STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF
GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND
THE DISTRICT OF COLUMBIA

SENATE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

ON

IMPROVING PERFORMANCE?
A REVIEW OF PAY-FOR-PERFORMANCE SYSTEMS
IN THE FEDERAL GOVERNMENT

JULY 22, 2008

Mr. Chairman and Subcommittee Members,

My name is John Gage. I am the National President of the American Federation of Government Employees, AFL-CIO, which represents 600,000 federal workers in 65 agencies across the nation and around the world, including employees in the Department of Defense (DoD) and the Transportation Security Administration (TSA).

I appreciate the opportunity to testify today on the subject of "pay for performance." While to date only a few AFGE members participating in small demonstration projects have been taken out of the General Schedule (GS) and placed under a so-called pay for performance system, the Department of Defense has the authority to apply its National Security Personnel System (NSPS) pay program to the employees in our bargaining units and is beginning to do so. In addition, Transportation Security Officers have never been in the General Schedule, but are covered by the agency's intentionally vague and indecipherable Performance Accountability and Standards System (PASS).

Department of Defense: National Security Personnel System

We are grateful, Mr. Chairman, for your support and assistance in the FY 2008 Defense Authorization Act (NDAA 2008) deliberations, that placed some limitations on DoD's ability to impose its new personnel system on employees. It is a tremendous relief to wage grade (blue collar) workers laboring long hours at military installations across our nation to support our warfighters, that they will no longer be subject to NSPS.

Another very important change brought about by the law is the revocation of the Secretary of Defense's authority to create a new labor relations system and the restoration of full collective bargaining rights and obligations under 5 U.S.C. Chapter 71. In passing that law, Congress intended to negate the travesty of a labor-management relations system that DoD had created in its regulations and ensure that DoD employees have the full protections of Chapter 71 rights.

It appears clear to us, however, that a primary goal of DoD has been and continues to be to limit as much as possible its obligation to bargain with the exclusive representatives chosen by its employees. On May 22, 2008, DoD published proposed revised regulations for NSPS. These regulations cynically and purposely attempt to evade Congress' mandate for bargaining in two important ways.

First, the NDAA 2008, in section 1106 (b), speaks about the ways that the system, as amended by the law, can be implemented. It may be implemented, "…through rules promulgated jointly by the Secretary of Defense and the Director of the Office of Personnel Management after notice and opportunity for public comment or through Department of Defense rules or internal agency

implementing issuances." The law goes on to say that rules jointly promulgated by OPM and DoD shall be treated as major rules for the purpose of section 801 of title 5, United States Code, and, if they are uniformly applicable to all organizational or functional units included in NSPS, they shall be treated in the same manner as government-wide rules for the purpose of collective bargaining. Bargaining regarding government-wide rules is severely limited compared with bargaining regarding an agency rule under 5 U.S.C. Chapter 71.

In its earlier regulations, DoD put in very few details about the new personnel system. Instead, it saved those details for internal Implementing Issuances, which it deemed to be non-negotiable and to override existing collective bargaining agreements in its NSPS labor relations system. The revised proposed regulations are filled with the same kind of details found in those implementing issuances and in supplemental Issuances issued by the Army, Air Force, Navy and the Defense Agencies.

Apparently, the desire to limit bargaining is so strong that DoD would rather deal with the more rigid, and inflexible system resulting from detailed regulations published in the *Federal Register*, now that Congress has removed the power of issuances to bar bargaining. In order to make this switch, DoD has also had to remove flexibilities previously given to its Components and managers in favor of centralized control. This will set up a situation in which DoD will have to waste precious time, resources and employee morale just policing its organizations to make sure that all the rules are uniformly applicable to all organizational or functional units included in NSPS so that what normally would be an agency rule can qualify as a government-wide rule. This will cause activities at all levels of the Department to have to try to squeeze into "one-size-fits-all" rules.

