of explicit language to direct the BLS to conduct surveys of Hawaii and Alaska for purposes of establishing both states as new localities under FEPCA that would not displace any existing locality.

This concludes my statement. I would be happy to answer any questions.

³ When locality pay began, there were 28 localities. In 1995, four cities were added and five were dropped to bring the total down to 27. In 1997, three were added; in 1998 an additional two cities were added to bring the total up the current number of 32. In 2006, three cities were dropped and three were added. The total remains 32.

Mr. DAVIS OF ILLINOIS. Thank you very much.
We will proceed to Mr. Gordon.

STATEMENT OF ART GORDON

Mr. GORDON. Thank you, Chairman Davis. It is an honor to be here today. I just want to correct one thing: actually, I retired as a Federal employee as of several months ago after 33 years.

I am the national president of the Federal Law Enforcement Officers Association, representing 26,000 Federal agents. These are the men and women who carry a badge and a gun and put their lives on the line every day for all of us.

I just want to trace a little bit of the history of Federal law enforcement pay reform and locality pay for all of you, and I am just going to summarize it briefly.

In 1988 there was a commission called NACLE, the National Advisory Commission on Law Enforcement. This was set up by Senator Deoncini. They held hearings and they came up with recommendations on Federal law enforcement pay.

The two conclusions they came to were: Federal pay was too low for the law enforcement occupations and needed to be increased at all levels; and the only long-term solution to Federal law enforcement pay and benefits was to provide for a separate Federal law enforcement pay system.

As a result of this, legislation was passed, Public Law 101-509, on November 5, 1990. It was signed into law. It was the first major Government-wide pay reform in almost 30 years. What it did, it granted special emergency pay adjustments to certain pay districts. It called for a 9-year phase-in of locality pay, which we have spoken about. And it required OPM to provide Congress no later than January 1, 1993 a plan to establish a separate pay and classification system for Federal law enforcement officers. To this date that has not been done.

I wish that I was not here to tell you that there are first-year Federal law enforcement officers who qualify for public assistance. We should not be able to tell you there are Federal law enforcement officers who commute before dawn to the city in which they work, then sleep in their cars to catch up on their sleep before reporting to work because they live so far away and cannot afford a house closer to the city they work in. We should not be able to tell you they have to re-hire and train people for Federal law enforcement, that there are Federal agents who leave in order to work for State or local law enforcement agency so they can make a better salary and get better benefits.

There have been several bills in Congress initiated and introduced by Representative Peter King in the last three sessions of Congress. The most recent bill, H.R. 4901, mirrors the other two bills, H.R. 466 and H.R. 566, which were designed to correct the locality pay inequities for Federal law enforcement.

We now know that many Federal agents leave Federal law enforcement and move to State and local agencies because they cannot afford the cost of staying a Federal agent.

It should be noted that some State and local police departments are not recruiting from the ranks of Federal law enforcement, so in effect what is happening is we pay to train qualified candidates

only to see these individuals leave Federal service to go to a better-paying law enforcement job.

There is also another issue, which is pay compression. Many Federal agents are at the pay cap, and the reason being is Federal law enforcement officers receive their salary plus 25 percent of their salary for law enforcement availability pay, and as a result you have grade 13 street agents, grade 14 and 15 supervisors all at the pay cap, and they have no incentive to move up in management and no incentive to move to higher-cost cities.

I would like to read a statement that Senator Dodd put in the record when he introduced S. 985 in May 2003. He said, "All over America Federal law enforcement personnel are enduring tremendous stress associated with our Nation's effort to protect citizens from the threat of terrorism. Unfortunately, that stress has been compounded by ongoing pressing concerns among many such personnel about their pay. I have heard from officers who have described long commutes, high personal debt, and in some cases almost all-consuming concerns about financial insecurity. Many of these problems occur when our agents or officers are transferred from low-cost parts of the country to high-cost areas. I have been told that some Federal officers are forced to separate from their families and rent rooms in cities to which they have been transferred because they cannot afford to rent or buy homes large enough for their family."

Again, we need to resolve the Federal law enforcement pay issues.

I also agree that we should go with full implementation of FEPCA. I would like to see a leap put above the pay cap to avoid pay compression. We would support the housing allowances in conjunction with FEPCA. And also we would support the changes for Alaska and Hawaii and other territories.

Thank you.

[The prepared statement of Mr. Gordon follows:]



Representing All

AGENCY for INTERN. AGRICULTURE - OIG
 COMMERCE
 Export Enforcement,
 & National Marine Fish
 DEFENSE
 Air Force - OIG
 Army - Criminal Investigation Command
 Defense Criminal Investigative Service
 Naval Criminal Investigative Service
 OIG
 EDUCATION - OIG
 ENERGY - OIG
 ENVIRONMENTAL PROTECTION AGENCY - OIG & OIG
 FEDERAL DEPOSIT INSURANCE CORPORATION - OIG
 GENERAL SERVICES ADMIN. - OIG
 HEALTH & HUMAN SERVICES - OIG
 Food & Drug Administration & OIG
 HOMELAND SECURITY
 Border Patrol
 Coast Guard Investigative Service
 Customs Service
 Dept. of Homeland Security - OIG
 Federal Air Marshal
 Federal Emergency Management Agency
 Federal Protective Service
 Immigration & Naturalization Service
 OIG
 Secret Service
 Transportation Security Administration
 HOUSING & URBAN DEVELOPMENT - OIG
 INTERIOR
 Bureau of Indian Affairs
 Bureau of Land Management
 & Wildlife Services
 National Park Service
 U.S. Park Police
 JUSTICE
 Bureau of Alcohol, Tobacco, Firearms & Explosives
 Drug Enforcement Administration
 Federal Bureau of Investigation
 Marshals Service
 OIG
 U.S. Attorney's Office - CI
 LABOR - OIG & LABOR RACKETEERING
 NATIONAL AERONAUTICS & SPACE ADMIN. - OIG
 NUCLEAR REGULATORY COMMISSION - OIG
 PORTAL SERVICE - OIG & INSPECTION SERVICE
 RAILROAD RETIREMENT BOARD - OIG
 SECURITIES & EXCHANGE COMMISSION - OIG
 SMALL BUSINESS ADMINISTRATION - OIG
 SOCIAL SECURITY ADMINISTRATION - OIG
 STATE DEPARTMENT
 Bureau of Diplomatic Security & OIG
 TRANSPORTATION - OIG
 TREASURY
 FINCEN & OIG
 Internal Revenue Service - CI
 TIGTA
 U.S. COURTS (JUDICIAL) - Probation &
 Prisons Service
 VETERAN AFFAIRS - OIG

