

**H.R. 3268, GOVERNMENT ACCOUNTABILITY OFFICE  
[GAO] ACT OF 2007**

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**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

ON

**H.R. 3268**

TO MAKE CERTAIN REFORMS WITH RESPECT TO THE GOVERNMENT  
ACCOUNTABILITY OFFICE, AND FOR OTHER PURPOSES

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MARCH 13, 2008

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**Serial No. 110-71**

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## H.R. 3268, GOVERNMENT ACCOUNTABILITY OFFICE [GAO] ACT OF 2007

THURSDAY, MARCH 13, 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 2:10 p.m., in room 2154, Rayburn House Office Building, Hon. Danny K. Davis (chairman of the subcommittee) presiding.

Present: Representatives Davis, Norton, Clay, and Marchant.

Staff present: Tania Shand, staff director; William Miles, professional staff member; Lori J. Hayman, counsel; LaKeshia N. Myers, clerk; and Alex Cooper, minority professional staff member.

Mr. DAVIS. The subcommittee will come to order.

Welcome, Ranking Member Marchant and members of the subcommittee and hearing witnesses and all of those in attendance. Welcome to the Federal Workforce, Postal Service, and the District of Columbia Subcommittee hearing on H.R. 3268, the Government Accountability Office [GAO] Act of 2007.

The hearing will examine H.R. 3268, the Government Accountability Office [GAO] Act of 2007, and various other legislative proposals that may be introduced before the hearing that address certain GAO reforms. It will also examine the results of the survey I requested last May that the Employee Advisory Council conduct of all GAO employees on the Band II restructuring and the Watson Wyatt compensation study and the Ivy Group study.

Hearing no objection, 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.

Today the Government Accountability Office [GAO], has an opportunity: It has an opportunity to regain its footing as an agency that not only touts that its employees are the best and the brightest, but treats them as if they are the best and the brightest. GAO has an opportunity to hold itself to the same standards of accountability and forthrightness that it demands of other agencies. GAO has an opportunity to work with, not against, the subcommittee when it raises legitimate concerns about its personnel reforms and other issues pertaining to the administration of the agency.

It appears that GAO is going to seize this opportunity. I have met with Mr. Gene Dodaro, the Acting Comptroller General, and he has indicated that he intends to work collaboratively with the

subcommittee to address any concerns that we have, and the subcommittee is committed to doing the same. Mr. Dodaro has over 30 years of service with GAO, and I hope he will restore GAO's legacy as a model agency.

Mr. Dodaro, welcome to your first hearing as Acting Comptroller General of the United States.

Mr. DODARO. Thank you.

Mr. DAVIS. That said, after 2 years of investigating GAO's personnel reforms, the subcommittee has unfinished business to address.

I am pleased to announce that I will be introducing legislation that restores the 2006 and 2007 across-the-board increase to all GAO employees who met expectations but did not receive it. The bill also includes a provision that establishes an across-the-board full guarantee that will govern how pay adjustments are to be administered at GAO in the future. The legislation has the support of GAO and its union, the International Federation of Professional and Technical Engineers.

While the subcommittee is pleased that the proposal has the support of GAO, it is unfortunate that it took 2 years of employees being demoralized and worrying about their pay before we received it. Last winter, the best and the brightest at GAO finally had to vote to unionize to get management's attention. The compromise legislation which will be discussed today will be introduced and marked up when Congress returns from the March recess.

In November 2007, at my request, members of GAO's Employee Advisory Council surveyed all GAO employees on GAO's personnel reforms. Seventy-one percent of GAO employees responded to the survey, and we will hear testimony about the results of that survey today.

Another troublesome issue that the subcommittee will continue to address at future hearings is the historic disparity between the ratings of African Americans and their Caucasian counterparts at GAO.

At a hearing the subcommittee held in November 2007 on diversity in legislative branch agencies, Ron Stroman, Managing Director of GAO's Office of Opportunity and Inclusiveness, testified that he alerted David Walker that if GAO went through with its personnel reforms of Band II restructuring that it would have a negative impact on African Americans. When pressed as to why GAO would go through with a restructuring that it knew would adversely impact African Americans, Mr. Stroman stated it was a decision that the Comptroller General made.

Last August, almost a year and a half after the restructuring took place, GAO hired the Ivy Group to research the rating disparities between African American and Caucasian employees at GAO. The Ivy Group will not complete its final report until next month. However, what they have learned to date is troubling and raises serious questions about GAO's performance management system.

Mr. Walker officially resigned from GAO yesterday. Therefore, the question of why he moved forward with the restructuring, given the disparity in ratings, cannot be posed to him directly. Nevertheless, the subcommittee will continue its oversight of this issue

and is pleased that Mr. Dodaro has indicated that he is committed to addressing the problem.

I thank you, all of you who have come, and look forward to hearing from the witnesses.

And now it is my pleasure to yield such time as he would consume to the ranking member, Mr. Marchant.

[The prepared statement of Hon. Danny K. Davis and the text of H.R. 3268 follow:]

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

**“H.R. 3268, THE GOVERNMENT ACCOUNTABILITY OFFICE ACT”**

**March 13, 2008**

Today, the Government Accountability Office (GAO) has an opportunity. It has an opportunity to regain its footing as an agency that not only touts that its employees are the best and the brightest, but treats them as if they are the best and the brightest. GAO has an opportunity to hold itself to the same standards of accountability and forthrightness that it demands of other agencies. GAO has an opportunity to work with, not against, the Subcommittee, when it raises legitimate concerns about its personnel reforms and other issues pertaining to the administration of the agency.

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While the Subcommittee is pleased that the proposal has the support of GAO, it is unfortunate that it took two years of employees being demoralized and worrying about their pay, before we received it. Last winter, the best and the brightest at GAO finally

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Thank you and I look forward to hearing from today's witnesses.

110TH CONGRESS  
1ST SESSION

# H. R. 3268

To make certain reforms with respect to the Government Accountability Office, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2007

Mr. WAXMAN (by request) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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## A BILL

To make certain reforms with respect to the Government Accountability Office, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Government Accountability Office Act of 2007”.

6 (b) **REFERENCE.**—Except as otherwise expressly pro-  
7 vided, whenever in this Act an amendment is expressed  
8 in terms of an amendment to a section or other provision,  
9 the reference shall be considered to be made to a section  
10 or other provision of title 31, United States Code.

1 **SEC. 2. APPOINTMENT PROCESSES.**

2 Section 703 is amended—

3 (1) by striking the term “and Deputy Comp-  
4 troller General are” and inserting “is” in subsection  
5 (a)(1),

6 (2) by striking the first sentence in subsection  
7 (a)(2) and inserting the following: “A commission  
8 shall be established 12 months in advance of an up-  
9 coming vacancy in the office of Comptroller General  
10 to recommend individuals to the President for ap-  
11 pointment to the office, except that if the vacancy is  
12 unanticipated, the commission shall be established  
13 when the vacancy occurs.”,

14 (3) by inserting “and” at the end of subsection  
15 (a)(2)(C),

16 (4) by striking “; and” in subsection (a)(2)(D),  
17 inserting a period, and striking all of subsection  
18 (a)(2)(E),

19 (5) by redesignating subsections (b), (c), (d),  
20 (e), and (f) as subsections (c), (d), (e), (f) and (g)  
21 and inserting a new subsection (b) as follows:

22 “(b) The Comptroller General shall appoint the Dep-  
23 uty Comptroller General in consultation with those indi-  
24 viduals listed in clauses (A), (B), (C) and (D) of this sub-  
25 section and in so doing shall choose an individual solely  
26 on the basis of integrity and demonstrated ability related

1 to the auditing, financial and management analysis, public  
2 administration, investigative and legal functions of the Of-  
3 fice.”,

4 (6) in subsection (c), as redesignated by this  
5 section, by striking “(e)” and inserting “(f)”,

6 (7) in subsection (d), as redesignated by this  
7 section, by renumbering subsections (1) and (2) as  
8 subsections (2) and (3) and inserting a new sub-  
9 section (1) as follows:

10 “(1) serves at the pleasure of the Comptroller  
11 General;” and

12 (8) in subsection (f), as redesignated by this  
13 section, by deleting the term “or Deputy Comp-  
14 troller General” wherever it appears and by deleting  
15 in subsection (1) the words “(as the case may be).  
16 Either” and inserting “and”.

17 **SEC. 3. INSPECTOR GENERAL.**

18 (a) IN GENERAL.—Title 31, United States Code, is  
19 amended by inserting after section 704 the following new  
20 section:

21 **“§ 705. Inspector General for the United States Gov-  
22 ernment Accountability Office**

23 “(a) ESTABLISHMENT OF OFFICE.—There is estab-  
24 lished an Office of the Inspector General in the United  
25 States Government Accountability Office, to—

1           “(1) conduct and supervise audits consistent  
2 with generally accepted government auditing stand-  
3 ards and investigations relating to the United States  
4 Government Accountability Office;

5           “(2) provide leadership and coordination and  
6 recommend policies, to promote economy, efficiency,  
7 and effectiveness in the United States Government  
8 Accountability Office; and

9           “(3) keep the Comptroller General and Con-  
10 gress fully and currently informed concerning fraud  
11 and other serious problems, abuses, and deficiencies  
12 relating to the administration of programs and oper-  
13 ations of the United States Government Account-  
14 ability Office.

15           “(b) APPOINTMENT, SUPERVISION, AND REMOVAL.—

16           “(1) The Office of the Inspector General shall  
17 be headed by an Inspector General, who shall be ap-  
18 pointed by the Comptroller General without regard  
19 to political affiliation and solely on the basis of in-  
20 tegrity and demonstrated ability in accounting, au-  
21 diting, financial analysis, law, management analysis,  
22 public administration, or investigations. The Inspec-  
23 tor General shall report to, and be under the general  
24 supervision of, the Comptroller General.

1           “(2) The Inspector General may be removed  
2 from office by the Comptroller General. The Comptroller  
3 General shall, promptly upon such removal,  
4 communicate in writing the reasons for any such re-  
5 moval to each House of the Congress.

6           “(c) AUTHORITY OF INSPECTOR GENERAL.—In addi-  
7 tion to the authority otherwise provided by this section,  
8 the Inspector General, in carrying out the provisions of  
9 this section, is authorized—

10           “(1) to have access to all records, reports, au-  
11 dits, reviews, documents, papers, recommendations,  
12 or other material that relate to programs and oper-  
13 ations of the United States Government Account-  
14 ability Office;

15           “(2) to make such investigations and reports  
16 relating to the administration of the programs and  
17 operations of the United States Government Ac-  
18 countability Office as are, in the judgment of the In-  
19 spector General, necessary or desirable;

20           “(3) to request such documents and informa-  
21 tion as may be necessary for carrying out the duties  
22 and responsibilities provided by this section from  
23 any Federal agency;

24           “(4) in the performance of the functions as-  
25 signed by this section, the Inspector General shall

1 use the authority and procedures provided in section  
2 716 of this title to obtain all information, docu-  
3 ments, reports, answers, records, accounts, papers,  
4 and other data and documentary evidence from a  
5 person not in the United States Government or from  
6 a Federal agency, to the same extent and in the  
7 same manner as the Comptroller General;

8 “(5) to administer to or take from any person  
9 an oath, affirmation, or affidavit, whenever nec-  
10 essary in the performance of the functions assigned  
11 by this section, which oath, affirmation, or affidavit  
12 when administered or taken by or before an em-  
13 ployee of an Office of Inspector General designated  
14 by the Inspector General shall have the same force  
15 and effect as if administered or taken by or before  
16 an officer having a seal;

17 “(6) to have direct and prompt access to the  
18 Comptroller General when necessary for any purpose  
19 pertaining to the performance of functions and re-  
20 sponsibilities under this section;

21 “(7) to report expeditiously to the Attorney  
22 General whenever the Inspector General has reason-  
23 able grounds to believe there has been a violation of  
24 Federal criminal law; and

1           “(8) to provide copies of all reports to the  
2 United States Government Accountability Office’s  
3 Audit Advisory Committee and to provide such addi-  
4 tional information in connection with such reports as  
5 is requested by the Committee.

6           “(d) COMPLAINTS BY EMPLOYEES.—

7           “(1) The Inspector General may receive, review,  
8 and investigate, as the Inspector General deems ap-  
9 propriate, complaints or information from an em-  
10 ployee of the United States Government Account-  
11 ability Office concerning the possible existence of an  
12 activity constituting a violation of law, rules, or reg-  
13 ulations, mismanagement, or gross waste of funds,  
14 provided that the IG shall refer complaints or infor-  
15 mation concerning violations of personnel law, rules,  
16 or regulations to established investigative and adju-  
17 dicative entities of the United States Government  
18 Accountability Office.

19           “(2) The Inspector General shall not, after re-  
20 ceipt of a complaint or information from an em-  
21 ployee, disclose the identity of the employee without  
22 the consent of the employee, unless the Inspector  
23 General determines such disclosure is unavoidable  
24 during the course of the investigation.

1           “(3) Any employee who has authority to take,  
2           direct others to take, recommend, or approve any  
3           personnel action, shall not, with respect to such au-  
4           thority, take or threaten to take any action against  
5           any employee as a reprisal for making a complaint  
6           or disclosing information to the Inspector General,  
7           unless the complaint was made or the information  
8           disclosed with the knowledge that it was false or  
9           with willful disregard for its truth or falsity.

10          “(e) SEMIANNUAL REPORTS.—(1) The Inspector  
11          General shall submit semiannual reports summarizing the  
12          activities of the Office of the Inspector General to the  
13          Comptroller General. Such reports shall include, but need  
14          not be limited to—

15                 “(A) a summary of each significant report, in-  
16                 cluding a description of significant problems, abuses,  
17                 and deficiencies disclosed by such report during the  
18                 reporting period;

19                 “(B) a description of the recommendations for  
20                 corrective action made with respect to significant  
21                 problems, abuses, or deficiencies identified in sub-  
22                 paragraph (A);

23                 “(C) a summary of the progress made in imple-  
24                 menting such corrective action identified in subpara-  
25                 graph (B); and

1           “(D) information concerning any disagreement  
2       the Comptroller General has with a recommendation  
3       of the Inspector General.

4       “(2) The Comptroller General shall transmit the  
5       semiannual reports of the Inspector General, together with  
6       any comments the Comptroller General considers appro-  
7       priate, to the Congress within 60 days of receipt of such  
8       reports.

9       “(f) INDEPENDENCE IN CARRYING OUT DUTIES AND  
10      RESPONSIBILITIES.—The Comptroller General is not au-  
11     thorized to prevent or prohibit the Inspector General from  
12     carrying out any of the duties or responsibilities assigned  
13     to the Inspector General under this section.

14      “(g) AUTHORITY FOR STAFF.—

15           “(1) IN GENERAL.—The Inspector General  
16     shall select, appoint, and employ such personnel as  
17     may be necessary to carry out the provisions of this  
18     section consistent with the provisions of this title  
19     governing selections, appointments, and employment  
20     in the United States Government Accountability Of-  
21     fice. Such personnel shall be appointed, promoted,  
22     and assigned only on the basis of merit and fitness,  
23     but without regard to those provisions of title 5 gov-  
24     erning appointments and other personnel actions in  
25     the competitive service, except that no personnel of

1 the Office may be paid at an annual rate greater  
2 than \$1,000 less than the annual rate of pay of the  
3 Inspector General.

4 “(2) EXPERTS AND CONSULTANTS.—The In-  
5 spector General may procure temporary and inter-  
6 mittent services under section 3109 of title 5,  
7 United States Code at rates not to exceed the daily  
8 equivalent of the annual rate of basic pay for level  
9 V of the Executive Schedule under section 5315 of  
10 such title.

11 “(3) INDEPENDENCE IN APPOINTING STAFF.—  
12 No individual may carry out any of the duties or re-  
13 sponsibilities of the Office of the Inspector General  
14 unless the individual is appointed by the Inspector  
15 General, or provides services procured by the Inspec-  
16 tor General, pursuant to this paragraph.

17 “(4) The Inspector General and any individual  
18 carrying out any of the duties or responsibilities of  
19 the Office of the Inspector General are prohibited  
20 from performing any program responsibilities.

21 “(h) OFFICE SPACE.—The Comptroller General shall  
22 provide the Office of the Inspector General with appro-  
23 priate and adequate office space, together with such equip-  
24 ment, office supplies, and communications facilities and  
25 services as may be necessary for the operation of the Of-

1 fice of the Inspector General, and shall provide necessary  
2 maintenance services and the equipment and facilities lo-  
3 cated therein.

4 “(i) DEFINITION.—As used in this section, the term  
5 ‘Federal agency’ means a department, agency, instrumen-  
6 tality or unit thereof of the Federal Government.”.

7 (b) INCUMBENT.—The individual who serves in the  
8 position of Inspector General of the United States Govern-  
9 ment Accountability Office on \_\_\_\_\_, 2007, shall con-  
10 tinue to serve in such position subject to the removal in  
11 accordance with this section.

12 (c) EFFECTIVE DATE.—This section shall be effective  
13 upon enactment of this Act.

14 (d) CLERICAL AMENDMENT.—The table of contents  
15 of chapter 7, of title 31, United States Code, is amended  
16 by adding at the end of subchapter I the following:

“705. Inspector General for the United States Government Accountability Of-  
fice.”.

17 **SEC. 4. ADMINISTERING OATHS.**

18 Section 711 is amended—

19 (1) by striking “when auditing and settling ac-  
20 counts” in paragraph 4, and

21 (2) by adding to the end of paragraph 4, as  
22 amended, “upon the specific approval only of the  
23 Comptroller General or the Deputy Comptroller  
24 General.”

1 **SEC. 5. COMPTROLLER GENERAL REPORTS.**

2 Section 719 is amended—

3 (1) by striking “and” at the end of clause (B)  
4 in subsection (b)(1),

5 (2) by striking the period at the end of clause  
6 (C) in subsection (b)(1) and inserting “; and”,

7 (3) by adding a new clause at the end of sub-  
8 section (b)(1) as follows:

9 “(D) for Federal agencies subject to sec-  
10 tions 901–903 of title 31 and other agencies  
11 designated by the Comptroller General an as-  
12 sessment of their overall degree of cooperation  
13 in making personnel available for interview,  
14 providing written answers to questions, submit-  
15 ting to an oath authorized by the Comptroller  
16 General under section 711, granting access to  
17 records, providing timely comments to draft re-  
18 ports, adopting recommendations in reports and  
19 responded to such other matters as the Comp-  
20 troller General deems appropriate.”,

21 (4) by striking “and” at the end of clause (B)  
22 in subsection (c)(2),

23 (5) by striking the period at the end of sub-  
24 section (c)(3) and inserting “; and”, and

25 (6) by adding a new subsection at the end of  
26 section (c) as follows:

1           “(4) as soon as practicable when an agency or  
2           other entity does not, within a reasonable time of a  
3           request by the Comptroller General, make personnel  
4           available for interview, provide written answers to  
5           questions, or submit to an oath authorized by the  
6           Comptroller General under section 711.”.

7   **SEC. 6. REIMBURSEMENT OF AUDIT COSTS.**

8           Section 3521 is amended by inserting after sub-  
9           section (h) the following new subsection:

10          “(i)(1) Any executive agency or component thereof  
11          that prepares an audited financial statement or any re-  
12          lated schedules under section 3515 shall reimburse the  
13          Government Accountability Office the cost of any audit of  
14          the financial statements or related schedules of such agen-  
15          cy or component performed by the Comptroller General  
16          of the United States.

17          “(2) Reimbursements required by paragraph (1) shall  
18          be credited to the appropriation account ‘Salaries and Ex-  
19          penses, Government Accountability Office’ current when  
20          the reimbursement is received and shall remain available  
21          until expended.”.

22   **SEC. 7. CONFORMING AMENDMENT.**

23           Section 1401 of title I of Public Law No. 108-83  
24           is repealed.

1 **SEC. 8. FINANCIAL DISCLOSURE REQUIREMENTS.**

2 Section 109 of title 5, United States Code, Appendix  
3 4, is amended—

4 (1) by inserting “except officers or employees of  
5 the Government Accountability Office,” at the begin-  
6 ning of subparagraph (13)(B)(i),

7 (2) by redesignating subparagraph (13)(B)(ii)  
8 as (13)(B)(iii),

9 (3) by striking “and” at the end of subpara-  
10 graph (13)(B)(i), and

11 (4) by adding a new subparagraph after sub-  
12 paragraph (13)(B)(i) as follows:

13 “(ii) each officer or employee of the  
14 Government Accountability Office who, for  
15 at least 60 consecutive days, occupies a po-  
16 sition for which the rate of basic pay,  
17 minus the amount of locality pay author-  
18 ized for General Schedule employees under  
19 section 5304 of this title for the area  
20 where the employee is located, is equal to  
21 or greater than 120 percent of the min-  
22 imum rate of basic pay payable for GS-15  
23 of the General Schedule; and”.

24 **SEC. 9. ADDITIONAL AUTHORITIES.**

25 Section 731 is amended—

26 (1) by deleting section (d),

1 (2) by renumbering sections (e), (f), (g), (h),  
2 and (i), as sections (d), (e), (f), (g), and (h),

3 (3) by amending the new section (d) as follows:

4 (A) by deleting subparagraph (2) in its en-  
5 tirety,

6 (B) by deleting the dash at the end of the  
7 first clause and the “(1)” that follows,

8 (C) by striking “GS-18 under section  
9 5332 of such title” and inserting “level IV of  
10 the Executive Schedule”,

11 (D) by striking “15” and inserting “20”,  
12 and

13 (E) by striking “; and” and inserting a  
14 “period”, and

15 (4) by adding new subsections (i) and (j) as fol-  
16 lows:

17 “(i) Funds appropriated to the Government Account-  
18 ability Office for salaries and expenses are available for  
19 meals, entertainment, and other related expenses incurred  
20 in connection with recruitment.

21 “(j) Consistent with regulations promulgated by the  
22 Comptroller General, the Government Accountability Of-  
23 fice may accept, hold, administer, use, and dispose of any  
24 money or property, real, personal or mixed, tangible or  
25 intangible, received by the Office as a gift, devise, bequest,

1 grant, or otherwise for the purpose of aiding or facilitating  
2 the work of the Office.”.

3 **SEC. 10. HIGHEST BASIC PAY RATE.**

4 Section 732(c)(2) is amended by striking “highest  
5 basic rate for GS-15” and inserting “rate for Executive  
6 Level III, provided that the total amount of cash com-  
7 pensation in any year shall be subject to the limitations  
8 provided under section 5307(a)(1) of title 5, United States  
9 Code;”.

10 **SEC. 11. PAY ADJUSTMENTS.**

11 Section 732(c) is amended—

12 (1) in clause (2) by striking “(4)” and inserting  
13 “(5)”;

14 (2) by redesignating clause (4) as clause (5);  
15 and

16 (3) by inserting after subparagraph (3) the fol-  
17 lowing:

18 “(4) whenever the rates of basic pay for the Ex-  
19 ecutive Schedule are increased, the Comptroller Gen-  
20 eral may increase the rate of basic pay for the posi-  
21 tions in sections 703(g), 731(e), and 731(d) that are  
22 paid by reference to the Executive Schedule. In de-  
23 termining whether to grant all or part of such in-  
24 crease, the Comptroller General shall consider the  
25 funding level for the Office and any other appro-

1        appropriate criteria. If the Comptroller General increases  
2        the rate of basic pay for such positions, the Comp-  
3        troller General may delay the implementation of  
4        such increases to become effective no later than the  
5        effective date of increases under paragraph 3 of this  
6        subsection;”.

7        **SEC. 12. COMPTROLLER GENERAL’S ANNUITY.**

8        Section 777(b) is amended in the first sentence by  
9        striking “of the Comptroller General” and inserting “for  
10       level II of the Executive Schedule”.

11       **SEC. 13. PLACEMENT IN SENIOR EXECUTIVE SERVICE.**

12       (a) Section 732a(b) is amended by striking “section  
13       731(d), (e)(1), or (e)(2)” and inserting “section 731(d)”.

14       (b) Section 733(e) is amended by striking “731(e),  
15       (d), (e)(1), or (e)(2)” and inserting “703(g)(2), 731(e) or  
16       (d)”.

17       **SEC. 14. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**

18       Section 2 of Public Law 106–303, as amended by sec-  
19       tion 2 of Public Law 108–271 (5 U.S.C. 5597 note) is  
20       amended—

21                (1) by striking “subsection (a)(2)(d)” at the be-  
22       ginning of (b)(1) and inserting “subsections  
23       (a)(2)(D) and (c)(2)(d)”,

1 (2) by inserting “and” following the colon in  
 2 subsection (b)(4) and striking the colon at the end  
 3 of subsection (b)(5) and inserting a period,

4 (3) by striking subsections (b)(6) and (b)(7),

5 (4) by striking subsection (c),

6 (5) by striking in subsection (d) the “s” in  
 7 “Definitions”, all of subsection (1), and “(2) EM-  
 8 PLOYEE.—” in subsection (2) and by adding as part  
 9 of subsection (d) the remaining text of the section,

10 (6) by striking the phrase “, excluding sub-  
 11 section (c)” in subsection (f), and

12 (7) by respectively redesignating subsections  
 13 (d), (e), (f), and (g) as subsections (c), (d), (e), and  
 14 (f).

15 **SEC. 15. BASIC PAY FOR RETIREMENT.**

16 Section 8331(3) of title 5, United States Code, is  
 17 amended—

18 (1) by striking “and” at the end of subpara-  
 19 graph (G),

20 (2) by inserting “and” at the end of subpara-  
 21 graph (H),

22 (3) by adding a new subparagraph as follows:

23 “(I) the nonpermanent amount of a per-  
 24 formance-based pay increase received by an of-  
 25 ficer or employee of the Government Account-

1 ability Office provided that such increase does  
2 not cause the officer's or employee's salary to  
3 exceed the maximum salary in section  
4 732(e)(2);", and  
5 (4) by striking "(B) through (H)" in the lan-  
6 guage following new subparagraph (I), and inserting  
7 "(B) through (I)".

8 **SEC. 16. EFFECTIVE DATES.**

9 This Act and the amendments made by this Act shall  
10 take effect on the date of enactment of this Act, except  
11 that sections 6 and 7 and the amendments made by those  
12 sections shall take effect on October 1, 2009.

○

Mr. MARCHANT. Thank you, Mr. Chairman.

The Government Accountability Office is a critical research arm of the Federal Government which we rely on for unbiased, high-quality information. This information is frequently instrumental in our legislative process and can determine the course of ongoing oversight and legislation.

Last year, the GAO presented a request for legislative improvements to Congress. That request is currently embodied in H.R. 3268, the Government Accountability Office Act of 2007, which was introduced by Chairman Henry Waxman. This bill would require the Comptroller General to appoint a Deputy Comptroller General who shall serve at the Comptroller General's pleasure; establish an Office of Inspector General in the GAO; and require the Comptroller General's annual report to Congress to assess the overall degree of Federal agency cooperation with GAO audits. The bill would also make certain adjustments to salary rules to increase retention and improve recruitment.

I understand, Mr. Chairman, that you are planning to introduce a new legislation that would incorporate the changes described above as well as other changes that are in response to the subcommittee's oversight hearings last year. I look forward to seeing a final version of that new legislation.

And as we move forward, I hope that the chairman and members of the committee will be open to some discussion on this legislation.

Again, I thank the chairman for holding this hearing and the witnesses for being before us today. Thank you.

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

I see that Mr. Clay has arrived.

Mr. Clay, let me ask, do you have any opening remarks?

Mr. CLAY. I will forego opening remarks in the interest of time.

Mr. DAVIS. Thank you very much, Mr. Clay.

And we will then proceed with the witnesses.

It is the committee's policy that all witnesses are sworn in, so if you would rise and raise your right hands.

[Witnesses sworn.]

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

Gentlemen, of course you know the usual drill with these. The green light indicates that you have 5 minutes in which to summarize your testimony. The full testimony is in the record. Of course, the yellow light means that there is a minute left, and the red light means it is time to stop. So thank you very much.

Let me, first of all, congratulate you, Mr. Dodaro, and indicate that not only are we pleased that you are here today, but I certainly look forward to a solid working relationship over an extended period of time. And we are delighted to work with you and to have you here today. So you may proceed.

**STATEMENT OF GENE DODARO, ACTING COMPTROLLER GENERAL, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, ACCOMPANIED BY GARY KEPLINGER, GENERAL COUNSEL, U.S. GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. DODARO. Thank you very much, Mr. Chairman. I appreciate the kind words and introduction. I'm determined to live up to the

commitments that I made to work collaboratively with this committee.

Mr. Marchant, it is a pleasure to see both of you here today. I appreciate the opportunity to be here today to discuss legislative proposals to bolster the ability of GAO to attract and retain a highly skilled and diverse work force and help improve our operations.

I also plan to update you on our evolving relationship with our new union and to also underscore my commitment to making sure there is equal and fair treatment for all GAO employees.

As backdrop for my remarks, I would like to point out that, over the past several years, there have been many changes at GAO. Some of those changes have strengthened the organizations. Other changes have evoked controversy and, in some cases, created new challenges. We've addressed some of these challenges, but many remain. And we're committed to working to resolve those challenges, in cooperation with our employees and with this subcommittee and other parts of the Congress.

It is important to note, I think, that during this whole time period throughout the GAO people have continued to produce high-quality work for the Congress and generate positive organizational results. I think this is a real tribute to the professionalism of our work force and their dedication to GAO's mission to support the Congress and to improve Government for the benefit of the American people.

And I'm committed to making sure that GAO not only maintains the high quality of its work to support the Congress, but also to confronting and resolving the challenges that are before us today.

Now, the legislative proposals before the subcommittee can help us in this regard. We support the adding of the floor guaranteed provision to govern annual pay increases for GAO by adding that to our existing authorities. Under this approach, existing GAO people meeting expectations will at least receive the annual increase for the GS annual adjustment for their locality that they're in.

My statement provides details on how this would work. And the bottom line of this floor guarantee provision, from our standpoint, is this gives out employees greater certainty and a link to the executive branch for pay parity while preserving the incentives and rewards of the GAO performance appraisal system. So we think it is a solid approach, and we are looking forward to working with the committee to get this into the legislation.

I would also seek the subcommittee's support for our proposal to raise the GS-15 cap to Executive Level III. We think this is very important. Currently, the agencies that are the financial institution regulators, such as FDIC, have this authority to pay higher than the GS-15 cap, as does DOD and DHS. So we are at a real competitive disadvantage by not having this authority, and we need it in order to make sure we have the senior, experienced people in order to best serve the Congress.

Now, turning to some of the operational improvements, there are many in the bill. I'll highlight three right now. One is the creation of a statutory Inspector General to replace our administrative Inspector General that's been in place for a number of years. This would put our Inspector General on an equal footing with the In-

spector Generals of other legislative branch agencies and provide an appropriate level of independence and autonomy.

Second, we are seeking a requirement where GAO would issue an annual report card on the cooperation that we received in executive branch agencies in carrying out our audit work, in terms of their timely provision of records and access to people needed to complete our work for the Congress. We think this would create greater transparency over the level of cooperation we receive and, ultimately, lead to more efficient GAO operations and timely services to the Congress.

And last, I would, in the operational area, seek your approval of the provision by which we would receive reimbursement for audit costs.