By putting most of NSPS into a government-wide rule that limits bargaining, DoD is attempting to thwart Congress' express intent that it bargain with the exclusive representatives of its civilian employees to the full extent of the law. We do not believe that Congress intended for most of NSPS to be implemented under the major rule provision, but that this would be used sparingly and only when necessary.

The second way that the proposed regulations are a deliberate attempt by DoD to avoid its bargaining obligations under the 2008 National Defense Authorization Act comes in its definition and description of a "rate of pay." § 9902(e)(9) of the NDAA 2008 clearly says, "Any rate of pay established or adjusted in accordance with the requirements of this section shall be non-negotiable, but shall be subject to procedures and appropriate arrangements of paragraphs (2) and (3) of section 7106(b)…"

In its proposed regulations, DoD has defined "rate of pay" as:

(a) The term "rate of pay" in 5 U.S.C. 9902(e)(9) means—

(1) An individual employee's base salary rate, local market supplement rate, and overtime and other premium pay rates (including compensatory time off);

(2) The rates comprising the structure of the pay system that govern the setting and adjusting of the individual employee rates identified in paragraph (a)(1) of this section, including the amount of each rate in the pay structure (expressed as a dollar amount or a percentage) and the conditions defining applicability of each rate…

By adding the phrase "and the conditions defining applicability of each rate" to the definition of "rate of pay," DoD is trying to broaden the definition, and thus narrow the scope of bargaining. "Conditions defining applicability of each rate" could easily be interpreted to include the very procedures and arrangements Congress intended DoD to bargain. It is an act of cynicism and defiance on DoD's part to think it can define itself out of its statutory obligation. The phrase "conditions defining applicability of each rate" should be removed and DoD should carry out its legal requirement to bargain procedures and appropriate arrangements related to rates of pay.

This is no small matter. DoD has used "rate of pay" to describe numerous aspects of NSPS and we believe Congress intended DoD to bargain over the procedures it will use and appropriate arrangements for employees adversely affected by these very actions.

For example:

We currently bargain over procedures and arrangements for determining fair distribution of overtime work, including rotations, seniority, or other methods for selecting employees. Management always has the right to determine the qualifications needed for that overtime work and whether or not specific employees meet those qualifications. Once that is done, however, we have negotiated processes in place to make sure that desirable assignments aren't given out based on favoritism or discrimination and that undesirable assignments aren't given based on reprisal.

The proposed regulations include in the definition of "rate of pay," for the purpose of asserting non-negotiability under 5 U.S.C. 9902(e)(9): "The value of various types of premium pay rates and the applicability conditions defining the type of work or other requirements that must be met to qualify for each type and level of premium pay;..."

We have no argument with the non-negotiability of the value of the rate or management's right to determine the type of work needed on overtime. We fear that "other requirements that must be met to qualify..." will be used to preclude bargaining over seniority or other systems to distribute overtime fairly.

Also included in the “rate of pay” definition is the amount of various adjustments in an employee's base salary rate such as performance pay increases, reassignment increases and decreases, promotion increases, etc. Once again, we don't expect to bargain over the amount of the adjusted rate of pay. We do, however, believe that Congress meant for us to bargain over such procedures and arrangements as the rules that pay pools will follow to ensure fairness, transparency, and accuracy.

Under NSPS, supervisors can reassign employees within a pay band or to a comparable pay band. Unlike the non-NSPS understanding of the meaning of “reassignment,” however, NSPS reassignments may carry with them an unlimited number of pay increases of up to 5% each. There is no requirement in NSPS, however, that other employees be given a chance to compete for the increases, or even that they be notified that such opportunities exist. We believe we should be able to bargain over notices, competitive processes, and other procedures to ensure fairness and transparency, but fear these will be precluded by DoD's interpretation of "applicability conditions." These non-competitive pay raises are separate from and in addition to the “pay-for-performance” part of NSPS. Without the safeguards we would expect to negotiate in our bargaining units, this will be a fertile breeding ground for discrimination, favoritism and abuse. I will have more to say on these “reassignments” later in this statement.