NATIONAL OFFICERS
 President
 ART GORDON
 Executive Vice President
 JOHN AMAT
 First Vice President
 FIK ADLER
 Second Vice President
 DANIEL WIRTH
 Legislative Vice President
 MATTHEW ISSMAN
 Treasurer
 BRYAN THEEL
 Secretary
 STEVE PANDIO
 Immediate Past Director
 CHRISTINE A. KUSIAK-TAYLOR
 National Chapters Director
 BRIAN R. CORNELI
 Immediate Past President
 RICHARD J. GALLO
 General Counsel
 LAWRENCE BERGER
 Legislative Counsel
 JAMES & HOFFMAN
 EDGAR H. JAMES

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

P.O. Box 326, Lewisberry, PA 17339
(717) 938-2300 • FAX (717) 932-2262 • www.fleoa.org

TESTIMONY OF
ART GORDON
NATIONAL PRESIDENT

OF THE
FEDERAL LAW ENFORCEMENT OFFICERS
ASSOCIATION

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE ON
THE FEDERAL WORKFORCE, POSTAL SERVICE AND THE
DISTRICT OF COLUMBIA

CONCERNING

In Search of an Equity: An Examination of Locality Pay

On
June 26, 2008

FLEOA TESTIMONY

Chairman Davis, Ranking Member Marchant, Members of the Subcommittee, Ladies and Gentlemen:

My name is Arthur Gordon and I currently serve as the National President of the Federal Law Enforcement Officers Association (otherwise known as FLEOA). I represent over 26,000 federal officers from over 50 different agencies

I am a retired Supervisory Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and I have been in Federal law enforcement for over 32 years. I am here speaking today on behalf of FLEOA and our members.

FLEOA is a non-partisan, professional association, representing exclusively federal law enforcement officers. On behalf of our members, I wish to thank you for your leadership on holding these hearings on this important topic.

We have been actively involved in the issue of Pay Reform for Federal law enforcement officers for over eighteen years. During the 1980s, FLEOA worked closely with Senator Denis DeConcini, who earned the nickname "Guardian Angel of the Treasury Agents". In 1987, a bill, introduced by Senator DeConcini, was passed that established the National Advisory Commission on Law Enforcement, commonly referred to as the NACLE Commission. This Commission was tasked to study (what was common knowledge to members of FLEOA and a few elected officials) the huge recruitment and retention problem in federal law enforcement.

The NACLE Commission was created in 1988, and FLEOA was a commissioner along with three US Senators, five Members of the House of Representatives, the US Attorney General, the Treasury Secretary, the Directors of OPM and the FBI, the Administrator of DE A, two Inspectors Generals and several others.

NACLE held hearings documenting the horror stories about the recruitment and retention problems in federal law enforcement. They heard how, even though federal agents needed a college degree and several years of investigative experience to apply for their jobs, state and local law enforcement paid more and gave greater benefits. They read presented stories showing how criminals were looking for the agents teetering on the edge of bankruptcy in order to offer bribes, and, they also read the stories of the federal agents, from agencies including the FBI, DEA Customs, and the Border Patrol, who succumbed to those temptations as a result. They read about the pay of federal law enforcement officers in California being ranked 25th lowest overall. They read about the senior agents in federal law enforcement who had plans to leave federal law enforcement as early as possible, because in the exact words of Herb Hawkins, Special Agent in Charge of the FBI's Phoenix office in the late 1980's: "I am not paid what I am worth, and I need to retire to make some money."

The NACLE staff made its draft recommendations on October 4, 1989. On January 30, 1990, the Commissioners approved the final findings and recommendations, two of which were:

Federal Pay was too low for the law enforcement occupations and needed to be increased at all levels.

The only long term solution to Federal Law Enforcement's pay and benefit malaise lay in a separate Federal Law Enforcement Pay System.

The NACLE Commission made a number of significant recommendations addressing longstanding pay and benefits issues for the government's law enforcement workforce, which were turned into legislative proposals, and introduced as companion bills introduced in both chambers in March 1990. In the House of Representatives, HR 4224 was introduced by Representative Don Edwards, along with Representatives George Gekas, William Hughes and Michael Oxley. Senator DeConcini introduced S.2250 in the Senate.

On March 28, 1990, FLEOA testified in front of the House Subcommittee on Compensation and Employee Benefits explaining the immediate need for sweeping adjustments of the pay scale for Federal law enforcement officers.

In October 1990, as a result of those hearings, and subsequent work by the Representatives, Senators and their staffs, the recommendations of the NACLE Commission passed into law. President George H. Bush signed Public Law 101-509 on November 5, 1990, the first major government-wide pay reform in almost 30 years.

In summary and in part, this law did the following:

- . Granted special emergency pay adjustments to certain pay districts (only 8, instead of the 23 originally recommended by NACLE);
- . Called for a nine-year phase-in of locality pay adjustments starting in 1994 (to bring federal employees within 5% of the pay disparity gap, set by the President's Pay Council in each individual pay district).
- . Required OPM to provide to Congress, no later than January 1, 1993, a plan to establish a separate pay and classification system for federal law enforcement officers.

