

Concept Paper for a Federal Law Enforcement Personnel System

Prepared by the Majority Staff of

**The House Committee on Government Reform, Subcommittee on
Federal Workforce and Agency Organization**

**Senate Committee on Homeland Security and Governmental
Affairs,
Subcommittee on Oversight of Government Management, the
Federal Workforce, and the District of Columbia**

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Introduction

The current system governing pay and retirement benefits for federal law enforcement officers is built on an inflexible patchwork of outdated concepts. Unfortunately, the archaic system does not meet the needs of the federal law enforcement officers who are committed to serving and protecting America in today's post-9/11 environment.

Over the last several years, the Senate and House subcommittees with jurisdiction over law enforcement personnel issues—the Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, and the House Committee on Government Reform, Subcommittee on Federal Workforce and Agency Organization—have examined ways to restore rationality to the personnel rules for law enforcement employees. Their joint efforts led to the passage of Public Law 108-196, which required the Office of Personnel Management (OPM) to review the classification, compensation, and benefits of federal law enforcement officers and to recommend ways to alleviate any disparities.

The report, entitled, *Federal Law Enforcement Pay and Benefits* (OPM Report) outlined a clear case for reform in the areas of law enforcement pay and retirement benefits. The OPM Report noted that the scope of law enforcement retirement coverage has not kept pace with the evolution of law enforcement work into highly specialized occupations. For example, when the provisions for law enforcement retirement were enacted in the late 1940's, the job function could be divided into two specialties--criminal investigation, and police work. Today, law enforcement has many specialized fields, including special weapons and tactical (S.W.A.T.) teams, bomb detection teams, explosive ordinance disposal teams (E.O.D.), airborne surveillance, and cyber crime counter operations, to name a few. However, because of the outdated definition of a law enforcement officer, some specialized categories of employees are excluded from enhanced law enforcement compensation and retirement benefits.

Further, the passage of the *Homeland Security Act of 2002* and the *National Defense Authorization Act for Fiscal Year 2004* may exacerbate the disparate nature of the federal law enforcement personnel system because they provided certain personnel flexibilities outside of current law. The new systems under development for the Departments of Defense and Homeland Security will eventually cover 54,000 law enforcement employees. However, almost half of the federal government's law enforcement officers will not be covered by either system, which could create several unintended consequences, including, adversely impacting staffing, employee morale, and agency budgets.

The Government Accountability Office (GAO) found a similar trend in a June 2003 report entitled, *Federal Uniformed Police: Selected Data on Pay, Recruitment and Retention at 13 Police Forces in the Washington, D.C. Metropolitan Area* (GAO-03-658). This report explained that compensation for entry level pay and retirement benefits varied significantly for the federal police officers at the agencies involved in the study. Furthermore, the report indicated that the creation of the Transportation Security Administration caused an exodus of federal police officers from the thirteen agencies because the employees could receive higher pay and enhanced benefits as a Federal Air Marshal.

Based on our extensive review, the goal of reforming the classification, compensation, and benefits of federal law enforcement is two-fold. First, it will offer 21st Century recruitment, hiring, and retention tools for the federal law enforcement community in order to meet the challenges of our post-9/11 environment. Second, it will bring common-sense parity to a disparate system that has fractured over time through the legislative, regulatory, and judicial processes. This paper is intended to generate discussions on ways to achieve these important objectives. We hope that the concepts and discussions will provide the foundation for the enactment of comprehensive legislative reform.

I) Principles

- Law enforcement employees should have clear goals for their performance, opportunities for professional growth, and managers who help them succeed. With the increased importance of the security and safety of our Nation, pay increases for Federal law enforcement employees should be based on performance, not longevity.
- Human resource management flexibilities for law enforcement employees available to Federal agencies must be exercised in accordance with the core values, principles, and protections of the Federal civil service, including:
 - The merit system principles;
 - Laws and regulations barring discrimination and reprisal against whistleblowers, and shielding employees from political influence and personal favoritism;
 - The right of employees to due process in actions taken against them based on performance or conduct;
 - Veterans preference; and
 - The right of employees to organize, bargain collectively, and otherwise participate (through labor organizations of their own choosing) in decisions affecting them, when applicable.

II) Coverage

A) System Will Cover All Employees Engaged In Law Enforcement

- All employees of the Executive Branch in “law enforcement positions” will be covered by the new system. U.S. Postal Police positions will be covered by the retirement system discussed under section XII, but will be excluded from the other aspects of the system (i.e., classification, pay, and adverse actions).