In addition to restoring collective bargaining (which DoD has tried to evade through its regulations), the 2008 NDAA ensures that any GS employee at DoD placed under NSPS will be guaranteed 60% of the nationwide pay adjustment, and 100% of the locality adjustment granted every year to GS workers, provided that employee is rated above “unacceptable.” This is an important improvement for civilian DoD workers. As we have already seen, DoD was prepared to give only 50% of the pay adjustment to employees in 2008 and NONE of it as an annual adjustment in 2009 – the whole amount was to be put into the pay pools to be given as performance payouts. And, even there, DoD might not have paid all of it out as base pay increases, but could have given cash bonuses instead. The new law ensures that the full amount of the nationwide pay adjustment go for base pay increases.

But simply paying out the full amount of the nationwide pay adjustment and 100% of the locality adjustment as base pay increases to employees is not enough to ensure the viability of the DoD pay system. DoD must be required to adjust its pay bands by the full amount of the nationwide pay adjustment just as grades in the GS system are adjusted annually. Currently, in its proposed regulations, DoD has retained for the Secretary of Defense the authority to adjust different pay bands by different amounts and the minimum and maximum rates of each pay band by different amounts. We believe this is because DoD wants to be able to suppress wages over time. The pay bands must keep up with the general pay increases given to the rest of the Federal government or wage suppression will, in fact, be the result.

Earlier this year, press reports of the January 2008 “payout” for employees under NSPS were very misleading. There are many questions about the methodology used in implementation, which I will discuss later in this statement. We strongly urge the subcommittee to request data from DoD to explain how the system has been applied, because the data that DoD has provided to date are insufficient for an effective evaluation of the system. We have asked for this information before and to date have not received it. I have attached an appendix to this statement listing the data needed to conduct such an evaluation.

This information is especially important because it appears that DoD is not routinely capturing it. In April of this year, DoD gave us a briefing on its NSPS Evaluation Program. In response to our questions, DoD said that it had no information on individual pay pools, such as the funding of the pools, the demographic make-up of different pay pools, the value of shares in different pay pools, the distribution of shares in the pay pools, etc. It was only collecting and evaluating broad data at the highest level. Again, in response to our questions, DoD said it was not requiring its Components to gather and analyze such data. As a result, DoD had no way of knowing if performance money was being given in disproportionally greater amounts to higher paid employees in or near the Pentagon, or in disproportionally lower amounts to minorities, women, or employees working in smaller activities in remote areas of the country.

The Bush Administration likes to claim, falsely, that NSPS is designed to adhere to the merit system principle of “equal pay for substantially equal work”. Employees who have had the misfortune of working under “pay for performance” systems know otherwise. When surveyed, federal workers express skepticism about their chances to excel in the workforce because their opportunities and evaluations depend so much upon expectations that are frequently arbitrary, subjective and unclear. Stanford University Business School Professor, Jeffrey Pfeffer, understands employee apprehension about individualized pay systems, noting that “supervisors in charge of judging employees have a natural tendency to favor people like themselves.” These proclivities tend to result in adverse effects on women, minorities, and sometimes older workers, who are underrepresented in the ranks of management. Indeed, women and minorities have been most likely to report dissatisfaction with pay for performance demonstration projects, arguing that pay raise decisions reflected bias rather than objective assessments of a worker’s performance.

This kind of subjectivity and bias pervades the NSPS pay system. Unlike the NSPS, the GS system and the pay adjustment process contained in the Federal Employees Pay Comparability Act (FEPCA) were established upon the pay principles of neutrality and “market sensitivity” or comparability with the private sector. Salaries are set on the basis of job responsibilities, and annual adjustments reflect both the performance and experience of the job holder, and market data from the Employment Cost Index (ECI) and locality surveys.

Reports from senior managers in DoD administering the NSPS pay plan for those not in bargaining units have described its implementation as even more problematic than its model. We are told that different pay pools have different rules for distribution, and that supervisors have been ordered to reveal to their subordinates only their "narrative" ratings, not their numerical ratings. The latter go as recommendations to the pay pool panel, which can change them, and determine different performance pay than the supervisor believed was warranted.