I'd quickly like to touch on two other work force issues.

First, we are committed to working constructively with our new union to forge a positive labor management relations environment. Since the union was voted in in September, we have provided a lot of resources and training to create a good environment, and we were pleased to negotiate a very prompt agreement with them on pay decisions for 2008.

Also, we're committed to ensuring fair and equal treatment for our work force. As was mentioned, we have commissioned the Ivy Group to come in and do a study. We are looking to them for insights, best practices and recommendations. We are looking forward to receiving a final report and have committed to following up on the recommendations and keeping this subcommittee apprised of our progress going forward.

In closing, Mr. Chairman, since this is my first day as Acting Comptroller General, I want to assure this subcommittee that I'm committed to improving GAO and making sure we have the highest-quality work possible to support the Congress. And I am very honored and privileged to lead such a highly skilled and talented work force at the GAO, and I will be working with them, as with this committee.

Thank you for your time and attention, and I'd be happy to take any questions.

[The prepared statement of Mr. Dodaro follows:]

United States Government Accountability Office

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**GAO**

Testimony

Before the Subcommittee on Federal Workforce,  
Postal Service, and the District of Columbia,  
Committee on Oversight and Government Reform,  
House of Representatives

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For Release on Delivery  
Expected at 2:00 p.m. EDT  
Thursday, March 13, 2008

**U.S. GOVERNMENT  
ACCOUNTABILITY OFFICE**

**Human Capital Initiatives  
and Additional Legislative  
Authorities**

Statement of Gene L. Dodaro,  
Acting Comptroller General of the United States



GAO-08-573T

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Chairman Davis and Members of the Subcommittee:

I appreciate the opportunity to appear before you today to discuss several important topics:

- provisions of H.R. 3268, the GAO Act, that would bolster our ability to attract and retain a highly skilled and diverse workforce needed to serve the Congress and provide for operational improvements and administrative efficiencies;
- steps we are taking to establish and maintain a constructive working relationship with the GAO Employees Organization, International Federation of Professional and Technical Engineers (IFPTE); and
- my commitment to ensure fair and equitable treatment for all segments of our diverse workforce, as reinforced by our commissioning of a study of various performance assessment issues related to African-American Analysts at GAO.<sup>1</sup>

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### Importance of GAO Act Provisions

The GAO Act contains several distinct and critical components. A number of provisions are designed to benefit our employees and to provide a means to continue to attract, retain, and reward a top-flight workforce, while other provisions are aimed at helping us improve our operations and increase administrative efficiencies. We ask for your support of these measures and have outlined each of them below.

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### Human Capital and Compensation Provisions

- *Permit the GS-15 statutory cap to rise to the Executive Level III*

Our pay surveys indicated that certain higher-level economists, attorneys, management positions, and specialists would warrant salaries above GS-15, step 10. This authority would enable GAO to compensate these skilled professionals and managers up to Executive Level III when justified, thus aiding GAO in its recruitment and retention efforts. This authority is similar to flexibilities exercised by other agencies. For example, the Federal Deposit Insurance Corporation and other agencies concerned with financial matters are not subject to the GS-15 cap. The Departments of Defense and Homeland Security likewise have the ability to pay their staff more than this limit. If this authority is granted, GAO would use its

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<sup>1</sup>The study comprises Analysts; Auditors; and Specialists, such as Economists and Information Technology Specialists, who perform GAO's audit and investigatory work.

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increased pay flexibility only when justified by pay surveys or other compensation data.

- *Allow GAO to incur recruiting expenses for meals and related expenses*

GAO's work requires skilled professionals for whom GAO must compete with leading private sector and public organizations. GAO would like the ability to incur recruiting expenditures for meals and related expenses. This small, but important, step would enhance GAO's effort to attract top talent. At this time, both the Department of Defense for recruiting military members (10 U.S.C §520c) and the Coast Guard (14 U.S.C. §468) have similar provisions. We would use this authority frugally.

- *Achieve equal footing regarding voluntary separation incentive payments (VSIP)*

The law authorizing GAO to provide VSIPs requires GAO to make a substantial payment to the retirement fund—no less than 45 percent of an employee's final basic pay—which renders the flexibility virtually unusable. This contrasts with the flexibility given to the executive branch for VSIPs. While the Department of Defense has agency-specific VSIP authority, and executive branch agencies—with Office of Personnel Management (OPM) approval—have general VSIP authority, in both instances the statutory authority for these programs does not require any payments to the retirement fund for the granting of a VSIP. Removing this requirement would put GAO on an equal footing with other agencies, make VSIPs more practical, and provide an important flexibility to help GAO reshape its workforce should such authority become necessary.

- *Include performance-based bonuses in calculating non-Senior Executive Service and non-Senior Level employees' "high-three" average salary for retirement purposes*

GAO's performance-based compensation system provides a nonpermanent bonus component for some of our employees. As our employees have pointed out, under current law, they do not get credit for these bonuses when OPM calculates their "high-three" average salary for retirement purposes. The GAO Act would remedy the situation by directing that bonuses be included in the "high-three" calculation. This provision does not apply to Senior Executive Service (SES) and Senior Level employees.

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**Related Compensation Proposals**

Before turning to provisions in the GAO Act related to operational improvements and administrative efficiencies, let me address two important proposals related to employee compensation that—while not included in H.R. 3268—have been under discussion as well.

- *Adopting a “floor guarantee” for future annual pay adjustments*

We support the adoption of a “floor guarantee” provision for future annual pay adjustments. We first raised a similar concept with Members of the Subcommittee last May.<sup>2</sup> Just last month, our negotiating team introduced the idea to the GAO Employees Organization, IFPTE, which agreed to adopt a floor guarantee as part of the agreement governing 2008 pay adjustments. We were pleased to reach a prompt agreement and believe the floor guarantee reasonably balances our commitment to performance-based pay with an appropriate degree of predictability and equity for all GAO employees.

A statutorily based floor guarantee would provide GAO employees with greater certainty about future salary increases and ensure at least pay parity with the executive branch. We support the floor guarantee approach because we believe it will preserve the incentives and rewards of GAO’s performance-based compensation system, while ensuring—subject to the conditions explained below—that GAO employees receive an annual increase in their permanent pay that is at least equal to GS across-the-board increase for each locality area.

The floor guarantee would ensure that all employees performing at the “meets expectations” level or better would receive an annual adjustment to their basic rate that is at least equal to the total annual increase under the General Schedule (GS) system for the employees’ geographic area.<sup>3</sup> The only exceptions would be employees (1) receiving ratings below the “meets expectations” level, (2) participating in development programs under which they receive performance reviews and permanent merit pay increases more than once a year, (3) occupying positions covered by the Federal Wage System, or (4) occupying SES or Senior Level positions.

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<sup>2</sup>GAO, *U.S. Government Accountability Office: Status of GAO’s Human Capital Transformation Efforts*, Statement of David M. Walker, Comptroller General of the United States, GAO-07-872T (Washington, D.C.: May 22, 2007).

<sup>3</sup>This would be in accordance with U.S. Code, Title 5, Part III, Subpart D, Chapter 53, Subchapter I.

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The floor guarantee would be implemented in the following manner. We would continue to apply the system we implemented in 2006, as authorized by GAO's 2004 legislation. Thus, we first would determine for each employee the amount of GAO's annual adjustment and performance-based compensation, which includes both permanent merit pay adjustments and any nonpermanent bonuses. Then, if the sum of the employee's annual adjustment and permanent merit pay is less than the increase the employee would have received under the annual adjustment to the GS in the employee's geographic area, we would increase the employee's permanent pay to equal the increase that would have been received under the annual adjustment to the GS system that year. If an employee receives an additional adjustment as a result of the floor guarantee, the additional amount would be deducted from any bonus an employee would have received.

- *Addressing prior pay decisions*

We understand that consideration has been given to including a legislative provision that would compensate GAO employees who did not receive the full base pay increases of 2.6 percent in 2006 and 2.4 percent in 2007. At the invitation of subcommittee staff, we have engaged in fruitful discussions about a reasonable and practical approach should the Congress decide to accomplish this objective legislatively. We appreciate the subcommittee's willingness to consider providing GAO with the necessary legal and funding authorities to address this issue. Resolution of this matter would be helpful and would permit us to move forward on other important human capital initiatives.

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#### **Operational Improvements and Administrative Efficiencies**

The GAO Act also contains a number of provisions to promote operational improvements and efficiencies. These include establishing a statutory Inspector General at GAO, providing the Congress with more information on the level of executive branch cooperation received by GAO in the conduct of our work, authorizing reimbursement for certain financial audits, allowing GAO more flexibility in administering oaths, receiving gifts that do not impair our independence, and clarifying financial disclosure requirements.

- *Establish a statutory inspector general*

The GAO Act would replace our current inspector general (IG) position with a statutory position. GAO supports the IG concept and administratively has created an IG who performs many of the roles of the

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statutory IGs. GAO's statutory IG would be similar to the statutory IGs in the other legislative branch agencies. Although appointed by the heads of their respective agencies (or by the Capitol Police Board, in the case of the Capitol Police IG), these statutory IGs are provided with independence and autonomy from the heads of their agencies. They conduct and supervise audits and investigations, and they endeavor to prevent and detect fraud and abuse in their agencies' programs and operations. This is the model followed in H.R. 3268 for GAO's statutory IG.

- *Report on executive branch cooperation*

Although the Comptroller General has certain statutory mechanisms available to aid in conducting GAO audits and investigations, voluntary cooperation of agency officers and employees of audited agencies is essential to the efficiency of GAO's work. The GAO Act includes two new reporting requirements to provide more transparency related to the level of cooperation GAO is receiving from audited agencies. The first would require an annual report card on the overall cooperation of federal agencies in all aspects of GAO's work, including any unreasonable delays in making personnel available for interviews, providing written answers to questions, granting access to records, providing timely comments on draft reports, and responding appropriately to report recommendations. The second reporting requirement would require that the Comptroller General inform the Congress as soon as practicable regarding specific impediments, such as when an agency or other entity does not make personnel available for interviews or does not provide written answers to questions.

- *Obtain reimbursement of certain financial audit costs*

The GAO Act also includes a provision to enable GAO to be reimbursed for the financial audits it performs that, in the first instance, are the specific responsibility of an executive branch agency. Since 1997, the Comptroller General has elected to exercise his statutory discretion to audit the financial statements of the Internal Revenue Service and the Schedule of Federal Debt, issued by the Bureau of the Public Debt, in lieu of the Treasury IG or an independent Certified Public Accountant hired by the IG. As a result, the Department of the Treasury has received these audit services at no cost and without reimbursing GAO. This legislation would require, beginning in fiscal year 2009, any executive branch agency covered by the Chief Financial Officers Act (CFO Act) and Accountability for Tax Dollars Act for which GAO elects to audit financial statements or related schedules to reimburse the Comptroller General for the cost of

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performing such audits. Such payment would be consistent with the principle that agencies should pay for financial statement audit services, as they otherwise must when the audit is conducted by their IGs or independent contracted auditors. This principle already has been applied to reimbursements made to GAO by the Securities and Exchange Commission and the Federal Deposit Insurance Corporation, as well as other government corporations for financial statement audits conducted by GAO under separate legal authorities.

- *Provide GAO with greater flexibilities in administering oaths*

Currently, the Comptroller General is authorized to administer oaths to witnesses when auditing and settling accounts. Although in 1921, when the Congress established GAO, auditing and settling accounts represented the bulk of our work, that is not the case today. The Comptroller General has been called upon to perform many other audit, investigative, and adjudicative roles for the Congress. These roles periodically raise situations involving, for example, potential criminal or ethical violations, or conflicting testimony or assertions of material and sensitive subjects. In such situations, the ability to administer oaths would be a useful and important tool for the Comptroller General to accomplish his work for the Congress. The new authority is not expected to be widely used or to have broad impact.

- *Give GAO the same gift authority as other agencies*

Under the GAO Act, the Comptroller General would receive the same authority presently available to many agency heads to aid them in accomplishing their mission. Specifically, the Comptroller General would be authorized to accept and dispose of gifts given for the purpose of aiding and facilitating the work of the office. To implement this authority, we would promulgate regulations to ensure that no conflict or appearance of a conflict would arise when accepting any gifts.

- *Clarify financial disclosure requirements*

GAO is seeking a revision to the law regarding the financial disclosure requirements of its employees to address an unintended result of GAO's revised pay system that vastly increased the number of employees who must file a public financial disclosure report. Under GAO's new pay system, GAO employees no longer receive severable locality pay adjustments, as compensation differences in local markets are already taken into account in setting the pay ranges for GAO's various locations.

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The inability to exclude amounts formerly attributable to locality pay has roughly doubled the number of GAO employees who must file a public disclosure report. This amendment would remedy this situation by deducting these amounts from employees' annual rate of pay for purposes of determining who must file a public financial disclosure report. This would substantially reduce administrative burden while assuring that GAO's senior employees remain required to file a public financial disclosure report. The employees who no longer would be required to file a public report would still be required to file a confidential financial disclosure report for review within GAO under GAO's ethics rules.

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#### Remaining Provisions

In the draft bill that we transmitted to the committee last July, there were a number of provisions related to the Office of the Comptroller General and the positions of Comptroller General and Deputy Comptroller General. These provisions are also contained in the GAO Act, as introduced by Chairman Waxman. While we recognize the prerogative of the Congress to address these issues, we believe they should now be placed in abeyance pending confirmation of a new Comptroller General.

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#### Establishing and Maintaining Constructive Union Relationships

As you know, on September 19, 2007, our Band I and Band II Analysts, Auditors, Specialists, and Investigators voted to be represented by the International Federation of Professional and Technical Engineers (IFPTE) for the purpose of bargaining with GAO management on various terms and conditions of employment. GAO management is committed to working constructively with employee union representatives to forge a positive labor-management relationship.

Since September, GAO management has taken a variety of steps to ensure it is following applicable labor relations laws and has the resources in place to work effectively and productively in this new union environment. Our efforts have involved:

- postponing work on several initiatives regarding our current performance and pay programs;
- delivering specialized labor-management relations training to our Band III, Band III-equivalent, SES, and Senior Level staff;
- establishing a new Workforce Relations Center within our Human Capital Office that is responsible for providing employee relations and labor relations advice and services to GAO management and leadership;
- hiring a Workforce Relations Center director, who also serves as our chief negotiator in collective bargaining deliberations.

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- In addition, we routinely notify union representatives of meetings that may qualify as formal discussions, so that a representative of the GAO Employees Organization, IFPTE, can attend the meeting. We also regularly provide the GAO Employees Organization, IFPTE, with information about projects involving changes to terms and conditions of employment over which the union has the right to bargain.

As mentioned earlier, we were pleased that GAO and the GAO Employees Organization, IFPTE, reached a prompt agreement on 2008 pay adjustments. The agreement was overwhelmingly ratified by bargaining unit members on February 14, 2008, and we have applied the agreed-upon approach to the 2008 adjustments to all GAO staff, with the exception of the SES and Senior-Level staff, regardless of whether they are represented by the union. The agreement embodies the floor guarantee described earlier in this statement.

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### **Pursuing Our Commitment to Diversity and Fair Treatment for All Staff**

Recruiting, rewarding, and retaining a high-performing diverse workforce is critical if GAO is to successfully carry out its mission in support of the Congress. As you know, an effective GAO requires a first-rate workforce that is representative of our society and steeped in a wide variety of disciplines that can gather the facts and develop innovative solutions to both old and new problems challenging the federal government.

Meeting these challenges requires top leadership commitment, sustained effort, and a focus on continuous improvement. For example, we enhanced our professional development programs for entry level staff; initiated a formal agencywide mentoring program; and continue our strong support for flexible work schedules and teleworking to help GAO employees balance the demands of work and home. GAO's two most recent testimonies before this subcommittee outlined many other support measures and safeguards in place to help ensure fair and equitable treatment of all employees.<sup>4</sup>

As circumstances warrant, we also are committed to studying areas in depth where we have reason to believe that actions and improvements are needed. One such example is GAO's decision in August 2007 to contract with the Ivy Planning Group (Ivy) for an independent assessment of

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<sup>4</sup>GAO-07-872T; and GAO, *Human Capital: Building Diversity in GAO's Senior Executive Service*, Statement of Ronald A. Stroman, Managing Director, Office of Opportunity and Inclusiveness, GAO-08-273T (Washington, D.C.: Nov. 13, 2007).

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differences in the averages of African-American Analysts' performance compared with white Analysts and to provide the Ivy team with complete access to relevant data and staff. Shortly after the contract award, we provided Ivy with all requested data on appraisals; employee demographics; employee education and skills; and information on GAO's performance management, pay, development, and recruitment programs. Further, in response to additional Ivy requests after they conducted employee and management interviews and focus groups, we provided information related to hires and separations, employee feedback scores, and exit survey results.

We tasked Ivy with reviewing African-American and white Analysts' performance appraisal data from 2002 through 2006—which was the data available at the time Ivy's study began. In addition, we charged Ivy with assessing and comparing the skills, assignments, engagement roles, training, educational attainment, and recruiting practices at GAO for African-American and white Analysts, as well as with identifying best practices internally and externally that might enhance GAO's performance management systems and assist us in reducing any gaps. Ivy has been asked to recommend further steps that GAO can take to ensure fair, consistent, and nondiscriminatory application of GAO's performance management system.

Ivy has not yet finished its analysis and is not scheduled to issue a final report until April 2008. We are looking forward to receiving the final report and its recommendations. We will keep this subcommittee and other interested parties informed as we address the recommendations contained in this final report.

As we implement necessary improvements to address this issue, as well as others, we are fortunate to have a solid foundation upon which to build. For example, while we missed a few of the targets we established, our employee feedback survey scores, as shown in appendix I, for our "people" measures on staff development, staff utilization, leadership, and organizational climate have remained relatively stable even in a period of significant change. Further, we are proud that GAO was named second among large agencies across the federal government in the 2007 ranking of best places to work, which was issued by the Partnership for Public Service and the Institute for the Study of Public Policy Implementation at American University. In addition, when results were analyzed by demographic groups, GAO ranked second among female, African-American, and Hispanic employees.

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This overall positive work environment is one of many reasons GAO's dedicated and talented workforce is able to effectively serve the Congress and produce solid results for the American people.<sup>3</sup> Last fiscal year, our work contributed to hundreds of improvements in government operations and benefits, as well as \$45.9 billion in financial benefits or a \$94 return for every dollar the Congress invested in us. We also contributed to over 270 congressional hearings and provided hundreds of valuable products to assist the Congress on topics as wide ranging as food safety, border patrol, and tax compliance.

In closing, I want to reiterate our appreciation for the subcommittee's consideration of these legislative proposals to strengthen GAO. We look forward to continuing our constructive dialogue with the subcommittee on these and other issues in the future. Thank you for the opportunity to share our views. Mr. Chairman, I would be pleased to answer any questions that you or other Members of the Subcommittee may have at this time.

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<sup>3</sup>GAO, *Performance and Accountability Report, Fiscal Year 2007*, GAO-08-1SP (Washington, D.C.: Nov. 15, 2007).

## Appendix I: Agencywide Summary of Annual Measures and Targets

Performance measure	2003 actual	2004 actual	2005 actual	2006 actual	2007 target	2007 actual	Met/ not met	2008 target
<b>Results</b>								
Financial benefits (dollars in billions)	\$35.4	\$44.0	\$39.6	\$51.0	\$40.0	\$45.9	Met	\$40.0 <sup>c</sup>
Nonfinancial benefits	1,043	1,197	1,409	1,342	1,100	1,354	Met	1,150
Past recommendations implemented	82%	83%	85%	82%	80%	82%	Met	80%
New products with recommendations	55%	63%	63%	65%	60%	66%	Met	60%
<b>Client</b>								
Testimonies	189	217	179	240	185	276	Met	220
Timeliness <sup>b</sup>	N/A <sup>c</sup>	89%	90%	92%	95%	94%	Not met	95%
<b>People</b>								
New hire rate	98%	98%	94%	94%	95%	96%	Met	95%
Acceptance rate	72%	72%	71%	70%	72%	72%	Met	72%
<b>Retention rate</b>								
With retirements	92%	90%	90%	90%	90%	90%	Met	90%
Without retirements	96%	95%	94%	94%	94%	94%	Met	94%
Staff development	67%	70%	72%	76%	75%	76%	Met	76%
Staff utilization <sup>d</sup>	71%	72%	75%	75%	78%	73%	Not met	75% <sup>e</sup>
Leadership	78%	79%	80%	79%	80%	79%	Not met	80%
Organizational climate	71%	74%	76%	73%	76%	74%	Not met	75% <sup>f</sup>
<b>Internal operations</b>								
Help get job done	3.98	4.01	4.10	4.10	4.00	4.05	Met	4.00
Quality of work life	3.86	3.96	3.98	4.00	4.00	3.98	Not met	4.00

Source: GAO.

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Notes: Information explaining all of the measures included in this table appears in GAO Performance and Accountability Report, Fiscal Year 2007, GAO-08-1SP (Washington, D.C.: Nov. 15, 2007)—see the Data Quality and Program Evaluations section in Part II.

\*Our fiscal year 2008 target for financial benefits differs from the target we reported for this measure in our fiscal year 2008 performance budget in January 2007. Specifically, we decreased our financial benefits target by \$1.5 billion based on (1) our assessment of our past recommendations that were likely to be implemented in fiscal 2008 by federal agencies and the Congress and (2) the impact that our constrained budget might have had on the work that leads to financial benefits.

\*Since fiscal year 2004, we have collected data from our client feedback survey on the quality and timeliness of our products, and in fiscal year 2006, we began to use the independent feedback from this survey as a basis for determining our timeliness.

\*N/A indicates that the data are not applicable because we did not collect it from our client feedback survey this period.

\*Our employee feedback survey asks staff how often the following occurred in the last 12 months: (1) my job made good use of my skills, (2) GAO provided me with opportunities to do challenging work, and (3) in general, I was utilized effectively.

\*Our fiscal year 2008 target for staff utilization differs from the target we reported for this measure in our fiscal year 2008 performance budget in January 2007. We lowered the staff utilization target by 3 percentage points because we determined that, based on our past performance, the target was unrealistic, and we reset it at a level that is still challenging but more likely to be achieved.

\*Our fiscal year 2008 target for organizational climate differs from the target we reported for this measure in our fiscal year 2008 performance budget in January 2007. We decreased the organizational climate target by 1 percentage point because we determined that based on our past performance, the target was unrealistic, and we reset it at a level that is still challenging but more likely to be achieved.

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Mr. DAVIS. Thank you very much, Mr. Dodaro. And we certainly look forward to all of our follow-ups and follow-throughs.

As you know, pay adjustment has been at the top of the discussion list for a while now. And the subcommittee staff has been working on a pay adjustment provision for the fiscal year 2006 and 2007 for GAO employees who met expectations but did not receive them—that is, did not receive an across-the-board adjustment for those years.

You've expressed some position, but would you reaffirm your views on the retroactive vision that I have included in the legislation that I am going to introduce to address this problem, and also rearticulate for us your views on the across-the-board floor guarantee?

Mr. DODARO. I would be happy to, Mr. Chairman.

First, on the 2006 and 2007 payments for those people who didn't receive the across-the-board adjustment, we believe the discussions we've had with the subcommittee have been very fruitful. And we have arrived at a practical and reasonable approach for addressing that issue, should the Congress decide to legislate on that issue. We are pleased that it contains the necessary legal authorities and funding authorities for GAO to carry out that provision once enacted. And we would be very pleased to have this issue behind us and moving forward.

As it relates to the floor guarantee, we think this is a really solid approach going forward that preserves the intent of the pay-for-performance system at GAO but strikes a better balance with giving our employees some certainty going forward and a link to the executive branch.

So we are supportive of these proposals and hope that they are enacted.

Mr. DAVIS. Thank you very much.

As you know, last summer GAO contracted with the Ivy Group to study why African American employees at GAO were receiving lower ratings than their Caucasian counterparts. The Ivy Group found that not only were there disparities in the ratings between African Americans and Caucasians, but that GAO's dropping of two rated competencies in 2004, while not significant, were the two competencies that African Americans performed better on.

What do these facts tell us about GAO's performance management system, if anything? And once the Ivy Group completes its final report, what steps do you intend to take to address the concerns raised in the report?

Mr. DODARO. First of all, Mr. Chairman, this study is very important to GAO, and I am personally committed to making sure that we forthrightly address the recommendations out of the study.

Now, the competencies were realigned back in 2004, effective for fiscal 2005 ratings. We went from 12 competencies down to 8. That was largely based on input from our managers and our Employee Advisory Council, at that point in time, that the new system we had put in place in 2002 was burdensome and there was some overlap in the competencies.

Now, the competencies themselves, the performance standards and work activities were actually merged in with our competencies, so it wasn't eliminated. We did not have any reason to believe, at

that time, that it would have a negative effect on any particular group, but it was to streamline the system that we had in place at that time and respond to concerns that were fairly broad-based at that time in the agency.

Now, given the fact that Ivy has already raised this in their Task 1 briefing, I've already asked our human capital people to go back and take a look at what we could do. That competency system was validated by a large number of GAO people, and we may have some ability to make some changes to that system. And, of course, you know, we'll have to work with the union to make any further changes, but we are already looking at that issue.

Mr. DAVIS. We're going to have to go and vote. But before I do, let me ask you, how do you reconcile GAO's second-place position on the best-places-to-work ranking with the concerns employees expressed in the Employee Advisory Council's restructuring survey?

Mr. DODARO. Well, the best-places-to-work survey is based upon OPM questions that are asked throughout the Federal Government, and then there are comparisons made. And its questions we incorporate in the GAO employee feedback survey, so that we can be bench-marked against other agencies. They take a fairly broad view of the workplace and the workplace environment, and on that score we do very well. We ranked No. 2 in large Federal agencies across the Government.

Now, the Employee Advisory Council survey that was conducted was focused on some of the most controversial aspects of our changes, which was the pay system and the Band II restructuring. But it also had a section on organizational climate. And, in that section, the results on the issues other than pay were very consistent with what we received in an employee feedback survey.

It was also conducted before we reached the agreement with the union on 2008 pay adjustments and we developed this floor guarantee approach. And I also think, you know, in retrospect, if we would have had the floor guarantee in place for 2006 and 2007, while we would have had some issues to deal with, they wouldn't have been anywhere near as magnified as they were otherwise.

Mr. DAVIS. OK. So the controversy that, sort of, existed around those issues in all likelihood helped to pull down how people ranked the—

Mr. DODARO. In this particular survey that was just conducted at the committee's request by the Employee Advisory Council, I believe that was a contributing factor. There was some provision in there that asked about the COLA, and a lot of people felt it was unfair that wasn't applied to everybody going forward.

I'm not saying that would have resolved all the controversies, Mr. Chairman, but I do think it would have reduced the angst.

Mr. DAVIS. Mr. Keplinger.

Mr. KEPLINGER. Mr. Chairman, I also think that if we are successful in getting your legislation passed, it will be responsive to a number of the concerns identified in the EAC survey.

And I would add to what Gene said, and I would second it too, I think there is also a significant amount of pride amongst our work force in the work that they do, and that comes through in these surveys.

So, hopefully, we can deal with the problems that we've had, get those resolved and move forward.

Mr. DAVIS. Well, thank you both, gentlemen. We're going to have to recess for a minute and run and vote, and we'll be back.

[Recess.]

Mr. DAVIS. We will return to session.

I'm going to go to Ms. Norton. Mr. Marchant hasn't gotten back yet, and we will just go to Ms. Norton for her questions.

Ms. NORTON. Thank you, Mr. Chairman. I think this is a very important bill and one that you have done the kind of oversight that is respected before changes are made in existing legislation.

I don't have a great many questions for these witnesses. However, I would like to just say a word about the COLA adjustment, which has come up time and again in our hearings.

I saw the appropriation committee of the Defense Department adjust the COLA for DOD employees, some of whom, for various reasons, were captured by the same problems, because of the new pay system, as the GAO employees. So guess what? They went to one of the most powerful committees, subcommittees, in the Appropriation Committee, and they got their COLA.

I want to know if you see any justification—I indicated, when we were discussing the changes, that I had recommended for this bill to equate the kinds of independence that the appointing authority has in the executive branch with the kind of authority the Speaker and the minority ought to have here and in the Senate.

I must say that I don't—uniformity, for its own sake, doesn't work with me. But inequality doesn't work either. There are good reasons, sometimes, for changes, and if they are justified then, of course, it seems to me if they are functionally justified, they should occur.

Looking to the COLA, would either of you see any justification for making people who did not receive their COLA in the years that have been acknowledged without, at the same time, making these employees whole for the entire period? Could that possibly be justified?

Mr. DODARO. I—

Ms. NORTON. In other words, could you get a little bit pregnant? If you concede that you must make them whole for a couple years, aren't you already pregnant? Go ahead and have the baby.

Mr. DODARO. With regard to the 2006–2007 situation, we think we've worked with subcommittee staff and have come up with a really reasoned and practical approach for providing the cost-of-living adjustment to those employees who did not receive the cost-of-living adjustment at that time. That would be provided in a lump-sum payment to them, as well as their salaries adjusted going forward, and so their salaries would be brought up to the level going forward that they would have been assuming they had received those adjustments. So we think that's a reasonable—

Ms. NORTON. Excuse me, OK, don't—because reasonable people can disagree on what's reasonable. I just want to make sure we have on the record whatever justification is appropriate.

Now, 2006 and 2007 you believe are appropriate.

Mr. DODARO. Yes.

Ms. NORTON. You believe they are reasonable.

Mr. DODARO. Yes.

Ms. NORTON. That being the case, why is it not appropriate to make these employees whole for the entire period? I can understand you may be limited—

Mr. DODARO. Right, right.

Ms. NORTON [continuing]. In what you can do. If that's your answer, I would understand that. But is there any justification for not making these employees whole for the years that they did not receive their COLA if they should have received them—

Mr. DODARO. Right.

Ms. NORTON [continuing]. For the 2 years that you believe clearly they should have? I'm looking for a justification. I'm not looking for what was reasonable.

Mr. DODARO. Right, right.

Ms. NORTON. I was looking for why it was reasonable or why it is reasonable, if you think it is, to deny them their COLAs for the years that preceded it. It may have seemed reasonable at the time. I'm now saying—that's why I said "at this moment in time."

Mr. DODARO. Right, right.

Ms. NORTON. Could the Congress possibly justify giving back the COLA for 2 years—and, by the way, isn't this a part of the pension? Isn't COLA included in the pension? Your COLA is part of your wages and is included in your pension.

So you understand what I'm talking about here.

Mr. DODARO. Right, right.

Ms. NORTON. We're not talking just about people's salaries. We are talking about their pensions as well, their base pay.

Mr. DODARO. Right.

Ms. NORTON. So I'm saying, that considered, what is the justification? I'm not saying at the time there may have seemed justification.

Mr. DODARO. Right, right.

Ms. NORTON. At this point in time, people get 2 years. Is there any justification for saying you can have it for 2 years, but you cannot have it for the period, the entire period that you were denied your COLA?

And, if so, I want to hear the justification, specifically, not that it was reasonable. If your justification is it seemed reasonable at the time, we understand the difference, fine. What would be the justification now for making people partially whole?

Mr. KEPLINGER. Mrs. Norton, maybe I could take a crack at this.