So why, with such a rich history in how Congress, back in 1987 to 1990, reviewed, studied, debated, and eventually solved the problems, are we here today?

It would appear that something has gone dreadfully wrong for Federal law enforcement and federal law enforcement officers to be in the same predicament as they were in the 1980's.

- . We should not be able to tell you that there are first year federal law enforcement officers who qualify for public assistance.
- . We should not be able to tell you that there are federal law enforcement officers who commute before dawn to the city in which they work in, then sleep in their cars (to catch up on their sleep) before reporting to work because they live so far away and can not afford a house closer to the city they work in.
- . We should not be able to tell you that after we hire and train people for the federal law enforcement occupation, that there are federal agents who leave in order to work for a state or local law enforcement agency – so they can make a better salary and get better benefits.

We should not be able to tell you these things but we must – they are happening every day in the real world. The only question left to ask is: WHY?

The answer is because the law passed by Congress and signed by President George H. Bush in 1990 has been ignored for more than eighteen years!

- . P.L. 101-509 has been the law for over eighteen years, yet there is still no separate pay and classification system set up for federal law enforcement officers.

- . The special emergency pay adjustments granted in P.L. 101-509 [based on 1990 dollar values] have eroded away, and are in dire need of readjustment.

The original special emergency pay adjustments, written during the September/October 1990 timeframe, while part of a viable solution then, are not valid today.

In February 2001, FLEOA presented to the Congressional Law Enforcement Caucus, co-chaired by two true friends of law enforcement, Representatives Jim Ramstad and Bart Stupak, a paper entitled: "FLEOA Calls for Changes in Locality Pay – Crisis Coming In Recruitment and Retention". We orally presented our paper before this Caucus. At this meeting, FLEOA detailed the problem and reviewed the potential disaster we saw coming.

Starting in February of 2001 and over the next several months, FLEOA worked on this pay reform legislation with Representative Peter King and his staff. We also worked closely with the Senate during this time, particularly Senator Joseph Biden and his staff.

The result of this collaborative work effort was HR 3794, introduced into the House of Representatives during the 107th Congress in 2002, which called for **partial** increases in the locality pay adjustment paid to federal agents. The bill, HR 3794, covered 18 pay districts (note: there are a total of 32 pay districts).

Of the 18 pay districts covered by HR 3794, they included the eight pay districts originally covered by the special emergency pay adjustments granted in P.L. 101-509, plus any other pay district that had a higher pay disparity gap (as determined by the Bureau of Labor Statistics and published by OPM's Presidents Pay Agent) than the lowest pay gap within the original eight districts (ten districts had such – therefore the total pay districts on HR 3794 was 18).

Originally, we did not include a section written up by Senator Biden's staff for FLEOA – a section that addressed fencing off LEAP (Law Enforcement Availability Pay) from the pay cap. However this section surfaced in a bill introduced later by Representative Michael Rogers, as well as in the bill introduced this year by Representative King.

By the end of the 107th Congress, HR 3794 had 162 co-sponsors. A companion bill in the Senate (S.2770) was also introduced, and almost made it as an amendment to the legislation creating the Department of Homeland Security .

The lame duck session of the 107th Congress ended with HR 3794 and S. 2770 (also SA 4839) pending in their respective committees.

However, due to differences regarding how many pay districts should be included, a single bill was not immediately reintroduced. In January of 2003, the completed work regarding the pay districts was introduced by Representative Peter King as HR 466. We truly appreciate Representative King's leadership and support on this issue.

HR 466 included **partial** pay adjustments in the locality pay adjustments for all 32 pay districts and a section (originally written by Senator Biden's staff for FLEOA) to fence off LEAP pay from counting towards the pay cap, thereby enabling supervisors to earn overtime pay – overtime which they currently work, but do not get paid for. Unfortunately, even though this bill had overwhelming support it was never passed.

HR 4901 was introduced by Rep Peter King on December 19, 2007. This bill mirrors similar bills introduced in the 108th and 109th congressional sessions, HR 466 and HR 556 respectively.

This bill also seeks “to amend the Federal Law Enforcement Pay Reform Act of 1990 (Public Law 101-509) to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas...”

The requirements to become a Federal agent are generally tougher than any other law enforcement agency – state, local or municipal. The usual requirements include a four-year degree plus investigative experience in a state or local police or investigative agency. Federal agents are usually recruited and selected from many of the other law enforcement agency – state, local and municipal.

Many who jump to the federal law enforcement ranks [because federal law enforcement is considered the epitome of law enforcement] lost time in grade [seniority] they had in their previous state or local agency. This time is usually measured in years; some transferees lose more than ten years. The job of federal law enforcement officer is not for the faint hearted. The job comes with last minute travel, long hours, training, and extended surveillances, just to name a few things. It can be very frustrating. Many strive and yearn to be federal law enforcement officers; but only the best are selected. Many highly qualified people don't act on their desire to be one of the best because, **they can't afford it!**

The simple fact is, many state and local police departments pay more and have better benefits.

It has to be noted that federal agents receive overtime in the form of "LEAP" (stands for: Law Enforcement Availability Pay) Pay, which is restricted to 25% of their base salary. In addition, anyone earning over the pay cap automatically has his or her salary reduced to the pay cap (note: this occurs frequently at the GS-14 and GS-15 level). The overtime pay of local Police Department Detectives are not automatically restricted – and the media continually issues reports regarding the huge amounts of overtime worked by local Police Department detectives, especially needed in these days of growing concerns over a potential terrorist attack.

It should be noted that some state and local Police Departments are now recruiting from the ranks of federal law enforcement. So in effect what is happening is: we pay to train qualified candidates only to see these individuals leave federal service to go to a better paying law enforcement job at the local level (where, besides the pay, the health and retirement benefits are better). We are bleeding this hidden cost through our training budgets.