- This new system will not cover Legislative or Judicial Branch law enforcement employees.

B) Definition of “Law Enforcement Position”

- The definition of “law enforcement position” for pay and retirement purposes will cover Federal employees in positions with or requiring—
 - Arrest authority;
 - Primary duty of –
 - prevention, detection, or investigation of violations of the criminal laws of the U.S., or
 - the apprehension or detention of individuals suspected or convicted of such violations, or
 - protecting officials of the U.S. against threats to personal safety
 - Rigorous physical requirements (i.e., recurring medical examination, and periodic tests of strength and endurance).
- The definition of “law enforcement position” for pay and retirement purposes will cover supervisory and administrative positions that require prior experience in a law enforcement position.
- The Director of OPM, in consultation with the Federal Law Enforcement Pay and Retirement Council (as described in section (V)(B) of this paper), will have broad discretion in applying or defining “law enforcement positions.”
- Law enforcement coverage decisions will be subject to limited judicial review.

C) Savings Provision

- An individual who is a “law enforcement officer” for pay purposes on the date of enactment will continue to be treated as a “law enforcement officer” for pay purposes so long as the individual continues to occupy his or her position. This provision will not apply to prison support staff.
- An individual who is a “law enforcement officer” for retirement purposes on the date of enactment will continue to be treated as a “law enforcement officer” for retirement purposes so long as the individual continues to occupy his or her position.

D) Definition of “Detention Auxiliary Position”

- A new definition of “detention auxiliary position” will be established to distinguish prison support positions from law enforcement positions for pay and retirement purposes.
- An employee in a detention auxiliary position on the date of enactment will retain the current level of retirement benefits as long as he or she is continuously employed in a “detention auxiliary position”.
- Employees in detention auxiliary positions will be treated as a separate group from law enforcement positions under the human resources system and will have their own pay banding system consistent with their occupation classification.
- The Director of OPM, in consultation with the Federal Law Enforcement Pay and Retirement Council, will have broad discretion in applying or defining detention auxiliary position. Detention auxiliary position coverage decisions will be subject to limited judicial review.

III) Authority of the Director of OPM

- The Director of OPM, in consultation with the Federal Law Enforcement Pay and Retirement Council (as described in section (V)(B) of this paper), will have the authority to establish, and from time to time adjust, a Governmentwide framework of retirement (based on the definition of “law enforcement position”), classification, basic and premium pay for law enforcement employees.
- The human resource system for law enforcement personnel established by the Director of OPM must--
 - Adhere to Merit Systems Principles;
 - Link the pay-for-performance system and the employee performance appraisal system;
 - Adequately train and retrain supervisors, managers, and employees in the implementation and operation of the system;
 - Include a process for ensuring ongoing communication of performance expectations between supervisors, managers, and employees throughout the appraisal period, and;
 - Have effective safeguards to ensure that the management of the system is fair

and based on employee performance.

- The Director of OPM must also—
 - Notify affected employees and Congress 30 days in advance when the system is established or changed;
 - Consult with employees and employee representatives before the system is established or modified;
 - Publish regulations in the Federal Register to establish or modify the system;
 - Submit a report to Congress when the system is established or modified; the report must include justifications for the changes.
- The Director must consult with the Federal Law Enforcement Pay and Retirement Council before setting and adjusting local and special market supplements for law enforcement positions and detention auxiliary positions. However, the Director will not be bound by the advice of the Council and may adopt an alternative approach.
- In determining the amount of local and special market supplements, the Director of OPM may consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other agencies, and any other relevant factors that pertain to the covered category of employees.
- In evaluating labor market conditions, the Director will take into account any allowances and differentials under 5 U.S.C. chapter 59 payable to employees outside the 48 contiguous States.
- The Director of OPM will determine the effective dates of newly set or adjusted supplements.

IV) Classification

A) Procedures

- The Director of OPM, in consultation with the Federal Law Enforcement Pay and Retirement Council (see section (V)(B)), shall establish a core position classification system for federal law enforcement officers. The system will be published in a form determined by the Director.
- The Director of OPM may make whatever inquiries or investigations of positions it considers necessary. Each agency will be required to provide OPM with information for, and cooperate in, defining components of the classification structure.

- The Director of OPM may establish, revise, or abolish official position titles, career/occupational groups (groupings of occupations), subgroups, and associated bands (levels of work) for federal law enforcement officers.
- The Director of OPM will establish procedures for continuing coordination and collaboration between OPM, agencies, and stakeholders, and for the issuance of implementing directives concerning the classification system.

