



Testimony of

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**Senate Committee on Homeland Security and
Governmental Affairs**

“Improving Pay Flexibilities in the Federal Workforce”

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Chairman Lankford, Ranking Member Heitkamp and members of the Subcommittee, thank you for inviting me to testify today on pay issues on behalf of the 150,000 federal employees represented by NTEU at dozens of federal agencies. As President of NTEU, I appreciate the opportunity to discuss this critical issue with the Subcommittee, particularly owing to the last few years of extreme pay challenges for the federal workforce.

Mr. Chairman I want to be clear that NTEU believes that the General Schedule (GS) pay system is indeed fully able to meet the needs of both agencies and employees; if agencies also utilize the existing pay flexibilities available to them. The difficult federal employee pay climate does not stem from a problem with current law or regulation, but rather a lack of funding that would allow agencies to pursue the use of pay flexibilities.

PAY

The pay system for the large majority of white collar federal employees is known as the GS. It is based upon the principle that federal pay should be comparable to pay for similar work in the private sector. I want to underscore the fact that federal pay is derived from comparability with private-sector wages, a fact that is often overlooked or ignored by some purporting to analyze and comment on federal pay levels. It is also important to recognize that the federal workforce has a significantly higher number of professional occupations that require advanced degrees and high levels of education than the overall private-sector workforce. According to Department of Labor (DOL) employment data, more than half (56%) of the federal workforce is employed in nine of the highest-paying private-sector occupations, compared to approximately a third (35%) of private-sector workers. Examples are the scientists and chemists we represent at the Food and Drug Administration (FDA), as well as our members who are accountants, tax and financial experts at the IRS and nuclear engineers at the Nuclear Regulatory Commission (NRC). In contrast, while 12% of private-sector workers fall into the three lowest-paying occupations, only 4% percent of federal workers are in these lowest-paying occupations.

In 1990, Congress enacted the Federal Employees Pay Comparability Act (FEPCA), which introduced the concept of locality adjustments to make the pay system more sensitive to geographic market forces. Under FEPCA, employees were to receive an annual across the board adjustment equal to half a percent below the increase in the DOL Employment Cost Index, which measures non-federal wages, and a locality adjustment based on the size of federal vs. private sector wage gaps in 33 different localities around the country. In practice, the formula set under the law was never fully implemented and for many years Congress set the annual pay adjustment for federal employees through the annual appropriations process.

However, as you know, beginning in 2011 and continuing for three straight years, federal employees were subjected to a pay freeze. In both 2014 and 2015, federal employees received reduced across-the-board pay increases of 1%, which were below the amount called for under the law, and therefore federal pay has been outpaced by private-sector wage increases. Using DOL data, private sector wages have increased 8.3% over the last five years while federal wages have increased by a total of 2%. No employer can expect to recruit and retain a modern, professional, and skilled workforce while failing to keep up with general pay trends. NTEU worked closely

with Senators Schatz (D-HI) and Cardin (D-MD), and Representative Gerry Connolly (D-VA), on legislation--S. 164 in the Senate and H.R. 304 in the House-- to provide a 3.8% across-the-board pay raise for calendar year 2016. It is more than time for federal employees to receive a meaningful pay raise.

One provision of FEPCA that has been implemented requires the Bureau of Labor Statistics (BLS) to conduct surveys of the 33 pay localities to determine whether there are gaps between federal pay and private sector pay. BLS then provides that information to the President's Pay Agent, which consists of the Secretary of Labor, the Director of the Office of Management and Budget and the Director of the Office of Personnel Management who have the statutory responsibility of submitting a report to the President each year that lists pay gaps in these 33 areas as well as a national average gap. The most recent Pay Agent's report found that the overall national pay disparity—between federal and private sector jobs—is 35.37%. NTEU is very pleased that the Administration, based upon the Federal Salary Council's recommendation, has proposed to add 13 new locality pay areas for 2016. After five consecutive years of no increases to locality pay rates, and given its importance to overall wages, NTEU is strongly committed to the resumption of annual increases in locality pay rates.

EXISTING PAY AUTHORITIES

Overall, the GS system is a highly-structured pay system that is set in law under Title 5 United States Code (U.S.C.). There are rules and standards in place for performance, with written employee evaluations required. Importantly, it also has both merit and market-based components. Within-grade and career ladder promotions and employee performance awards are all subject to merit standards. Non-performers can be denied merit pay increases while outstanding performers can be rewarded, through the use of a variety of employee performance awards, quality step increases (QSIs), and the so-called 3 Rs—recruitment, retention, and relocation bonuses. One of its additional key strengths is the limited ability for favoritism, racial and gender discrimination, or other non-merit discriminations to come into play. And, key to this discussion, it is inherently flexible, by design and by law.