In many cases, the pay pool panel that first considers the supervisors' recommendations is only a sub-pay pool panel. The recommendations of various sub-pay pool panels then go to the over-arching pay pool for final determination of employees' ratings, shares and payouts. As a result, the direct connection between performance and the employee's compensation is lost. Without the direct feedback, the premise of pay-for-performance is undermined. Surely it violates the principle of transparency if an employee cannot see the supervisor's rating, and the final rating and payout are the result of a bureaucratic process that goes on behind closed doors.

Because it is DoD's intention that NSPS pay not exceed the cost of the GS system, the "pay for performance" system is required to fit performance ratings into a so-called "normal" distribution, or bell curve. In practice this means that numerical ratings can be changed not because of failure to reach performance objectives, but to align with pre-set ceilings on the number of 5's, 4's, 3's, 2's, and 1's that are necessary to assure adequate funding for pay pool distributions.

Far too many managers have told us that they had carefully rated their subordinates as objectively as possible, only to be told when they went to the pay pool meeting with other supervisors that their ratings must be lowered in order to get to the bell curve. But it gets much more complicated than that.

Employees in the same pool who were rated "3", for example, might not get the same number of shares.[*] That number varies on the basis of:

1. the component/activity/workplace
2. the pay band (individual workplaces gave out different numbers of shares to professionals vs. technicians vs. supervisors/managers.)
3. the location of the workplace
4. the pay pool manager's opinion of how an employee rated relative to other "3s" submitted by other supervisors
5. how crucial the employee's job is judged to be relative to the Pentagon's strategic military objectives.

[*] The little data DoD has released indicates that of the employees rated as a "3", about 30% received one share, and 70% received two shares.

Further, the money put into shares varied enormously. In some places, a share was worth 1% of salary, in others it was worth 1.5% and in others it was worth 2%. Again, these could vary among and within components and all the way down to individual workplaces and individual employees. In some workplaces, an employee who got a 3 could get more than someone elsewhere who got a 4 or even a 5. Also, as mentioned above, some pay pools made distinctions among 3s, 4s, and 5s giving individuals who got the same ratings different numbers of shares. In other words, there is no consistency whatsoever.

Just to make matters even more complex, the pay pool managers have flexibility in deciding how much of a share should be put into an employee's salary increase versus cash bonus. Obviously, the more compensation placed in bonuses as opposed to salary increases has profound implications for the employee's standard of living not only in subsequent years while he or she is still working, but also into retirement. Once he or she retires, both the defined benefit portion of the pension (based on a formula using the high-3 years of salary) as well as the agency's contribution to the Thrift Savings Plan (TSP) (based on a percentage of salary) will be reduced commensurate with reduction or stagnation of salaries.

The "forced distribution" model is evident in the way DoD established "performance" pay with its non-union NSPS employees in 2008. Fifty-seven percent were rated "3" or average; 36 percent got a "4" rating, and just five percent received the highest rating of "5." Two percent were rated either "1" or *"2" and thus received little or no raise. And despite triumphant headlines touting "average" raises of 7.6%, the ugly fact is that not all those rated in the middle level "3" got the same percentage raise. In fact, among the 62,700 "valued" employees, DoD decided that 5,425 were of so little value that they got raises smaller than their GS counterparts, or less than 3.5%.

We are greatly concerned that if it is true that this first relatively small number of employees got raises whose average was higher than GS employees, this was a ploy to put additional money in the system to make it look good. There is no way that DoD could continue to pay average increases higher than the GS increase when hundreds of thousands of employees are added to NSPS without greatly increasing its payroll costs.

Senior DoD managers have also explained how the work of employees in the lower grades, which cannot be linked directly to the strategic military objectives of the Pentagon, is also systematically undervalued in the NSPS pay system. For those employees, it is not enough to perform extra work or exceed their written objectives. The accomplishments of subordinates are written into the accomplishments of their superiors, even if these higher-graded people were entirely uninvolved in the work. Sometimes lower-level employees are even

assigned to write up their bosses' accomplishments, and told to describe their own work as having been done by others.