HR 4901 would also allow mid and high level supervisors to earn 25% of their salaries in overtime. This will resolve the problem of pay compression in our ranks. Currently some mid and high-level supervisors do not earn more than their subordinates. A street level agent with 20 years on the job may be the top candidate for a managerial position but why take on added responsibilities for no additional pay?

A top-level street agent with over 20 years on the job closely earns not only what his/her direct supervisor earns, but also what his/her second level supervisor earns! This is why Federal law enforcement agencies have not been able to attract candidates for managerial positions in high cost of living areas. This disincentive has resulted in Federal law enforcement agencies getting ZERO applicants for supervisory positions in high cost of living cities such as; New York, Los Angeles, San Francisco and Washington, DC.

This problem in retaining managers who are at the pay cap is compounded by virtue of our retirement system (federal criminal investigators can retire at the age of 50 if they have 20 years of service). Since most agents with over 20 years on the job find themselves at, or near the pay cap, and are working many hours for which they are not getting paid, most have no incentive to remain in Federal Service – but huge incentives to retire and seek employment in the private sector.

Recently, a FLEOA National Officer hosted a luncheon in New York City for new agents. After the meeting, the number one question asked by the new agents was whether they would have to repeat the law enforcement academy if they changed agencies. When asked why they were thinking of this, they all responded that they didn't want to be in New York City due to the lousy commute and high cost of living, but only took the job to get their foot in the law enforcement door. An increase in locality pay, and the institution of a housing allowance would help to mitigate this dire situation.

The Federal Law Enforcement Pay Reform Act of 1990 instituted a locality pay system that was set to begin in 1994. However, there were two caveats: if the President declared an "economic emergency," or our country was at war, than no adjustment would be implemented. As a result of these two caveats, the Pay Reform Act has not achieved its stated goal. The end result is that the high cost of living areas continue to be plagued with a staffing crisis as attrition rates climb and morale plummets.

Here is an excerpt that I wanted to share with you from Senator Dodd's introductory statement for S. 985 in May, 2003.

"All over America, Federal law enforcement personnel are enduring tremendous stress associated with our Nation's effort to protect citizens from the threat of terrorism. Unfortunately, that stress has been compounded by ongoing pressing concerns among many such personnel about their pay. I have heard from officers who have described long commutes, high personal debts, and in some cases, almost all-consuming concerns about financial insecurity. Many of these problems occur when agents or officers are transferred from low-cost parts of the country to high-cost areas. I have been told that some Federal officers are forced to separate from their families and rent rooms in the cities to which they have been transferred, because they cannot not afford to rent or buy homes large enough for a family."

"...as we continue to ask Federal law enforcement personnel to put in long hours and remain on heightened alert, we must provide them with a salary sufficient to allow them to focus on their vital work without nagging worries about how to provide their families with the essentials of food, clothing and shelter."

The following information was obtained from the Congressional Budget Office Summary Statement of 2004, regarding their pay comparison study of federal and nonfederal officers. It is directly connected to the recruitment and retention issue.

"In 1990, the National Advisory Commission on Law Enforcement (NACLE) compared the employment benefits provided to state and local law enforcement officers with those received by federal law enforcement officers. The commission determined that, relative to state and local governments, the federal government more often provides fewer benefits in the area of life insurance, paid holidays, cash allowances, employee cost and some aspects of coverage of health insurance and disability benefits. "

The 1990 Federal Law Enforcement Pay Reform Act, using the National Advisory Commission on Law Enforcement's report, designated eight cities in need of emergency special pay adjustments (Boston, Chicago, Los Angeles, New York, Philadelphia, San Diego, San Francisco and Washington D.C.). This law called for the pay disparity gap to be narrowed down to 5% over nine years and specified an immediate emergency special pay adjustment. The current pay disparity gap is having a seriously detrimental impact on the recruitment and retention of federal agents in the top high-cost areas, i.e., Los Angeles, San Francisco and New York City. These high-cost areas are competing against local police departments with significantly higher starting salaries, as well as against areas with much lower cost of living standards for agents.

Rep King's proposal (H.R.4901) does not give the full amount specified in Public Law 101-509, but the proposed increase does provide some immediate relief.

OPM's report in response to Public Law 108-196, which required OPM to submit a report to Congress on, among other things, a comparison of federal law enforcement pay issues, provides some interesting insights regarding pay and retention.

Although FLEOA takes exception with several of the views expressed by OPM, it does support their statement where they wrote, under "Classification and Basic Pay Recommendations," the following: "Entry and developmental level pay rates for some federal law enforcement officer (LEO) jobs are not competitive in a number of local markets, with more severe disparities in areas with the highest labor costs (such as San Francisco, Los Angeles and New York City.)" On page 57, under Entry-Level Rates, OPM stated, "Some available salary data indicates that, in certain high-cost locations, the starting rates for Federal Criminal Investigators lag behind the starting rates for non-Federal detectives and investigators despite the LEO special rates."

In an earlier section of this report, in the section regarding Recruitment and Retention, OPM also acknowledged that recruitment may be a major problem "...for some jobs in cities with extremely high labor costs, such as New York, San Francisco and Los Angeles. However, we acknowledge that the quality of applicants and newly hired employees is affected by the level of starting salaries and that this is an area where greater flexibility might be appropriate." It is FLEOA'S position that the locality pay increases set forth in HR 4901 would satisfy the "greater flexibility" referenced by OPM.

We fully support OPM's recent recommendation to place Alaska and Hawaii under locality pay and eliminate their current system of cost of living raises.

We must be able to draw dedicated, focused and talented professionals to perform the difficult work that America wants its federal agents to perform to keep America safe and secure. Once we get them, we need to retain them.

#####

Mr. DAVIS OF ILLINOIS. Well thank you all very much. We certainly appreciate your testimony.