Under Title 5, agencies are expressly provided with a substantial variety of human resource (HR) flexibilities and authorities, which includes pay. By intent, the federal personnel system is substantially decentralized, giving agencies full authority to determine what pay authorities and flexibilities to utilize. NTEU strongly advocates that agencies actually utilize the HR tools they have been given to reward high-performing employees--which as an example would mean providing meaningful performance-based awards and QSIs to deserving employees. Agencies have discretion to provide GS employees with performance-based cash awards, which are also termed ratings-based awards and lump-sum cash awards, and which must be justified in writing, as well as for non-rating based awards which can be provided in recognition of a specific contribution an employee has made to an agency. Agencies should also use retention and recruitment bonuses to address the staffing shortages they are currently experiencing. It is simply a myth that the GS system does not allow agencies to reward for high performance or to respond to a changing recruitment and retention environment, rather these HR pay tools are just not regularly being used. My request to the Subcommittee is Funding. Help us get agencies in a

position so they can actually use the myriad pay tools already available to them. Without the necessary funding to reward deserving employees with performance-based awards, which simultaneously also allows for agencies to differentiate between employee performance levels, the GS system's performance elements are being limited.

Additionally, the law provides agencies with pay-setting flexibilities that are designed to respond to an agency's need for specialized talent and highly-technical skills, and to situations where staffing shortages develop owing to an inability to recruit or retain workers. Examples include critical pay authority when a position's qualifications are highly unique, and special pay rates, which can be used when local private-sector wages make any recruitment impossible or difficult. For these two specific pay authorities to be granted, unlike the others previously referenced, agencies must first seek and obtain final approval from the U.S. Office of Personnel Management (OPM).

Another commonly-overlooked pay flexibility granted to agencies is the use of student loan repayments. Student loan repayment programs can be a vital way to provide additional compensation to employees, while also assisting with improving workforce skillsets, and overall agency recruitment and retention needs.

Finally, I'd like to address an issue that is currently contributing to agencies' non-use of their full pay authorities. The Administration's multi-year guidance to employing agencies capping GS employee performance awards at 1% has played a major role in undermining compensation levels for federal employees, and handicapping an agency's ability to reward employee performance. Further, Congress' recent criticism of agency officials for providing awards to employees is only serving to erode agencies' abilities to be good employers—that is any employer must be in a position to reward excellent performance, and to recruit and retain skilled employees. NTEU is concerned that calls for limits to or the total elimination of performance-based awards are further serving to turn off the GS system's most useful performance-based mechanisms and features. I want to be clear that agency management should have both a justification for and a documentation process for use of these pay authorities, and Congress certainly has the right to scrutinize Executive branch decisions, but managers need to be able to perform their core duties—that is in the course of supervising their employees, they evaluate their employees' work, and reward for high performance.

NTEU has long advocated for required managerial and supervisory training before this Committee, which would not only allow for better employee-employer relations and enhanced knowledge of personnel rules, but would also familiarize managers with the various pay flexibilities and authorities available, which could in turn result in an increased use of these pay tools. For similar reasons, NTEU also believes OPM plays a key role through the guidance it provides to agencies, in order to fully educate agency HR, benefit, and management officials on the available pay flexibilities and how to actually apply them.

CBP ISSUES ON THE NORTHERN BORDER

NTEU has the honor of representing over 25,000 Customs and Border Protection (CBP) Officers (CBPO) and trade enforcement specialists stationed at 328 land, sea and air ports of entry. Understaffed ports lead not only to long delays for passengers entering the United States (U.S). at airports, but also in our commercial lanes as cargo waits to enter U.S. commerce. Recognizing the integral role played by CBPOs, Congress recently funded 2,000 new CBPO positions to help address current CBP staffing shortages. However, this increase is less than the number stipulated in CBP's Workforce Staffing Model that shows a need to hire 2,700 additional CBPOs in order to adequately staff all ports of entry.