When we considered these two issues of dealing with the past and the pay decisions that were made with respect to 2006 and 2007, as Gene mentioned before, we want to prospectively adjust their salary and we want to give them a lump sum.

The three principles that we brought to bear as we were talking internally and with staff about how to approach this is that we wanted to, one, have something that budgetarily we can afford; second, that it's administratively doable and not overly burdensome; and third, that it is fair.

Now, we have structured a proposal which, you know, in an ideal sense it may not be everything that everybody wants and every detail, but we think, on balance, it's a very fair proposal. And it also deals with the retirement issue, too, through directions to OPM to

include the prospective pay adjustments in our employees' high-3 going forward.

I hope that helps.

Ms. NORTON. Well, according to the staff memo, what we are doing is authorizing—seeks to provide an opprobrium for those employees who were denied all or part of their annual adjustment for 2006 and 2007 or both years.

Are those the only years—

Mr. DODARO. Yes.

Ms. NORTON. Perhaps that makes them whole, but—

Mr. KEPLINGER. Yes, those are the only 2 years.

Mr. DODARO. This takes care of everything in the past.

Ms. NORTON. Thank you.

Mr. DODARO. Yeah. Prior to that, Congresswoman, I'm sorry, I didn't understand either. Basically up to 2005, we were giving the same across the board as the executive branch.

Ms. NORTON. Only for those years.

Mr. DODARO. Only for those years. And the floor guarantee provision we're seeking that's also included in there—

Ms. NORTON. The what?

Mr. DODARO. It is a floor guarantee going forward; that would take care of the issue going forward as well.

We're hoping to never to talk about this issue again.

Ms. NORTON. Talk about putting an issue to rest.

Mr. DODARO. Yes, yes. That is our objective.

Ms. NORTON. So we are fully pregnant; the baby has been born.

Mr. DODARO. Yes.

Ms. NORTON. Thank you very much.

Mr. DODARO. As has been pointed out to me, I am not able to do that. [Laughter.]

But I am able to be empathetic, and I can try.

Ms. NORTON. Well, like every father, you all were very necessary. [Laughter.]

If you want to cutoff these metaphors, I'm perfectly willing to. [Laughter.]

The part of me that still teaches law enjoyed our conversation on the effort I'm seeking in the chairman's bill to equate what happens in the executive agencies with GAO as well. And there was some thought that maybe there were some agencies, smaller agencies, where the agency head may appoint the IG. Perhaps that is the case.

I must say I'm familiar with many agencies, having headed one myself, and am aware of no agency of any consequence where Congress hasn't appointed a GAO. And that may be because Congress looks at the size and importance of the agencies to public policy. Surely it wouldn't be the size alone, because agencies differ vastly in size.

But I do want to get on the record that, in terms of the kinds of work the GAO does, which depends upon your independence, would you believe that, for an agency of consequence, whose policy concerns were of importance to the public, that an independent IG would help it or assist it in being credible to the Congress of the United States and to the general public?

Mr. DODARO. We definitely support the IG concept and the principal. And we are prepared to have ourselves held to the same standards as any other agency. And we believe firmly in that process.

I mean, that is why we've had an Inspector General created administratively for over a decade. So we have voluntarily put that system in place, the way we have for many management principles and laws that are applied to the executive branch that don't normally apply to the legislative branch or GAO.

And so we are very committed to that. I mean, we have put forth the statutory IG provision in our bill in an attempt to further enhance the independence and autonomy of that position. And, you know, we're willing to entertain discussions about the best way to appoint that person to have credibility, you know.

There are only one political appointees, maybe two, in GAO all together. One is the Comptroller General position, which the Congress creates a list of at least three people with a congressional commission, sends names to the President; the President can ask for additional names but has to pick from that list. Now, that's different because we're in the legislative branch than it would be for just the President to pick somebody on their own, for a Presidential appointee in a legislative branch agency. So there are differences.

The only other political appointed position in the GAO has been Deputy Comptroller General, and that's been vacant for a while, because that has not worked, that process hasn't worked. And while we were originally seeking to change that process with this legislative proposal, given the departure of Mr. Walker we think those things ought to be held in abeyance for a while.

Mr. KEPLINGER. And, Mrs. Norton, I would be happy to supply the committee, for the record, the list of the entities in the executive branch—I don't want to pass judgment on whether they are or are not of any consequence at this moment—where the heads of the agencies point the IG.

In the legislative branch, the Architect of the Capitol, the Librarian of Congress and, I believe, the Public Printer all appoint the Inspector Generals in their institutions.

Mr. DODARO. And I'm certainly open to having consultation with our oversight committees as part of this process. I mean, I think that just makes sense, so that you have confidence in that individual.

Ms. NORTON. Well, I certainly want to commend the GAO for understanding that, when Congress hadn't appointed one, at the very least he should appoint one. And I do want to indicate I certainly have seen nothing to indicate that the lack of formal independence has affected the PAB or has affected the IG or has affected the Comptroller General. I really have not.

As I indicated to you, I am sick and tired of Congress waiting until something happens before it then runs to do the obvious. That, really, is all I'm about, because the chairman was doing a number of other things in the bill. We don't just shoot bills through here, that seem the appropriate time. I certainly don't think—far be it from me to say that the Architect of the Capitol, Library of Congress and the Public Printer are not agencies of consequence, but you will forgive me if I do not equate them with the Govern-

ment Accounting Office, which then gets to pass judgment on everybody in and the U.S. Government, much to their displeasure, because whenever the GAO is talking about you, it normally isn't saying anything you want to hear. [Laughter.]

So I must say, if those are the agencies, they tend to prove my point, that I—my own sense is that if a Member of Congress wants to require things of their constituents, we have an Office of Compliance, and it says we're going to apply the same laws to ourselves. Those of us who sit in stations of power of one kind or the other are most vulnerable, terribly vulnerable, if, in fact, we don't live up to the same standards or structure ourselves by the same standards.

So without meeting in fact-finding, I've sat in hearings and heard General Counsel testify about the employee matters. That seemed to me to be a straight-up-and-down counsel who looked at the law and just called it as she saw it.

So the last thing I'm saying is that I see some evidence, but I have to tell you, this committee is part of oversight and reform. The reason that we have oversight and reform, a whole committee on that, largest committee in the House, is precisely because there are so many things that blow up, and then it is our job to look at why it blew up. And then they say, why in the world didn't somebody do something about it? The reason is it wasn't broken. It wasn't broken.

In the global economy, the United States better figure out this is not a world of ours any longer. This is not about economics. But it is about the habit of the Congress of saying, unless it's broken, we aren't going to do anything about it. So I would like to do something about it this time.

And I thank you, Mr. Chairman.

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

Gentlemen, I think that concludes our questions for you. And so thank you very much, and we appreciate your being here.

Mr. DODARO. Thank you, Mr. Chairman.

Mr. DAVIS. We will now go to our second panel for the afternoon.

Panel two is Mr. Paul Coran. He is the chairman of the GAO's Personnel Appeals Board. The Personnel Appeals Board adjudicates personnel disputes involving employees or applicants to GAO, as well as monitors equal employment opportunities at GAO.

Ms. Anne Wagner is the General Counsel for the GAO's Personnel Appeals Board.

And I see that you are both standing, so I will just stand with you and administer the oath.

[Witnesses sworn.]

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

Thank you both for coming, and thank you both for being here.

Mr. Coran, we will begin with you. You've got 5 minutes to summarize your testimony. The yellow light indicates that you are down to 4. And, of course, the red light means that we've exhausted the time.

Thank you very much, and you may begin.

**STATEMENTS OF PAUL CORAN, CHAIRMAN, PERSONNEL APPEALS BOARD, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; AND ANNE WAGNER, GENERAL COUNSEL, PERSONNEL APPEALS BOARD, U.S. GOVERNMENT ACCOUNTABILITY OFFICE**

**STATEMENT OF PAUL CORAN**

Mr. CORAN. Good afternoon, Chairman Davis and Representative Norton. I am Paul Coran. I've served on the Personnel Appeals Board since January 2005, and I've been the Chair since September 2007. I'm honored to be here today before you to share my impressions of the Board's structure and processes.

The PAB is charged with all of the investigatory and adjudicatory functions of the MSPB, the EOC, the Office of Special Counsel, and the FLRA. As an adjudicatory body, the PAB must be independent, impartial, informed, effective and efficient. The Congress and GAO's employees and managers are entitled to no less.

One might ask how the PAB may entertain such broad jurisdiction, exist in the GAO's structure, and yet maintain strict standards of an adjudicatory body. The answer is that, in creating the PAB, Congress was very careful to design the Board, its jurisdiction and structure in a way that would maintain the requisite independence and be both efficient and effective.

I believe that the PAB is structured to and has consistently performed its statutory mission very well by providing a just forum for resolution of employment disputes and by providing independent oversight of equal employment opportunity at GAO for nearly 30 years.

My perspective I derive from serving a term in the so-called school of hard knocks. Before joining the PAB, I served for 36 years in Federal employment in labor law capacities in both the executive and legislative branches, as a neutral with the NLRB, the Department of Labor, the old Federal Labor Relations Council, and the Office of Compliance. And I served in advocate roles at two ends of the pole: as a president of a local labor organization and as a management attorney with the Department of State.

These experiences allowed me to observe and participate before an array of Federal-sector employment adjudication agencies with governmentwide jurisdiction. I've also had the opportunity to observe and participate before boards which are limited to the executive branch foreign affairs agencies.

In preparing for today, I reviewed the excerpts from last year's hearing and noted Representative Norton's concerns about Board members' independence, in particular how they are appointed. I would like to address those concerns.

The PAB's independence goes well beyond its separate physical location in a building closer to Capitol Hill than it is to GAO. It goes beyond its complete freedom to create its own personality, such as in its own report covers not having the iconic GAO blue covers. It goes beyond its ability to keep its employees in the GS, general schedule, pay system, while the rest of GAO became pay-banded. It goes beyond the fact that the PAB has its own logo and its own Web site.

In my 3 years with the PAB, I've had no reason to conclude anything but that my colleagues and I serve as totally free agents in meeting our statutory responsibility.

As part of the GAO, we enjoy the excellent logistical resources that GAO provides us for our administrative needs. In prior service, I have seen the small free-standing agency overburdened with having to provide for nearly all of its administrative needs. I am grateful that we are not so diverted from our mission.

At the same time, our autonomy evokes the sense of actual separateness throughout our staff and through the Board. I recognize that the appearance of independence can be as important as the actuality. While the Comptroller General appoints the PAB members, that act is the result of a nearly year-long collegial process.

I'm running short on time, and I want to summarize that process just by saying that the process is exhausting. Employees and their involvement is integrated throughout the process. And the Comptroller General may appoint the members, but it's only after this careful vetting process.

I'm sorry that I've gone past my time.

Mr. DAVIS. Go right ahead. You can finish up.

Mr. CORAN. Oh, OK.

I'd like to point out the people with whom I serve, which is indicative of the quality of appointments through this process. Throughout the history of the board, they have all been labor and employment law specialists. Some have represented management, some been employee advocates, some have been neutral. I, myself, have moved across those roles. But I've never worked with anyone on the Board who would ever serve in a situation where doctrinaire policies govern rather than applying the rule of law and equity to cases on an individual basis.

I do believe that the Board has fulfilled its function through its decisions and its oversight on EEO matters throughout its almost 30 years of existence. And I would be pleased to answer any questions the committee may have. Thank you.

[The prepared statement of Mr. Coran follows:]

**Before the  
House Committee on Oversight and Government Reform  
Subcommittee on Federal Workforce, Postal Service and the District of Columbia**

Hearing on H.R. 3268, "Government Accountability Office (GAO) Act of 2007"  
March 13, 2008

Statement of Paul M. Coran, Chair  
Personnel Appeals Board, GAO

I would like to thank Chairman Davis, Ranking Member Marchant, and members of the Subcommittee on Federal Workforce, Postal Service and the District of Columbia for the opportunity to testify on the "Government Accountability Act of 2007" and the role of the Personnel Appeals Board (PAB or Board) of the U.S. Government Accountability Office (GAO). I have served as Chair of the PAB since September 2007, and as a member of the Board since January 2005. This statement presents a broad outline of the Board's structure and processes established pursuant to the GAO Personnel Act of 1980, as amended (GAOPA).

Overview of PAB Structure and Processes

Creation of the PAB

The Personnel Appeals Board is an independent entity. It was established in 1980 as part of a separate personnel system Congress created for GAO pursuant to the GAO Personnel Act. As reflected in the statute's legislative history, the Board's founding grew in large part from concern over the inherent conflict of interest in GAO's role as auditor of executive branch agencies while some of those agencies maintained regulatory responsibility over GAO's personnel system. Both the statute and its legislative history demonstrate an intent to preserve the basic civil service character of employment at GAO, while allowing some additional flexibility in the personnel system and providing relief from the possibility of conflict of interest in auditing agencies that had authority to review GAO employment decisions. The Committee Report accompanying the GAOPA described the "cornerstone" of the statute as the "creation of a GAO Personnel Appeals Board to handle appeals from such matters as adverse actions, prohibited personnel practices, union elections, determination of bargaining units, unfair labor practices and discrimination appeals. . . . In this way the employees of the GAO retain all the rights enjoyed by employees in the executive branch, while at the same time, the conflict of roles is eliminated." H.R. Rep. 96-494, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. at 5-6 (1979).

The GAOPA recognized the many important safeguards GAO employees enjoyed under the Civil Service system and continued those protections in the new independent system under the PAB's jurisdiction. Thus, GAO employees have enjoyed a long and continuous history of coverage under laws designed to protect civil servants, through a system that embodies the merit principles that apply in the executive branch, guards against prohibited personnel practices, prohibits employment discrimination, bans unlawful political activity, and protects employee rights with respect to labor organization.

The dual purposes of the GAO Personnel Act—authorizing the establishment of an independent personnel system and the new PAB to oversee that system—were recognized early in the PAB's history by the United States Court of Appeals for the District of Columbia Circuit, which described the relationship between the two as follows:

Congress sought to solve GAO's conflict of roles problem by granting the GAO broad authority to manage its own workforce. But, at the same time, Congress also sought to guarantee employee rights by establishing an independent, internal board available to enforce and adjudicate those rights.

*GAO v. GAO/PAB*, 698 F.2d 516, 523 (D.C. Cir. 1983).

The statute also provides for the Board to have both an investigative as well as adjudicative function. In a recent case, the D.C. Circuit upheld the independence of another internal board against a challenge based on the entity having the authority to both investigate and adjudicate labor disputes. *American Federation of Government Employees v. Gates*, 486 F.3d 1316, 1329 (D.C. Cir. 2007), *cert. dismissed*, 2008 U.S. LEXIS 1219 (Feb. 6, 2008).

#### Statutory and Regulatory Safeguards for the Board's Independence

##### ▶ Selection of Board Members

The GAOPA together with GAO's implementing order establish an inclusive process for providing the Board with experienced and independent members. The statute requires that individuals selected as Board members are not current or former GAO employees; have demonstrated ability, background, training and experience; and are able to devote sufficient time to disposing of cases in an expeditious fashion. Candidates who are recommended by organizations whose members are experienced in adjudicating or arbitrating personnel matters must be considered and GAO employee organizations must be consulted during the selection process. In addition, the statute provides for Congressional participation in the selection process through consultation with

designated members of Congressional committees having legislative jurisdiction over GAO's personnel management system.

GAO's internal Order (2300.4), *Personnel Appeals Board Vacancies*, sets out a detailed process for the appointment of Board members. This involves a wide-ranging distribution of the vacancy announcement, including organizations whose members are experienced in the arbitration or adjudication of personnel matters. A screening panel composed of senior management officials, employee representatives and a Human Capital Office representative determines the best qualified candidates from among the qualified applicants. An interview panel, comprised of screening panel members and including an employee representative, conducts personal interviews and provides the results to the full screening panel. The screening panel recommends one or more candidates to the Comptroller General, who makes an appointment from among the recommendations. The appointment is for a five year non-renewable term that may, under certain circumstances, be extended for up to six months.

In seeking to establish an independent personnel system for GAO employees, the drafters of the GAO Personnel Act were also mindful of the need to maintain the Board's independence from the Agency. As required by statute, the Board selects its own Chair from among the members. 31 U.S.C. §752(a). Cognizant of the concept that the power to remove is incident to and derives from the power to appoint, Congress took the removal authority from the selecting official and placed it with the Board. Under the relevant provision of the statute, which has remained unchanged since the passage of the GAOA, a majority of the Board may remove a member for inefficiency, neglect or malfeasance, subsequent to the member being given notice and the opportunity for a hearing. 31 U.S.C. §751(d). This "good cause removal constraint" is a judicially recognized indicia of an independent board. *American Federation of Government Employees v. Gates*, 486 F.3d at 1329.

The current Board and immediate past Chair typify the backgrounds of those who have served on the PAB over nearly three decades. A Federal retiree, I bring 36 years of Federal employment law experience to the position of Chair, including service at the National Labor Relations Board (NLRB), U.S. Department of Labor, Federal Labor Relations Council, U.S. Department of State, and as Deputy Executive Director for the U.S. Senate, Office of Compliance. The immediate past Chair, also a Federal retiree, compiled 32 years of employment law experience as a Civil Service Commission hearing officer; an administrative judge, appellate counsel and a manager with the Merit Systems Protection Board (MSPB); and Deputy General Counsel and Regional Director of the Washington, DC Regional Office at the Federal Labor Relations Authority (FLRA). The Vice Chair currently serves as Associate Vice Chancellor for Labor Relations for the Minnesota State Colleges and Universities, and has prior experience as an attorney with the NLRB, an arbitrator for the U.S. Postal Service and its unions, general counsel for the United Electrical, Radio and Machine Workers of America and an attorney advisor for the U.S. Patent and Trademark Office and the MSPB, and Director of Labor Relations and Collective Bargaining for the District of Columbia. The third current member, a Federal retiree with 31 years of experience, served with the Federal Labor

Relations Council and in various capacities with the FLRA from its inception in 1979 until his retirement. He served as Chief Counsel for several FLRA members, represented the FLRA in the United States Supreme Court and various United States Courts of Appeals, and also served as Acting Director of the Collaboration and Alternative Dispute Resolution Office and Assistant General Counsel for Legal Services.

► Selection of the PAB General Counsel

Under the GAO Personnel Act, the Chair of the PAB selects an individual to serve as General Counsel of the Board, and the Comptroller General is required to appoint the individual selected by the Board Chair. The statute provides that the General Counsel "serves at the pleasure of" the Chair. 31 U.S.C. §752. Other than the formal, ministerial appointment of the Chair's selectee, the Comptroller General has no role in the selection or retention of the Board's General Counsel.

Authority of the Personnel Appeals Board

► Adjudication

The Personnel Appeals Board's authority combines the adjudicatory functions of its executive branch counterparts: the Federal Labor Relations Authority (FLRA); the Merit Systems Protection Board (MSPB); and the Equal Employment Opportunity Commission (EEOC). The GAO Personnel Act charges the PAB with adjudicating disputes, issuing decisions and ordering corrective or disciplinary action, where appropriate, in cases involving employee appeals, prohibited personnel practices, discrimination, and prohibited political activity with respect to GAO and its employees. In addition, the Board has authority over cases involving a decision of an appropriate unit of employees for collective bargaining, the election or certification of such a collective bargaining unit, and resolution of unfair labor practice cases.

The statutory basis of the PAB's combined enforcement authority over merit system violations, equal employment opportunity infractions, and labor-management relations was also the subject of early review by the United States Court of Appeals for the D.C. Circuit. In the context of a GAO challenge to the Board's regulations, the Court noted that the GAO Personnel Act created a "hybrid board, with the combined functions of several boards and with a statutory procedural design that is purposely sparse in detail." *GAO v. GAO/PAB*, 698 F.2d at 531. See also, H.R. Rep. No. 96-494, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. at 5-6 (1979). The decision rejected the argument that the Board was to precisely follow the procedures used by its executive branch counterparts, and concluded that the legislative history demonstrated "a legislative view that combining the functions of the various executive personnel agencies would sufficiently guarantee employees of the GAO the rights and remedies enjoyed by employees in the executive branch. With these substantive protections guaranteed, Congress left to the PAB the discretionary

task of formulating appropriate procedures and a proper role for the General Counsel.”  
*GAO v. GAO/PAB*, 698 F.2d at 531.

#### Implementing Regulations for Adjudication of Employment Disputes

The GAO Personnel Act authorizes the PAB to “consider and order corrective action” in cases arising from employee appeals of adverse actions, prohibited personnel practices, prohibited political activity, a decision of an appropriate unit of employees for collective bargaining, an election or certification of a collective bargaining representative, a matter appealable under the labor-management relations program (including unfair labor practices), an action involving prohibited discrimination, and any additional issues about GAO personnel that the Comptroller General decides by regulation that the Board should resolve.

Through its implementing regulations, the PAB established a two-tier adjudicatory system. Cases ordinarily are heard in the first instance by a single member serving as administrative judge. An aggrieved party may request reconsideration of an initial decision and/or may appeal the initial decision to the full Personnel Appeals Board. The regulations also provide for *sua sponte* review by the full Board, in the absence of a timely appeal, if a majority of the Board deems it appropriate. A decision of the full Board disposing of a matter is considered a final decision.

Pursuant to the GAO Personnel Act, such final decisions of the Personnel Appeals Board may be appealed to the United States Court of Appeals for the Federal Circuit. 31 U.S.C. §755(a).

Under the Board’s mediation program, either party may request mediation at any stage of the investigatory or adjudicatory process. In addition, Board procedures allow for and encourage settlement at any stage in the process.

#### ▶ Investigation and Prosecution by the PAB Office of General Counsel

The GAO Personnel Act enumerates four distinct functions for the General Counsel of the Personnel Appeals Board:

The General Counsel shall—

- (A) investigate an allegation about a prohibited personnel practice . . . to decide if there are reasonable grounds to believe the practice has occurred, exists, or will be taken by an officer or an employee of the Government Accountability Office;
- (B) investigate an allegation about a prohibited political activity. . . .

- (C) investigate a matter under the jurisdiction of the Board if the Board or a member of the Board request; and
- (D) help the Board carry out its duties and powers. [31 U.S.C. §752(b)(3).]

The Board's implementing regulations further delineate the role of the PAB Office of General Counsel (PAB/OGC) by requiring that the PAB/OGC offer representation to an individual if the investigation leads to the conclusion that "there are reasonable grounds to believe that the charging party's rights" under the GAOPA have been violated. 4 C.F.R. §28.12(d)(1).

In addition to the investigation and prosecution of matters brought by a charging party, the Board's regulations allow the General Counsel to conduct an investigation and, if appropriate, to bring a corrective action proceeding when information comes to his or her attention that suggests that "a prohibited personnel practice may have occurred, exists or is to be taken." (4 C.F.R. §28.131). The Board crafted this regulation to align PAB/OGC procedure more closely with that of the executive branch where allegations of a prohibited personnel practice, standing alone, may be raised by the Office of Special Counsel. The provision authorizes the PAB General Counsel to act in a role similar to that of the Special Counsel by investigating and prosecuting an alleged prohibited personnel practice in the absence of a GAO employee seeking personal relief.

Thus, through the statutory and regulatory scheme, the PAB Office of General Counsel protects the employment rights of GAO employees by performing the investigatory and prosecutorial functions of its executive branch equivalents, including investigation and, where appropriate, prosecution of cases involving allegations of workplace discrimination, prohibited personnel practices, and unfair labor practices.

Recognizing the statutorily defined role for its General Counsel to "decide if there are reasonable grounds to believe" that a prohibited personnel practice is involved in a given case, the Board's regulations prescribe general procedures for the operation of the PAB/OGC consistent with that prosecutorial independence. For example, the Board is not privy to the statement of results of investigation issued by the PAB/GC to the charging party at the close of an investigation, and the regulations prohibit introduction of such statements into evidence. 4 C.F.R. §28.12(c).

An important corollary function of the PAB/OGC's investigative and prosecutorial authority is to provide advice and counseling to employees about their rights under the merit system, equal employment opportunity and labor-management relations statutes.

► Oversight of Equal Employment Opportunity at GAO

The GAOPA provides for the Board to have "the same authority over oversight and appeals matters as an executive agency has over oversight and appeals matters." 31 U.S.C. §732(f)(2)(A). Pursuant to that grant of authority, the Board established an

Office of EEO Oversight to conduct studies of GAO's policies, procedures, and practices relating to discrimination in employment. The Board solicits ideas for oversight topics from employee representatives and from the Board's General Counsel, who has significant contact with and input from individual employees. With the recent certification of the GAO Employees Organization, IFPTE, suggestions will also be solicited from elected Union officials at GAO. At the conclusion of its studies, the Board issues evaluative oversight reports containing its findings, conclusions, and recommendations for change to the Agency. The Board's oversight reports are available on the Board's website, [www.pab.gao.gov](http://www.pab.gao.gov), and current oversight activity is described in the Annual Report of the Personnel Appeals Board, which also is published on the website.

Thus, through both the oversight and adjudicatory functions, the PAB provides an important backstop for the rights of employees within GAO's independent personnel system. The dual functions were noted and endorsed during the mid-1990s by GAO's Acting General Counsel in hearings before the Senate Committee on Governmental Affairs:

Our Personnel Appeals Board functions in two ways: first, it resolves cases that are brought by aggrieved employees, and in that sense it is truly an independent body, favoring neither the employee nor the agency. . . .

In deciding disputes, the Board is commonly viewed at GAO as a fair and impartial body, contributing to an atmosphere that promotes effective employer-employee relations.

There is a whole other role that our Personnel Appeals Board fulfills for us, and that is, it provides oversight of the civil rights laws as they are applied at GAO.

*Congressional Coverage Legislation: Applying Laws to Congress, Hearing Before the S. Comm. on Governmental Affairs, 103d Cong., 1<sup>st</sup> Sess. 53 (June 29, 1994) (Comm. Print 1995) (testimony of Robert P. Murphy).*

The mission described by the Acting General Counsel—to provide independent adjudication of employment disputes as well as independent oversight of equal employment opportunity at GAO—guides the Personnel Appeals Board today, as it has over the 28 year history of this institution.

#### PAB Administrative Matters

Based on a mid-1980s agreement between the Personnel Appeals Board and GAO, the PAB is located outside of the GAO Headquarters building to help ensure in fact and in perception the Board's independence and to guarantee the privacy of employees conducting business with the Board. Since the early 1990s the Board has been on First

Street, NE, with the Board and its Office of General Counsel occupying two adjoining suites. As an independent entity within GAO, the Board receives its funding from the Agency. This includes, in addition to salaries and rent, such things as cutting edge information technology systems, books, supplies, contracting services (*e.g.*, for court reporting), training and travel funding. Early in the Board's existence, GAO and the PAB reached an agreement that the Board would have administrative autonomy from the Agency within the confines of fiscal responsibility. Over the ensuing years the Board has consistently received all the funding and staffing it has required. Because the amount of work that the Board has at any given time is varied, staffing issues are more challenging than they would be in a more traditional office setting. The Board has used a combination of full time, part-time, and intermittent employees over the years. Recently it hired an employee on a three year appointment and, after one year, when the future workload did not appear to be diminishing, the person was converted to permanent.

Thank you for the opportunity to participate in these hearings as changes are considered that may have an impact on the employment rights of individuals at GAO and the enforcement of those rights through the Personnel Appeals Board. The PAB would be pleased to provide any further information that the Subcommittee would find helpful.

**Before the  
House Committee on Oversight and Government Reform  
Subcommittee on the Federal Workforce, Postal Service  
and the District of Columbia**

Hearing on H.R. 3268, "Government Accountability Office (GAO) Act of 2007"  
March 13, 2008

Supplemental Statement of the  
Personnel Appeals Board, GAO

The Personnel Appeals Board offers this supplemental statement to the testimony provided to the Subcommittee on Thursday, March 13, 2008 by PAB Chair Paul M. Coran. The Board wishes to clarify its position on the question posed as to whether it objected to having the leadership of Congress appoint Board members and the Board's General Counsel. The PAB recognizes and respects the authority of the Congress to fashion appointment authority as it deems fit. As a result, the PAB does not object to the Congress exercising its prerogative. However, the Board does not support any change in the process of appointment of Board members and the Board's General Counsel.

Mr. DAVIS. Thank you very much.  
Ms. Wagner.

**STATEMENT OF ANNE WAGNER**

Ms. WAGNER. Thank you, Mr. Chairman. Good afternoon.  
Good afternoon, Mrs. Norton.

I am here at your request, Mr. Davis, to answer your questions concerning the Office of General Counsel's investigations into a number of charges that have been filed with the PAB General Counsel's Office dealing with GAO's pay system.

As a preliminary matter, I would just like to reiterate what I had stated in my previous testimony before the subcommittee, that the PAB General Counsel, by statute and regulation, conducts investigations into charges that are brought before it, in order to make a reasonable-grounds determination as to whether a violation has been committed and, if so, to offer representation to the charging party, to adjudicate that claim before the Personnel Appeals Board.

Therefore, the entire thrust for our investigation is really directed at determining whether that offer of legal representation is to be made.

The ultimate decisionmaking with regard to those claims is, of course, statutorily committed to the Personnel Appeals Board itself, which makes findings of fact and draws conclusions of law with regard to the claims.

With regard to the status of the investigations, I would point out that there were 274 charges that were filed in toto dealing with various aspects of the GAO pay system. These charges can generally be characterized as having challenged a market-based pay system that was established at GAO, the elimination of the 2006 and 2007 annual adjustment, otherwise known as the COLA.

The charges also raised the question or raised claims as to the deviation of the GAO COLA in 2006 and 2007 from that which was accorded the executive branch employees under the GS schedule.

Some of these charges also challenged the use of a standardized ratings score in calculating the performance-based compensation that is afforded employees at GAO.

In addition, some of these charges dealt with the calculation of locality pay, the use of a "speed bump" with regard to some of the band-level pay ranges, the lack of uniformity in the rating system across the teams at GAO, as well as some challenge to the Band II restructuring decisions.

In addition, there were 14 individuals who challenged the pay decisions based on claims of discrimination. That is, some of them have alleged that the pay decisions were unlawful based on discrimination due to age, race, as well as sexual orientation.

Since these charges have been filed, eight individuals have withdrawn, which has left us with 266 charges currently pending in our office in investigation.

Our office has now completed its investigation, and I am particularly sensitive at this point to enter into any public disclosure with regard to our preliminary assessment as to the merits of any or all of those claims. However, the question as to the Comptroller General's statutory authority to eliminate the COLA entirely in 2006 and 2007 was a question that was raised as part of the Band II

restructuring cases that my office handled last year which settled and which was the basis of the testimony that I gave last year. So I do feel—I don't feel constrained with regard to any issues of confidentiality in discussing that issue with you today.

My determination with regard to the statutory authority question has not changed since last year. I do believe that the plain language as well as the legislative history of Public Law 108-271 manifestly supports the conclusion that the Comptroller General lacked statutory authority to eliminate the COLA entirely.

That said, and with due regard for the rights of the employees whose claims are still pending in our office and still under investigation, I would be more than happy to answer any of the questions that you have with regard to the cases that we are handling.

Mr. DAVIS. Thank you very much, and thanks to both of you.