Let me just ask you, Ms. Kelley, your statement suggests that NTEU supports maintaining the current cost of labor methodology used for calculating locality pay. In your opinion, how do you see us being able to address the problems with employee recruitment and retention in these high-cost areas that we are discussing?

Ms. KELLEY. Well, I think there are a couple of things. There has been a lot of talk about the recruiting incentives and the flexibilities that agencies have, and the fact is they do have them. They don't use them. They don't use them nearly to the extent that they can or should. Why they would tell you that? I don't know. They might say funding. They might say because they just want to use it selectively. In my experience they use it very, very selectively and very rarely. So they have tools that they are not using right now.

I think the idea of looking at a housing allowance in addition to FEPCA, not in place of, is something that should be looked at with a defined criteria so that cities who meet that criteria could be considered for that.

And I also think that the question of cost of labor versus cost of living, actually, the cost of living would end up being included in a scenario that was mentioned earlier where private sector employers give cost of living adjustments every 6 months or so. If they are doing that, then their salary numbers would be increasing, and it is those salary numbers that are used to compare Federal employees to adjust what the locality pay should be over periods of time. So eventually that cost of living adjustment that private sector employers are doing would be taken into account when it comes to calculating the locality adjustment for Federal employees.

I think the easiest answer is to fully implement FEPCA. There was some concern indicated earlier by Representative Norton that the public would not allow a 17 percent pay raise to Federal employees. Well, if FEPCA had been implemented as it was intended and there was, say, a 2 percent additional increase given to employees over 10 years, we wouldn't be looking at a 17 percent increase now that is needed.

So I think fully implementing FEPCA and figuring out how to do that. And if it can't be done in 1 year, we would be glad to work with you, Mr. Chairman, or anyone else to figure out how to do that.

Mr. DAVIS OF ILLINOIS. So greater utilization of the tools and opportunities that we currently have would, in your mind, go quite a ways?

Ms. KELLEY. Absolutely. If what was currently in the law was implemented from a flexibility, recruiting bonuses, incentive, all that, as well as implementation of FEPCA, as well as in areas where, like I said, if we could agree on a defined criteria for some kind of a housing allowance. I would echo, though, that I would never support it in lieu of locality pay. It would need to be in addition to those areas where it is confirmed that it is needed.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Ms. Simon, your testimony suggests that a possible remedy for the Federal recruitment and retention problem is to offer workers

in high-cost areas a housing subsidy. Given the current pressures that I guess our Federal Government seems to be experiencing relative to pay and relative to budgetary issues and constraints, do you think it is realistic that agencies will be able to afford the housing allowance concept?

Ms. SIMON. Well, it depends. You are asking me whether it is realistic for us to afford it. I think that we can afford what we need. Our Nation has never been wealthier than it is at this moment, and it is really a matter of priorities and how you decide to distribute the money and the budget.

Everyone has talked for a long time about the impending retirement of the Baby Boom and what is going to take to recruit the next generation of Federal employees. Reference has also been made to the fact that people in the Civil Service Retirement System have a tremendous incentive to stay with the Federal Government, even though their salaries were far below the market, because of the nature of the older Federal retirement system. FERS allows a little more mobility, and I am not sure that the Government is going to be able to get away with paying salaries that are so far below the market when they try to recruit the next generation.

We think that, as President Kelley suggested and as we propose in our testimony, the idea of using these housing allowance ideas ought to be restrained. We are not proposing an equivalent housing allowance for every Federal employee employed in every single place in the entire United States. We really thought that in places where median house prices far exceed the median within a pay locality, housing allowances would be justified and affordable.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Mr. Gordon, much of your testimony points to the difference in pay and benefits between Federal law enforcement agencies and State and local police departments. What, in your opinion, are the differences in duties and job functions between the Federal agencies and these other jurisdictions? In other words, is the notion of equal pay or pay differential based upon essentially the same duties and responsibilities, or are there different duties and responsibilities to the extent that one might say we are not comparing apples with apples, but maybe apples with oranges?

Mr. GORDON. Sir, we are comparing apples to apples. What we did is we looked, back when we testified in 2004, at the rate of pay for a detective with 5 years on the job and felt that they were equivalent to a Federal law enforcement officer's based on the standards that Federal law enforcement officers are required to meet. We felt, based on that, in cities like New York, L.A., and San Francisco, that there was a big disparity in the salaries and the Federal agents were making significantly lower money.

The question you asked is if they are doing the same job. Since 2001, since the formation of the FBI Joint Terrorism Task Force, Federal agents work side by side with NYPD detectives, LAPD detectives, all across the country. They are all doing the same job. The detectives are deputized as Federal agents. They go out, they do investigations, they conduct interviews, they do surveillance. So we believe there is a similarity or comparison as to what they are doing.

Mr. DAVIS OF ILLINOIS. Well, I don't have any other questions, and I believe that other Members are trying to finish up their day, so let me thank you all for your testimony and for being with us. We appreciate your coming.

This hearing is adjourned.

[Whereupon, at 4:14 p.m., the subcommittee was adjourned.]

[The prepared statements of Hon. Elijah E. Cummings, Hon. Luis G. Fortuño, and additional information submitted for the hearing record follow:]

**CONGRESSMAN ELIJAH E. CUMMINGS OF MARYLAND
OPENING STATEMENT**

“IN SEARCH OF EQUITY: AN EXAMINATION OF LOCALITY PAY”

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND THE
DISTRICT OF COLUMBIA**

THURSDAY, JUNE 26, 2008

Mr. Chairman,

Thank you for holding this important hearing to examine how locality pay is calculated and to consider recent legislative proposals to address the problems that exist.

We have all heard the rumors that government bureaucrats are overpaid, but the reality is the opposite.

As we have learned from a number of hearings of this Subcommittee, compensation experts in academia and elsewhere have consistently found that federal pay lags behind the private sector by as much as 50 percent in some locations.

Today we will examine why this is the case.