B) Classification Structure

- The Director of OPM shall define career/occupational groups and subgroups based on factors including mission or function; nature of work; qualifications; competencies; career or pay progression patterns; relevant labor-market features and other characteristics of those occupations or positions.
- Director of OPM will establish one or more pay bands within each career/occupational group or subgroup of federal law enforcement officers. Each career/occupational group may include, but is not limited to, the following bands:
 - **Entry/Developmental** – work that involves gaining the competencies needed to perform successfully in a Full-Performance band through appropriate formal training or on-the-job experience or both;
 - **Full Performance** – work by employees who have successfully completed any required entry-level training, or developmental activities, or both, necessary to independently perform the full-range of non-supervisory duties of a position in a career/occupational group;
 - **Senior Expert** – work that involves an extraordinary level of specialized knowledge or expertise upon which the agency relies for the accomplishment of critical mission goals and objectives; reserved for a limited number of non-supervisory employees; and
 - **Supervisory** – work that may involve hiring or selecting employees, assigning work, managing performance, and other associated duties.
- Each agency will be required to classify each position under its jurisdiction into the appropriate occupational series, career/occupation group, subgroup (if applicable), and band in conformance with standards published by or coordinated with OPM.
- If there are no published standards that are directly applicable, the classification must be consistent with other existing published standards.
- Agencies may change the classification of a position as warranted.

C) Review of Position Classification

- The Director of OPM may review an agency's classification of positions and order corrective action, where necessary, with respect to the placement of one or more positions in the appropriate pay system, series, career/occupational group (and subgroup, where appropriate), and band, or with respect to the official title of a position. Agencies will be required to take any corrective action prescribed by OPM.
- When Director of OPM finds that positions are not being classified in conformance with, or consistent with, published standards, OPM may:
 - Limit, revoke, or suspend an agency's authority to classify positions; and
 - Require that prior approval of the Office be secured before issuing a classification action; or
 - May exercise the agency's classification authority directly.
- After limiting, revoking, or suspending an agency's authority, the Director of OPM may restore an agency's classification authority once it is certain that the agency's subsequent classification actions will be in conformance with, or consistent with, published standards.

D) Reconsideration of Classification Decisions

- An employee may, subject to regulations of the Director of OPM, request a reconsideration of the classification of the employee's official position of record with respect to the assigned pay system, career/occupational group, subgroup, occupational series, official title, or band.
- The reconsideration request may be filed with either the agency or OPM. An employee may ask the Director of OPM to review an agency reconsideration decision. The Director's decision is final and not subject to further review or appeal. An agency's reconsideration decision is also considered to be final and not subject to further review or appeal if the employee does not request reconsideration by the Director.

V) Pay System

A) Establishment of Pay System

- The Director of OPM will be required to establish a framework of basic pay for the law enforcement pay system consistent with the law enforcement classification system.
- Performance-based pay must be linked to employee's ratings of record.
- Employee evaluations will measure activities (i.e., competencies, and behaviors). Evaluations of law enforcement employees will use a competency-based approach based on knowledge, skills, abilities, and behavior. In other words, the evaluation system will evaluate quality of work, rather than quantity of work. For example, agencies may not evaluate law enforcement officers based on the number of arrests made. Core competencies must be in writing and clearly transmitted to the employee.
- The evaluation system should foster and encourage teamwork and cooperative behavior among law enforcement personnel.

B) Federal Law Enforcement Pay and Retirement Council

- Structure of the Federal Law Enforcement Pay and Retirement Council
 - The Director of OPM will be required to establish a Federal Law Enforcement Pay and Retirement Council, with one official of OPM serving as the Chair, and one official of the Department of Justice serving as Vice Chair. Membership will consist of experts, and employee and management representatives, including one official each from DHS and DoD. There must be an equal number of employee and management representatives. Total membership of the Council may not exceed 20 members.
 - Employee and management representatives for the Federal Law Enforcement Pay and Retirement Council may be appointed from an agency employing Federal law enforcement personnel.
- Responsibility of the Federal Law Enforcement Pay and Retirement Council
 - The Federal Law Enforcement Pay and Retirement Council will provide its views and recommendations to the Director of OPM regarding a plan for a flexible basic pay framework for Federal law enforcement occupation classification, basic and premium pay, performance management, adverse actions and appeals process for law enforcement personnel throughout the Government. The framework should—

- Be consistent with the paybanding and classification framework that is proposed for law enforcement positions under MaxHR and NSPS;
- Have a common structure of law enforcement occupations, a structure of bands or rate ranges for various levels of work, and provisions for establishing and adjusting those rate ranges;
- Have a procedure for setting and adjusting premium pay rates, establishing and modifying local market areas, and a methodology for determining the amounts of local and special market supplements;
- Provide Federal agencies with the flexibility to adopt targeted approaches tailored to meet the needs of specific categories of law enforcement positions taking into account occupation, level, and location. The framework should allow a strategic mission-centered and market-oriented approach to setting and adjusting pay ranges so that payroll dollars are used as effectively as possible;
- Ensure that individual basic pay increases will be based on performance, with agencies accorded considerable flexibility to establish policies in this area.