[The prepared statement of Ms. Wagner follows:]

**Before the House Subcommittee on the  
Federal Workforce, Postal Service, and the District of Columbia**

Statement of Anne M. Wagner  
General Counsel  
Personnel Appeals Board, GAO

March 13, 2008

Good afternoon, Chairman Davis, and members of the subcommittee. At your request, I am here today to address questions you may have regarding my Office's investigation into allegations that the Government Accountability Office (GAO) unlawfully deprived some of its employees of pay to which they were otherwise entitled. As a preliminary matter, however, I would appreciate the opportunity to address my role and that of the Personnel Appeals Board with regard to this matter.

In enacting the Government Accountability Office Personnel Act (GAOPA), 31 U.S.C. 731 *et seq.*, Congress created the Personnel Appeals Board (PAB or Board) with jurisdiction to adjudicate adverse actions and prohibited personnel practices, among other things. Under the GAOPA and the Board's implementing regulations, the Board's Office of General Counsel (PAB/OGC) investigates charges filed by parties alleging a violation of their statutory rights. Where reasonable grounds exist to believe that such a violation has occurred, the General Counsel offers to represent the charging party in adjudicating the claim before the PAB. The charging party may accept the offer, or decline and proceed to the Board *pro se* or with some other representative. If reasonable grounds do not exist to support the claim, and the PAB General Counsel does not offer to represent, the charging party may still proceed to the Board with the claim. However, the PAB General Counsel has no role in the creation or implementation of policy at GAO other than to comment on proposed agency orders. More importantly, while the PAB/OGC is empowered to prosecute claims before the Board, the ultimate adjudicatory function remains with the members of the PAB.

In January, 2006, GAO provided some of its employees a 2.6% across-the-board annual adjustment to permanent pay, but denied 308<sup>1</sup> employees - all of whom had satisfactorily met performance expectations - the same annual increase. In 2007, GAO denied 139 GAO employees of the 2.4% annual adjustment. Since these actions were taken, 274 individuals filed with the PAB/OGC challenging GAO's decision to abolish their annual cost-of-living adjustments in 2006 and/or 2007.

In general, the charges filed with the PAB/OGC allege that GAO committed certain prohibited personnel practices in (1) instituting its market-based pay system; (2) eliminating the 2006 and 2007 annual adjustments for employees who performed at a satisfactory level; (3) setting the 2006 and 2007 annual adjustment provided GAO employees at a rate below that given executive branch employees under the General Schedule; and (4) calculating performance-based pay based on the standardized rating score. Some of these employees also challenged the

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<sup>1</sup> These included 14 Band III, 5 Band IIB, 236 Band IIA, and 53 Band I employees.

formula for calculating locality pay, the use of a so-called “speed bump” to delay employees from reaching the pay cap, the lack of uniformity in the rating system across teams, and the Band II restructuring. In addition, at least fourteen of these employees indicated that they believed the pay decisions evidenced discrimination based on one or more of the following improper bases: age, race, and sexual orientation.

Because our investigation in these cases has not been completed, I believe that it could prejudice the rights of these employees to disclose publicly our preliminary assessment of the merits of most of these claims. However, because the issue of the Comptroller General’s statutory authority to abolish the annual adjustment was implicated by the Band II restructuring cases that were settled last year, and because I have previously testified before this Subcommittee regarding my legal analysis as to this claim, I am not similarly constrained with regard to discussing this issue. Specifically, I concluded that there were reasonable grounds to believe that the Comptroller General’s statutory authority with regard to setting the annual adjustments of employee pay under Public Law 108-271, sec. 3(a)(3) did not encompass the discretion to deny the adjustment altogether to employees whose performance was at a satisfactory level. In this regard, both the plain language and legislative history of the statute readily reflected Congress’ intent that the Comptroller General would provide GAO employees who were performing at acceptable levels some annual pay adjustment.

With due regard for the rights of employees whose claims are still pending before the PAB, I am prepared to answer your questions.

Mr. DAVIS. As you know, the subcommittee staff has been working on pay adjustment provisions for the fiscal year 2006 and 2007 for GAO employees who met expectations but did not receive an across-the-board adjustment for those years. What I would like to know is your views on the retroactive provision that I have included in the legislation that I will introduce to address the problem and also your views on the across-the-board floor guarantee provision that will ensure that, in future years, GAO employees will get the general schedule annual pay adjustment.

Ms. WAGNER. Mr. Chairman, I have to say that I don't have a—it would be entirely speculative to pass judgment or to address the questions directly.

I was given a draft proposal, proposed language, Friday or Monday. I raised concerns about whether or not the language as it was given to me at that point would fully redress the claims with regard to the COLA. I don't—I have not seen any subsequent revisions, if, in fact, there have been. At that point, if there have been revisions, I certainly would be happy to review that and provide you with my assessment as to whether that would redress fully the claims concerning the COLA.

Mr. DAVIS. All right. Let me ask you, also, what drives if you—many of the appeals that you get? Many of the appeals that come before the Board? I mean, what do you think actually drives them or cause the individuals to appeal?

Ms. WAGNER. I think there are two aspects to that question, the first being what drives people to our office filing a charge, and then what would compel them to take a case forward to the Board.

I think that in my short experience as the General Counsel at the Personnel Appeals Board, I have seen that employees uniformly come to our office because they genuinely feel that they have—somehow, their rights have been violated or that they have been wronged in some way. If they can't articulate specifically how their rights have been violated, I find that perfectly understandable, but it is genuinely that they feel that they have been wronged.

After we have had an opportunity to do an investigation and to examine the factual and legal grounds for that, their claim, they then have to step back and analyze whether there is a viability from a legal standpoint in terms of going forward. That is assuming, you know, whether or not we offer to represent them or not.

And at that point, I think that—again, I can only speculate—but I suspect that the extent to which individuals take those cases forward or want to take them forward is probably a function of a number of factors: how strong the case is, what personal toll they anticipate this having on them.

Mr. DAVIS. Do you feel that passage of the provisions relative to the claims before the PAB that pertain to the denial of across-the-board increases for 2006 and 2007 would decrease the number of appeals that would in all likelihood come before the Board?

Ms. WAGNER. Again, without having the language to—having really reviewed the language that may be currently under consideration, if I could simply state more sort of broadly and generally. If the legislation that is being proposed plainly manifests congressional intent to make these individuals whole with regard to their

annual pay adjustments, then I think the—one could say that much of the relief that the employees might have gotten through the adjudicative process would have been afforded them through the legislative process.

Mr. DAVIS. Thank you very much. I have no further questions.

Ms. Norton.

Ms. NORTON. Could I have your view, if a system may be used to determine job-related matters, such as promotion, for example, does that system have to be validated?

Mr. CORAN. Representative Norton, we only get it at the Board level after it goes through the General Counsel's investigative process. We get live cases where the employee has exhausted the administrative process and is—either the General Counsel represents the employee, if the employee accepts, or else the employee comes forward.

And what you are bringing up is a question of possible or legal failing of a charge. Someone may claim that the standards by which they were not promoted do not—they have an adverse impact and a prescribed basis, and they haven't been validated. That could be a case that could properly be brought before the Board and would have to be adjudicated.

Ms. NORTON. I didn't ask you about the outcome. I asked you about the standard. I am asking about the standard of validation of matters used for various decisions and an employee's work have to be validated. I am not asking you for the outcome. Obviously, they have to show whether or not they are job related. I am asking validated. Of course, validated means job related.

Mr. CORAN. I would be speaking just personally and not for the Board. But from my dealing in these cases, particularly at the State Department, where there was a women's class action where the written examination had an adverse effect on women and it couldn't be shown to be strictly job related, the Department settled that case because the matter hasn't been validated. Yes.

Ms. NORTON. Thank you.

Ms. Wagner, isn't that the current state of the law, that terms and conditions used for such matters as promotion—I just give an OA system of ratings, you can name it, that—that, subject to challenge, if in fact the entity could be a private employer or Federal agency cannot validate the use of the particular system?

Ms. WAGNER. The question as to whether—what factors must be taken into account with regard to—

Ms. NORTON. Now, don't answer another question I wasn't asking you. I wouldn't begin to ask you what factors. I'm asking you a conclusion of law, based on what I presume you understand about the existing case law.

That is all Mr. Coran gave me. He couldn't give me anything pertaining to a specific case.

If I were to ask a Supreme Court Justice, do you—what does—a conclusion of law, he could probably tell me what the law is. What applied to a specific fact, he couldn't tell me anything because you have to look at that set of circumstances.

I am simply asking whether the factors that an employer uses, public or private, to make judgments about major aspects of a person's employment such as promotion or how the person's rating—

you can name it. I don't know what it is, because I don't know what job I am talking about yet. I am simply asking. The bottom-line question is, would not that system have to be validated as a matter—does not the case law show that?

Ms. WAGNER. The case law talks specifically in terms of a Title 7 challenge to a personnel action. Oftentimes, the party will look to whether the factors were validated. I don't think that the law supports the concept that there is any one particular method for validating a particular system, and the only reason why I was talking—

Ms. NORTON. I will grant you that. I wouldn't ask you about any of the specifics of validation. It is a very technical process. It varies from job to job. It is a very difficult process. I am simply trying to ask the bottom-line question about validation itself.

Ms. WAGNER. I think that it would—it is reasonable to say that any decision, whether it is a promotion or pay, would have to be—arise out of a system that is valid.

Ms. NORTON. That is all I am asking.

Let me understand—I understand your role, Mr. Coran. Your role, obviously, is much like the adjudicatory role of any body, of any similar body, for example, in the executive branch, where you sit in judgment and you wait for the specific cases to come before you.

Could I ask whether the General Counsel renders advice to anybody other than the PAB? Who renders advice to the Comptroller General?

Ms. WAGNER. The PAB General Counsel does not render advice to the Comptroller General, and I would assume that the Office of General Counsel at GAO provides—

Ms. NORTON. So they have their own General Counsel?

Ms. WAGNER. Yes.

Ms. NORTON. Could I ask you—Ms. Wagner, I think it is probably the case—and I can't find a way out of this. Apparently, 12 employees did file for the PAB and did get a remedy; and, of course, that left everybody else out, and they didn't get a remedy. They hadn't filed. That is why this action here has been necessary, to make those people who did not file whole.

Is there anything that could have been done so that we did not have to go through this laborious process? When there were 12 people who had shown for the class, there was an error made and most of the class was left out because they haven't filed—

Now, obviously, we are in Federal court. There is ways to deal with those things. It is pretty formal, class actions and the like. But here you have this anomalous situation where the PAB had found, I believe, that—I believe you had argued, I believe you had argued that the Comptroller General lacked the authority to deny the COLAs. I believe Mr.—the PAB found to that effect and that, as a result, 12 people who filed, they settled before it went to the PAB.

Ms. WAGNER. Yes—

Ms. NORTON. You argued, and then they settled. Is that it? You made the—you made the case that you believed he—he, the Comptroller General, lacked the authority. At that point, a settlement occurred. Is that how?

Ms. WAGNER. If I can just address what I believe is the underlying concern, which is why the relief wasn't extended more broadly from the 12 to the rest of the 308 individuals who were denied COLA in 2006.

At the time, that the 12 individuals—actually, there were more. But at the time those individuals filed, the case, what they were challenging, the personnel decisions that they were challenging had to do with the restructuring. They all arose out of the split of the Band II analysts and specialists work force. That—one of the effects of the split for some of those people was the elimination of their COLA because they, having been placed in a Band II A, they capped out and then, therefore, were denied a COLA.

But the fundamental thrust of those cases was then, and remained throughout, whether this restructuring process itself was valid and whether those individuals—I mean, assuming—and, ultimately, the case—ultimately, though, the decisions had to do with whether those individuals were demoted. And the factors that were taken into account in that process with regard to whether those 12 individuals were demoted not only took into—not only involved sort of general policy decisions that the Comptroller General made but, ultimately, came down to their performance. So that, in assessing whether this was the type of case that would be amenable to a class action, I had to look at whether it was going to require individual evidentiary showings with regard to those—each particular individual. And it just didn't strike me that was going to be amenable to class action treatment.

The impact with regard to the COLA was, in fact, more broad-based, but the 12 cases that I had before me that we were investigating had to do with the demotions of 12 individuals. And, again, it was a judgment call with regard to whether, ultimately, those cases were going to be amenable to class certification. Because the evidence was going to have to ultimately—in order to demonstrate that they should not have been demoted, if all of my theories about the policies were wrong, then ultimately we are going to have to show that each of those people qualified to get into Band II B. And so to do that on a broad basis was going to be—was beyond the scope—

Ms. NORTON. Of course, that may be the case, Ms. Wagner. But if the underlying issue was whether the system itself was job related, regardless of the individual differences in performance, those individual differences would have to have been judged by a job-related system for each aspect of their performance that was involved. Is that not in fact the case?

Ms. WAGNER. What was at issue there was whether their ratings over the last—the 3-year period prior to the restructuring were legitimate reflections of their qualifications to remain in Band II B.

The issue as to—there was an issue concerning, and we would have been prepared to challenge the rating system as such to show that these individuals' ratings did not accurately reflect their performance. It did not—the challenges that we were looking at were, again, specific to these particular individuals in that we were looking at issues, like did this individual's performance manager accurately capture that individual's performance during this period of

time, as opposed to the sort of systemic issues that I think are implicated by your question.

Ms. NORTON. I just want to say for the record, Ms. Wagner, your answer does not indicate that you are in touch with the complexity of validation cases.

When somebody challenges the system for promoting—let's just give me a very simple-minded answer—but the way it has happened where these notions have been developed, in an entire corporation, with hundreds of thousands of employees, the complaint will say, these people up and down the corporation who are black, who are female—you name it—have systematically gotten performance ratings. There is a pattern of performance ratings reflected in pay, etc., that is less than, let us say, white males.

If you want to see something complicated, much more complicated than 300-some employees who you say you have to capture the individual job, their performance on the job, their qualifications, that is precisely the nomenclature, the words that describe validation cases. And the reason that employers go to all the trouble to validate is, once you get into the morass of trying to explain differences the way you are, you are out of court.

So you have to understand it is very complicated here. This is based on whether you are capturing everything they do—and everything these women do is really different from what these men—hey, fine. The burden shifts to the employer. And that is the point.

But once you show statistically the difference, don't think that employers haven't been able, particularly with validated systems, to overcome this. But once you show the difference, the burden shifts entirely to the employer. Because, obviously, the employee and its lawyer doesn't have the information. It is you who are saying these women are being paid equal to men, if you knew what I knew. OK, fine. Tell us what you know. All we have done is shift the burden to you.

Now the thing that troubles me about your answer is that if employees challenged performance or ratings systems from some other agency before—I don't know—the EOC or some such agency, MSBP, that system would be fully understood. So I am bothered by the notion that, you know, that there is some difference here, whether you are saying to me that there is some difference here given your independence that we in the legislative branch have granted you and the PAB, which we saw as no different from the kind of application of the law that we would expect for other employees.

Ms. WAGNER. Mrs. Norton, I wasn't suggesting that we treated these cases any differently than how they would have been treated by any other similar agency in the Federal Government. In fact, there were cases, as I pointed out earlier, that—our office handled 12, but there were initially more cases, more individuals who filed charges challenging the restructuring decisions. Which, again, I want to point out, is different from the GAO order concerning pay, to some extent. I mean, those were two separate processes.

The three individuals who filed discrimination allegations concerning the restructuring were, by virtue of the mechanism that is set forth in the PAB regulations and GAO orders, were transferred, in effect, to the GAO's Office of Opportunity and Inclusiveness for

investigation; and they are still there. So we did not take it upon ourselves to examine these claims for the determination as to whether reasonable grounds existed to believe that the restructuring process was discriminatory, because those questions were to be addressed first at OOI. They can still come to the PAB once that process is completed where—

Ms. NORTON. I understand this. That is why I asked you for the law. And I asked Mr. Coran for the law, too. Frankly, I am at a loss, Ms. Wagner.

Let me just ask both of you a final question. I am not asking you anything that I think is outside of what you know, and I don't think saying what the black letter law is or that somebody settled it—you know, you settled a case, too. I am not saying why you settled it—you, the GAO—but you settled a case after looking at the law.

Let me ask both of you. Are you prepared to follow existing anti-discrimination law as it applies to other Federal employees?

Mr. CORAN. Absolutely. Unqualified.

Ms. NORTON. Ms. Wagner.

Ms. WAGNER. Yes.

Ms. NORTON. That is really all I am getting at. I want to make sure that we are not still dealing with a different standard in the GAO.

My final question is, would either of you have any objection to the Speaker of the House, the majority leader of the Senate, together with the minority leader of the House and the minority leader of the Senate, appointing the members of the PAB, the General Counsel, and the IG?

Mr. CORAN. Well, it is certainly, Representative Norton, within the purview and the best judgment of Congress who should serve in such positions that are under Congress. However, my view is that the present system has worked extremely well because the employees are so integral to the selection process, and the way the screening has taken place has been—

Ms. NORTON. You notice, Mr. Coran, that I have been at great lengths to say that I regarded both your work and—your work, PAB's work, and Ms. Wagner's work to be above reproach during the controversy that has been before us. So I am not indicating whether it has worked well or not. I asked, would you object? Would you see any problem to these four members being the appointing authority? That is my only question.

Mr. CORAN. I certainly couldn't object to that.

Ms. NORTON. Ms. Wagner.

Ms. WAGNER. I have no objection to that.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. DAVIS. Thank you very much.

I have no further questions and thank you all very much.

Our third panel is going to consist of Mr. Curtis Copeland. Mr. Copeland is currently a Specialist in American Government at the Congressional Research Service [CRS], within the U.S. Library of Congress. His specific area of research expertise is Federal rule-making and regulatory policy. He is also head of the Executive and Judiciary Section with the CRS Government and Finance Division.

Mr. Copeland, thank you.

Ms. Shirley Jones is the current president of the GAO Chapter of Blacks in Government. She was first elected president in 2005 and was reelected January 2007. Ms. Jones is Assistant General Counsel in the Office of General Counsel at the U.S. Government Accountability Office. In this role, she is responsible for supervising the legal support for the Strategic Issues [SI], Mission Team, work related to tax policy and administration.

Ms. Jones, thank you.

Ms. Janet Crenshaw Smith is co-founder and president of Ivy Planning Group, an 18-year-old management consulting and training company that specializes in diversity strategy and change management.

Ms. Smith, thank you very much.

Ms. Jacqueline Harpp is on GAO's International Federation of Professional and Technical Engineers Interim Council. She is a senior analyst on GAO's Education, Workforce and Income Security Team. She has nearly 34 years of experience working at GAO.

Thank you all for being here. And, as you know, we swear all of our witnesses in, so if you will raise your right hands.

[Witnesses sworn.]

Mr. DAVIS. The record will show that the witnesses answered in the affirmative. Thank you all very much.

And, of course, you know that your testimony is included in the record. If you would take 5 minutes and summarize. The green light indicates that you have the full 5 minutes going. When it gets down to yellow, you have a minute left. And, of course, the red means that you have concluded your testimony and thank you very much.

Dr. Copeland, we will begin with you.

**STATEMENTS OF CURTIS COPELAND, SPECIALIST IN AMERICAN NATIONAL GOVERNMENT, CONGRESSIONAL RESEARCH SERVICE; SHIRLEY JONES, EMPLOYEE ADVISORY COUNSEL, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; JANET C. SMITH, PRESIDENT, IVY PLANNING GROUP, LLC; AND JACQUELINE HARPP, INTERIM COUNCIL REPRESENTATIVE, INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, AFL-CIO**

**STATEMENT OF CURTIS COPELAND**

Mr. COPELAND. Thank you, Mr. Chairman, members of the subcommittee. Thank you for inviting me today.

I am here to discuss several issues that CRS was asked to address related to the implementation of the new pay system under the GAO Human Capital Reform Act of 2004.

The first such issue was whether the Comptroller General told Congress and GAO employees during consideration of the legislation that all employees who received a "meets expectation" performance evaluation would receive annual adjustments in their base pay. As I described in detail in my written statement and as I testified before this subcommittee last year, the record indicates that the Comptroller General gave such assurances in writing and orally on multiple occasions to both congressional committees and individual Members of Congress. House and Senate committee re-

ports on the legislation repeated the Comptroller General's commitments.

GAO's employees' concerns were reportedly assuaged by those assurances; and documents published before and after the statute's enactment that are still on GAO's Web site continue to indicate that, "all GAO employees who perform at a satisfactory level will receive an annual base pay adjustment."

However, the record indicates that 308 GAO analysts and specialists did not receive the 2.6 percent permanent increase that other GAO employees received in January 2006. All of the 308 employees had meets expectations ratings or better on all relevant performance dimensions.

In 2007, 138 GAO analysts and specialists with at least meets expectations ratings did not receive any of the 2.4 percent permanent pay increases provided to other GAO employees, and 66 others received only partial increases. Thirteen GAO administrative staff members with at least satisfactory ratings also did not receive the full 2007 pay increase.

During the May 2007, hearing before this subcommittee, the Comptroller General said his decisions to withhold those annual pay increases were fully consistent with the authority provided him in the GAO Human Capital Reform Act. GAO told CRS that the act permitted the Comptroller General to determine the size of the annual adjustments, including the option of providing no adjustment at all to some or all GAO employees. However, the General Counsel of the GAO Personnel Appeals Board testified at the May 2007, and repeated just now that the Comptroller General appeared to have exceeded his statutory authority.

The General Counsel and a CRS attorney who also testified at the May 2007, hearing testified that the legislative history of the act indicated that Congress believed all GAO employees who met performance expectations would receive an annual pay adjustment.

In February 2008, as a result of negotiations with union representatives, GAO agreed to provide all of its employees with a meets expectations rating with at least a 4.49 percent increase that was provided to General Schedule employees in the Washington, DC, area. However, this action does not restore the salaries or income lost by the employees who did not receive the 2006 or 2007 annual adjustments.

For example, a table in my testimony illustrates, because those two adjustments were not provided, a GAO employee who is making \$110,000 a year in 2005 who was placed in Band II A, which is roughly a grade 13 in General Schedule, will have foregone a total of more than \$14,000 in base pay increases by the end of 2008. If that employee then retires under the Civil Service Retirement System, her pension will be nearly \$2,700 a year lower than if she had received the 2006 and 2007 adjustments. Therefore, after a 20-year retirement, the employee will have foregone nearly \$68,000 in wages and pensions since 2005.

A variety of factors can influence the size of the wage and pension differential, including the employee's starting salary, whether the PBC is started as base pay, and whether the employee receives an annual increase in 1 year or the next.

Mr. Chairman, that concludes my prepared statement. I would be happy to answer any questions.

Mr. DAVIS. Thank you very much.

[The prepared statement of Mr. Copeland follows:]



**Statement of Curtis W. Copeland  
Specialist in American National Government  
Congressional Research Service**

**Before**

**The Committee on Oversight and Government Reform  
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia  
House of Representatives**

**March 13, 2008**

**on**

**“Government Accountability Office (GAO) Act of 2007”**

Chairman Davis and Members of the Subcommittee:

My name is Curtis Copeland. I am here today to discuss certain issues related to the implementation of the new pay system at the Government Accountability Office (GAO). As requested, my testimony reviews (1) statements by the Comptroller General during Congress’s deliberations on the GAO Human Capital Reform Act of 2004 (P.L. 108-271) that GAO employees who met performance expectations would receive annual across-the-board pay adjustments; (2) the question of the Comptroller General’s legal authority to withhold annual pay adjustments to some of those employees in 2006 and 2007; and (3) the financial implications of the Comptroller General’s decisions for GAO employees.

Before addressing those issues, in the interest of transparency, I need to tell you that I worked at GAO for more than 23 years — from September 1980 until January 2004. I moved to CRS more than six months before the GAO Human Capital Reform Act of 2004 was enacted. At GAO, I worked on a variety of issues, including federal personnel management, ethics in government, and regulatory reform.

## Annual Pay Adjustments and “Meets Expectations” Ratings

The record indicates that the Comptroller General stated on several occasions during the deliberations on the GAO Human Capital Reform Act that GAO employees who performed at or above a “meets expectations” level on all relevant ratings dimensions (described as “competencies” at GAO) would receive annual adjustments to their base pay. These statements were made in writing and orally to congressional committees, individual Members, and GAO employees. For example:

- At a July 16, 2003, hearing on GAO’s human capital reform proposal before the House Government Reform Committee’s Subcommittee on Civil Service and Agency Organization, the Comptroller General said in his written statement that, in developing the proposal, GAO’s Executive Committee had adopted several recommendations from GAO employees, one of which was “the commitment to guarantee annual across the board purchase power protection and to address locality pay considerations to all employees rated as performing at a satisfactory level or above (i.e., meeting expectations or above) absent extraordinary economic circumstances or severe budgetary constraints.” He went on to say that GAO planned to satisfy that commitment through a GAO Order rather than through legislative language, and that he had “committed to our employees that I would include this guarantee in my statement here today so that it could be included as part of the legislative record.”<sup>1</sup> In his written statement, the Comptroller General reiterated that “if GAO is granted this authority, all GAO employees who perform at a satisfactory level will receive an annual base pay adjustment composed of purchase power protection and locality based pay increases absent extraordinary economic conditions or severe budgetary constraints.”<sup>2</sup> A table included in the appendix to the Comptroller General’s written statement said the annual across-the-board increase to base pay would be provided “for all satisfactory performers.” A footnote to the table said that, “absent extraordinary economic conditions or serious budgetary constraints, all GAO staff rated as performing at a satisfactory level (i.e., meeting expectations or higher) can expect to receive at a minimum an annual adjustment designed to protect purchasing power (e.g., the Consumer Price Index) and address differences in compensation ranges by localities.”<sup>3</sup>
- In response to a question from Representative Chris Van Hollen at the July 16, 2003, hearing, the Comptroller General said, “I have made it clear that, as long as employees are performing at the meets expectation level or better, then they will be protected against inflation.” He said the only exception would be “extraordinary economic conditions, like deflation or

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<sup>1</sup> U.S. General Accounting Office, *GAO: Additional Human Capital Flexibilities Are Needed*, GAO-03-1024T (July 16, 2003), p. 10, available at [<http://www.gao.gov/new.items/d031024t.pdf>].

<sup>2</sup> *Ibid.*, p. 17.

<sup>3</sup> *Ibid.*, pp. 28-29.

hyperinflation or serious budgetary constraints.”<sup>4</sup> Representative Van Hollen then said, “Let me make sure I understand what you were just saying. You have provided an assurance that except under extraordinarily bad budget scenarios, for example, a situation much worse than anything we’re encountering even today, and things are pretty bad today — that you would assure that employees who are meeting the minimal expectation would receive a COLA and locality pay; is that right?” The Comptroller General then said, “Yes, and we would have a different method. But yes, they would receive protection against erosion of purchasing power due to inflation, and some consideration of locality at a minimum.”<sup>5</sup>

- Christopher A. Keisling, a member of the GAO Employee Advisory Council, also testified at the July 16, 2003, House subcommittee hearing. In his written statement, Mr. Keisling said the Comptroller General had made several commitments to GAO employees that had tempered their concerns, including a statement that “employees who are performing adequately will be assured of some annual increase that maintains spending power. He outlined his assurance in GAO’s weekly newsletter for June 30<sup>th</sup> that successful employees will not witness erosion in earning power and will receive an annual adjustment commensurate with locality-specific costs and salaries.” Mr. Keisling went on to say that “To the extent that these steps are taken, overall employee opinion of the changes should improve because much of the concern has focused on making sure that staff who are performing adequately do not witness economic erosion in their pay.”<sup>6</sup>
- GAO’s human capital reform legislation (H.R. 2751) was introduced in the House of Representatives on the same day as the subcommittee hearing (July 16, 2003). The House Government Reform Committee’s November 19, 2003, report on the legislation included the views of the minority members of the committee, who said that the Comptroller General “has assured GAO employees that anyone performing satisfactory work will receive at least a cost of living adjustment.”<sup>7</sup> H.R. 2751 passed the House on February 25, 2004.
- On September 16, 2003, the Senate Committee on Governmental Affairs held a hearing on pending GAO human capital legislation (S. 1522, which

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<sup>4</sup> U.S. Congress, House Committee on Government Reform, Subcommittee on Civil Service and Agency Organization, *GAO Human Capital Reform: Leading the Way*, hearing, 108<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 2003), p. 78.

<sup>5</sup> *Ibid.*

<sup>6</sup> U.S. General Accounting Office, *GAO’s Proposed Human Capital Legislation: View of the Employee Advisory Council*, GAO-03-1020T, July 13, 2003, p. 9, available at [<http://www.gao.gov/new.items/d031020t.pdf>].

<sup>7</sup> U.S. Congress, House Committee on Government Reform, *GAO Human Capital Reform Act of 2003*, report to accompany H.R. 2751, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 108-380 (Washington: GPO, 2003), p. 23, available at [[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_reports&docid=f:hr380.108.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:hr380.108.pdf)].

had been introduced in the Senate on July 31, 2003). In his written statement, the Comptroller General recommended passage of the legislation, and said that although GAO employees had expressed strong concerns about the initial proposal, “those concerns have been reduced considerably by the clarifications, changes, and commitments I have made.”<sup>8</sup> He included a copy of his July 16, 2003, testimony as an appendix to his written statement, in which he said that one such commitment was “to guarantee annual across the board purchase power protection and to address locality pay considerations to all employees rated as performing at a satisfactory level or above (i.e., meeting expectations or above) absent extraordinary economic circumstances or severe budgetary constraints.”<sup>9</sup> GAO’s Employee Advisory Council did not testify at this hearing, but provided a statement for the record that was virtually the same as its testimony before the House subcommittee two months earlier.<sup>10</sup>

- During the September 16, 2003, hearing, Senator Thomas Carper asked the Comptroller General how employees could be ensured protection against inflation in a pay for performance system. The Comptroller General said that “for the 97-plus percent of our employees who are performing at an acceptable level or better, . . . we will protect them against inflation at a minimum.”<sup>11</sup>
- The Senate Committee on Governmental Affairs, in its December 9, 2003, report on the GAO human capital reform legislation, said that the committee had “received a commitment from the Comptroller General that, absent extraordinary circumstances or serious budgetary constraints, employees or officers who perform at a satisfactory level will receive an annual base-pay adjustment designed to protect their purchasing power.”<sup>12</sup> S. 1522 passed the Senate on June 24, 2004, and was enacted into law on July 7, 2004.

Several other descriptions of GAO’s new pay system addressed this issue as well. For example, a set of questions and answers provided to GAO employees in June 2003 stated that “GAO will, absent extraordinary economic conditions or serious budgetary constraints, provide all GAO staff who are rated as performing at a satisfactory level (i.e., meets

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<sup>8</sup> U.S. General Accounting Office, *GAO: Transformation, Challenges, and Opportunities*, GAO-03-1167T (Sept. 16, 2003), p. 33, available at [<http://www.gao.gov/new.items/d031167t.pdf>].

<sup>9</sup> *Ibid.*, p. 60.

<sup>10</sup> U.S. General Accounting Office, *GAO’s Proposed Human Capital Legislation: Views of the Employee Advisory Council*, GAO-03-1162T (Sept. 16, 2003), pp. 9-10, available at [<http://www.gao.gov/new.items/d031162t.pdf>].