We have heard reports from across the country that the current locality pay system simply is not working.

In California, cities with high costs of living such as Los Angeles and San Francisco are experiencing great difficulty recruiting and retaining qualified, capable employees.

The federal executive boards of those cities released a joint report on the phenomenon entitled, “Imperfect Storm: A Federal Executive Board White Paper.”

The report included several recommendations, not the least of which suggested that housing costs ought to factor into the formula that determines locality pay.

Mr. Chairman, I appreciate this opportunity to take a closer look at what the individuals on the ground are suggesting we do with regards to locality pay.

I further understand that many of our colleagues have introduced legislation to address this problem as it affects their constituencies.

These too should be fully reviewed and considered.

We must continue to promote policies like this to ensure that our federal employees are afforded pay that is on par with the private sector.

We have an obligation to the American taxpayer to keep overhead costs in all levels of government low—but there comes a point where we will no longer be able to attract our nation’s best and brightest if we are unwilling to pay them.

That is why I appreciate your dedication to this issue, Mr. Chairman, and I look forward to learning more about the solutions that exist.

I look forward to the testimonies of today’s witnesses and yield back the balance of my time.

ELIJAH E. CUMMINGS
Member of Congress

LUIS G. FORTUÑO
 PUERTO RICO

WASHINGTON OFFICE:
 126 CANNON HOUSE OFFICE BUILDING
 WASHINGTON, DC 20515
 (202) 225-2615 FAX: (202) 225-2154

SAN JUAN OFFICE:
 P.O. BOX 9023569
 SAN JUAN, PR 00902-3958
 (787) 723-6333 FAX: (787) 729-7738



Congress of the United States
House of Representatives
 Washington, DC

COMMITTEES:
 FOREIGN AFFAIRS
 EDUCATION AND LABOR
 NATURAL RESOURCES

RANKING MEMBER OF:
 SUBCOMMITTEE ON INSULAR AFFAIRS

CHAIRMAN, CONGRESSIONAL
 HISPANIC CONFERENCE

REPUBLICAN POLICY COMMITTEE

CO-CHAIRMAN, CONGRESSIONAL
 FRIENDS OF SPAIN CAUCUS

Statement of the Honorable
 Luis G. Fortuño
 House Subcommittee on Federal Workforce, Postal Service, and the District of
 Columbia

I would like to thank Chairman Davis and Ranking Member Marchant for the opportunity to present this testimony for the record on the subject of locality pay. I represent over 10,000 federal employees residing in Puerto Rico who currently participate in the COLA program. There are at present various proposals under consideration that would phase out the non-foreign cost-of-living allowances and phase-in locality pay for federal employees in my District, as well as the U.S. Virgin Islands, Alaska, Hawaii, Guam, and the other territories and U.S. possessions.

As you know, the Office of Personnel Management submitted a legislative proposal on May 30, 2007, entitled the "Locality Pay Extension Act of 2007." Recently, Senators Akaka, Stevens, Inouye, and Murkowski introduced S. 3013, the "Non-Foreign Area Retirement Equity Assurance Act of 2008." Both proposals, although significantly different in some respects, would extend locality pay to white collar Federal Employees in the non-foreign areas, including Puerto Rico, while reducing cost-of-living allowances.

I have received many calls and letters from federal employees in my district expressing concerns about the impact the phase-out may have on the Island and seeking additional information about the proposal. In order to answer their questions I invited OPM to Puerto

Rico last June to participate in a town hall style meeting at which OPM representatives were able to explain the Administration's proposal and answer many questions.

The most salient concern of my constituents regards the impact, if any, that the phase-out may have on their take-home pay. COLA, unlike locality pay, is non-taxable and is considered non-taxable income by the Puerto Rican government. I understand that S.3013, as drafted, would minimize if not eliminate altogether, any impact on take-home pay during the three year phase-out period. In light of the severe economic crisis that currently affects Puerto Rico and the difficulties the federal government has experienced in hiring and retaining employees, I believe it is critical that take home pay not be adversely affected.

Many of my constituents have also expressed concern about the different impact that the phase-out might have on federal employees under the Civil Service retirement systems and those under the newer FERS (Federal Employees Retirement System) that includes a mandatory Thrift Savings Plan. OPM has provided some examples with numbers as to how the proposed legislation would affect an average Puerto Rican federal employee. However, these examples do not take into consideration that many federal employees in Puerto Rico are under the new retirement system, FERS, and that FICA taxes are deducted from their salaries. I would welcome an opportunity to discuss my constituents' concerns and to gain a better understanding of whether the conversion to locality pay will have a different impact on those employees in my district who are covered under the Civil Service retirement systems, and the federal employees under FERS.

Thank you.

**Post-Hearing Questions for the Record
Submitted to Mr. Chuck Grimes
From Congressman Danny K. Davis**

“In Search of Equity: An Examination of Locality Pay”

1. **Unlike domestic employees, Foreign Service Officers (FSOs) do not receive locality pay while overseas. Currently, the Foreign Service Committee is considering several options changing the rules governing the locality pay these officers would receive. Does OPM have a position on the possible change in locality pay for FSOs and a position on how best to determine what locality pay they should receive?**

We support the establishment of a worldwide, uniform pay schedule based on the Washington, DC locality rates for Foreign Service members paid under section 403 of the Foreign Service Act of 1980, as amended (i.e., Classes 9 through 1 of the Foreign Service Schedule). H.R. 3203 outlines the Administration’s proposal, which would also provide for the transition to a performance-based pay system for Foreign Service members. H.R. 3203 also includes provisions for supplementary payments to Foreign Service members stationed in CONUS and currently receiving a locality rate higher than the rate authorized in Washington, DC, or stationed in a nonforeign area and currently receiving cost-of-living allowance payments under 5 U.S.C. 5941. These supplementary payments would apply during the transition to a worldwide pay scale to ensure that no Foreign Service member would lose pay during the transition.