Additionally, CBP employees perform agriculture inspections to prevent the entry of animal and plant pests or diseases at ports of entry. The U.S. agriculture sector is a crucial component of the American economy generating over \$1 trillion in annual economic activity, and according to the Department of Agriculture (USDA), foreign pests and diseases cost the American economy tens of billions of dollars annually. Failure to detect and intercept these non-native pests and diseases imposes serious economic and social costs on all Americans. CBP's Agriculture Specialist (CBPAS) Workforce Staffing Model calculates that CBP needs to hire 723 additional frontline agriculture specialists and supervisors to address current workloads.

Ranking Member Heitkamp, I know you have been heavily engaged on federal workforce issues in the Bakken region, including addressing serious pay gaps that have developed from the recent oil and gas boom in the region. On behalf of our CBP members, I would like to thank you for your persistent interest in CBP issues on the Northern Border, which frequently can be overlooked at a national level. Currently, there are approximately 300 frontline CBP employees at the land ports of entry from Pembina to Portal on the North Dakota border with Canada. We greatly appreciate your Subcommittee staff members' willingness to explore ways with us to increase pay for our CBP members on the Northern Border, including focusing in on the potential use of either special rates or by utilizing the so-called 3 Rs-- recruitment, retention, and relocation-- bonuses. I look forward to our continued work on this issue. I also want to recognize Senator Tester for his continued efforts to enhance the federal workforce, and for his outreach to our CBP members on the Northern Border, some of whom recently had a chance to meet with him in Sweetgrass, Montana.

As the Subcommittee may know, CBP collects user fees to recover certain agency costs incurred for processing, among other things, air and sea passengers, and various private and commercial land, sea, air, and rail carriers and shipments. These fees are deposited into the Customs User Fee Account, and are designated by statute to pay for services provided to the user, such as inspections for passenger and commercial vehicles. The Senate-approved Highway and Infrastructure bill, H.R. 22, includes language requiring the Customs User Fees to be permanently indexed to inflation and directs that the anticipated \$4 billion in revenue over ten years be used as an offset for highway infrastructure projects.

The inclusion of this provision sets a troubling precedent, as it, for the first time, diverts user fees paid by the users--commercial vessels, commercial vehicles, rail cars, private aircraft, private vessels, air passengers, sea passengers, cruise vessel passengers, dutiable mail, customs brokers and barge/bulk carriers --from critical border security and inspection needs to other Federal programs. Already, there is insufficient CBP staffing to ensure security and mitigate

long wait times at our nation's air, sea, and land ports of entry. Trade and travel-related job creation, border security and wait time reduction at the ports of entry require stable funding for CBP. It should be noted that Customs User Fees have not increased in several years, so user fees currently cover only a portion of recoverable fee-related costs. As a result, the Administration's Fiscal Year 2016 budget calls for a \$2 increase in Customs User Fees to address inadequate border security resources. NTEU strongly believes that any increases in Customs User Fees, including additional revenue from indexing current fees to inflation, must be applied to sorely needed border security needs, including the need for increases to CBPO staffing to strengthen America's border security and economy. I urge this Committee with jurisdiction over both our nation's homeland security and agency management to stop any proposals to divert Customs User Fees away from CBP needs.

CONCLUSION

Mr. Chairman and Ranking Member Heitkamp, in closing, I want to revisit my statement at the beginning of my testimony, conveying to you that while we believe pay increases have been totally inadequate the last several years, we support the current pay system, and believe in its proven ability to provide agencies with various pay flexibilities—in terms of salary, awards, and other targeted payments, and to justly compensate federal employees. As I stated, the real issue that needs to be addressed is the lack of agency use of these existing flexibilities.

However, I want to make it clear that agencies must receive proper levels of funding to be in a position to make use of these flexibilities, or they merely exist on paper. This is the chief reason for NTEU's advocacy to end the sequester, as agencies are not being funded at appropriate levels, and in some cases, simply do not have the funding to properly maintain staffing levels and compensate employees. Congress needs to be fully cognizant that if agencies are not adequately funded, they simply will be unable to recruit and retain talented personnel, which ultimately will only serve to harm the American public. NTEU members well understand the many challenges facing our country and are willing to work hard to help solve them. Federal employees have good ideas about how to do the work of the federal government more efficiently. They care deeply about successfully accomplishing the missions of their agencies, as evidenced again in this year's newly-released Federal Employee Viewpoint Survey. I stand ready to work with this Subcommittee in a productive way to ensure that federal agencies and employees are truly supported—in terms of funding needs and for the work that they do every day to better our nation.