<sup>11</sup> U.S. Congress, Senate Committee on Governmental Affairs, *Oversight of GAO: What Lies Ahead for Congress’ Watchdog?*, hearing, 108<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 2003), pp. 19-20.

<sup>12</sup> U.S. Congress, Senate Committee on Governmental Affairs, *GAO Human Capital Reform Act of 2003*, report to accompany S. 1522, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 108-216 (Washington: GPO, 2003), p. 9, available at [[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_reports&docid=f:sr216.108.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:sr216.108.pdf)].

expectations or higher) both across the board and performance-based annual pay adjustments.”<sup>13</sup> Using almost identical language, a GAO official testifying after enactment of the GAO Human Capital Reform Act in July 2004 said, “GAO will, absent extraordinary economic conditions or serious budgetary constraints, provide all GAO staff whose performance is at a satisfactory level both across-the-board, and, as appropriate, performance-based annual pay adjustments.”<sup>14</sup>

In addition, documents that have been on GAO’s website for some time continue to suggest that employees performing satisfactorily can expect an annual pay adjustment. For example, a description of the GAO Human Capital Reform Act’s provisions states that the act “establishes a compensation system that places greater emphasis on job performance while protecting the purchasing power of employees who are performing acceptably.”<sup>15</sup> GAO’s *Human Capital Strategic Plan: Fiscal Years 2004-2006* states that, under the Human Capital Reform Act, “all GAO employees who perform at a satisfactory level will receive an annual base pay adjustment composed of purchase power protection and locality-based pay considerations absent extraordinary economic circumstances or severe budgetary constraints.”<sup>16</sup>

### Some GAO Employees Received No Annual Pay Increases

Some GAO employees who were rated as having met or exceeded performance expectations did not receive an annual across-the-board pay increase in 2006 or 2007.<sup>17</sup> In 2008, however, GAO has announced that all employees with at least a “meets expectations” rating will receive the same annual pay adjustment as General Schedule (GS) employees in Washington, DC.

**The 2006 Pay Adjustment.** GAO noted in its response to questions after a March 10, 2006, hearing by the House Committee on Appropriations on GAO’s FY2007 appropriation that of the 1,829 GAO analysts and specialists who were assessed for

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<sup>13</sup> U.S. General Accounting Office, “Additional Human Capital II Questions and Answers (Second Set: June 27, 03),” p. 3, provided to CRS by House Committee on Government Reform staff. The same document (p. 4) also said “The Comptroller General has stated that, absent extraordinary economic conditions or serious budgetary constraints, all GAO staff who are rated as performing at the satisfactory level (i.e., meets expectations or higher) can expect to receive an annual adjustment designed to protect purchasing power (e.g., the Consumer Price Index “CPI”) and address differences in competitive compensation by varying localities. Based on the results of last year’s performance appraisal process, over 97 percent of GAO’s analysts met this standard.”

<sup>14</sup> Statement of J. Christopher Mihm, Managing Director, Strategic Issues, U.S. Government Accountability Office, *Human Capital: Building on the Current Momentum to Transform the Federal Government*, GAO Report GAO-04-976T (July 20, 2004), p. 18.

<sup>15</sup> Available at [<http://www.gao.gov/about/namechange.html>].

<sup>16</sup> U.S. Government Accountability Office, *The Human Capital Strategic Plan: Fiscal Years 2004-2006*, p. 9, available at [<http://www.gao.gov/htext/d041063sp.html>].

<sup>17</sup> As discussed in more detail later, changes in GAO employees’ annual compensation can be changes to their base pay (referred to here as the “annual pay adjustment”) or “performance-based compensation,” which may be provided in terms of base pay or as a lump sum bonus that does not count toward employees’ base pay. Employees who did not receive annual pay adjustments in 2006 or 2007 may have received some form of performance-based pay.

performance-based compensation and actually on board on the effective date of the pay adjustments, 308 employees (approximately 17%) did not receive GAO's 2.6% across-the-board permanent pay increases in January 2006.<sup>18</sup> Of these 308 employees, 14 were in Band III (roughly GS-15 equivalent); five were in Band IIB (GS-14); 236 were in Band IIA (GS-13); and 53 were in Band I (GS-7 through GS-12).<sup>19</sup> According to GAO, all 308 employees had performance ratings of "meets expectations" or better on all relevant competencies during the rating period.

Another of the post-hearing questions in March 2006 cited the Comptroller General's statements at the House subcommittee hearing on July 16, 2003, assuring "purchase power protection" raises to all GAO employees who met expectations, absent extraordinary economic circumstances or severe budgetary constraints. Given these statements, the questioner asked why these 308 GAO employees who "met expectations" were not given an across-the-board pay increase. In response, GAO said the Comptroller General's statements to Congress in 2003 were "accurate at the time," but said "there have been significant subsequent events that have altered the Comptroller General's views on whether and when employees should receive pay adjustments."<sup>20</sup> GAO said the most significant of these events was the completion of a pay study by the Watson Wyatt Worldwide consulting firm, which indicated that certain employees were already paid more than what should be the maximum pay for their positions.<sup>21</sup> As a result, 53 Band I and 236 Band IIA employees did not receive the 2.6% annual adjustment to their base pay in January 2006 because, according to the Watson Wyatt study, they were already paid more than the maximum salaries for their bands (at the time, \$75,900 for Band I and \$101,600 for Band IIA).

However, some employees at the Band IIB and Band III levels did not receive the 2.6% annual increase in January 2006 because of a change in GAO policy — not because the Watson Wyatt pay study indicated they were paid more than the market rate for their band. According to that policy, for employees who were paid less than the maximum rate of their

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<sup>18</sup> The average GS permanent pay increase in January 2006 was 3.19%, and the increase in Washington, DC, was 3.44%.

<sup>19</sup> "Final Questions and Answers Submitted for the Record as Part of GAO's 2007 Appropriation Hearing," Mar. 27, 2006, provided to CRS by House Committee on Government Reform staff. GAO adopted a three-band pay system in 1989, and divided the middle band into Band IIA and Band IIB in late 2005 for the 2006 pay cycle. For more on this action, see U.S. Government Accountability Office, *Band II Restructuring* (GAO Order 2900.3), Nov. 4, 2005.

<sup>20</sup> *Ibid.*, p. 2.

<sup>21</sup> GAO and Watson Wyatt defended the reliability of this study. The study, however, has also been criticized as faulty in several respects. See testimony of Charles H. Fay, Professor of Human Resource Management and Chair of the Human Resource Management Department, Rutgers University School of Management and Labor Relations, before Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia, House Committee on Government Oversight and Reform; and the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Senate Committee on Homeland Security and Governmental Affairs, May 22, 2007, which is available at [<http://federalworkforce.oversight.house.gov/documents/20070522162122.pdf>]. Problems cited included (1) the non-involvement of GAO employees in the study, (2) the use of off-the-shelf surveys that "are unlikely to have captured the appropriate market data" and that came from too few organizations, and (3) the use of inconsistent data cuts in developing benchmark medians.

band, but more than a “speed bump” rate (established at about the 75% point of the bands, based on the Watson Wyatt results), their ability to receive an annual pay increase was also based on their performance appraisals relative to those of other GAO employees in their team and band. For Band IIB employees, their rating had to be in the top 50% of their cohort; for Band III employees, their rating had to be in the top 80% of their cohort.<sup>22</sup> As a result, five Band IIB employees received no annual adjustment to their base pay because they were paid more than the Band IIB speed bump (\$118,000), and they were not in the top 50% of appraisal scores for their band and team. Similarly, 14 Band III employees received no annual pay adjustment because they were paid more than the Band III speed bump (\$129,800), and they were not in the top 80% of appraisal averages for their band and team.

**PAB Cases.** In September 2006, 12 of the employees who had been assigned to Band IIA and had not received the January 2006 annual pay adjustment filed a petition with the GAO Personnel Appeals Board (PAB) alleging that their reassignment from Band II to Band IIA was a violation of the GAO Personnel Act. Each of the 12 petitioners also challenged the legality of GAO Order 2540.3 (which put in place the GAO annual adjustment and performance-based compensation system) and the FY2005 Performance-Based Compensation Guide for Analysts, Specialists, and Investigators.

On April 5, 2007, shortly before the case was scheduled to be heard, GAO agreed to a settlement of all 12 appeals, retroactively placing the petitioners into Band IIB effective January 8, 2006 (the start of the 2006 pay year), with full back pay, including appropriate retirement contributions and interest.<sup>23</sup> As a result of this settlement, the number of employees who did not receive the January 2006 annual pay increase fell to 296 (308 minus 12). In the wake of the April 2007 settlement, about 270 other GAO employees with at least “meets expectations” performance ratings who did not receive the 2006 annual pay increase also filed appeals with the PAB. Those cases are pending before the PAB.

**The 2007 Pay Adjustment.** In January 2007, GS employees received an average permanent pay increase (base pay plus locality pay) of 2.24%; employees in the Washington, DC, pay area received an increase of 2.64%. Most GAO employees received an annual base pay adjustment of 2.4%.<sup>24</sup> Because of a delay in the passage of its appropriation bill, GAO delayed the implementation of its annual pay increase until February 18, 2007, the start of the fourth pay period of the year.

Some employees at the Band I and Band IIA levels with at least “meets expectations” performance ratings did not receive the 2007 across-the-board pay increase because they were still considered to be paid in excess of applicable market pay rates. Other GAO employees at the Band IIB level did not receive the 2007 increase because (1) they were paid

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<sup>22</sup> U.S. Government Accountability Office, *Pay Administration in the Analyst Performance-Based Compensation System*, Order 2540.3 (June 12, 2006).

<sup>23</sup> One of the petitioners separated from GAO in 2006, so her back pay was calculated from January 8, 2006, until the date of her separation.

<sup>24</sup> In GAO, the annual adjustment is the same regardless of location, but the size of the performance-based compensation differs by location. GAO has established five geographic salary zones, with the Washington, DC, zone serving as the baseline. For example, performance-based compensation for employees in Zone 1 (Norfolk, Huntsville, and Richland) is 8% lower than in Washington, whereas employees in Zone 5 (San Francisco) receive 11% more than in Washington.

above the Band IIB speed bump; and (2) even though they received at least “meets expectations” ratings, they were not in the top 50% of appraisal scores for their band and team. In contrast, all Band III employees with at least “meets expectations” ratings received the across-the-board pay increase in 2007 because the Comptroller General decided in late 2006 to eliminate the speed bump for Band III.<sup>25</sup> Taken together, a total of 138 GAO analysts and specialists at the Band I, Band IIA, and Band IIB levels did not receive any of the 2007 across-the-board increase. Another 66 analysts and specialists at these levels received only partial across-the-board increases (because full increases would have caused them to exceed applicable GAO pay caps).<sup>26</sup> All of these employees had at least “meets expectations” performance ratings on all applicable competencies.

On May 8, 2007, the International Federation of Professional and Technical Engineers (IFPTE) filed a petition with the PAB to start the process to organize and represent certain GAO employees. In September 2007, GAO employees voted to approve union representation by IFPTE. It was reported that one main reason for the establishment of a union at GAO was the Comptroller General’s decision to deny annual pay adjustments to employees with at least “meets expectations” performance ratings.<sup>27</sup>

**The 2008 Pay Adjustment.** In January 2008, GS employees received an average annual pay increase (base pay plus locality pay) of 3.5%; employees in the Washington, DC, pay area received an increase of 4.49%. The pay increases took effect on January 6, 2008. On February 8, 2008, GAO announced that it had reached tentative agreement with the IFPTE union’s interim council that all GAO employees performing at the “meets expectations” level or better on all competencies would receive no less than a 4.49% increase in permanent pay — irrespective of whether employees’ pay was over applicable pay caps or speed bumps.<sup>28</sup> GAO also indicated that the pay increases would be made retroactive to January 6, 2008. GAO employees subsequently approved the tentative agreement.

### Comptroller General’s Authority to Deny Annual Adjustments

The second issue that the Subcommittee asked CRS to address was the legal authority of the Comptroller General to deny annual pay adjustments to some GAO employees with at least “meets expectations” performance ratings in 2006 and 2007. Section 3(a) of the

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<sup>25</sup> U.S. Government Accountability Office, *Pay Administration in the Analyst-Performance-Based Compensation System*, Order 2540.3.

<sup>26</sup> In addition, one non-analyst administrative professional and support staff (APSS) employee received no across-the-board adjustment, and 12 APSS employees received only partial adjustments. All of these employees also had “meets expectations” performance ratings, or better.

<sup>27</sup> See, for example, Brittany R. Ballenstedt, “GAO analysts vote for union representation,” *Government Executive*, Sept. 20, 2007, available at [[http://www.govexec.com/story\\_page.cfm?articleid=38085](http://www.govexec.com/story_page.cfm?articleid=38085)], which said the push to unionize at GAO was partly in response to “the elimination of cost-of-living increases for many, and the labeling of some analysts as overpaid relative to the market.”

<sup>28</sup> The annual adjustment increase was 3.5% for all staff who at least meet expectations, subject to salary maximums and the Band II speed bump. The performance-based compensation budget factor was 2.75% for all covered staff who meet expectations, subject to salary maximums and the Band IIB speed bump. Maximum salary ranges increased by 4.5%, and minimum salary ranges increased by 3.5%.

GAO Human Capital Reform Act amended 31 U.S.C. § 732(c) to state that the “basic rates of officers and employees of the Office shall be adjusted annually to such extent as determined by the Comptroller General.” The statute (31 U.S.C. § 732(c)(3), as amended) indicates that the Comptroller General “shall consider” six factors in making his determination:

(A) the principle that equal pay should be provided for work of equal value within each local pay area; (B) the need to protect the purchasing power of officers and employees of the Office, taking into consideration the Consumer Price Index or other appropriate indices; (C) any existing pay disparities between officers and employees of the Office and non-Federal employees in each local pay area; (D) the pay rates for the same levels of work for officers and employees of the Office and non-Federal employees in each local pay area; (E) the appropriate distribution of agency funds between annual adjustments under this section and performance-based compensation; and (F) such other criteria as the Comptroller General considers appropriate, including, but not limited to, the funding level for the Office, amounts allocated for performance-based compensation, and the extent to which the Office is succeeding in fulfilling its mission and accomplishing its strategic plan.

The statute also provides that an adjustment “shall not be applied in the case of an officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment.”

In his testimony before this subcommittee on May 22, 2007, the Comptroller General said the following:

First and foremost, I know that some are concerned that I did not follow through on certain assurances I made in 2003 during consideration of GAO's Human Capital Reform Act, namely, that we would provide across-the-board pay adjustments to GAO employees who received at least a “meets expectations” rating. In late 2004, after we received the market based pay study, we were faced with the reality that some of our employees were paid above market levels. This fact was not known when I testified in 2003. In retrospect, we should have advised the Congress and others sooner that we did not view my prior statements as applying to employees who were paid above market levels. I am sorry that we did not do that; however, the fact remains that I did not believe then, nor do I believe now, that it would be appropriate or equitable to provide across-the-board pay increase to employees who are paid above market levels. The very notion that one would provide across-the-board pay adjustments to those paid above market is, in my opinion, fundamentally inconsistent with the very premise of a market-based pay system and the concept of equal pay for work of equal value.<sup>29</sup>

The Comptroller General also said that his decisions to deny the 2006 and 2007 annual pay adjustments to certain GAO employees with “meets expectations” ratings or better were “fully consistent with the principles and criteria that were under consideration in July 2003, when I testified, and that were enacted into law in July 2004.”<sup>30</sup> In information provided to CRS by GAO, the agency said the GAO Human Capital Reform Act provided the Comptroller General with broad discretion to determine if an employee should receive an

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<sup>29</sup> U.S. Government Accountability Office, *United States Government Accountability Office: Status of GAO's Human Capital Transformation Efforts*, GAO-07-872T, May 22, 2007, p. 4.

<sup>30</sup> *Ibid.*, p. 5.

adjustment. GAO maintained that as long as the six factors were considered, the Comptroller General was authorized to determine the appropriate annual adjustments, including the option of providing no adjustment to all or certain employees. GAO also said that the flexibilities provided in the statute under section 3(a) permitted the Comptroller General to establish criteria for determining whether Band IIB and Band III employees who were at or above the speed bumps would receive a pay adjustment.

Other witnesses at the May 2007 hearing offered a different perspective, some concluding that the Comptroller General had exceeded his legal authority. For example, the General Counsel of the PAB said that if the 12 cases filed with the board had gone to a hearing, she “intended to argue that the elimination of petitioners’ annual adjustment was contrary to Pub.L. 108-271 [the GAO Human Capital Reform Act of 2004]. This claim presented a question of law that turned upon a straightforward reading of the statutory language and an examination of its legislative history.”<sup>31</sup> In her view, because the statute (1) stated that annual pay rates “shall be adjusted” by the Comptroller General, and (2) indicated which GAO employees should not receive annual pay adjustments (those whose performance did not meet expectations), the Comptroller General could not deny other GAO employees the annual pay adjustment. She also said the legislative history of the statute indicated that Congress believed that all GAO employees with at least a “meets expectations” rating would receive the annual pay adjustment.

A legislative attorney from the American Law Division within CRS testified that if a court were asked to determine whether GAO’s actions were permissible, it would first consider whether Congress had spoken directly on this issue. After reviewing the language of the statute and its legislative history, CRS stated that, while the Comptroller General could determine whether an employee’s performance had met expectations, and could decide the amount of any annual pay adjustment, “The statutory language of section 3(a) [of the GAO Human Capital Reform Act of 2004] and the section’s legislative history appear to illustrate clear congressional intent to have a pay adjustment in the form of an increase in basic pay rates for all officers and employees who perform at a satisfactory level.”<sup>32</sup> For further information on these issues, the Committee may contact our American Law Division.

### **Financial Implications for GAO Employees**

The third issue that CRS was asked to address was the financial implications of the Comptroller General’s decisions in 2006 and 2007 to withhold the annual pay adjustment to

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<sup>31</sup> Statement of Anne M. Wagner, General Counsel, Personnel Appeals Board, GAO, before the Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia, House Committee on Government Oversight and Reform; and the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Senate Committee on Homeland Security and Governmental Affairs, May 22, 2007, p. 22, available at [<http://federalworkforce.oversight.house.gov/documents/20070523130124.pdf>].

<sup>32</sup> Statement of Jon Shimbukuro, Legislative Attorney, American Law Division, Congressional Research Service, before the Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia, House Committee on Government Oversight and Reform; and the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Senate Committee on Homeland Security and Governmental Affairs, May 22, 2007, p. 5, available at [<http://federalworkforce.oversight.house.gov/documents/20070522162003.pdf>].

certain GAO employees with at least “meets expectations” performance ratings. As noted previously, GAO employees in Band I and Band IIA who were already being paid in excess of the new maximum rate for their band were not eligible for the annual pay adjustments authorized for other GAO employees in January 2006 or February 2007.<sup>33</sup> These employees, under the system then in place, could receive no annual pay adjustment until the maximum rate for their band increased to a point above the employees’ current salary. Likewise, GAO employees in Band IIB were not eligible for the 2006 or 2007 annual pay increases if their salaries were already over the “speed bump” for the band and if their performance ratings — even though they were at least “meets expectations” on all competencies — were in the lower half of all other Band IIBs in their teams.<sup>34</sup> These employees would not be eligible for annual pay increases until their performance improved compared to others at their band level in their team, or the speed bump increased to a point above the employees’ current salary.<sup>35</sup>

Similarly, GAO employees in Band III were not eligible for the 2.6% annual pay increase in January 2006 if their pay was over the speed bump for the band and their performance rating — although at or above “meets expectations” on all competencies — was in the bottom 20% of all other Band IIIs in their team.<sup>36</sup> However, the annual pay increases for certain Band III employees with at least “meets expectations” ratings were not withheld in 2007. As noted earlier, in late 2006, GAO revised its compensation order and eliminated the speed bump for Band III; as a result, all Band III employees with at least a “meets expectation” performance rating were eligible for the annual across-the-board pay increase provided in February 2007.<sup>37</sup>

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<sup>33</sup> In 2006, Band I employees who were paid more than what the Watson Wyatt data indicated should be the maximum rate for their band (\$75,900) could receive a \$1,000 lump sum bonus if they were in the top 20% of performers; otherwise, they received no bonus or annual adjustment. In 2007, Band I employees received all of their performance-based compensation as a lump sum bonus. As discussed later, Band IIA employees in 2006 who were paid more than the maximum rate for Band IIA (\$101,600) but less than the transition rate (\$118,700) could receive up to 50% of their performance-based compensation as base pay; the remaining 50% was not provided as either base pay or a lump sum bonus. If paid at or above the transition rate, they could receive a \$1,000 lump sum bonus if they were in the top 20% of performers. In 2007, Band IIA employees could receive 100% of their performance-based compensation as base pay, up to the transition cap, with the remainder provided as a bonus.

<sup>34</sup> In 2006 and 2007, Band IIB employees who were paid more than the “speed bump” and whose performance, even though it met or exceeded performance expectations, was in the bottom 50% of all Band IIBs in their team, could receive 100% of their performance-based compensation only as a lump sum bonus.

<sup>35</sup> GAO notified CRS that both the maximum rate of the bands and the speed bumps will be increased using factors that the GAO Human Capital Reform Act requires the Comptroller to consider, including the need to protect the purchasing power of officers and employees of the Office. Between 2006 and 2007, the rate of increase was about 3%.

<sup>36</sup> In 2006, Band III employees who were paid more than the speed bump and whose performance met or exceeded expectations but who were in the bottom 20% of all Band IIIs in their team could receive 100% of their performance-based compensation only as a lump sum bonus. In 2007, the speed bump was removed for Band III, so all Band III employees were eligible for both the annual adjustment and performance-based compensation.

<sup>37</sup> U.S. Government Accountability Office, *Pay Administration in the Analyst-Performance-Based* (continued...)

**Salary and Pension Effects.** Even though all GAO employees with at least a “meets expectation” rating will receive a 2008 across-the-board pay increase of at least 4.49% (subject to the statutory cap at GS-15, step 10), without a change in policy, the pay and the retirement annuities of GAO employees who did not receive the 2006 adjustment, the 2007 adjustment, or both adjustments will be permanently affected by the Comptroller General’s decision to freeze their annual pay increases. Perhaps the best way to illustrate this effect is through a hypothetical example.

As shown in **Table 1**, if a GAO Band II employee in Washington, DC, making \$110,000 per year in 2005 was placed in Band IIA, the employee would not have been eligible for the 2.6% annual pay adjustment that GAO gave to other employees because the maximum pay rate for that band in January 2006 was \$101,600. However, the “capped” Band IIA employee could have received up to 50% of her performance-based compensation in 2006 as base pay.<sup>38</sup> For example, as **Table 1** indicates, if the capped employee was eligible to receive \$2,000 in performance-based compensation in January 2006 (slightly higher than the average for Band IIA employees that year), she would have received a \$1,000 increase in base pay, raising her annual salary to \$111,000 for 2006. In contrast, as the table shows, if the employee’s pay was not capped and she had received the 2.6% annual adjustment for 2006 as well as the performance-based compensation that counted toward base pay, her salary would have increased by \$3,860 (\$2,860 annual increase plus \$1,000 in performance-based compensation) to \$113,860 in January 2006.

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<sup>37</sup> (...continued)

*Compensation System, Order 2540.3.*

<sup>38</sup> The cap applicable to performance-based pay for Band IIA employees in Washington, DC, was the “transition cap” of \$118,700. In 2006, Band IIA employees who were paid less than the transition cap could receive up to 50% of their performance-based compensation as an adjustment to their base pay. The other 50% plus any PBC amounts in excess of the transition cap were lost.

**Table 1: Salary Differences Between Hypothetical Capped and Uncapped GAO Employees: 2006, 2007, and 2008**

	Capped Employee	Uncapped Employee	Salary Difference
2005 Annual Salary	\$110,000	\$110,000	0
2006 Annual Adjustment (2.6%)	0	\$2,860	-----
2006 Performance-Based Compensation as Base Pay (50% of \$2,000)	\$1,000	\$1,000	-----
2006 Annual Salary	\$111,000	\$113,860	\$2,860
2007 Annual Adjustment (2.4%)	0	\$2,733	-----
2007 Performance-Based Compensation as Base Pay (100% of \$2,000)	\$2,000	\$2,000	-----
2007 Annual Salary	\$113,000	\$118,593	\$5,593
2008 Adjustment (4.49% guaranteed floor)	\$5,074	\$5,325	-----
2008 Annual Salary	\$118,074	\$123,918	\$5,844
Cumulative Salary (2006, 2007, and 2008)	\$342,074	\$356,371	\$14,297

Note: For this analysis, CRS assumed \$2,000 in performance-based compensation in 2006 and 2007. Although the GAO annual adjustment in 2008 was 3.5%, the 4.49% guaranteed floor was provided to employees with "meets expectations" ratings whose combined annual adjustment plus performance-based compensation was less than 4.49%.

Source: CRS analysis.

**Table 1** depicts a similar scenario in 2007. Although the Band IIA maximum pay rate increased by about 3% in 2007 (to \$104,700), the Band IIA employee earning \$111,000 in 2006 was still ineligible to receive the annual pay adjustment that other GAO employees received that year (2.4%) because her salary was still above the cap. In 2007, Band IIA employees could receive up to 100% of their performance-based compensation as additions to base pay, as long as they were paid less than the applicable performance-based compensation cap.<sup>39</sup> Therefore, if the employee's performance-based compensation was

<sup>39</sup> The "transition" cap for Band IIA employees remained at \$118,700. Therefore, beginning in 2007, all Band IIA employees who were paid less than the cap could receive 100% of their performance-based compensation as base pay. Any performance-based compensation in excess of the transition cap was provided to employees as a one-time bonus. Band I employees who were over the cap and Band IIB employees who were over the speed bump could only receive their performance-based (continued...)

\$2,000 that year, her annual salary would have increased to \$113,000 for 2007. On the other hand, if the employee had received the annual adjustment as well as the performance-based compensation as base pay, her annual salary (building on the increases provided in 2006) would have increased to \$118,593.

Finally, if the employee who did not receive the 2006 or 2007 annual pay adjustments received the negotiated minimum 2008 adjustment of 4.49%, her annual salary would have gone to \$118,074 for 2008. In contrast, if the employee had received the full annual and performance-based pay adjustments to her base pay for all three years, her annual salary for 2008 would have been \$123,918 — \$5,844 more than the employee who had not received the 2006 and 2007 annual pay adjustments. By the end of 2008, the capped employee who did not receive annual pay adjustments in 2006 or 2007 will have forgone a cumulative total of \$14,297 in annual salary (\$2,860 plus \$5,593 plus \$5,844).

The capped employee's annual retirement pension would also be affected by the forgone salary increases in 2006 and 2007. As shown in **Table 2** below, if the employee retired at the end of 2008, her "high-three" average salary would be \$4,765 less than if she had received the 2006 and 2007 adjustments, and her annual pension (assuming that she retired under the Civil Service Retirement System (CSRS) with exactly 30 years of service) would be \$2,680 less. Assuming that the employee draws her pension for 20 years, the cumulative pension difference (not including cost of living increases that will likely be provided during this period to maintain the annuity's original purchasing power) would be \$53,600. This difference, when added to the \$14,297 cumulative difference in income described above, would yield a total differential over the full 23-year period of \$67,897.

**Table 2: Pension Differences Between Hypothetical Capped and Uncapped GAO Employees**

	<b>Capped Employee</b>	<b>Uncapped Employee</b>	<b>Difference</b>
"High-Three" Average Salary	\$114,025	\$118,790	\$4,765
Annual CSRS Pension (56.25% of High-Three Average)	\$64,139	\$66,819	\$2,680
Cumulative Pension for 20 years	\$1,282,780	\$1,336,380	\$53,600

Note: The pension calculations assume the employee was in CSRS and retired with exactly 30 years of service. The cumulative pension figures do not include any cost of living increases.  
Source: CRS analysis.

The effects of not receiving the 2006 and 2007 annual pay adjustments are similar for GAO employees at other band levels. For example, a Band I employee earning \$80,000 in 2005 would appear to forgo more than \$10,000 in salary between 2006 and 2008, and her pension would be nearly \$2,000 per year less than if she had received the 2006 and 2007

<sup>39</sup> (...continued)  
compensation as a one-time bonus.

annual pay adjustments given to other GAO employees. Band III employees appear to be least affected, because the speed bump was removed for their band in 2007, and they were allowed to receive the annual pay increase that year.

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Mr. Chairman, that concludes my prepared statement. I would be happy to answer any questions that you or other Members of the Subcommittee might have.

Mr. DAVIS. We will proceed to Ms. Jones.

**STATEMENT OF SHIRLEY JONES**

Ms. JONES. Mr. Chairman and Representative Norton, I am pleased to be here today to discuss the results of the survey that you requested on the Band II restructuring and the Watson Wyatt market-based compensation study.

My name is Shirley Jones, and I am an Assistant General Counsel at GAO. I had the opportunity to testify before you last November in my capacity of the GAO chapter of Blacks in Government to share the concerns that our chapter had previously raised regarding the impact of the Band II restructuring on African American staff in particular.

In addition to being Chapter president for the last 4 years, I have also served as the attorney representative to the Employee Advisory Counsel; and since your hearing last May, I have worked with the EAC committee that conducted this survey.

I will highlight just a few points.

The survey was sent to all GAO employees except SES and interns. Seventy-one percent of eligible employees responded. To provide a picture of those responding, demographic questions were asked regarding position, years at GAO, age, race, ethnicity, sex, and location. Not surprisingly, the highest area of nonresponse to the demographic questions was in the answer to the question about race identification. In addition, the highest nonresponse to the survey itself was from Asian and African American employees.

Several survey questions asked about staff involvement, input, and transparency with regard to the Watson Wyatt study.

Starting with the Watson Wyatt focus groups, 19 percent of administrative professional and support staff reported participating, compared to only 4 percent of analysts and 8 percent of attorneys. Only 4 percent of those responding reported being interviewed by Watson Wyatt for the study. Of particular note, no Band I or Band II respondents reported being interviewed by Watson Wyatt.

A much higher number of staff, 94 percent, reported that they listened to CG Chats or attended town hall meetings. An overwhelming majority, 81 percent, of respondents reported that they felt they were only slightly involved or not at all involved in providing input to management on the transition to market-based pay. Similarly, 81 percent also felt that employee input was ultimately only slightly or not at all considered.

A majority of those responding had concerns with the level of transparency of the Watson Wyatt study and the GAO decision-making process.

We also asked about satisfaction with GAO's market-based pay system. There were notable differences based on position, age, and race. Band II A's and Band II B's, respondents age 40 and over, and African Americans had higher percentages of respondents who said they were generally or very dissatisfied with GAO's market-based pay system. Eighty-one percent of respondents thought morale in general was worse or much worse now than before the transition. Forty-eight percent responded that their own morale was worse or much worse now. A higher percentage of respondents age

40 and over and African Americans reported that their morale was worse or much worse.

Turning to the restructuring of Band II and to Band II A and Band II B, 54 percent of respondents disagreed or strongly disagreed with the restructuring, while 29 percent strongly agreed or agreed. Certain demographics disagreed or strongly disagreed at a higher rate: African Americans again, Band II A staff, those at GAO 10 years or longer, and employees 40 years or older.