2. **In your opinion and the opinion of OPM, should a teleworker’s locality pay be based on the employee’s headquarter’s location or the location in which they telework? Additionally, who should be responsible for the payment of a teleworking employee’s travel expenses to and from headquarters?**

OPM’s regulations for locality pay require that an employee’s locality pay entitlement be based on the location of the employee’s official worksite associated with the employee’s position of record. For most employees, the official worksite is the location where the employee regularly performs his or her duties. For employees covered by a telework agreement, the official worksite is the location of the regular worksite for the employee’s position (i.e., the place where the employee would normally work absent a telework agreement), as long as the employee is scheduled to report physically at least once a week on a regular and recurring basis to that regular worksite. The official worksite for an employee covered by a

telework agreement who is not scheduled to report at least once a week on a regular and recurring basis to the regular worksite is the location of the telework site (i.e., home, telework center, or other alternative worksite), except in certain temporary or emergency situations.

OPM established this rule (1) to ensure consistency and equity (see 5 U.S.C. 5301(1), which provides that there be equal pay for substantially equal work in each local pay area) and (2) meet the purposes of the locality pay law, which is designed to address local labor market circumstances relevant to those employees working in that local labor market. We believe it would be contrary to the intent and purpose of the locality pay law to provide locality pay entitlements to an employee who is not actually stationed “within the locality” in question, as required by 5 U.S.C. 5304(c)(1)(A). In addition, 5 U.S.C. 5304(c)(4)(B) and 5304(f)(1)(A) exclude payment of locality pay to employees not in a pay locality and outside the continental United States. These rules resulted from OPM becoming aware of inconsistent treatment of employees—e.g., where agencies were paying locality pay for one location to telework employees who were actually working full-time in a distant location where a lower locality pay rate applied or where no locality pay rate applied (i.e., outside the 48 contiguous States). Thus, these telework employees were paid more than similar Federal employees working in the same location. OPM’s rule is designed to ensure that teleworkers regularly work in the pay area that is the basis for their locality pay rate.

With regard to a teleworker’s travel entitlements, the General Services Administration (GSA) should be consulted as the agency primarily responsible for the Federal travel rules. However, OPM understands the limitations of the current travel rules for teleworkers and has supported a change in law to allow agencies to decide whether or not to provide payment for travel expenses for voluntary teleworkers when they are required to report to the normal worksite. For employees engaged in long distance teleworking, the employee’s telework location (usually home) becomes the employee’s official worksite for pay and travel purposes. Thus, under GSA’s current travel rules, if an agency requires the employee to report to the normal worksite, the employee is being directed to travel away from his or her official duty station, and the agency is obligated to provide for travel expenses, even though the location of the telework site was chosen by the employee for his or her personal benefit or convenience. Employee-paid travel costs can serve as a disincentive to establishing such telework arrangements. Giving agencies more discretion regarding the payment of such travel expenses could help agencies retain valued employees and remove a barrier to the expansion of telework in the Federal Government.

Testimony for the Record
Before the House of Representatives
Committee on Oversight and Government Reform
Subcommittee on the Federal Workforce, the Postal Service and the District
of Columbia
June 26, 2008

Chairman Davis, Ranking Member Marchant and Members of the House Subcommittee the Federal Workforce, the Postal Service and the District of Columbia:

My name is Joyce Matsuo. I am president of the COLA Defense Committee of Oahu, Inc. (hereafter, the Oahu COLA Committee), a non-profit corporation. The 15,000 federal employees on Oahu is the largest group of COLA recipients covered by a COLA Committee. In Hawaii, COLA Committees were originally established on each island but only 2 remain today – the Oahu and Maui COLA Committees. The primary purposes of our corporations are to monitor the COLA program as implemented by the U.S. Office of Personnel Management (OPM) and to share information about the COLA program and other compensation programs with the white collar federal employees and the U.S. Postal Service employees on the island of Oahu.

I have been involved with the Oahu COLA Committee since 1986 and continue to remain active. As a COLA Committee representative, I have been involved in the collaborative studies with OPM that began in 1995 which resulted in the current improved COLA survey methodology. Two important outcomes of the collaborative studies were that (1) it updated the survey methodology with current economic concepts and (2) it resulted in a more objective survey methodology that would protect the government from future COLA survey methodology lawsuits. With six other COLA Committees' representatives, I continue to participate with OPM in the implementation phase of this improved methodology.

At the start of the 1995 collaborative studies, the COLA Committees' representatives and OPM recognized that with the implementation of locality pay in 1994 to be applied to the federal employees in the 48 contiguous states and excluding the

federal employees in Alaska and Hawaii, a retirement inequity was created between the COLA areas and the contiguous United States.

We find it unusual that Alaska and Hawaii were excluded from a pay statute as this had never happened before in history, regardless of receiving a COLA since 1948.¹ Since 1994, federal employees in Alaska and Hawaii have not received comparable pay as their counterparts in the 48 states and the benefits that go with the increased pay such as increased over time pay, premium pay, retirement and TSP contributions, and retirement benefits.

In working with OPM since 1995, we were told that the COLA and locality pay programs were two distinct and separate programs. COLA is paid to the COLA areas to provide a standard of living comparable to the DC area. The COLA rate is determined by measuring living costs differences between DC and a COLA area. Locality pay is based on wage differences between the federal sector and the private and local governments' sectors in a particular locale. Living costs are not to be considered when determining locality pay.² Hence, in Houston, where the living costs are comparatively low as compared to a high cost area as San Francisco or Los Angeles, its locality pay is one of the highest. Because these programs are so distinct from one another, OPM would not allow adjusting our COLA to take into consideration the fact that DC-base area for determining our COLA received a locality pay amount and the COLA areas did not because doing so would be mixing the two programs together. So, we were further disadvantaged as we would not be receiving a proper COLA if this fact was not considered.