In addition, there appears to be a profound bias in favor of employees who work higher up the chain of command or closer to the Pentagon as compared to those who do not. Apparently, the assumption is that no matter how significant one's assignment might be to national security, the simple fact of working further from the Pentagon is evidence that that position is not as valuable. There may also be hierarchies of this bias; we are told that while it is best to work in the Pentagon, second best is a regional command, and yet further down the ladder are those working at military installations. (I would think Members of Congress would be particularly interested in what is so obviously an inside-the-beltway bias.)

Although NSPS calls itself a "pay-for-performance" system, the reality is anything but. An employee can end up in a pay pool that is funded proportionally lower than other pay pools for reasons that have nothing to do with his or her performance. An employee can have his or her rating and payout determined by managers several levels up in the chain of command who may know nothing about that employee's work. An employee can be in a job or in a job location considered by upper management to be too far away from the Pentagon to be doing anything important enough to deserve a level 5 no matter how much the employee exceeds the job objectives. An employee's rating may be lowered to fit the bell curve tacitly required in the pay pool. And, we hear that many times it is more about an employee's or supervisor's ability to write than about that employee's actual performance. Employees can have their recommended rating lowered because the pay pool panel thinks the supervisor wrote poor job objectives, although the employee worked in good faith to exceed those objectives. And, employees who are skilled at writing their self-assessments, blowing their own horns and tying everything they did to the mission of the agency, may get better ratings than employees whose actual performance was better.

In many, many ways DoD's proposed regulations violate the clear mandate of the NDAA 2008 for the system to be transparent. Under the system DoD proposes employees will not know how pay pool money is distributed, if they are in a pay pool that has been funded below the amount that would have been available to them had they not converted to NSPS, and how and why such decisions are made. Employees will not know what rating their supervisor recommended, and who, in the hierarchy of managers in the pay pool process actually determined their rating and payout and why. Unlike the GS system, in which employees know the grade and step of their fellow employees, NSPS workers will not know who is getting what in their workplace. Without this information, managers can manipulate workers and keep them from being able to evaluate the equity of their own compensation. DoD should not be allowed to keep everything behind closed doors, require managers to sign "non-disclosure" agreements, and hide the facts about the distribution of pay. Employees should be able to get reports

of how the money is distributed to pay pools, who got what in the work place, and how and by whom their own rating and payout were determined.

By contrast, the General Schedule is transparent, easy for employees to understand, and easy for agencies to administer. The complexity of the NSPS can be used to hide the suppression of future wage adjustments for the rank and file. Lower pay increases and the replacement of salary increases with cash bonuses will necessarily lower the standard of living for many good performers during their work years and into retirement.

In addition to concerns about loss of salary, and corresponding reductions in pensions and thrift savings plans, AFGE is also very concerned about the elimination of merit promotion and violations of the merit principles required by law that were recently reinforced by the NDAA 2008. Under the General Schedule, an employee's ability to get promoted is clear from the position description. If the job is based on a career ladder (say, it starts as a GS-5 but goes to a GS-7 then a GS-9), employees know what is expected of them and they can look forward to those promotions (and the corresponding salary increases) until they reach the full performance level of their jobs - in my example, GS-9. After that, employees who want further advancement can check for job openings, which are routinely posted for a requisite notice period, and have the opportunity to apply, and compete for the job.

Under NSPS, promotions are very rare. Employees might be given additional duties by their supervisor in order to advance inside the pay band – what NSPS calls "reassignments," but there will be no clear pathway to that advancement, nor is there a requirement that a job at the higher pay level be open to competition or even that other employees know about the opportunity. The merit promotion system under NSPS will be all but dead. Bias and favoritism are inevitable, along with an erosion of the merit principles so important to the quality of the Civil Service.