Regarding the current general climate at GAO, lower percentages of Band II analysts and administrative professional and support staff, 33 percent and 38 percent respectively, felt their professional contributions at GAO were highly or very highly valued, compared to attorneys and Band III staff, with that rate at 67 percent and 63 percent respectively.

A lower percentage of respondents with 10 or more years of service and respondents age 40 and older felt that their contributions were highly valued. A lower percentage of African Americans, only 27 percent compared to other racial groups, felt that their contributions were highly valued.

1,113 survey respondents provided substantive narrative comments at the end of the survey, which we coded into 29 categories. Although not generalizable to the overall GAO population, we noted that more than twice as many respondents specifically commented that the Band II restructuring was damaging to employee morale or otherwise provided disincentives than those that responded that it was the right thing to do, 217 compared to 74.

133 respondents commented that GAO's pay for performance system is damaging to employee morale or otherwise provides disincentives, while 80 respondents said that they believed that PFP at GAO is helpful or worthwhile.

108 respondents noted their belief that PFP ratings are inaccurate. 107 respondents noted their belief that GAO employees should receive the same cost of living adjustment as employees at executive branch agencies.

Staff also used the narrative comments to express other concerns, such as GAO losing talented staff because of the recent changes, GAO's overall processes being discriminatory, lack of trust overall, locality pay decisions being flawed, concerns about the lack of domestic partner benefits, and concerns about the treatment of communications analyst positions under the restructuring.

It is important to note that some narrative comments conveyed positive thoughts, including the belief that the Comptroller General should be given credit for moving the agency in the right direction, that GAO has excellent benefits, and that our work is cutting edge.

In conclusion, I would like to end with a personal observation, having served on the EAC for over 4 years. From my perspective, it wasn't surprising that Band II A staff reported more unfavorable responses, particularly as it relates to the compensation ranges and the Band II restructuring. It is also not surprising that African American staff generally had less favorable responses, since we know that African American staff had expressed concerns with the disparities in appraisal scores leading up to the restructuring.

But more than just confirming what was perhaps the obvious, it is notable that staff at all levels and in all positions, not just Band

II A and not just African American staff, expressed concerns about transparency levels, the restructuring, COLAs, and locality pay decisions.

Having worked on the content analysis myself, it was striking to me that while more Band III staff responded that they felt their own personal contributions were highly or very highly valued compared to Band II A staff, Band III staff were also among those who shared concerns with the PFP system and the Band II restructuring providing disincentives or otherwise being damaging to morale, or that the PFP ratings are inaccurate.

It is clear from the survey's high response rate and the voluminous narrative comments that staff at all levels and in all positions and of all races that they appreciated the subcommittee's interest and the opportunities to share their thoughts, both positive and negative, with you directly. On their behalf, I thank you.

This concludes my statement, and I am happy to answer any questions.

Mr. DAVIS. Thank you very much, Ms. Jones.

[The prepared statement of Ms. Jones follows.]

**Testimony before the Subcommittee on Federal Workforce,  
Postal Service, and the District of Columbia,  
Committee on Oversight and Government Reform,  
House of Representatives**

**“The Government Accountability Office  
(GAO) Act of 2007” (H.R. 3268), and  
Other GAO Reforms**

**Statement of Shirley A. Jones, Esq.,  
Employee Advisory Council (EAC) Attorneys Representative**

For Release on Delivery  
Expected at 2:00 p.m. EST  
Thursday, March 13, 2008

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today at your hearing on H.R. 3268, the "Government Accountability Office (GAO) Act of 2007" and other GAO reforms, to discuss the results of the survey that you previously requested that the Employee Advisory Council (EAC) conduct of all GAO employees (except Senior Executive Service/SL and interns) on GAO's Band II restructuring and the Watson Wyatt market-based compensation study used to set salary ranges. My name is Shirley Jones and I am an Assistant General Counsel at GAO. For the last four years I have served as the Attorneys Representative to the EAC. Since your hearing last May, I have worked with the EAC committee that conducted the survey. I am here today to share the results of that survey with you.

#### Overview of EAC Creation and Purpose

The EAC was established by Comptroller General David Walker to provide a consolidated forum for him to meet with representatives from the various employee liaison groups (e.g. Advisory Council for Persons with Disabilities, Blacks In Government, Gay and Lesbian Employee Association, etc.) so that these groups could voice the concerns of their constituency groups. He also decided to include representatives from each of the staff positions (i.e. Administrative Professional Support Staff (APSS), attorneys, and each of the Band levels). Consequently, the EAC was chartered in January 2000 to serve as an advisory body to the Comptroller General and other senior executives by seeking and conveying the views and concerns of the individual employee groups they represent, proposing solutions to those concerns where appropriate, providing input by assessing and commenting on GAO policies, procedures, plans and practices, and communicating issues and concerns of the CG and senior managers to employees.

#### Survey Background

Five EAC members volunteered to conduct the survey that you requested. In addition to myself, the committee consisted of Betsy Morris, Senior Analyst, Defense Capabilities and Management, Beverly Ross, Senior IT Specialist/Data Analyst, Applied Research and Methods, Nellie Shamlin, Executive Assistant, Professional Development Program, and Shana Wallace, Assistant Director, Applied Research and Methods. We received assistance from a survey specialist, Luann Moy, an Assistant Director from our Applied Research and Methods group.

Upon completion of our preliminary survey development work, the survey was pre-tested among a small number of employees representing the different Band levels and positions in the agency, and representing both headquarters and field staff. A draft of the survey instrument was provided to the Chairman's staff for comment. A courtesy copy was given to the Comptroller General and the attorney representing the IFPTE.

The finalized survey was ultimately launched on Thursday, November 15, 2007. The survey was closed on Friday, December 14, 2007. Your staff was briefed on the results on January 15, 2008 and March 5, 2008.

#### Overall Survey Response Rate

The survey was sent to all GAO employees except Senior Executive Service/SL and interns (a total of 3,002 employees). 71% of eligible employees participated in the survey.

To provide a picture of those responding to the survey, respondents were asked demographic questions regarding their position, years at GAO, age, race, ethnicity, sex, and location (headquarters or field). As is normally the case, some respondents chose not to answer some or all of the demographic questions.

The highest area of nonresponse to the demographic questions was in the answer to the question about race identification, which was not answered by 253 or 12% of the respondents. The highest nonresponse was from Asian employees (the number who responded and identified themselves as Asian represents only 40% of those eligible) and African Americans (the number who responded and identified themselves as African American represents only 49% of those eligible). Because of the lower response rate for these two races, the EAC survey committee noted its concerns with presenting comparisons by race and with the possible under-representation of the views of those two groups in particular.

#### Analysis of Close-Ended Survey Questions

Several survey questions asked employees about the Watson Wyatt market-based compensation study and specifically about staff involvement, input and transparency. Specifically, respondents who were at GAO prior to January 1, 2006, were asked if they were involved in several different types of activities conducted by Watson Wyatt and GAO during the study. These activities included focus groups, interviews, meetings with team management, and CG chats.

Of those respondents who were at GAO prior to that date (83% of respondents), 30% could not recall if they received communications from management advising that Watson Wyatt would be conducting focus groups. Of those who recalled whether they participated in focus groups, more APSS than analyst staff reported participating. Specifically, 19% of APSS staff reported participating, while only 4% of analysts and 8% of attorneys reported participating.

Only 4% of all respondents at GAO prior to that date reported being interviewed by Watson Wyatt. More APSS than other staff reported being interviewed (21%). Of particular note, no Band I or Band II respondents reported being interviewed by Watson Wyatt. However, in comparison to the 4% that reported being interviewed by Watson Wyatt, 21% of respondents reported having attended briefings conducted by Watson Wyatt.

A higher number of staff who were at GAO prior to that date, 94%, reported that they listened to CG Chats or attended town hall meetings. 13% also reported asking a question or making a comment to the CG about the transition outside of meetings.

53% of respondents reported little or no opportunity to provide input to management on the transition to market-based pay. A higher percentage of respondents who identified themselves as Hispanic (67%) or African American (66%) as compared to other racial groups reported that they had little or no opportunity to provide input into the transition.<sup>1</sup>

81% of respondents reported that they felt they were only slightly involved or not at all involved in providing input to management on the transition to market-based pay. Similarly, 81% of respondents also felt that employee input on the transition was ultimately only slightly or not at all considered. 42% responded that employee input was not at all considered.

57% of all respondents at GAO prior to January 2006 felt the level of transparency of the Watson Wyatt study to be very or somewhat unreasonable. Similarly, 58% also felt that the level of transparency of the GAO decision-making process was somewhat or very unreasonable. Generally, the more years of service a respondent had at GAO, the more likely he or she was to report feeling the GAO decision-making process was somewhat or very unreasonable. 75% of respondents with over 20 years of service felt this way compared to 55% of respondents with 2 years or less.

46% of survey respondents felt generally dissatisfied or very dissatisfied with GAO's market-based pay system compared to 34% of survey respondents who were generally or very satisfied. 20% of respondents reported that they were neither satisfied nor dissatisfied.

There were notable differences in dissatisfaction level based on position, age, and race. Band IIAs and Band IIBs reported being more dissatisfied than Band I and Band III analysts, APSS, and attorneys. A higher percentage of respondents age 40 and over (59%) than under 40 (25%) reported feeling generally or very dissatisfied with the market-based pay system. African Americans also had higher percentages of respondents (64%) than other racial groups who said they were generally or very dissatisfied with GAO's market-based pay system than those in other racial groups.

With regard to the effect of the transition to market-based pay on overall morale, 81% of respondents thought morale in general was worse or much worse now than before the transition to market based pay. 48% responded that their own morale was worse or much worse now. A higher percentage of respondents age 40 and over than respondents under 40 reported that their morale and productivity are worse or much worse than before the transition. A higher percentage of African Americans than other racial groups reported that their morale was worse or much worse (58%).

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<sup>1</sup> As noted earlier, because of the lower response rate for Asians and African Americans, the EAC survey committee noted its concerns with presenting comparisons by race and with the possible under-representation of the views of those two groups in particular.

Regarding the Band II Restructuring (i.e. the restructuring of Band II into a Band IIA and Band IIB with IIB having a higher salary range), 54% of respondents disagreed or strongly disagreed with the Band II analyst and analyst-related restructuring, while 29% agreed or strongly agreed. Certain demographics disagreed or strongly disagreed at a higher rate - African Americans (67%), Band IIA (67%), those at GAO 10 years or longer (66%), and employees 40 years or older (65%).

Regarding specific outcomes of the Band II restructuring, 55% of respondents disagreed or strongly disagreed that the restructuring rewards workers more equitably, while 31% agreed or strongly agreed. Similarly, 67% disagreed or strongly disagreed that the restructuring enhances productivity while 13% agreed or strongly agreed.

Conversely, a slight majority (52%) of respondents agreed or strongly agreed that Band IIB staff lead more complex jobs. These results varied widely by Band level - 34% of Band IIAs agreed or strongly agreed while Band IIBs and Band IIIs agreed or strongly agreed at a much higher rate (69% and 71% respectively).

Regarding the current general climate at GAO, 40% of respondents said that their own level of morale related to working at GAO was high or very high. 36% said their level of morale was moderate, while 24% said it was low or very low.

There were notable differences in responses regarding general climate at GAO based on position, age, and years of service. Among the different positions at GAO, Band IIA analysts had the lowest percentage responding that their morale was high or very high (30%) while attorneys had the highest percentage (60%). 53% of respondents under 40 years old reported high or very high levels compared to 32% of respondents who were age 40 or older. Staff with less than 10 years at GAO (50%) reported higher levels of morale than respondents with 10 or more years at GAO (only 30%).

45% of respondents reported feeling that their professional contributions at GAO were valued to a high degree. 33% said that their contributions were moderately valued, and 22% said their contributions were valued to a low or very low degree. Lower percentages of Band IIA analyst and APSS (33% and 38% respectively) felt their contributions were highly or very highly valued compared to attorneys and Band III staff (67% and 63% respectively).

The more years of service respondents had at GAO, the less likely they were to report that they felt their contributions were highly or very highly valued. A lower percentage of respondents with 10 or more years of service (37%) than respondents with under 10 years of service (54%) felt that their contributions were highly valued. Similarly, a lower percentage of respondents age 40 and older (38%) than respondents under 40 (59%) felt that their contributions were highly valued.

A lower percentage of African Americans compared to other race groups felt that their contributions were highly valued. 27% of African Americans responded that their contributions were highly or very highly valued compared to 51% of White staff.

#### Methodology for Content Analysis of Open-Ended Survey Question

To give respondents an opportunity to provide additional thoughts or concerns, we include an open-ended question which read “What other comments or thoughts would you like to provide to the House Subcommittee about the Watson Wyatt study, Band II restructuring, market-based pay system, the GAO performance management system or GAO work life, in general?” 1113 respondents provided substantive comments to this question.

To classify the nature of the comments, we created 29 categories to use as codes. Two survey committee members independently coded every comment, and then discussed comments where there were any differences in coding until 100% agreement was reached. Some comments were coded into more than one category since some respondents discussed more than one topic.

#### Analysis of Open-Ended Survey Question

The comments to the open-ended question cannot be generalized to the entire GAO employee population. They do, however, provide some insights into why some respondents answered close-ended survey questions as they did.

Our content analysis of respondents’ comments showed the top specific areas of concern expressed as the Band II restructuring being damaging to employee morale or otherwise providing disincentives (217 comments), the Pay For Performance (PFP) system being damaging to employee morale or otherwise providing disincentives (133), PFP ratings not being accurate (108), GAO employees not receiving the same COLA as employees at Federal executive branch agencies (107), and the Watson Wyatt study being flawed or fraudulent (84). (The other two categories among the top seven most common comments were “other” less specific consolidated comments.)

Although not generalizable to the overall GAO population, we noted that more than twice as many respondents commented that the Band II restructuring was damaging to employee morale or otherwise provided disincentives than those that responded that it was the right thing to do. Specifically, in contrast to the 217 comments noted above from respondents that said that the Band II restructuring at GAO is damaging to employee morale or otherwise provides disincentives, 74 of the narrative comments said the Band II restructuring was the right thing to do. Some other comments expressed agreement with the Band II restructuring in concept but didn’t believe it was working (74). Some comments also noted concern with the lack of transparency in the Band II restructuring (47). Some respondents also noted their belief that the Band II restructuring should have included “grandfathering” provisions for staff already within Band II at the beginning of the process (31).

While 133 respondents commented that GAO's Pay For Performance (PFP) system is damaging to employee morale or otherwise provides disincentives, 80 respondents said that they believe that PFP at GAO is helpful or worthwhile. Similarly, 108 respondents specifically noted their belief that PFP ratings are inaccurate. Some others agreed with PFP in concept but didn't believe it was working here at GAO (48). Some respondents also noted their concern with the lack of transparency in the PFP system at GAO (69). A smaller number of respondents specifically noted their belief that the PFP system is flawed, fraudulent or unethical (45).

Cost of living adjustments (COLAs) were also a consistent theme within the narrative responses. As noted earlier, 107 respondents specifically noted their belief that GAO employees should receive the same COLA as employees at Federal executive branch agencies.

Compared to the 84 narrative comments that noted concerns with the Watson Wyatt study being flawed or fraudulent, 6 narrative comments specifically noted belief that the Watson Wyatt study was correct. Some respondents' comments also noted concerns about the lack of transparency with the Watson Wyatt study (73).

Some narrative comments conveyed positive thoughts including the belief that the Comptroller General should be given credit for moving the agency in the right direction (30) and that GAO has excellent benefits (32). Other generally positive comments (44) that did not fit into one of the more specific categories so were coded as "Other-Positive" included beliefs that GAO's Professional Development Program (PDP) is a very good one and that GAO's work is cutting edge.

Staff also used the narrative comments, however, to express their belief that the changes at GAO were going to happen anyway regardless of staff input (64). Other negative comments included concerns with GAO losing talented staff because of recent changes (74), GAO's overall processes being discriminatory (54), lack of trust overall (45), and locality pay decisions being flawed (27).

The count of combined negative comments that did not fit into the more specific categories and that were captured as "Other-Negative" had the highest overall category count (426). This category captured a variety of negative comments such as promoting Band I staff to IIA faster results in less qualified staff at higher levels, GAO should deal with the real problem – poor performance, concerns about the lack of domestic partner benefits, and concerns about the treatment of communications analyst positions under the Band II restructuring.

### Conclusion

In general, Band IIA staff reported more unfavorable responses to many of the topics covered in this survey (Band II restructuring, the Watson Wyatt studies –analyst and APSS, market-based pay, and overall GAO climate) than staff in other bands and positions. African American staff, older staff, and staff with more years at GAO, also had

generally less favorable opinions of these topics. There were few differences of opinion between male and female staff, and headquarters and field staff about these topics.

Respondents used the open-ended question that we included to further highlight their concerns regarding these topics as well as to express their continued belief in the work of the agency. While the narrative comments can not be generalized to the overall GAO population, they did provide insightful and thoughtful feedback for consideration.

Mr. DAVIS. Ms. Smith.

**STATEMENT OF JANET C. SMITH**

Ms. SMITH. Chairman Davis and members of the subcommittee, I am pleased to be here today to discuss the U.S. Government Accountability Office African American and Caucasian Analysts' Performance Assessment Study, Tasks 1 and 2.

My name is Janet Crenshaw Smith, and I am president of Ivy Planning Group.

In 2002, GAO issued a solicitation seeking a third-party assessment of the factors influencing the performance rating average differences between African American and Caucasian analysts. Ivy Planning Group was retained by GAO as the prime contractor for this contract; SRA International is the subcontractor to Ivy.

This project was divided into three tasks. We have completed the first two.

Task one is an analysis of 2002 to 2006 performance data for African American and Caucasian analysts. The purpose of this task is to confirm that there were differences between the ratings of African Americans and Caucasian analysts. The Ivy team performed a statistical analysis to determine if there are significant differences in the performance ratings of the two groups.

Task two is an assessment and comparison of abilities, education, engagement roles, and performance of new GAO analyst hires and onboard employees rated from 2002 to 2006. The purpose of this task is to determine if African American analysts and Caucasian analysts have the same abilities and backgrounds when they arrive at GAO and to begin to look at what happens to them during their tenure at GAO.

The Ivy team evaluated key characteristics to determine if both groups are equal at time of hire; controlled statistically for differences in education, experience, key roles and gender; assessed rater demographics on outcomes; and reviewed human capital processes for consistency with agency goals.

Task three is an assessment of internal and external best practices in implementing performance management systems, and preparation of a final report that brings tasks one, two, and three together. Task three involved looking at best practices in the private sector, the Federal sector, and within GAO; collecting qualitative data from African American and Caucasian analysts and raters at GAO; and presenting our overall recommendations to GAO. We are scheduled to present our final report at the end of next month.

I will discuss tasks one and two today. However, as the project is really the culmination of all three tasks, I look forward to having the opportunity to return to discuss with you task three and the final report and particularly Ivy's recommendations in the future. I will report where we are in the project, highlighting a few points around what we have learned thus far.

First, yes, there are differences in ratings between African American analysts and Caucasian analysts in general. Also, by competency, pay band, team, location, and regardless of the race of the rater. And the differences are statistically significant.

There are some differences between African American analysts and Caucasian analysts at their time of hire. They come from dif-

ferent schools and proportionally do not have the same level of education. Please note that our data on school and degree are based on the highest degree earned by the analyst and that, while most analysts earned their highest degrees prior to being hired, some analysts may have earned their highest degree after joining GAO.

We also learned that the same factor impacts African American analysts and Caucasian analysts ratings differently. For example, having a Ph.D. has a statistically significant positive effect for Caucasian analysts but no effect for African American analysts. Caucasian analysts receive a ratings benefit from being assigned to high-risk projects, compared to African American analysts who receive no statistically significant effect of having been assigned to a high-risk project. African American analysts with some college but no degree receive no statistically significant negative ratings correlation, compared with Caucasian analysts with some college but no degree who do.

The final report will provide our full synthesis and analysis of the data in the context of our overall findings and, more importantly, our recommendations to mitigate these differences.

I look forward to continuing the open communication with you and your staff and reporting those findings. Thank you for the opportunity.

Mr. DAVIS. Thank you very much, Ms. Smith.

[The prepared statement of Ms. Smith follows:]

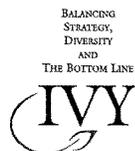
**Ivy Planning Group LLC  
Testimony Before  
The Committee on Oversight and Government Reform  
House of Representatives  
Subcommittee on Federal Workforce, Post Service,  
and the District of Columbia**

**On U.S. Government Accountability Office (GAO)  
African American Performance Assessment Study  
Tasks 1 and 2**

**Statement of  
Janet Crenshaw Smith  
President  
Ivy Planning Group LLC**

**Room 2154  
Rayburn House Office Building**

**Thursday, March 13, 2008  
2 p.m.**



**Chairman Davis and Members of the Subcommittee:**

I am pleased to be here today to discuss the U.S. Government Accountability Office (GAO) African American and Caucasian Analysts' Performance Assessment Study, Tasks 1 and 2.

In 2007, GAO issued a solicitation seeking a third party assessment of the factors influencing the rating average differences between African Americans and Caucasians. On the basis of the contractor's analysis and findings, GAO requested recommendations to address any non-merit-based issues. The assessment was to include an analysis of existing GAO data and outreach to the various stakeholders (e.g., the Executive Committee, Employee Advisory Council, Managing Directors and other managers, Designated Performance Managers who are responsible for developing staff and assessing performance, and employees) for their perspective and experience using GAO's validated competency-based performance appraisal system. The contractor was to:

- Assess the demographic rating differences among and within teams, identify current related best practices within GAO's teams and outside GAO
- Recommend, as necessary and appropriate, specific steps that GAO should take to address the contractor's findings
- Understand and determine what factors may or may not be influencing rating average differences that GAO has identified, GAO required assessments of the assumption that all new hires and onboard staff are comparable in terms of skills, education, background, engagement roles, and other major performance-related factors.
- Assess the causes of 2002–2006 rating average differences, including providing reasonable assurance that there is equity and non-discrimination in the implementation of the competency-based performance appraisal system (CBPS), and helping to ensure that any rating average differences are merit based
- Provide findings and make any related recommendations it deems to be appropriate.

Ivy Planning Group was retained by GAO as the prime contractor for this solicitation. SRA International is a subcontractor to Ivy Planning Group. Together we are the Ivy Team. *Chart 1 (Appendix) outlines the Ivy Team's Project Overview.*

This project was divided into three tasks.

- **Task One is an analysis of 2002-2006 performance data for African American and Caucasian Analysts.** The purpose of this task is to confirm that there were differences between the ratings between African American and Caucasian analysts. The outcome is an analysis of 2002-2006 performance ratings data for African American analysts and Caucasian analysts. The Ivy Team performed a statistical analysis to determine if there are significant differences in the performance ratings of the two groups. Task One was conducted in September and October of 2007. We presented a briefing to GAO in October 2007.
- **Task Two is an assessment and comparison of abilities, education, engagement roles, and performance of new GAO hires and onboard employees rated from 2002-2006.** The purpose of this task is to determine if African American analysts and

Caucasian analysts have the same abilities and background when they arrive at GAO and to begin to look at what happens to them during their tenure at GAO. The outcome is an independent assessment of the comparability of the capabilities of African American and Caucasian analysts upon hire; a review of data to determine if access to training and engagement assignments influence performance ratings; and an assessment of human capital processes to determine if they contribute to rating differences. The Ivy Team evaluated key characteristics to determine if both groups are equal at time of hire; controlled statistically for differences in education, experience, skills, key roles, and gender; assessed rater demographics on outcomes; and reviewed human capital processes for consistency with agency goals. Task Two was conducted September through December of 2007. We presented a briefing to GAO in January 2008.

- **Task Three is an assessment of internal and external best practices in implementing performance management systems; and preparation of a final report that brings Tasks One, Two and Three together.** The purpose is to determine what happens to analysts during their tenure at GAO that may contribute to differences in performance ratings; outline the factors that may contribute to the differences; and present recommendations to mitigate the differences in performance ratings and remove barriers. Task Three involves researching best practices in performance management in the Federal and private sectors and within GAO and collecting qualitative data from African American and Caucasian analysts and raters at GAO. We are scheduled to present the final report at the end of April 2008.

I will discuss Tasks One and Two today. However, as the project is really the culmination of all three tasks, I look forward to having an opportunity to discuss Task Three and the Final Report with you in the future. The final report will provide our full synthesis and analysis of the data in the context of our overall findings and more importantly, our recommendations. Today I will report where we are in the project and what we have learned thus far.

### Summary

1. Yes, there are differences in ratings between African American analysts and Caucasian analysts in general, by competency, pay band, team, location, and regardless of the race of the rater, and the differences are statistically significant.
2. There are some differences between African American analysts and Caucasian analysts at their time of hire. They come from different schools and proportionally do not have the same level of education. Please note that our data on school and degree are based on the highest degree earned by the analyst, and that while most analysts earned their highest degree prior to being hired, some analysts may have earned their highest degree after joining GAO.

3. The same factor impacts African American and Caucasian analysts' ratings differently. For example:
- a. Having a PhD. has a statistically significant positive effect for Caucasian analysts but no effect for African American analysts
  - b. Caucasian analysts receive a ratings benefit from being assigned to high risk projects compared to African American analysts who receive no statistically significant effect of being assigned to a high risk project
  - c. African American analysts with some college, but no degree, receive no statistically significant negative ratings correlation compared to Caucasian analysts with some college, but no degree, who do.

#### **Data Collection**

The Ivy Team assembled data from GAO-supplied systems; created a unified analysis file containing data over time and across systems; and conducted analyses to understand performance rating differences across various dimensions. We requested and received the following data from GAO:

- Performance Assessment Data
  - Five On-Cycle (annual) review files spanning years 2002-2006 with a total of 8,640 records
  - Two Off-Cycle review files for the 2002-2004 and 2005 Competency Based Performance Systems (CBPS)
  - 2,049 (out of 3,560) Off-Cycle review records correspond to Professional Development Program (PDP) reviews between 2002 and 2006
  - Files also contain Ratee demographic information and scores for each competency
- Demographic Data files including: Identifier, Pay Plan, Race, Band, Gender, Employee Type (e.g., full-time permanent), Date of Birth, Date of Last Appointment, GAO Start Date, Salary, Education Level, Title, Job Series, Location, Rater demographic information, and Off-Cycle Ratee demographic information
- Knowledge and Skills Inventory System (KSIS) including: Skills, Certifications, Publications and Education data (Most advanced degree, Major, and Institution attended)
- Management and Assignment Tracking System (MATS) data: How many hours each analyst worked on a project, and Project Risk Level
- Internship Data (information on interns between 1998 and 2006, some of whom may still be in the PDP)
- Separation Data

**GAO Performance Rating Scale**

<b>Ratings and Corresponding Scores</b>	
<b>Rating</b>	<b>Score</b>
Below Expectations	0.0
Meets Expectations	1.5
Exceeds Expectations	3.0
Role Model	5.0

**Note:** There are some limitations to the data that were available. They are outlined in the appendix.

**Are there differences between the performance ratings of African American analysts and Caucasian analysts?**

Yes, there are differences in general, by competency, pay band, team, location, and regardless of the race of the rater.

African American analysts' mean scores were lower than Caucasian analysts' mean scores in all years. The difference is statistically significant for 2002, 2003, 2004, 2005, and 2006. See Chart 2. *Performance Ratings Comparisons 2002-2006 African American vs. Caucasian analysts.* The difference in performance ratings begins during the PDP. Interestingly, over the course of the PDP, the average performance ratings for African American and Caucasian analysts increase. However, the average performance rating for Caucasian analysts increases more than that of African Americans (African American analysts improve .13 while Caucasian analysts improve .32)

***Ratings Comparisons by Competency***

With the exception of the average rating for Improving Professional Competence, African American analysts' mean scores were lower than Caucasian Analysts' mean scores across all competencies. Two of the three competencies that were dropped in 2004 (Improving Professional Competence and Facilitating and Implementing Change) are two of the three competencies for which the difference was not statistically significant. While not statistically significant, they are the competencies for which African American analysts performed better. See Chart 3. *Performance Ratings Comparisons by Competency*

The largest gaps are for the Maintaining Client and Customer Focus, Thinking Critically, and Presenting Information in Writing competencies. African American analysts score highest on Collaborating with Others; Caucasian analysts score highest on Maintaining Client and Customer Focus. The differences for Improving Professional Competence, Facilitating and Implementing Change, and Developing People are not statistically significant.

Leading Others, Developing People, and Investing Resources are not used for analysts in the PDP and are used for Band III only.

***Ratings Comparisons by Pay Band***

African American Analysts' mean scores were lower than Caucasian Analysts' mean scores across all Pay Bands. Band III differences are smallest, but are still generally statistically significant. *See Chart 4. Performance Ratings Comparisons by Pay Band*

***Effect of Review Year***

From 2002-2006, African American analysts' mean scores were lower than Caucasian analysts' mean scores. They were lower every year. The difference grew each year, with the most significant increase in 2005 and 2006. *See Chart 5. Regression by Review Year*

***Ratings Comparisons by Location***

With one exception, and this was not statistically significant, African American analysts' mean scores were lower than Caucasian analysts' mean scores across all locations. The ratings differences are statistically significant in eight of the thirteen locations.

***Ratings Comparisons by Race of Rater***

On average, raters of all races rated African American analysts lower than Caucasian analysts. The differences were statistically significant when the rater was African American, Hispanic or Caucasian. Based on these data, rater race demographics did not influence African American or Caucasian analyst ratings. *See Chart 6. Performance Ratings Comparisons by Race of Rater*

**Do African American and Caucasian analysts have the same abilities and background when they arrive at GAO?**

Given some of the data limitations, such as not having grade point averages and usable data related to skills to more accurately compare abilities, we are primarily able to answer this question based on two data points:

- Highest degree obtained
- Third-party ranking (*U.S. News & World Report*) of the schools from which analysts earned their highest degree

**Note:** *These two data points do not allow us to adequately answer this question because some analysts received their highest degree after arriving at GAO.*

Based on these data, African American and Caucasian analysts are not the same when they arrive. They come from different schools and proportionally do not have the same level of education.

In this section, we not only answer the question are they the "same" when they arrive, but also look at the impact of these factors on average ratings for Caucasians and African American analysts.

The Ivy Team performed regression analyses, a statistical technique applied to data to determine if there is a strong or weak correlation of variables. In this case, the analysis was to control for individual characteristics that may contribute to performance ratings. This included analyses of performance ratings against demographic, education, experience, and organizational variables for African Americans only, Caucasians only, and both Caucasians and African Americans (All). The “All” results are similar to the Caucasian results because Caucasians are almost 86% of the data (African Americans are 14.4% of the total).

***Effect of Education (Most advanced degree earned)***

A higher percentage of Caucasian analysts have graduate degrees (Master’s and Doctorates) – 75 percent versus 66 percent. African American analysts are more likely to have only a Bachelor’s degree or less (34 percent versus 25.6 percent of Caucasian analysts). *See Chart 7. Highest Degrees Earned by Analysts*

Having a Ph.D. has a statistically significant positive effect for Caucasian analysts but no effect for African Americans. In other words, if a Caucasian analyst has a PhD, there is a probability that it will have a positive impact on his or her performance rating. If an African American analyst has a PhD, there is a probability that it will have no impact on his or her performance rating.