C) Pay Limitation

- A federal law enforcement officer in the new pay system may not be paid an annual rate of basic pay in excess of the rate for level III of the Executive Schedule, unless a higher rate is approved under the critical pay authority in 5 U.S.C. § 5577.
- Employees will be subject to the aggregate pay limit in 5 U.S.C. § 5307, which will not be preempted.

D) Pay Band Structure and Pay Progression

- Each pay band established for an occupational group or subgroup shall have a range of basic pay rates, with each range defined by a minimum rate and a maximum rate. Rates shall be expressed as annual amounts.
- For each band, the Director of OPM shall establish a common base rate range that applies in all locations (before applying any supplements or premium pay).
- The Director of OPM may, in regulations, prescribe pay progression policies (or allow agencies to establish such policies) which will apply either to an entire rate

range or a portion of a rate range. The policies must take into account differences among employees' competencies, performance, organizational levels, or other appropriate factors.

E) Pay Band Adjustments

- The Director of OPM will have the authority to set and adjust pay ranges after receiving the recommendation of the Federal Law Enforcement Pay Council agencies (and securing the concurrence of OMB).
- The Director of OPM will be required to make a determination annually regarding whether to adjust rate ranges and by what amount, if any. The Director may consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other agencies or under other pay systems, and any other relevant factors.
- The Director of OPM may provide different adjustments for different bands and may adjust band minimum and maximum rates by different percentages.
- The Director of OPM will determine the effective dates of rate ranges.

F) Effect of a Pay Band Adjustment

- When the minimum rate of a band is adjusted, employees with a fully successful performance rating will be entitled to a basic pay increase equal to the percentage increase in that minimum rate, as long as their rate of basic pay does not exceed the maximum rate of the range. However, this rule will not apply to employees receiving a retained rate.
- Employees with a performance rating below fully successful will be prohibited from receiving a pay increase, except in certain situations. Since such an employee's rate will be frozen while the band minimum is increasing, the employee's rate may fall below the band minimum.
- An employee who does not have a rating of record for the most recently completed appraisal period for the new system will be treated the same as an employee who received a fully successful rating of record for that period.
- In a situation where an employee is denied an increase because of performance below the fully successful level, if the employee's basic pay does not fall below the minimum rate of the band as a result of that rating, and the agency later gives the employee a new rating of record of fully successful or higher (after the effective date of an adjustment to the minimum rate of a range and the next rate range adjustment), the employee will be entitled to an increase effective on the

first day of the first pay period beginning on or after the date the new rating is final. The increase must be the same amount as the increase received by an employee with a fully successful or higher rating.

- If an employee is denied an increase in pay due to a pay band adjustment because his or her performance is below the fully successful level, and the employee's rate of basic pay falls below the minimum rate of the band: (1) the employee will be given the opportunity to develop a performance improvement plan with his or her supervisor; and (2) if the employee demonstrates fully successful or higher performance within 90 days (with or without a new performance plan), the employee's supervisor will issue a new rating of record and the employing agency will provide a prospective pay increase consisting of the same dollar amount the employee would have received if he or she had been rated fully successful or higher at the time of the rate range adjustment. If the employee's performance remains below the fully successful level after the 90-day period for improvement, the agency must initiate action to demote or remove the employee. If the agency fails to demote or remove an employee whose performance remains below the fully successful level after a 90-day period for improvement, the employee would be entitled to the minimum rate of the band effective on the first day of the first pay period beginning on or after the 90th day following the effective date of the adjustment of the minimum rate.

VI) Local and Special Market Supplements

A) General Provisions

- Local and special market supplements will be expressed as a percentage of an employee's rate or basic pay.
- The Director of OPM will prescribe regulations outlining the extent to which these supplements will apply to employees receiving a retained rate.
- Judicial review of any such regulation shall be limited to whether or not it was promulgated in accordance with the notice and comment requirements.
- In determining the amount of local and special market supplements, the Director of OPM may consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other agencies, and any other relevant factors that pertain to the covered category of employees.