In 2007, the Bush Administration proposed converting COLA to locality pay. Then, in April 2008, Senate Bill 3013 was introduced in the U.S. Senate that proposed revisions to the Administration's proposal.

As early as 1991, OPM recognized the retirement inequity between the COLA areas and the 48 states and contemplated a conversion of COLA to locality pay. Still, it

¹ The President's approved annual pay raises in 1994 and thereafter were about the same as pay raises in years prior to 1994. FEPCA provided a mechanism for re-allocating a portion of the annual pay raise to the locality pay areas.

² See senate hearings on the Civil Service Reform Act of 1990.

has taken almost 17 years for this issue to be finally addressed by Congress. We are looking for a fair resolution of this long, on-going and continuing retirement inequity.

I would like to take this opportunity to comment on four key aspects found in the proposals to convert COLA to locality pay:

1. Phase-In Period: We believe that Alaska and Hawaii should not have been excluded from locality pay from the onset. Had we been included, our present locality pay rates would be at least the rates determined in a 1996 BLS locality pay surveys conducted in the COLA areas. Then, the (funded) locality pay rate for Alaska was estimated to be about 38% and Hawaii at RUS. In July 2007, OPM calculated locality pay estimates for Alaska at 28% and Hawaii at 20%.

The Administration's proposal calls for a 7-year phase-in period and S. 3013 proposes a shorter 3-year phase-in period. Either proposal calls for a fraction of the RUS rate in the first year and proportional yearly increases of applicable locality pay rates thereafter until the end of the phase-in period. For example, S. 3013's 3-year phase-in calls for 1/3 of RUS (or 4.39%) in year 1; 2/3 of applicable locality pay rate in year 2; and full applicable locality pay rate in year 3.

If we consider that Alaska should be at 38% today³, it is hardly fair to consider a 4.39% rate in year 1. Similarly, for Hawaii, if our locality pay rate would be about 20%, a 4.39% is not fair. That employees would have to work another two years to reach full applicable locality pay in year 3, and then, work another three years to achieve their "high-3" for retirement purposes is unconscionable. We are seeking comparable retirement benefits to the retirement benefits of our counterparts in the 48 states which they receive today.

We propose that full applicable locality pay rates be considered from year 1. However, if a phase-in period is necessary, then the shorter 3-year period proposed in S. 3013 should be used. However, we propose that full RUS be granted in year 1 and the rates for years 2 and 3 be adjusted accordingly.

2. Buy-in Election: S. 3013 proposes a buy-in for the phase-in period which would allow employees retiring any time during the 3-year phase-in period to elect to

³ Under the current locality pay program, if the locality pay rate drops for an area, pay is not reduced. Instead, the locality pay rate is "frozen" until a subsequent locality pay survey equals or exceeds the "frozen" rate.

have their remaining COLA amounts count towards retirement. Allowing the buy-in on COLA could result in COLA plus locality pay phase-in amounts exceeding a COLA areas' true locality pay rate. We recommend instead that if there is to be a phase-in of true locality pay rate, the retiring employee be allowed to have the difference of true locality pay less the locality pay phase-in amount count towards retirement. The period for this election should be extended to five years so all retiring employees under the conversion of COLA to locality pay would be able to benefit from full applicable locality pay for "high-3" purposes.

For example, using Hawaii's locality pay rate of 20%:

Year 1 – 1/3 of RUS, or 4.39% locality pay rate. The retiring employee would have their COLA up to 15.61% count towards retirement. The total of locality pay plus this COLA amount is 20%.

Year 2 – 2/3 of 20%, or 13.4% locality pay rate. The COLA counting towards retirement would be 6.6%. The total of locality pay plus this COLA amount is 20%.

Year 3 – Full locality pay, or 20%.

The employee retiring any time during the period from implementation to five years later would be able to make their own decision as to how many more working years they will put in to achieve their "high-3" years. (Any one who works beyond the fifth year will be earning full locality pay for three years and would not require a buy-in provision.)

The present number of retirement-eligible employees consists mainly of CSRS employees. They have been waiting for a conversion proposal since 2001. We expect all of the CSRS employees to be making this election. Rather than engaging in a buy-in process, it is simpler to offer full locality pay at the start as the buy-in process provides for achieving full locality pay during the phase-in period anyway.

3. No Impact on Take-home Pay: It is the senators' desire to preserve employees' take-home pay during the conversion of COLA to locality pay.⁴

⁴ Prior to 1994, three areas received a special 8% pay increase until FEPCA could be implemented. When implemented in 1994, these areas continued to receive the higher of 8% or their locality pay rate. Special rate employees received the higher of their special rate or locality pay. There was no loss in pay with the implementation of FEPCA in 1994.

We support the adjustment factor of 65% proposed by the senators as this ensures minimal impact on take-home pay. Our calculations using an 85% as proposed by the Administration show that there will be a significant negative impact on take-home pay and is not acceptable.

4. Retirees: Both proposals do not address those employees who have retired. These annuitants are not receiving the proper annuities they should be receiving had Alaska and Hawaii not been excluded from locality pay or had COLA been converted to locality pay beginning in 1994. It is proposed that a buy-in provision for our annuitants be considered which would allow them to buy-in the locality pay amounts, subject to their COLA as a cap, for re-determining their "high-3" years. Annuitants would pay their retirement contributions on the locality pay amounts plus interest. (This would be similar to the military service buy-in offered to federal employees with prior military service.)

We have submitted extensive comments to the senate subcommittee on S. 3013 that cover these four aspects as well as other areas of concerns. They are part of the senate hearing record.

I want to thank you for this opportunity for providing comments on converting COLA to locality pay. I am available to answer any questions or provide further explanations.

Joyce Matsuo, President
COLA Defense Committee of Oahu, Inc.
1755 Mahani Loop
Honolulu, HI 96819-2833
Phone: (808) 841-0232