Caucasian analysts with some college, but no degree, receive performance ratings significantly lower than those with Bachelors degrees. For African American analysts there is no statistically significant negative correlation. *See Chart 8. Regression by Highest Degree of Analysts by Race*

***Effect of Education (Institution)***

KSIS provided information on educational institution attended. This analysis uses the institution associated with the analyst’s most advanced degree. US News and World Report’s 2007 Ranking of 130 Colleges and Universities was divided into five equal groups (quintiles). Those schools that were not ranked by the magazine are captured by the “Institution – Not Ranked” variable. Those analysts who have not entered the relevant information in KSIS are captured as “Institution – Not Provided.”

Caucasian Analysts are 1.5 times more likely than African American analysts to attend an institution in the top 3 quintiles for their most advanced degree. African American Analysts are 33% more likely to attend an institution not ranked by US News and World Report for their most advanced degree as compared to Caucasian analysts. *See Chart 9. School Ranking – U.S. News and World Report*

The effects of educational institution are measured relative to the top quintile. If the best performers come from the top ranked 26 schools, the coefficients for lower ranked quintiles would all be negative. While the coefficients for the second through fifth quintiles in the All and Caucasian regressions are all negative, they are not all statistically significant. However, the Not Ranked group (schools below the top 130), which accounts for 41% of African American analysts and 31% of Caucasian analysts, is negative and statistically significant. African

American analysts who attended historically black colleges or universities (HBCU), all but one of which are unranked, get a positive effect relative to other African American analysts. Thus there is a probability that African American analysts who attended a HBCU will have a higher performance rating than those who did not. *See Chart 10. Regression by School Ranking*

In addition to education, we also examined other factors.

#### *Years of Prior Work Experience*

Caucasian Analysts on average have approximately six years of work experience outside of GAO while African American analysts have about 4.5 years of outside experiences. Years of experience have a small positive effect on the performance ratings of Caucasians and virtually no effect on the ratings of African Americans.

#### *Effect of Having Been a GAO Intern*

Those African American Analysts who had been a GAO intern prior to becoming a full-time GAO employee seem to benefit from the experience. The effect of having been an intern has a statistically significant positive effect on the ratings of African American analysts.

#### **What happens to African American and Caucasian analysts after they arrive at GAO that may contribute to differences in their performance ratings?**

The data below begins to answer this question. We believe we will be able to answer it more fully once we complete the analysis of the qualitative data in Task 3 which will help us better understand: 1) how the human capital processes that impact performance ratings actually work and, 2) any differences in the experiences of African American and Caucasian Analysts. Nonetheless, what we know now suggests that pay band, rating team, and project risk level impact the performance rating difference.

#### *Effect of Pay Band*

Being in bands 2b and 3 have a positive effect on ratings for both African American and Caucasian analysts. Band 2a has a negative effect on the performance ratings of both African Americans and Caucasians.

#### *Effect of Rating Team*

African American Analysts' mean scores were lower than Caucasian Analysts' mean scores across all Rating Teams. However the differences were not always statistically significant.

*Effect of Project Risk Level*

Caucasian analysts benefit from being assigned to high risk projects, but for African American analysts the effect of being assigned to a high risk project is not statistically significant. *See Chart 11. Project Risk*

**Human Capital Process Analysis**

As part of the Ivy Team's work in Task 2, we began to review the human capital processes that impact performance ratings – workforce planning, recruiting, PDP, training, the assignment process, and the performance evaluation process.

The Ivy Team interviewed twenty-one GAO process owners and subject matter experts to understand how each process does or is intended to work. We reviewed GAO documents including: GAO website and intranet; competencies; forms, procedures, and resources; reports, strategy outlines, organization charts, and memos; training catalogues, guidelines, and materials; procedures manuals and process maps. We compiled, synthesized, and applied the Ivy Team's expertise in performance management, human capital systems, organizational effectiveness, and diversity to the qualitative information to identify findings and implications that could lead to the discrepancies between the performance ratings of African American and Caucasian analysts.

We found that the Human Capital processes are designed to be consistent and include good practices in their design; and GAO's Human Capital processes are well documented and available to supervisors and employees to assist them in implementing human capital procedures.

Task Three will provide additional, and we believe meaningful, qualitative data to inform these preliminary observations:

*Structure and Process*

- Many Human Capital processes have been redesigned or are undergoing redesign. These changes may, over time, mitigate some of the performance rating discrepancies. Examples include: structured learning paths, banding (2a and 2b), agency-wide mentoring program, campus executive recruiting training.
- There may be inconsistencies in the application of some of the Human Capital processes reviewed that may or may not impact performance ratings, e.g., field versus headquarters practices, PDP selection process differences for intern conversions versus new applicant hiring practices.
- There appears to be insufficient data management infrastructure, tracking, reporting and analysis, to permit GAO to monitor proactively differences in access to assignment opportunities and other factors that impact performance ratings. This includes limited capability for real-time reporting and limited ability to change data requests which delays timeliness of information gathering and analysis. Most metrics appear to be "lag" versus

“lead” measures that extend the time to institute changes until after results are in instead of before negative results can occur.

There may be inconsistencies in the administration of the Performance Management Process that may allow for more than the expected level of subjectivity that is inherent in performance management processes.

#### *Professional Development and Training*

- Experiences in the Professional Development Program (PDP) seem to shape an analyst’s career.
- The role of the PDP advisor and his/her accessibility may impact an analyst’s experience. Informal mentors seem to play an important role in the development of PDPers.
- Analysts of both races face similar challenges related to accessing training given their busy schedules.
- The project assignment process may not always work as outlined.
- Voluntary rather than required individual development planning may result in less focused attention to an analyst’s developmental needs.
- GAO’s environment appears to emphasize production with limited incentives for managers to develop lagging performers.

#### **NEXT STEPS**

In Tasks One and Two we answered key questions. An analysis of 2002-2006 performance data revealed that, “Yes” there were differences between the performance ratings of African American and Caucasian Analysts. The ratings gap existed for both off-cycle and on-cycle reviews. The ratings gap existed after controlling for variables including competency, rating team, pay band, location, race of the rater, education (highest degree earned), educational institution attended, ratee’s average project risk, review year and other organizational indicators.

A review of GAO Human Capital Processes provides insights that may have contributed to some of these ratings differences, but additional information is required to provide a meaningful analysis.

In Task Three the Ivy Team will:

- Compare performance management-related processes with best practices and develop recommendations
- Review feeder systems to performance management (assignments, access to training) to identify any unintended barriers
- Analyze sample of approx. 16 individuals’ performance reviews at years one, three, and five (approx. 48 individual performance review documents)

- Collect qualitative data to help test hypotheses and to better understand the work environment and how employees are coached, mentored, developed, and assigned work (17 focus groups in 4 locations)

The Final Report will bring the three tasks together, outlining the factors responsible for rating average differences, barriers or obstacles that may cause or perpetuate differences, and recommendations to mitigate differences and remove barriers and obstacles.

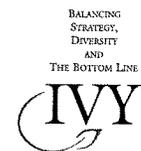
## APPENDIX

**Data Limitations**

- Because grade point average was not available, we were limited in the variables that could be included in the regression analysis
- Because KSIS data are often incomplete or missing altogether, we are not able to measure skills prior to and after employment at GAO
- KSIS skills data are too detailed to consolidate for analysis. In addition, the self-reported skills assessments may be subjective
- Our experience variable represents years or age
- MATS risk data do not apply to all GAO analysts (e.g., those in staff offices or details in Congressional Relations)

**Charts**

1. Ivy Team's Project Overview
2. Performance Ratings Comparisons 2002-2006 African American vs. Caucasian analysts
3. Performance Ratings Comparisons by Competency
4. Performance Ratings Comparisons by Pay Band
5. Regression by Review Year
6. Performance Ratings Comparisons by Race of Rater
7. Highest Degrees Earned by Analysts
8. Regression by Highest Degree of Analysts by Race
9. School Ranking - US News and World Report
10. Regression by School Ranking
11. Band and Project Risk



**U.S. Government Accountability Office (GAO)  
African American Performance Assessment Study**

*Chart 1. Project Overview*

Task	Outcome	Time Frame
1. Analysis of 2002-2006 performance data for African Americans and Caucasians	<ul style="list-style-type: none"> <li>▪ Analysis of GAO's performance ratings data for African Americans and Caucasians</li> <li>▪ Briefing to Executive Committee</li> </ul>	9/10- 10/15/07
2. Assessment and comparison of, skills, education, engagement roles, and performance of new GAO hires and onboard employees rated in the last five cycles	<ul style="list-style-type: none"> <li>▪ Independent assessment of the comparability of the capabilities of African Americans and Caucasians upon hire</li> <li>▪ Review of data to determine if access to training and engagement assignments influences performance ratings</li> <li>▪ Assessment of human capital processes to determine if they contribute to rating differences</li> <li>▪ Briefing to Executive Committee</li> </ul>	9/17 –12/24/07
3.1 Assessment of internal and external best practices in implementing performance management systems 3.2 Preparation of final report that brings all three tasks together/ Executive Committee briefing 3.3 Three local final report briefings	<ul style="list-style-type: none"> <li>▪ Performance management and recruiting best practices within GAO and in the Federal and private sectors</li> <li>▪ Final report that outlines the factors responsible for rating average differences, barriers or obstacles that may cause or perpetuate differences, and recommendations to mitigate differences &amp; remove barriers/obstacles</li> <li>▪ Briefing to Executive Committee</li> <li>▪ Additional briefings</li> </ul>	Task 3 Briefing Late 3/08  Final Report Briefing late 4/08  Add'l Briefings 5/08



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Appendix - 1

*Chart 2. Performance Ratings Comparisons 2002-2006 African American vs. Caucasian analysts*

Ratings by Year	African American		On-Cycle Caucasian		Difference
	Mean	N	Mean	N	
<b>2002*</b>	2.02	256	2.22	1,554	0.20
<b>2003*</b>	2.14	259	2.33	1,515	0.19
<b>2004*</b>	2.17	268	2.38	1,483	0.21
<b>2005*</b>	2.28	249	2.55	1,396	0.27
<b>2006*</b>	2.26	242	2.60	1,418	0.34
<b>Overall*</b>	2.17	1,274	2.41	7,366	0.24

\* denotes statistically significant difference in means at 95% confidence level



Chart 3. Performance Ratings Comparisons by Competency

	On-Cycle African American Mean	Caucasian Mean	Difference
Achieving Results*	2.09	2.33	0.24
Maintaining Client and Customer Focus*	2.5	2.88	0.38
Thinking Critically*	2.21	2.81	0.6
Improving Professional Competence	1.92	1.89	-0.03
Collaborating with Others*	2.73	2.86	0.13
Presenting Information Orally*	1.95	2.13	0.18
Presenting Information in Writing*	1.78	2.13	0.35
Facilitating and Implementing Change	1.9	1.94	0.04
Representing GAO*	2.24	2.34	0.10
Leading Others*	2.22	2.31	0.09
Developing People	2.29	2.4	0.11
Investing Resources*	1.77	1.85	0.08

\* denotes statistically significant difference in means at 95% confidence level



Chart 4: Performance Ratings Comparisons by Pay Band

	African American		Caucasian		Difference
	Mean	N	Mean	N	
2002	I*	51	2.19	278	0.19
	II*	169	2.19	942	0.19
	III*	36	2.32	334	0.17
2003	I*	56	2.37	262	0.27
	II*	164	2.29	910	0.16
	III	39	2.41	343	0.15
2004	I*	56	2.42	210	0.28
	II*	169	2.33	922	0.19
	III	43	2.47	351	0.13
2005	I*	36	2.54	126	0.33
	II*	170	2.50	934	0.26
	III*	43	2.68	336	0.22
2006	I*	32	2.50	123	0.37
	IIA*	117	2.35	583	0.30
	IIIB*	49	2.85	378	0.23
	III*	44	2.77	334	0.25
Overall	I*	231	2.37	999	0.26
	II*	672	2.33	3,708	0.20
	IIA*	117	2.35	583	0.30
	IIIB*	49	2.85	378	0.23
	III*	205	2.53	1,698	0.17

\* denotes statistically significant difference in means at 95% confidence level



**Chart 5: Regression by Review Year**

Explanatory Variable Name	African Americans		Caucasians		All Analysts	
	Coefficient	Mean	Coefficient	Mean	Coefficient	Mean
<b>2003 Review</b>	0.11 ***	0.21	0.10 ***	0.20	0.10 ***	0.20
<b>2004 Review</b>	0.13 ***	0.20	0.14 ***	0.20	0.14 ***	0.20
<b>2005 Review</b>	0.22 ***	0.20	0.31 ***	0.20	0.30 ***	0.20
<b>2006 Review</b>	0.28 ***	0.21	0.42 ***	0.22	0.40 ***	0.21

\* statistically significant at the .10 level  
 \*\* statistically significant at the .05 level  
 \*\*\* statistically significant at the .01 level



**Chart 6 Performance Ratings Comparisons by Race of Rater**

Race of Rater	African American		On-Cycle Caucasian		Difference
	Mean	N	Mean	N	
African American*	2.18	248	2.36	493	0.18
American Indian	2.27	6	2.36	8	0.09
Asian	2.35	17	2.45	193	0.10
Hispanic*	1.95	38	2.45	195	0.50
Caucasian*	2.18	965	2.41	6,477	0.23

\* denotes statistically significant difference in means at 95% confidence level



Chart 7. Highest Degrees Earned by Analysts

Major Type	African Americans		Caucasians	
	Count	%	Count	%
High School	9	2%	7	0.3%
Some College	8	2%	7	0.3%
Bachelor's Degree	115	30%	595	25%
Master's Degree	229	60%	1,545	64%
PhD	23	6%	272	11%

Chart 8. Regression by Highest Degree of Analysts by Race

Explanatory Variable Name	African Americans		Caucasians		All Analysts	
	Coefficient	Mean	Coefficient	Mean	Coefficient	Mean
High School	0.21	0.02	-0.01	0.003	0.09	0.005
Some College	-0.10	0.02	-0.52 ***	0.002	-0.27 ***	0.004
Master's Degree	-0.01	0.58	0.001	0.64	-0.003	0.63
PHD	-0.04	0.06	0.03 **	0.12	0.02 *	0.11

\* statistically significant at the .10 level  
 \*\* statistically significant at the .05 level  
 \*\*\* statistically significant at the .01 level



Chart 9. School Ranking - US News and World Report

Institution	African Americans		Caucasians	
	Count	%	Count	%
Quintile 1	34	9%	463	19%
Quintile 2	33	9%	312	13%
Quintile 3	66	17%	484	20%
Quintile 4	37	10%	113	5%
Quintile 5	3	1%	41	2%
Not on US News List	158	41%	759	31%
No institution in K&SIS	54	14%	253	10%
Historically Black Colleges	89		4	

Chart 10. Regression by School Ranking

Explanatory Variable Name	African Americans		Caucasians		All Analysts	
	Coefficient	Mean	Coefficient	Mean	Coefficient	Mean
Institution - Second Quintile	0.07	0.09	-0.04 **	0.13	-0.03	0.12
Institution - Third Quintile	-0.04	0.16	-0.02	0.21	-0.02	0.20
Institution - Fourth Quintile	-0.09	0.10	-0.01	0.05	-0.03	0.06
Institution - Fifth Quintile	0.19	0.01	-0.09 **	0.02	-0.07 *	0.02
Institution - Not Ranked	-0.09 *	0.44	-0.05 ***	0.31	-0.05 ***	0.33
Institution - Not Provided	-0.06	0.12	-0.04	0.09	-0.04 *	0.09
Institution - Historically Black College or University	0.06 *	0.25	-0.05	0.002	0.01	0.04

\* statistically significant at the .10 level  
 \*\* statistically significant at the .05 level  
 \*\*\* statistically significant at the .01 level



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Chart 11. Band and Project Risk

Explanatory Variable Name	African Americans		Caucasians		All Analysts	
	Coefficient	Mean	Coefficient	Mean	Coefficient	Mean
On Cycle	0.06	0.83	-0.22 ***	0.81	-0.19 ***	0.81
Band 2	0.09 **	0.44	0.02	0.41	0.04 **	0.41
Band 2a	-0.14 **	0.08	-0.27 ***	0.06	-0.25 ***	0.07
Band 2b	0.35 ***	0.03	0.23 ***	0.04	0.26 ***	0.04
Band 3	0.28 ***	0.13	0.17 ***	0.19	0.19 ***	0.18
Intern	0.16 ***	0.09	0.003	0.10	0.02	0.10
No MATS Data	0.03	0.03	0.22 ***	0.02	0.20 ***	0.02
Medium MATS Risk Level	0.03	0.41	0.03 **	0.39	0.03 ***	0.39
High MATS Risk Level	0.02	0.14	0.06 ***	0.18	0.06 ***	0.17

\* statistically significant at the .10 level  
 \*\* statistically significant at the .05 level  
 \*\*\* statistically significant at the .01% level



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Appendix - 9

Mr. DAVIS. We will proceed to Ms. Harpp.

**STATEMENT OF JACQUELINE HARPP**

Ms. HARPP. Thank you, Mr. Chairman.

Mr. Chairman and Ms. Norton and members of the subcommittee, my name is Jacqueline Harpp; and I am a senior analyst on GAO's Education, Workforce and Income Security Team. I am also a representative of GAO's newly elected union, including a bargaining unit of about 1,900 employees, affiliated with the International Federation of Professional and Technical Engineers [IFPTE].

I am pleased to be here today to discuss GAO's reforms and the impact on staff of human capital transformation efforts, such as the restructuring of one pay band under pay for performance, changes to employee classification and compensation using a market-based pay study, and proposed legislation that is before the Congress today, referred to as the Government Accountability Office Act of 2007.

Over the past 2 years, GAO employees have experienced major changes in the way we do our work and how we are compensated. The restructuring of Pay Band II analysts and the use of a market-based pay study have led to charges of unfair treatment as Federal employees with respect to pay and discrimination based on race and age in job classification and pay.

While GAO employees continue to have a tremendous respect for the agency and the service GAO brings to the Congress and the American people, GAO's analysts have formed GAO's first bargaining unit to address our concerns, and now we have a way to ensure that our concerns are heard and actions are taken.

A summary of our major concerns are: GAO employees' pay should be on par with that of other Federal employees. Employees' purchasing power should be protected, particularly since this has been a longstanding promise and a key selling point for the pay for performance initiative. Major changes in personnel systems should be assessed to ensure that employees or groups of employees are not harmed by the use of criteria that would put them at a distinct disadvantage.

GAO has a long history that show disparities in performance appraisals of African Americans, and job leadership opportunities have varied widely for all staff. Yet these two criteria were central to restructuring positions and pay of about 800 employees, leading to charges of discrimination based on race and prohibited personnel practices because employees believed they had been demoted without cause.

We applaud GAO's efforts to examine the reasons for disparities in ratings, and we look forward to a briefing on the results of the study. We appreciate and endorse the legislation proposed to remedy concerns raised with GAO's implementation of its new authorities, pay parity and protection of employees' purchasing power. The minimum requirement of a floor guarantee to ensure pay parity will be very helpful as the GAO Employees' Organization and GAO management bargain for future negotiated pay agreements.

We endorse retroactive compensation to those employees denied full annual pay adjustments in 2006 and 2007 as provided in this legislation; and we would ask, Mr. Chairman, that pending em-

ployee grievances or discrimination complaints involving issues in addition to or other than the denial of past annual adjustments be held harmless in this legislation.

We also support the legislative provision for a statutory Inspector General, along with requirements to ensure independence of the Inspector General, the Office of Opportunity and Inclusiveness, and the Personnel Appeals Board.

The GAO Employees' Organization stands ready to work with GAO management to ensure that the needs of the agency, the Congress, and the American people are met. We appreciate the opportunity to testify before you today and look forward to working with you to help ensure that GAO continues to improve its transparency, employee communications, as well as its pay and performance management systems.

Mr. Chairman, I want to thank the members of this subcommittee, other Members of Congress, and your staff for the support you have provided GAO employees from the time the first person contacted you about individual concerns over 2 years ago through the entire unionizing efforts. Members of this committee and others made it clear that our rights to organize would be protected, and for that we are especially grateful. We appreciate the Members and staff who were empathetic to our concerns and did not brush us aside as just a few disgruntled staff.

Today is an historic occasion for GAO employees, since it is the first time a member of GAO's newly formed union is testifying before a congressional committee.

This concludes my statement, and I will be happy to answer any questions.

Mr. DAVIS. Thank you very much.

[The prepared statement of Ms. Harpp follows.]



**GAO EMPLOYEES' ORGANIZATION**

**INTERNATIONAL FEDERATION OF  
PROFESSIONAL AND TECHNICAL ENGINEERS  
AFL-CIO & CLC**

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**Statement of  
Jacqueline Harpp  
Interim Council Representative  
GAO Employees' Organization**

**International Federation of Professional &  
Technical Engineers  
(IFPTE), AFL-CIO**

*Prepared For:*

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

**Hearing:  
"GAO Reforms and the  
Government Accountability Office Act of 2007"**

**Thursday, March 13, 2008 - 2:00 p.m.  
2154 Rayburn House Office Building**

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss GAO reforms and the impact on staff of human capital transformation efforts such as the restructuring of one pay band (Band II) under Pay-for-Performance (PFP), changes to employee classification and compensation using a market-based-pay study, and proposed legislation that is before the Congress today, referred to as the Government Accountability Office Act of 2007. Over the past 2 years, GAO employees have experienced major changes in the way we do their work and how we are compensated. The restructuring of pay band II analysts and the use of a market based pay study have led to charges of unfair treatment as federal employees with respect to pay and discrimination based on race and age in job classification and pay. While GAO employees continue to have tremendous respect for the agency and the service GAO brings to the Congress and the American people, GAO's analysts have formed GAO's first bargaining unit to address our concerns and now we have a vehicle that will ensure that our concerns are heard and actions are taken.

Let me first take this opportunity to thank the members of this subcommittee, other members of Congress, and most importantly your staff for the support you have provided GAO employees from the time the first person contacted you about individual concerns over 2 years ago, through the entire unionizing efforts. Starting a new union is a challenging task that requires workers to take significant risks. Members of this committee and others made it clear that our rights to organize would be protected and for that we are especially grateful. Much of the success we have experienced in the process of banding together to form this union, we owe to you Mr. Chairman and to the dedicated efforts of this subcommittee, especially your staff director, Ms. Tania Shand. Additionally, GAO employees are equally pleased that members of the Senate counterpart to this subcommittee and employees' own local delegations listened to our concerns and beliefs that GAO had unfairly implemented its new personnel authorities and broken the promise to protect employees' purchasing power for all staff that performed satisfactorily. We appreciate the members and staff who were empathetic to our concerns and did not brush us aside as just a "few disgruntled staff."

The work of Ms. Shand, and her Senate counterpart, Ms. Jennifer Tyree, were critical in orchestrating the joint hearing on May 22<sup>nd</sup> 2007, which illustrated the need for much greater transparency at GAO. Specifically, the testimony of the Personnel Appeals Board's General Counsel helped validate employees' concerns that GAO's implementation of the new personnel authorities, was in essence, an illegal demotion of two-thirds of GAO's senior analyst staff – a critical component in GAO's workforce. Further, the testimony from Watson Wyatt confirmed that GAO, not Watson Wyatt, predetermined the parameters that many believe undervalued analysts' job responsibilities and created lower pay ranges. Finally, thank you for the encouragement you provided as we struggled to come to agreement with GAO management on the composition of our bargaining unit so that employees could have the opportunity to vote up or down on union representation. Today is an historic occasion for GAO employees since it is the first time a member of GAO's newly formed union is testifying before a congressional committee.

My name is Jacqueline Harpp and I am a Senior Analyst on GAO's Education, Workforce, and Income Security Team. In September 2007, GAO employees voted to have a union represent about 1900 of its employees by more than a 2 to 1 margin. The new bargaining unit established an Interim Council in December 2007 to develop the governing structure of the new GAO Employees' Organization and to meet the needs of the agency and employees until the permanent governing structure is finalized. I was elected by bargaining unit employees GAO-wide to represent African Americans on the Interim Council. I also serve on the Interim Council's Legislative Committee and was voted by the majority of the Interim Council's members to represent bargaining unit employees before this subcommittee today.

In summary, GAO has sought and received legislation that allowed the agency to be among the leaders in implementing pay initiatives in the federal government but some employees believe that insufficient attention has been paid to the impact these initiatives have had or will have on a diverse workforce and retaining the principle that made such initiative successful. For example, from the time GAO went to a PFP system the concept of keeping employees' pay on par with that of other federal employees was a key structural selling point for the PFP initiative. Further, this concept was also viewed as a central factor to obtain new personnel legislation but subsequently, not considered in full or applied equitably for all employees when determining employees' across the board pay, (sometimes referred to as a cost of living adjust (COLA)). Employees believed that the implementation of these initiatives lacked transparency and their experience with the appeal processes in place, such as the Office of Opportunity and Inclusiveness (OOI) and the Personnel Appeals Board (PAB) left little recourse for correcting problems employees faced with these initiatives.

Many employees believe that GAO did not sufficiently assess the impact on all groups of staff or consider staff input on its most recent initiative to link employees pay to a market based pay study. Employees were concerned that this new system would affect their retirement benefits and their ability to effectively compete, particularly among, African American and older workers, by linking all pay to a performance appraisal system that had not been properly validated. Further, GAO had not taken action to address numerous concerns raised about the fairness of the appraisal systems and lack of leadership opportunities in job assignment processes before relying heavily on these processes to make critical personnel decisions. GAO has taken a step in the right direction by studying the disparities in appraisals with a view towards recommendations for improvement.

The GAO Act of 2007 now before this subcommittee seeks to correct some implementation flaws in these pay initiatives and establish the Office of Inspector General (IG) and address requirements for independence in GAO offices responsible for employees' rights to appeal agency personnel actions. The GAO Employees' Organization appreciates the Committee's long efforts to ensure that those employees who were denied pay adjustments despite satisfactory performance in 2006 and 2007 would receive them. In this respect, the GAO Organization would ask the Chairman to consider adding language noting that the remedy affected under this legislation would not jeopardize any employees with pending claims of discrimination rights of due process. The GAO Organization also supports the legislative

provision to assist GAO employees with minimum requirements for annual adjustments for every employee performing satisfactorily and receive additional pay to reward their hard work is also appreciated.

### **Background**

#### Diversification of GAO Professional Staff and Separation from the Executive Branch

In 1974, when I entered the agency, GAO was in a major transformative stage that saw the recruitment of employees with degrees in a variety of disciplines beyond just accounting, as well as the integration of women and minorities into the predominantly white and male staff in GAO's mission ranks. GAO's personnel practices including hiring and classification of employees were subject to the regulations and guidance of the Civil Service Commission (CSC), the predecessor of the Office of Personnel Management (OPM). Employees were hired in under the General Schedule (GS) system (generally GS-7 to GS-11) and progressed accordingly unless performance was unsatisfactory. The late 1960s to mid-1970s represented a major effort to increase the diversity of GAO's staff. GAO revamped its recruiting strategy to target educational institutions with significant populations of African American, Hispanic and Asian students including Historically Black Colleges and Universities. To achieve diversity in some of its field offices, GAO transferred employees from headquarters to aid in recruiting efforts. In the Atlanta field office, I was among the first few African American and female employees recruited into that field office.

In 1976, the CSC audited GAO's personnel management program focusing on GAO's classification and position management practices. GAO disagreed with the criteria used in the audit and the conclusions reached by the CSC. In 1980, the GAO Personnel Act was passed with the principal goal of avoiding potential conflicts by making GAO's personnel system more independent of the executive branch. Specifically, the act gave GAO greater flexibility in hiring and managing its workforce. Under the act, the Comptroller General had the authority to

- Appoint, promote, and assign employees without regard to Title 5 requirements in these areas;
- Set employees' pay without regard to the federal government's General Schedule (GS) pay system's classification standards and requirements; and
- Establish a merit pay system for appropriate officers and employees.

While the GAO Personnel Act of 1980 provided independence in personnel actions, GAO continued to operate its pay and classification systems and application of veterans' preference consistent with the executive branch for appointments and all appropriate reductions-in-force. A new entity, the Personnel Appeals Board (PAB)<sup>1</sup> was specifically created to address GAO

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<sup>1</sup> The Congress authorized the establishment of the PAB specifically for GAO in order to protect GAO's independence as an agency. GAO employees, like other federal executive branch employees have the right to appeal certain kinds of management actions including removal, suspension for more than 14 days, reductions in pay

grievances and afford these employees due process through a specially created entity. The 1980 Personnel Act did not change GAO's coverage under Title VII of the Civil Rights Act, which forbids employment discrimination, or its continued emphasis on maintaining a diverse workforce.<sup>2</sup>

#### Broadbanded Pay-for-Performance with a Guarantee

In 1989, GAO was among the first federal agencies to convert employees serving as analysts, related specialists, and attorneys' pay classifications from the GS system to "broad banding" or "pay banding" under a pay-for-performance (PFP) system. The conversion to the PFP system raised employee concerns about the fairness of the system. Then-Comptroller-General Charles Bowsler sought to ameliorate concerns about converting to PFP and outlined several key points and steps he would take to ensure the success of the PFP system in a memorandum to the staff. Particularly notable among the points the Comptroller General emphasized was that GAO had

"...designed a system to ensure that those who continue to perform fully satisfactorily will not fare worse financially than they would have at their current grade under the General Schedule. Our "pay protection" provisions ensure that."

The Comptroller General also noted that the band structure reflected the way GAO was organized to do its work with, essentially, four categories of staff:

"...those learning the skills to do our work (Band I Developmental); fully proficient [staff] (Band I Full Performance); leaders and supervisors of our jobs (Band II), and managers of multiple projects or areas of work (Band III). In addition to mirroring the way we do our work, broadbanding also gives us greater flexibility in assigning appropriate staff. Often, in GAO we are required to put together interdisciplinary teams of professionals on short notice to get jobs done in a timely manner and broadbanding will help us to do this. Roles and tasks will be assigned based on staff capabilities and skills rather than grade.

Individual staff will also benefit from these expanded opportunities. By freeing us from restrictive grade distinctions, broadbanding allows greater flexibility in setting salaries to attract and retain the high quality people we need to do our work. And we will be able to move people faster through broader salary ranges based on their performance without being encumbered by as many competitive promotion hurdles."

#### Comptroller General Walker Launched Efforts to Reshape GAO

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or grade, furloughs of more than 30 days, a prohibited personnel practice, an action involving prohibited discrimination, a prohibited political activity, a within-grade denial, unfair labor practices or other labor relations issue.

<sup>2</sup> GAO's Office of Civil Rights, which is responsible for addressing equal employment opportunity (EEO), informal pre-complaint counseling, and GAO's formal discrimination complaint process, was changed in 2001 to the Office of Opportunity and Inclusiveness (OOI). The office monitors the implementation of GAO's disability policy, evaluates and recommends changes to GAO's major human capital policies and processes including recruiting, hiring, performance management, promotions, awards, and training.