Outside the context of union representation, DoD employees are reluctant to utilize the formal process set up to challenge their numerical performance rating, as it is widely viewed as career suicide to do so. Bargaining unit employees with exclusive representatives will be able to use a negotiated grievance and arbitration process to challenge their performance ratings. In its revised proposed regulations, however, DoD has unilaterally determined the scope of that grievance procedure, something normally negotiated by the parties. Under its proposed regulations, the Arbitrator can change an employee's rating but then must remand the rating back to the same pay pool manager whose decision was challenged, to come up with the actual shares and payout. Once again DoD is using its regulations to try to avoid carrying out its full collective bargaining obligations. The NSPS system, so far, has violated even its own alleged principles of rewarding individual performance. If it is allowed to spread, the damage to the merit system will be incalculable.

Mr. Chairman and Subcommittee Members, what AFGE has been told by senior managers at DoD is that there are many problems with the NSPS pay system and we have no reason to doubt them. They are not obligated to discuss any of these matters with us at this time. The proposed regulations will not correct these problems. They fail to meet the requirements of § 9902(b) of the 2008 National Defense Authorization Act. Among other things, the system they describe is not flexible or contemporary; is subject to abuse and discrimination; does not adequately ensure collective bargaining; does not contain a fair, credible, and transparent employee performance appraisal system; nor does it have effective safeguards to ensure fairness.

It is crucial in any evaluation of a system with this much complexity and variables, that the results be exposed to a great deal of sunshine. With your advocacy and the compliance of the Department, the fairness, transparency and accountability promised by NSPS can be better evaluated using the numbers. We urge the committee to acquire the data listed in the appendix annually, and to share it with the representatives of the employees in the department who may be placed under NSPS in the future. It is also important that this information be publicly available on the website. If the system is any good, it will withstand the scrutiny. If it is not, AFGE and other unions will negotiate for its improvement, and continue to advocate for legislative correction.

Transportation Security Officers

Despite the public's call for a federalized, well-trained and well-compensated screener workforce following the tragedy of 9-11, TSOs continue to be drastically underpaid for the extraordinarily difficult and important job they perform every day. According to TSA, TSOs make on average $30,000 a year, far less than other federal employees in law enforcement and security positions, and the meager PASS increases and bonuses by no means provide pay parity with other federal workers, including those in the DHS, performing similar work. This pay is approximately equal to that of a GS-5 under the General Schedule. Other law enforcement officers at the Department of Homeland Security (DHS) who perform duties similar to TSOs, such as Immigration and Customs Enforcement (ICE) Detention and Removal Officers, are classified between a GS-7 and GS-11.

In addition to low base salaries that have not increased for over four years, TSOs are subject to the unaccountable and highly subjective performance-based pay system known as the Performance Accountability and Standards System (PASS). Despite its protestations to the contrary, TSA has created a mostly opaque pay-for-performance system that changes constantly. (As with NSPS, AFGE urges the Congress to require the agency to provide data which would allow for an evaluation of the system.) While understandably confused

about the details, employees tell us that PASS is based on favoritism, not merit. Transparency is completely lacking. Practically every component of PASS—ranging from duty assignment to test results—is unfair to TSOs, yet they lack the ability of other federal workers to seek relief before an objective third party like the MSPB. TSA created PASS out of whole cloth without specific guidance from Congress or adhering to the practices recommended by the MSPB for reasonable and effective federal government pay for performance programs. Since December 2008, TSA has made a number of changes to the PASS program that in large part has had a detrimental effect on TSOs, further eroding the devastatingly low morale of the men and women who serve as our country's first line of defense against aviation terrorism.

In a move that only the Grinch could appreciate, shortly before the holidays TSA announced that TSOs would receive a smaller pay raise in 2008 than in 2007 even if they received the same performance rating as the previous year. Perhaps this was an effort by TSA to cover up the fact that there is no guaranteed funding for PASS bonuses and raises. The President's FY 2009 budget request included a proposal to give the TSA Administrator authority to deny TSOs the annual government-wide pay raise. We believe that TSA management would like to divert the funding for annual raises to pay for PASS raises and bonuses.

