STATEMENT OF COLLEEN M. KELLEY
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

ON

ENHANCING EMPLOYEE PERFORMANCE:

The Federal Workforce Performance Appraisal and Management Improvement Act

AND THE

Federal Supervisor Training Act

PRESENTED TO

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANANGEMENT AND THE FEDERAL WORKFORCE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
JUNE 29, 2006

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Chairman Voinovich, Ranking Member Akaka, members of the subcommittee, I appreciate the opportunity to testify today at this important hearing on enhancing employee performance.

SUPERVISOR TRAINING

Let me first address the Akaka bill on supervisor training and section 3 of S. 3492, which deals with the same issue. Section 3 mandates the establishment of a training program for supervisors by each agency, in consultation with the Office of Personnel Management (OPM). The training program would have two focuses. The first is a comprehensive management succession program designed to help develop managers. The second is a supervisor training program aimed at developing supervisor skills in communicating to employees on performance expectation, conducting employee performance evaluations, mentoring employees, improving their performance and dealing with poor performers. The bill requires this training for covered supervisors during their first year in their positions and once every five years thereafter.

Supervisor training, accountability and development are pressing concerns for human capital management in the federal sector. Mr. Chairman, NTEU appreciates your recognition of the need for supervisor training by the inclusion of this section in your bill.
NTEU also commends Senator Daniel Akaka for introducing the Federal Supervisor Training Act. We believe that the Akaka bill expands and develops in a very positive way the basic mandate for supervisor training in S. 3492. Like S. 3492, the Akaka bill would establish and authorize funding for new and necessary training programs for supervisors and managers of federal employees. These training programs would be mandatory and based on competency standards set by agencies under the guidance of the Office of Personnel Management (OPM).

NTEU believes the Akaka bill adds several essential features to a supervisor training initiative. First, it mandates coverage of a wider range of managers. Second, it provides a more detailed description of the type of training to be required. It specifically requires that training be interactive and instructor based. For supervisor training to be meaningful, it must be more than simply the review of written material. Training delivered by training professionals in a situation –

either face to face or internet based – which allows dialogue, questioning and interaction between student and teacher is an indispensable feature of an effective program.

Further, the Akaka bill has great value as it requires more than simply training in the supervision of employees but in working with employees, communicating with them, and discussing their progress. A good manager needs to do more than correctly evaluate an employee. A good manager needs to know how to develop an ability to help his or her subordinates become top performers and be able to communicate with and hear from employees. A well trained manager knows how to motivate employees, build teamwork, and be flexible rather than rigid in workplace situations.

Absolutely essential is the requirement in the Akaka bill to include supervisor training on prohibited personnel practices, particularly violations of statutorily prohibited discriminatory actions and whistleblower activities. A key way to lessen discrimination in the federal workplace and ensure workplace fairness is for proper supervisor training so that they fully understand the duties and obligations they have. NTEU believes, however, that this section needs to be even further expanded and defined. It must be explicit that this training encompass the full range of prohibited personnel practices, unfair labor practices and all violations of the merit system.

The Akaka bill also adds another important feature which is missing in S. 3492. It includes the promulgation of management performance standards. S. 3492 mandates training and increases responsibility over employee pay but does not include any standards or methods of accountability. Supervisor training will lose its full value if there are not standards to measure it by. NTEU believes that by including management competency standards, we have the ability to move toward accountability.

Finally, NTEU is concerned as to whether this provision will be adequately funded. Sadly, it is too often the case that when agency budgets become tight, training is the first to go. Cutting other pressing agency needs is not the answer. NTEU would prefer that this legislation clarify exactly where the resources will come from to finance this important initiative. But, the compelling case for supervisor training is clear.

DENIAL OF ANNUAL PAY INCREASES

With regard to S. 3492, much of the section dealing with performance appraisal systems, is already in place. For example, linking the system with the strategic goals and annual performance plan of the agency is a basic tenet of the Government Performance and Results Act. (GPRA). While the bill calls for a "written performance appraisal annually," OPM regulations currently state that "as soon as practicable after the end of the appraisal period, a written, or otherwise recorded, rating of record shall be given to each employee." (5 CFR 430.208(a)). Current regulations also state that the appraisal period "generally shall be 12 months so that employees are provided a rating of record on an annual basis." (5 CFR 430.206(a)(2)) We have no objection to the language in S. 3492, which makes clear that a written performance appraisal is required annually.

The major change in this section adds the term "compensating" to the list of uses for which the performance appraisals can be used. Current law states that agencies shall use performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees (5 USC 4302(a)(3)). The purpose of the inclusion of "compensating" in the list is made clear in section 4 of the bill, which states that an employee whose summary rating of performance for the most recently completed appraisal period is below fully successful, may not receive annual across the board or locality increases. This provision will apply to wage grade as well as general schedule employees.