In 1998, David Walker became Comptroller General and early in his tenure, he noted that GAO was “out of shape” with respect to its workforce and that several personnel concerns had to be addressed—some of which required additional legislation while others could be addressed through the agency’s internal administrative process. Using the agency’s administrative authority, Comptroller General Walker undertook the reformation of several initiatives, key among them were 1) the development of a new performance appraisal system, 2) the establishment of an Employee Advisory Council. Some of these initiatives were new to employees, such as a knowledge skills inventory and the feedback survey but other initiatives already existed and were simply modified. For example, various employee groups that had interfaced with employee constituencies and GAO management were merged into one group to form the Employee Advisory Council and the professional development program absorbed the Band I “Developmental” and the “Full Performance” became just Band I. While GAO had a rating system, the Comptroller General believed that employees’ performance appraisal systems had been the “victim of inflation;” so, he established a competency-based appraisal system.

#### Legislation Intended to Reshape GAO Enacted

The Comptroller General also sought legislation for broader reforms. In 2000, Congress passed and the President signed Public Law 106-303, also known as the GAO Personnel Flexibilities Act. The act authorized the Comptroller General to implement offers of voluntary early retirement to realign the workforce to meet budgetary constraints or mission needs; separation incentive payments to realign the workforce; to modify reduction in force regulations; and, to establish senior level scientific, technical, and professional positions with the same benefits as Senior Executive Service positions while remaining within GAO’s current allocation of super-grade positions. According to Comptroller General Walker, these flexibilities were needed to help GAO address the past decade’s dramatic downsizing (approximately 40 percent from 1992 through 1997) combined with a significant increase in the retirement-eligible workforce that jeopardized our ability to perform our mission in the years ahead.

In 2003, GAO came before the Subcommittee on Civil Service and Agency Organization, seeking additional “human capital” flexibilities. Specifically, Mr. Walker requested authority to adjust GAO’s annual pay system separate from the executive branch. While he acknowledged that employees found certain of the provisions in the proposal presented to Congress controversial, (GAO’s pay adjustment provision), the Comptroller General stated that he had made a number of changes, clarifications, and commitments to address employees’ concerns. Mr. Walker testified that he would

“...guarantee annual across the board purchase power protection and address locality pay considerations to all employees rated as performing at a satisfactory level or above (i.e., meeting expectations or above) absent extraordinary economic circumstances or severe budgetary constraints. I have committed to our employees that I would include this guarantee in my statement here today so that it could be included as part of the legislative record.”<sup>3</sup>

<sup>3</sup> GAO Testimony Before the Subcommittee on Civil Service and Agency Organization, Committee on Government Reform, House of Representatives, Statement of David M. Walker, Comptroller General of the United States, GAO: Additional Human Capital Flexibilities Are Needed, GAO-03-1024T, Washington, DC, July 16, 2003.

In 2004, Congress passed legislation (Public Law 108-271) that allowed the Comptroller General to implement modifications to GAO's PFP system. Specifically, the act provided the Comptroller General the authority to adjust employees' pay annually in accordance with the following six criteria:

1. The principle that equal pay should be provided for work of equal value within each local pay area.
2. The need to protect the purchasing power of officers and employees of the Office, taking into consideration the Consumer Price Index or other appropriate indices.
3. Any existing pay disparities between officers and employees of the Office and non-Federal employees in each local pay area.
4. The pay rates for the same levels of work for officers and employees of the Office and non-Federal employees in each local pay area.
5. The appropriate distribution of agency between annual adjustments under this section and performance-based compensation.
6. Such other criteria as the Comptroller General considers appropriate, including but not limited to the funding level of the Office, amounts allocated for performance-based compensation, and the extent to which the Office is succeeding in fulfilling its mission and accomplishing its strategic plan.

Under the act, the Comptroller General would apply these criteria for adjusting pay annually only to employees whose performance is rated at a satisfactory level.

#### **Use of Market Based Study, Restructuring, and Broken Promises Adversely Affected GAO Employees**

GAO employees had worked for more than 15 years under the team concept and structured assignments with staff of varying skills to accomplish work the Congress requested or the agency initiated and still provided for annual pay adjustments with a promise to protect employees' purchasing power. GAO's decision to restructure pay band II, which many consider the backbone of the agency, suddenly made the role of Analyst-in-Charge the most coveted role and pitted staff against each other. Additionally, the use of performance appraisals as the key criterion to place staff and the use of a market based study to determine pay ranges after placement led older workers and Africans to charges of discrimination.

#### **Restructuring of Band II Staff, Using Market-Based Study Leads to Charges of Discrimination**

In 2004, GAO contracted with Watson Wyatt, a private firm, to conduct a pay study, which GAO used to change the classification of about 800 employees functioning at GAO's Band II level and institute new pay ranges that were intended to be linked to market based pay ranges for all GAO staff. GAO used the study to develop pay ranges and two newly created Bands-- IIA and IIB, as well as the previously existing Band I and Band III positions. Each pay range included specific pay caps and "speed bumps," a mechanism for slowing down raises of those employees

performing at the top of the range for that position. For some employees, GAO used the Watson Wyatt study to create another pay range, referred to as the IIA transition range that basically froze some employees pay even though they were performing satisfactorily or better, at a certain level, preventing them from receiving any pay adjustment and only minimal or no performance based pay because they were deemed to already be paid above market.

GAO also used this contractor to adjust locality pay for employees in GAO field offices. Although some field offices' locality pay were naturally lower than others, under the new locality pay provisions, some field-office-based employees received less than that provided under the GS schedule paid to other federal employees sometimes located in the same city and sometimes even the same building as GAO employees.

GAO's restructuring of the Band II staff has had a profound impact on the agency and many staff believe the impact adversely affected employee morale, collegial team working relationships, and employees' confidence in management to keep its word to honor promises made for determining annual pay adjustments. GAO developed three criteria to use to place existing Band II employees into one of the two newly created bands—IIA, the lower performance band or IIB, the higher performance band—job leadership experience, performance appraisals, and potential to perform at the Band IIB level.

However, some employees contended that individuals rarely have control over the engagements they are assigned to work on. Some employees, particularly older employees, reported that despite considerable skills and longtime experience they were relegated to lesser tasks, to give newer employees leadership opportunities. Further, opportunities for project leadership vary widely by team. With the implementation of PFP in 1989 and after surviving personnel actions such as, downsizing and hiring/promotion freezes, many employees believed that GAO analysts had developed a positive, collaborative culture of sharing or alternating project leadership responsibilities. Then, with no warning from their perspectives, a recent record of project leadership became a key deciding factor in whether many senior analysts were designated as Band IIB or “demoted” to Band IIA. Additionally, many African American staff believe that GAO did not conduct proper due diligence with respect to the impact such sweeping changes would have on them as an ethnic group given the subjectivity of the performance appraisal system that left African Americans at a distinct disadvantage regardless of the criteria used to restructure the Band IIs.

Further, some employees did not appreciate the manner in which GAO informed staff that the restructuring was underway. According to employees, they were alarmed and unsure of what was meant when they received e-mail notifications stating that they did not appear to be eligible to qualify for placement in the newly created Band IIB. Employees reported feeling demoralized, humiliated, demoted, marginalized, and unfairly treated. For some particular groups of Band II employees, the restructuring lowered the maximum pay they had thought they would be eligible to receive in their current positions. Band II communications analysts, the GAO's writer/editors, were deemed “not eligible” to apply for the Band IIB positions, despite considerable experience and expertise of many in the group whose reviews indicated leadership experience.

### Impact on African American Staff

GAO has a longstanding history of concerns about disparate treatment in job assignments, performance appraisals, promotions and performance recognition. A few employees have brought discrimination suits against the agency as a result of this disparate treatment.<sup>4</sup> Yet, GAO management continued to use, as its primary criteria, performance appraisals and experience leading job assignments to place staff in the newly created lower pay Band IIA.

Many African-American employees believe that lower ratings assigned to African American analyst staff have adversely impacted them for disproportionate placement in the lower pay band. In addition, African American employees are concerned that lower ratings cripple their chances to compete for pay raises, promotions, and leadership roles on high profile assignments. Because lower performance ratings affect attrition rates, some African Americans believe that lower ratings also contribute to the high attrition rate among African American male analysts especially because many leave GAO before their two year probationary period ends. While GAO is not systematically tracking retention rates, a CG Project that examined retention of GAO analysts and specialists hired during fiscal years 2002-2005, noted that, relative to band, race and year hired, differences exist in the rates of retention for certain groups of GAO employees.<sup>5</sup> For example, as of January 2007:

- o Among FY 2004 hires, retention rates were 72 percent for Whites, 48 percent for African Americans, and 91 percent for Asian Americans
- o Across all four hiring years collectively (FY 2002-2005), at the Band I level, retention rates were 70 percent for Whites, 77 percent for Asian Americans, 61 percent for African Americans, and 62 percent for Hispanics.

After several requests from Blacks In Government, and one employee enlisting the assistance of a member of Congress to obtain performance ratings data, Mr. Walker released performance ratings statistics and acknowledged that there were disparities in performance ratings between African Americans and other group of employees, but asserted that they were not statistically significant. Yet, GAO continued to use the lower performance ratings data to make critical decisions that impact work assignments and pay decisions that place African Americans at a distinct disadvantage when compared with other ethnic groups.

The CG also acknowledged during a July 2006 "CG Chat" that performance ratings statistics for African American staff hired over the most recent 5 year period were lower than those of other groups. For example, for the 2005 Performance Appraisal Cycle, the average appraisal score for African American Band I Analysts staff with 5 years or less experience was 2.36 compared to scores of 2.69 for Asians, 2.55 for whites, and 2.468 for Hispanics.

<sup>4</sup> Otha J. Miller vs. Elmer B. Staats, Civil Action No. 73-996 (entered into a consent decree November 1980); Julian McKensy Fogle v. U.S. General Accounting Office, EEOC No. 091-80-X-0055, and Tyrone Delano Mason v. U. S. General Accounting Office, GAO Docket No. 02-700-82-03.

<sup>5</sup> Data taken from GAO Slide presentation given by Valerie Melvin, GAO SES Candidate, entitled CG Project: Retention of GAO Analysts and Specialists Hired During Fiscal Years 2002-2005, SES/SL Partners' Workshop, July 23, 2007, Washington, D.C.

It was not until the data showed that African American staff hired under Mr. Walker's tenure was being adversely impacted by lower performance ratings that the CG proposed initiatives to address the problem, including enlisting the expertise of an outside consultant to study conditions that led to the ratings disparities and provide recommendations for improvement.

#### The Ivy Group Contracted to Study Appraisal Differences

The GAO Employees' Organization has not been formally briefed by the contractor, the Ivy Group, on its findings; but updates from GAO's management indicate that the contractor has confirmed disparities between African Americans' performance appraisals and those of other groups. The results of focus groups, interviews, comparisons of African American and Caucasian employees similarly situated with skills and entry at GAO and the use of the employees' skills inventory were not yet available when GAO management briefed the GAO Employees' Organization. According to the GAO management officials, GAO's contract with the Ivy Group only allowed for a couple of briefings over the course of the contract but the agency is negotiating to obtain more briefings and we look forward to such a briefing from the Ivy Group very soon.

An early observation of some of the contractor's work involving interviews raised a few concerns with respect to the appearance of a conflict of interest. For example, the contractor subcontracted some data analysis to a current GAO contractor that employs a former senior GAO manager. Additionally, that subcontractor was observed administering an interview with some participants that raised questions about exceeding the scope of work under the contract. GAO management has assured members of the GAO Employees Association that there is no conflict of interest despite the appearance and that the contractor authorized and likely trained the subcontractor to administer the interviews observed. Even so, the GAO Employees' Organization believes that GAO should hold its contractors to Government Auditing Standards and require that operations be free from even the appearance of conflict of interest. The GAO Employees' Organization reserves further comments on the Ivy Group's study until the bargaining unit can be briefed on the contractor's findings.

#### Broken Promises and Lack of Transparency Lead to First GAO Union

Many employees believe that GAO management and the Comptroller General broke the promise that had been in place since the beginning of Pay-for-Performance at GAO—that is, no employee would be any worse off under PFP than they would have been under the GS system. The promise to maintain purchasing power was broken despite maintaining performance at the required meets expectations or better. Additionally, some employees were concerned that their views were not solicited and, in other cases, when they were solicited, the views were ignored. Employees believed that GAO management ignored warnings from individual employees about the effect modifications to the pay system and restructuring would have on a specific group of employees. In addition, groups such as Blacks in Government and the Employee Advisory Council attempted to advise management about the negative impact these changes would have on older employees and African Americans but the comments went unheeded. Moreover,

employees and employee groups requested data on the restructuring, Watson Wyatt pay study, and the placement of staff in the two pay bands but were generally denied such information until congressional inquiries were made to obtain the data. As a result, employees moved to form a union so that employees could have a voice in determining their future and a right to request and obtain data as necessary to meet employees' needs.

#### **Annual Pay Adjustments Not Made for Some Staff In Two Years**

The use of the Watson Wyatt study to establish new pay ranges resulted in more than 300 employees not receiving an annual pay adjustment. Retroactive compensation to those employees denied full annual adjustments in 2006 and 2007 remains a major pain point for many members of our bargaining unit and we strongly endorse solutions that would rectify these past inequities and provide these employees an annual adjustment at least equivalent to the one that other employees received, without losing any of the performance-based pay that they received during those years. We endorse the legislative remedy that this subcommittee has proposed and ask that pending employee grievances or discrimination complaints involving issues in addition to or other than the denial of past annual adjustments (COLA denial) be held harmless in this legislated settlement language. We believe that this action will enable us to move forward quickly with negotiations and implement additional changes to the personnel management system that the staff can support.

#### Negotiations going forward

The GAO Employees' Organization is anxious to begin negotiations with GAO management on all aspects of its pay and performance management system and we requested this commitment from GAO during our negotiations for the 2008 pay adjustments. In order to expeditiously conclude our 2008 pay negotiations and ensure that GAO employees would receive their 2008 pay adjustments as soon as possible, we agreed to postpone our discussion of systemic compensation issues which are intricately tied to GAO's underlying personnel management system. Section 3 of Public Law 108-271, the GAO Human Capital Reform Act of 2004, gave GAO extensive flexibility in how it pays its staff and despite promises from Mr. Walker to protect employee purchasing power both to this subcommittee and its employees, in 2006 and 2007, GAO denied annual adjustments to staff performing at a satisfactory level in violation of this law and Mr. Walker's word. We are pleased that we were able to guarantee all staff performing at a satisfactory level an adjustment to their pay equivalent to the GS locality pay adjustment in the Washington, D.C. area this year, however this negotiated guarantee was not the desired distribution between amounts allocated for an annual adjustment and those allocated for performance-based compensation that we would have preferred.

While we hope to conclude negotiations with GAO management in sufficient time to implement changes with the 2008 rating cycle and the 2009 annual adjustment, the changes we need to analyze and negotiate are extensive and it is possible that these negotiations may take longer than expected. We would prefer to take whatever time is necessary to cover all aspects of our pay and performance management system in these negotiations, and therefore appreciate and endorse the legislated floor guarantee which this subcommittee provides in this bill. We would also

appreciate the subcommittee's support by mandating that GAO provide all future annual adjustments effective the first pay period of the year.

Another compensation component that we plan to address in our negotiations with GAO on the overall pay system is its use of geographic zone differentials in determining employees' pay. The current system results in employees in some locations receiving less pay than they would have received had the GS locality pay rates been used, while employees in other locations receive greater pay than they would have received had the GS locality pay rates been used. Using his authority under the GAO Human Capital Reform Act of 2004, Mr. Walker established minimum and maximum salary ranges for 5 geographic zones that encompass all the GAO locations based on their variance from Washington D.C. salary ranges, and eliminated the use of the GS locality pay rate system that continues to be used by most federal agencies. In our negotiations we will seek to adjust the way GAO pays its employees in its various locations to ensure that salaries are more competitive with their local counterparts.

#### **GAO Act of 2007: Proposed Legislation**

In addition to retroactive and future pay issues and restructuring of GAO's processes to address discrimination issues and increase the transparency and accountability of those actions, we would like to take this opportunity to provide additional input for your consideration in the markup of H.R. 3268, the Government Accountability Office Act.

The GAO Employees Organization would support the provision that GAO should have a statutory Inspector General (IG) similar to other legislative branch agencies. We believe that a statutory IG at GAO would be a definite asset for assisting this subcommittee with its oversight of GAO and would provide a proper venue for whistleblowers. However, we strongly believe the appointment of such an IG and its office needs independence from GAO organizationally to be effective, and therefore he or she should be appointed by an independent candidate selection committee, not by the Comptroller General. The IG office should also have separate line item budget authority; the ability to hire staff and make contracting decisions to supplement the staff; provide an easy to find website link where its reports would be posted; safeguards to protect staff confidentiality and assure that there is no GAO management reprisal against staff; and the IG should only be subject to removal for stated cause and after notification to Congressional leaders, to ensure its independence from GAO. The House passed legislation in November and there is similar legislation under consideration in the Senate, that will increase the independence of other IGs in the federal government and we believe these same concepts should apply to GAO's IG office. As the Project on Government Oversight recently concluded, "the most important single attribute of a successful Inspector General is independence—from internal agency influence, from outside pressures, from personal or political or institutional conflicts."<sup>6</sup>

The GAO Employees' Organization would also support any changes that would provide more independence, transparency and accountability in GAO's Personnel Appeals Board (PAB) and its Office of Opportunity and Inclusiveness, including mandated reporting, and independent oversight of their activities. Specifically, the union would support PAB board members' and its

<sup>6</sup> Project on Government Oversight. "Inspectors General: Many Lack Essential Tools for Independence" February 29, 2008. Washington, DC.

General Counsel's appointment and removal by a separate independent congressionally appointed committee rather than the Comptroller General. We would also support more independence of the PAB operations, such as a separate line item in the GAO appropriations, the ability for the PAB to request of Congress all the staff and budget authority it needs to meet its caseloads, and physical separation between the Board and its General Counsel's office. Employees have told us that they find it very confusing to navigate the GAO grievance and discrimination complaint process between GAO's Office of Opportunity and Inclusiveness and the PAB and are reluctant to pursue complaints as a result. The GAO Orders regarding grievances and complaints processing are complicated and confusing by references to other GAO Orders and it is difficult to find clear procedures for follow when issues come up. In addition, it is difficult to locate the PAB's website, and once there, difficult to understand the process or procedures for pursuing a complaint or grievance. Also, recent reports of PAB activities are not as investigative and comprehensive as they once were and are now limited to only those cases that come before the Board itself and not how many cases are filed and settled before getting to the Board.<sup>7</sup>

Further, we would support more transparency and accountability at GAO in general. GAO management should routinely make much more information available to its employees, in electronic form, in the same manner in which GAO expects agencies to operate. Such information may include, but should not be limited to:

- Comprehensive compensation and ratings information, analyses, comparisons, and cross-tabulations, particularly data with which to monitor disparities by gender, age, race, ethnicity, and compliance with affirmative action plans;
- Employee professional development costs and related information;
- GAO budget information, including budget requests, justifications, bi-weekly obligations and expenditures reports for each GAO budget object class, GAO-wide and for individual GAO units;
- Data on all contracts, consultants, personal service agreements, including the reemployment of GAO annuitants; and
- All aspects of ongoing or future workforce and compensation studies.

<sup>7</sup> In a study of GAO Promotions of Banded Employees (1991-1995) issued September 30, 1999, GAO's Personnel Appeals Board (PAB) examined the median time to promotion and rates of promotion for the five year period 1991-95. Employees in the study were differentiated by race, gender, national origin, age, and disability to discern whether there were any significant disparities among these groups in either the median time to promotion or rates of promotion at different levels of the banding system. PAB concluded that there were some disparities based on race, gender and age, but that the causes of these differences were not readily apparent from the statistics alone. Therefore, the Board has recommended that the Agency further investigate the disparities to determine whether additional steps need to be taken to ensure equal opportunity for its employees. However, we are unaware of any additional steps taken by GAO to address these disparities.

In addition, GAO should take action to affirmatively comply with the objectives of FOIA, establishing an agency FOIA point of contact, and invite requests for data from its staff. All information and data provided should contain safeguards in order to protect employee privacy.

### **Conclusions**

GAO has sought legislation and been in the forefront of personnel issues; which, indicates an agency that is forward thinking. However, critical decisions and the success of such initiatives require greater participation and consideration of employees' views and a deeper sense of fairness to all employees before implementation of new initiatives, as was the case in the 1980s when GAO first began pay-banding and its pay for performance system. The GAO Employees' Organization stands ready to work with GAO management to ensure that the needs of the agency, the Congress and the American people are met. We appreciate the opportunity to testify before you today and look forward to working with you to help ensure that GAO continues to improve its transparency and employee communications, as well as its pay and performance management systems. This concludes my statement and I will be happy to answer any questions.

### **Acknowledgements**

I would like to acknowledge the contributions of the members of the GAO Employees Association, its 39-member Interim Council (see Appendix I), and specifically those of its Legislative Committee for their valuable assistance helping me to prepare for this hearing, including Ron La Due Lake, Carolyn McGowan, Daniel Meyer, and Henry Sutanto; as well as Jennie Apter, our communications analyst.

## APPENDIX I

## APPENDIX I

## GAO EMPLOYEES' ORGANIZATION

Atlanta Field Office	Scott Borre
Boston Field Office	Jeffrey V. Rose
Chicago Field Office	Dan Meyer
Dallas Field Office	Debra Conner
Dayton Field Office	Myra Watts Butler
Denver Field Office	Sandy Davis
Huntsville Field Office	Beverly Breen
Los Angeles Field Office	Matt Sakrekoff
Norfolk Field Office	Gina Ruidera Hoffman
San Francisco Field Office	Leo Acosta
Seattle Field Office	Nathan Anderson
Applied Research and Methods (ARM)	Ron La Due Lake
Acquisition and Sourcing Management (ASM)	Lorene Sarne
Defense Capabilities and Management (DCM)	Barbara A. Gannon
Education Workforce and Income Security (EWIS)	Lise Levie
Financial Management and Assurance (FMA)	Kristi Karls
Financial Markets and Community Investment (FMCI)	Sonja Bensen
Health Care (HC)	Lesia Mandzia
Homeland Security and Justice (HSJ)	Jonathan Tumin
International Affairs and Trade (IAT)	John F. (Jeff) Miller
Information Technology (IT)	Robert Kershaw
Natural Resources and Environment (NRE)	John Johnson
Physical Infrastructure (PI)	Nancy Zearfoss
Strategic Issues (SI)	Steven J. Berke
Staff Office Analysts	Carolyn McGowan
Band I Staff	Margit Willems Whitaker
Communications Analysts	Jennie Apter
Professional Development Program (PDP)	Ethan Iczkovitz
Professional Development Program (PDP)	Christopher Langford
Professional Development Program (PDP)	Heather Rasmussen
Professional Development Program (PDP)	Mark Ryan
Professional Development Program (PDP)	Stephen Ulrich
Diversity, Asian/Pacific-Islander	Eddie W. Uyekawa
Diversity, Black/African American	Jacqueline Harpp
Diversity, Disability	Suzanne Rubins
Diversity, Hispanic	Alfonso Garcia
Diversity, Sexual Orientation/Gender Identity	Andrew Huddleston
Diversity, Non-Designated	Ken Stockbridge
Diversity, Non-Designated	Henry Sutanto

Mr. DAVIS. I want to thank each one of you for your testimony.

Mr. Copeland, let me ask you. You have testified before the subcommittee regarding the personnel reforms and Band II restructuring at the Government Accountability Office. In your opinion, would the lump sum payments and the pension changes in my draft legislation make whole the GAO employees who met expectations but did not receive their annual across-the-board increases in 2006 and 2007?

Mr. COPELAND. Mr. Chairman, I would first like to point out that CRS doesn't take a position on any legislation. But, technically, I have reviewed it; and it appears that, in general, the lump sum payments and the pay adjustment provisions would, in general, make those employees whole vis-a-vis other GAO employees who had their PBC as annual—as bonus payments in those years. That is correct.

Mr. DAVIS. Also let me ask you, if GAO employees received the floor guarantee in the future, which is similar to what GAO and the union agreed to implement this year, what impact do you think it would have on GAO's overall performance-based compensation program?

Mr. COPELAND. In 2006 and 2007, GAO funded the performance-based compensation program in part by reducing the size of the annual adjustments. And so the annual adjustments are provided on par with the GS increases, and the amount of funds available for performance-based compensation would be less, which means either the performance-based compensation bonuses would become less, fewer people would receive them, or both.

Mr. DAVIS. In H.R. 3268, GAO included a provision that would remove the current Executive Level IV cap and allow GAO employees to be paid up to Executive Level III. As a result non-SES GAO employees' maximum salaries would go from \$149,000 to \$158,000. What do you think of this provision?

Mr. COPELAND. I would note that the Executive Level IV cap currently affects GS employees in 12 locality pay areas across the government. So GAO is not the only agency that is affected by the Executive Level IV cap. And next year if current trends continue, then five more pay areas will be covered. If GAO is granted this relief, then it is likely that other agencies will seek similar types of relief.

Mr. DAVIS. Thank you very much.

Ms. Jones, I thank you for your testimony. Let me ask you, what was the survey response and how many respondents took the time to write comments for the open ended survey question and how meaningful are the survey's response rates?

Ms. JONES. The overall survey response rate was 71 percent, which is almost identical to the survey response rate for GAO's employee feedback survey. And we consider that a very good response rate, especially considering employees' previous concerns with survey confidentiality.

We had 1,113 respondents to actually provide narrative comments to the open ended question. And having been a part of the two-person team that did the content analysis, I can tell you that they were voluminous. And they were indeed thoughtful and considerate of the issues going on at GAO, and I would even character-

ize many of them as passionate. It was clear to me in reading them that they really wanted the Congress to hear their concerns.

Mr. DAVIS. In your opinion why was there a higher non-response rate for Asian and African-American employees?

Ms. JONES. Well, as I mentioned in my testimony, my oral testimony, I wasn't surprised at that fact at all. As I mentioned a few moments ago, there have been previous concerns with survey confidentiality across the board at GAO, but that concern is always heightened for minority staff because generally there are fewer of them on the teams. And so there is the concern that they can more readily be identified personally. And so often they choose to not respond to surveys at all or they choose not to respond to the demographic questions.

Mr. DAVIS. Are you saying that in your experiences that minority staff have a tendency to have a higher level of concern about retribution?

Ms. JONES. Yes.

Mr. DAVIS. And that may mitigate against revealing information?

Ms. JONES. Right, I believe that to be true. And even though in our testimony, our full written statement and the products that we previously supplied to your staff, we noted concerns with under representation of the staff and we noted concerns with the missing demographic information. However, since our response rate is essentially identical to the employee feedback survey response rate, I'm not sure—I have no evidence that it is any different for our survey than it is for any other survey at GAO or for that matter any survey at another agency. I think that's a concern that is across the board with minority staff that they can be personally identified and in some instances they fear retribution and retaliation.

Mr. DAVIS. How do you reconcile the majority of negative comments to the survey with the previous high marks on the GAO employee feedback survey that in 2007 led to GAO being second place on the best place to work survey?

Ms. JONES. I think GAO staff were very honest. I think they answered questions with integrity. They can give credit when credit is due. And when there are concerned they can provide negative feedback. I think that was the case with our survey. We asked—we touched a nerve, so to speak, by asking questions about very sensitive topics such as the Band II restructuring and the PFP system and the lack of COLAs, and the staff stood up and expressed their concerns about those issues.

On the other hand, the best places to work survey has a much more limited focus and essentially asks considering everything how satisfied are you with your job. And GAOers, they are very satisfied with their work, they feel that they are providing a great service to the Congress and to the taxpayer. So it is clear that on the one hand they could be very satisfied with their job, but still have very serious concerns with a Band II restructuring and with loss of COLAs and the PFP system.

Mr. DAVIS. Thank you very much.

Ms. Smith, let me ask you, the Ivy Group consulting/training company that specializes in diversity strategy and change management, would you recommend an agency implement personnel re-

forms that would impact employees' promotions and pay if it had evidence of rating disparities based on race?

Ms. SMITH. Well, Mr. Chairman, we will be making recommendations next month after we have fully synthesized the information. But certainly if we find that there are differences that we can attribute to race that are unfair, we will make recommendations to the agencies to address any of those disparities.

Mr. DAVIS. And those findings would then obviously at least raise a red flag in your mind or in the mind of you and your colleagues?

Ms. SMITH. Would you repeat the question, please?

Mr. DAVIS. If you found such disparities, would they at the very least raise what I will call a red flag in the minds of you and your colleagues?

Ms. SMITH. Well, in task 1 and task 2 we have already found that there are differences in the performance ratings of African American analysts and Caucasian analysts. However, we have not found answers to the why. In fact the data can say that there is a difference, the data doesn't necessarily explain the differences. So our recommendations can address those differences and performance ratings without necessarily understanding why the differences exist.

Mr. DAVIS. Would you view that information as certainly being helpful and directive for management as it continues to program and make decisions?

Ms. SMITH. I do believe that our recommendations will be helpful to management and to the analysts in terms of assisting them in their career, their transition and actually delivering the work.

Mr. DAVIS. Thank you very much.

Ms. Harpp, let me ask you, the subcommittee staff has been working on pay adjustment provisions for fiscal year 2006 and 2007, the GAO employees who met expectations but did not receive an across-the-board adjustment for those 2 years. What are your views on the retroactive provision that we've included in the legislation that I'm introducing, and do you think it will effectively address the problem?

Ms. HARPP. Mr. Chairman, while we believe that a full remedy would have been to include the across-the-board increase that staff had in addition to the performance-based pay that they have received, we feel that the retroactive provision provided in the legislation represents a compromise that will provide additional compensation to our employees now and in the future, and we support it and thank you for providing that to the employees.

Our understanding in the legislation also is that it will not effect any outstanding claims that GAO employees have that relate to discrimination and/or placements or promotions that have—that are included in these claims. And so employees are happy to support the legislation.

Mr. DAVIS. Thank you very much. And let me ask you, what are your views on the across-the-board floor guarantee?

Ms. HARPP. We support the floor guarantee. We feel this concept gives us a minimum threshold to ensure that GAO employees, through a combination of GAO across-the-board and increase in performance-based pay, will receive the percentage of their salary that many Federal employees received just by coming to work

every day. So we are very pleased with the floor guarantee and that it assures that everyone who performs satisfactorily at GAO, which is a high standard, will have their purchasing power not eroded as was the case with management decisions made in 2006 and 2007.

Mr. DAVIS. Do you have the same feeling that was expressed with the hope that it might put to rest the anxiety or controversy surrounding whether or not individuals can simply expect with a tremendous amount of reliability that if they meet expectations that they will and shall indeed receive their cost of living adjustment?

Ms. HARPP. Yes, sir, Mr. Chairman. We do believe that will go a long way to relieving the anxiety of staff, because in the past with the Comptroller General's discretion as to how he would divide the pot of money for pay staff were concerned particularly with the ranges, where some staff would not be subject to getting any across-the-board, so this will greatly assist staff and relieve their anxiety.

Mr. DAVIS. Well, let me thank all of you for your participation, as well as your patience. Our hearings seem to be getting longer and longer and it requires an amount of patience to be a part of them, but we certainly thank you and we look for to seeing you again soon. And this hearing is adjourned.

[Whereupon, at 5 p.m., the subcommittee was adjourned.]