In March 25, 2008, TSA Administrator Hawley sent a memo to all TSOs informing them of changes to PASS due to complaints that it had become "too complicated". Among the changes was a moratorium on the image test, finally recognizing what AFGE has reported on behalf of its TSO members for years: they are "trained and tested on different standards, and that these standards do not reflect how" TSO do their jobs. By May of this year TSA reimplemented the image test and in a stroke of astounding contradiction, continued to hold previous failures of the admittedly flawed previous test against TSOs. To make matters worse, TSOs reported that they still had limited access to image test training, the new training software was not available at all airports and in some cases simply did not work, and that trainers gave wrong information about identifying "threat" objects during the test which directly led to some TSOs failing the new test. TSOs with excellent work histories and commendations were told they would lose their jobs. Rather than simply scrapping the image test until the agency could properly train and test TSOs, TSA came up with another new policy that continued to hold failures under the previous flawed testing against TSOs, but allowed management the discretion to "retain and retrain" whomever they wanted, making the impact of the "new and improved" image testing more unfair than it was before. On June 3, 2008, as National President of the union representing TSOs, I sent a letter to Administrator Hawley outlining the problems with the image test and requesting a meeting to discuss its impact on our members.

TSOs are greatly troubled by the Standards of Procedure (SOP) portion of the PASS evaluation. The Department of Homeland Security Inspector General's May 2008 report entitled "Transportation Security Administration's Efforts to Proactively Address Employee Concerns" specifically cited TSO's ongoing concerns about the "inconsistent interpretation and implementation of TSA policies and procedures" such as operating procedures. TSOs have reported to AFGE that different supervisors use different interpretations of SOP, and that they do not know which procedure to use during the SOP test. Although TSA has suspended the SOP test for the balance of the year, it is quite clear the agency intends to resume the program in 2009. Additionally, TSOs have complained that the SOP tests were administered by non-government testers—employees of the Lockheed Martin corporation. Lockheed Martin's conflict of interest arising from the firm's pursuit of TSA contracts to privatize TSO jobs was borne out by its announcement earlier this month of the awarding of a $1.2 billion contract to Lockheed Martin to develop a "fully-integrated human resources solution to support the recruiting, assessing, hiring, paying and promoting of all TSA employees". Last week AFGE filed a complaint with the Government Accountability Office that the TSA-Lockheed Martin contract is a direct conversion of federal functions that has a current and future impact on TSOs. We do not see how it is possible for an agency that is stiffing its workforce on pay, training, and technology resulting in chronic understaffing at checkpoints has this type of money to spend on a contract that does not follow procurement rules.

There is a long list of problems with the PASS system. In addition to the inability to appeal adverse PASS evaluations to an objective third party, the internal TSA grievance procedures are overly complicated and contradictory, making it unclear whether a TSO can grieve a PASS evaluation issue on anything other than procedural grounds. A substantial percentage of the TSO workforce is ineligible for a PASS rating or increase because they are on light duty due to non-work related medical conditions or leave restriction (a grossly unfair, ongoing status used to penalize TSOs for leave issues). A large portion of the PASS evaluation is based on the very subjective perceptions of TSA managers, some of whom evaluate TSOs they do not supervise. TSOs report that TSA management is badly trained in administering PASS evaluations. There is no standard training and testing of TSOs. The type of training and frequency of testing vary from airport to airport. Even when TSOs receive a raise and/or bonus under PASS, they have to wait up to four months before they receive the bonus or see the raise in their paychecks. Although TSOs can earn additional points on their PASS evaluation performance rating by performing "collateral" duties such as clerking, equipment maintenance and records management, assignment of those duties is discretionary to TSA management and is usually awarded to TSOs based on favoritism and denied in retaliation unlike the fair bidding process included in collective bargaining agreements. Most TSOs will never be assigned to these duties and will not have the opportunity to achieve a higher rating for the evaluation period. Simply put, nothing in the current TSA pay for performance

system is effective as an award for a job well done or incentive to improve performance. PASS fails in every aspect.