Under current law an employee who has received an unacceptable performance evaluation may not receive a within grade step increase or grade promotion. These increases are tied to performance and it is entirely appropriate that they be withheld if an employee's performance is less than acceptable (5 USC 5335(a)(3)(B)). The annual across the board and locality increases were created in the Federal Employees Pay Comparability Act (FEPCA) with the purpose of achieving comparable pay between federal employees and their counterparts in the private sector. These increases are tied to the position, not the individual in the position, and therefore, withholding these increases based on the performance of the individual in the position completely drops the goal of comparability, which has been the goal of federal pay for decades.

Before the enactment of FEPCA, the goal was still comparability with the private sector. Under FEPCA, locality adjustments were introduced 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 Administrations and Congresses since the enactment of FEPCA have not implemented the law as intended, NTEU supported the locality provisions in the law to make increases more reflective of local markets. If Congress wants to drop the goal of comparability with the private sector as the basis of the federal pay system, I think that should be noted and debated. That is clearly what the result of this proposal will be and NTEU opposes that.

DEALING WITH POOR PERFORMANCE

Denying across the board and locality increases to employees with less than acceptable performance ratings will affect a very, very small number of federal employees, but still should not be done. According to a GAO report issued in June of last year, "Poor Performers in the Federal Workplace," OPM's Central Personnel Data File (CPDF) showed that in fiscal year 2003, 0.3 percent of employees rated that year received an unacceptable performance rating (GAO-05-812R). While other studies have shown that perceptions of supervisors or employees of the number of poor performers may be somewhat higher, the 0.3% reflects the actual number of documented poor performers. This extremely small number should not drive major, substantive changes in the basic tenets of our pay system.

I believe that there are many factors in place that keep the number of poor performers small. First, the federal hiring process is rigorous and managers are good at hiring people who will be good at their jobs. Second, no appeal rights attach to adverse actions, including dismissal of employees, until after a probationary period, which is usually one year. Managers are also good at determining within the course of that one year probationary period those employees who

are not at, and likely will not achieve, an acceptable level of performance and dealing with them at that time.

The 2005 GAO report considered the issue of dealing with poor performers, stating:

> Various studies, reports, and surveys of federal supervisors and employees we reviewed have identified various impediments to dealing with poor performance, including issues related to (1) time and complexity of the processes; (2) lack of training in performance management; and (3) communication, including the dislike of confrontation. (GAO-05-812R, p.3)

None of the top impediments cited include lack of sufficient disincentives for poor performance, which is what the proposal of denying across the board and locality incentives would amount to. In fact, many disincentives already exist, including reduction in grade and removal. Rather, the impediments highlight managers' reluctance to engage in the processes that will have an impact on performance, rather than the processes themselves. I believe dealing with that reluctance is the key to improving performance as well as dealing with poor performers.

SENIOR EXECUTIVE PAY INCREASES

While the portions of S. 3492 that deal with rank and file federal employees would deny them annual across the board and locality increases unless a new performance based standard is achieved, the portions that deal with the Senior Executive Service would provide increased pay totally unrelated to individual performance. I was quite surprised to see this and believe it is not a sound message to be sending rank and file employees who are being told that new performance appraisal systems will be fair and based only on performance.

Under current law (5 USC 5376(b)(1)(B) members of the Senior Executive Service may receive basic pay up to Level IV of the Executive Schedule ($143,000). Under section 6 of S. 3492 Senior Executives could receive basic pay up to Level II of the Executive Schedule ($165,200, or $22,000 increase) if they work for agencies that have been certified by OPM as making meaningful distinctions in performance. Whether or not the individual's performance played any part in that certification is irrelevant. Furthermore, a Senior Executive could receive basic pay up to Level III ($152,000, or $11,000 increase) even in agencies whose performance management systems have not been certified by OPM. The bill also makes clear that a Senior Executive will not lose pay if he or she moves from a certified to a non-certified agency.

These increases for Senior Executives are not tied to any new individual performance standards the way the proposed denial of pay is tied to individual performance for rank and file employees. NTEU believes this is exactly the wrong signal to be sending to federal employees who are extremely concerned that the buzz words "pay for performance" will end up meaning less pay for them. There is great concern that changes to the General Schedule and other pay systems that have been set by statute and refined through regulations and review will not be fair or transparent, especially to those at the lower end of the pay scales. To increase pay for the highest paid employees, regardless of their performance, in the same piece of legislation that

would for the first time allow for cutting certain pay based on performance for everyone else will only increase the already deep skepticism that a new "pay for performance" system will be fair.

EFFECTIVE DATES OF PROPOSALS

Section 8 of S. 3492 will require all agencies to have a performance appraisal system designed and to OPM for certification by July 1, 2007. Based on the problems that the Department of Homeland Security and the Department of Defense have been having in designing new performance systems, this seems like a very short time period. It also is clear that such a deadline will allow little opportunity to review the elements and application of the DHS and DOD systems, which I believe would be very valuable for other agencies.

The effective date of the pay increases for the Senior Executive Service is 180 days after enactment, well before most of the other sections of the bill will be in place. This leaves the unfortunate impression that providing the highest paid employees with pay increases unrelated to performance is the most pressing issue in the bill.

Thank you for this opportunity to provide NTEU's views on these important issues. I would be happy to answer any questions you may have.