In its current form PASS leaves a permanent scar on the present and future income of TSOs. PASS bonuses do not figure into the base for future pay increases. PASS bonuses do not figure into the formula for pensions. TSOs are losing stable pay raises for unpredictable, temporary bonuses that are subject to nonrenewal at any time instead of continuing wage increases that are reflected in promised retirement benefits. Perhaps most damaging to both wages and careers of TSOs and the flying public is the fact that the PASS system does not reward longevity and provides no incentive for TSOs to make the job a career. This fact directly contradicts the demand of both Congress and the public for a well-trained, highly compensated, well-trained and professional screening workforce following the terrible events of September 11, 2001.

TSOs express a strong desire to move to the General Schedule so that in return for doing their jobs, they can be assured of at least a stable standard of living. AFGE would support an employee recognition system to supplement the General Schedule, but the employees' basic compensation and standard of living should not be subject to the whims of individual managers – too many of whom are incompetent.

Mr. Chairman, TSA constantly ranks at the bottom of any survey of employee morale in the federal government. The 2007 DHS Annual Employee Survey found that well over half of TSOs did not believe that their pay raises depend on how well they perform their jobs, while only a third of TSOs believe their performance appraisal is a fair reflection of their performance. Close to half of TSOs do not believe they received awards based on how well they perform their jobs. These are issues directly relating to the flawed PASS system and the rampant unfairness and TSA's lack of accountability to the TSO workforce. The first and most important thing Congress can do to resolve these and other TSA workplace issues is to pass legislation granting TSOs the same collective bargaining rights and workplace protections that apply to other federal workers, including those in DHS. Many PASS issues could be addressed through union negotiations about the impact and fairness of any pay for performance system and application of the General Schedule would eliminate the type of blatant inequality currently pervasive in the TSA pay banding and PASS system. The TSO workforce is too important to be treated so callously. The flexibility given to TSA under the Air Transportation Security Act has been abused to the point of absurdity. It's time to provide a rational pay system for these workers before the incredibly high attrition rate of 21% climbs any higher.

That concludes my statement. I will be happy to try to address any questions.

APPENDIX

In order to evaluate the NSPS pay system in terms of whether it has adhered to its legal obligation to the merit system principles, specifically the requirement of "equal pay for substantially equal work," it is necessary to have access to data that describes the distribution of pay adjustments. Data similar to what are requested here are widely available for all other federal pay systems, including the General Schedule and the Federal Wage System. As those pay systems cover close to 1.8 million federal employees, publication of similar data sets for a pay system covering just 110,000 federal employees is a modest request.

Specifically to evaluate the January 2008 payout for NSPS, the following data are needed:

1. A list of each separate pay pool, identified by service, component, activity, and geographic location.

2. For each pay pool, the following information:
    - Number of employees to be paid from pay pool.
    - Funding of pay pool as a percentage of aggregate salaries subject to that pay pool.
    - Age distribution of employees subject to each pay pool.
    - Gender distribution of employees subject to each pay pool.
    - Race distribution of employees subject to each pay pool.
    - Salary range of employees subject to each pay pool.
    - Occupations included in each band subject to the pay pool.
    - Number of 1s, 2s, 3s, 4s, and 5s awarded in each pay pool.
    - Value of shares awarded in each pay pool.
    - Number of employees awarded a 3 who received one share, for each pay pool, by race, age, and gender.
    - Number of employees awarded a 3 who received two shares, for each pay pool, by race, age, and gender.
    - Number of employees awarded a 4 who received three shares, for each pay pool, by race, age, and gender.
    - Number of employees awarded a 4 who received four shares, for each pay pool, by race, age, and gender.
    - Number of employees awarded a 5 who received five shares, for each pay pool, by race, age, and gender.
    - Number of employees awarded a 5 who received six shares, for each pay pool, by race, age, and gender.
    - By pay pool, the percentage of money given as salary increases and the percentage given as cash bonuses.