B) Local Market Supplements

- The Director of OPM may establish local market supplements, within the limits discussed below, that may vary by career/occupational group, band, and location.

These local market supplements will be similar to locality-based comparability payments currently authorized under 5 U.S.C. § 5304.

- The supplements will apply only to employees whose official duty station is located in the particular local market area covered by the supplement.
- Local market supplements may be treated as basic pay for all purposes for which locality-based comparability payments under 5 U.S.C. § 5304 are treated as basic pay—for example retirement, life insurance, and premium pay.

C) Special Market Supplements

- The Director of OPM may establish special market supplements (subject to limitations described below) that provide higher pay levels for a specified category of employees if the Director determines that such supplements are warranted by current or anticipated recruitment or retention needs, or both.
- A special market supplement replaces any lower local market supplement that would otherwise be applicable.
- A special market supplement is treated as basic pay for the same purposes as a local market supplement, for the purpose of computing cost-of-living allowances and post differentials in nonforeign areas, and for any other purposes specified in regulations of the Director.

D) Linkage Between Performance and Local and Special Market Supplements

- When a local or special market supplement is increased, employees with a fully successful performance rating will be entitled to a basic pay increase resulting from that supplemental increase.
- Employees with a performance rating below fully successful will be prohibited from receiving a pay increase because of a supplemental increase, except as provided below. Failure to receive a supplemental increase will not be appealable as an adverse action under chapter 75 of title 5.
- Since the supplement-adjusted pay rates of employees with a performance rating below fully successful will be frozen while the supplement-adjusted band minimum is increasing, their adjusted rates may fall below the adjusted band minimum.
- For purpose of entitlement to a supplemental adjustment, an employee who does not have a rating of record for the most recently completed appraisal period will be treated the same as an employee who receives a fully successful

rating of record for that period.

- If an employee does not receive a supplemental adjustment to basic pay because of performance below the fully successful level, and the employee's basic pay (including a local or special market supplement) remains above the adjusted minimum pay rate of his or her band, the following adjustment would be allowed:
 - If the employing agency gives the employee a new rating of record of fully successful or higher (after the effective date of the adjustment at issue and before the next adjustment), the employee would receive the supplemental adjustment. The supplemental adjustment would be effective on the first day of the first pay period beginning on or after the date the new rating is final.
- If an employee does not receive supplemental adjustment to basic pay because of performance below the fully successful level, and the employee's basic pay (including a local or special market supplement) falls below the adjusted minimum pay rate of his or her band, the agency must: (1) provide the employee an opportunity to develop a written performance improvement plan with his or her supervisor; and (2) if the employee demonstrates fully successful or higher performance within 90 days (with or without a new performance plan), the employee's supervisor will issue a new rating of record and the employing agency will provide a prospective pay increase. If the employee's performance remains below the fully successful level after the 90-day period for improvement, the agency must initiate action to demote or remove the employee. If the agency fails to demote or remove an employee whose performance remains below the fully successful level after a 90-day period for improvement, the employee would be entitled to the pay increase effective on the first day of the first pay period beginning on or after the 90th day following the effective date of the supplemental adjustment.

E) Performance-Based Pay Adjustments

- Performance-based pay adjustments and cash awards will be part of the pay system, which, operating in conjunction with the performance appraisal system, will constitute a pay-for-performance system. The provisions described below are designed to ensure that higher performance is rewarded with higher pay.
- Employees in a Full Performance or higher band will be eligible for within-band performance-based pay increases.
- Employees will be assigned performance shares, based on performance ratings of record, representing shares or units of pay pool funds.

- If an employee is eligible to receive a rating but no rating has been assigned, the agency must use the modal rating for the most recently completed appraisal period--that is, the rating of record received most frequently by employees in the same pay pool.
- Agencies will have to develop their own policies to address the situation of an employee who is not eligible for a rating of record for some reason other than those addressed in 5 U.S.C. § 5267(f) or (g) (having to do with certain employees who return from periods of military service or after receiving workers' compensation payments).
- Agencies will be required to establish pay pools for allocating performance pay increases. Agencies determine which employees are covered by any pay pool and determine the dollar value of each pay pool.
- In setting the value of pay pools for the first five years after converting to a pay-for-performance system, agencies must allocate an amount for performance pay increases equal to or greater than the Governmentwide historical average value of within-grade and quality step increases under the General Schedule, as well as the estimated average amount that otherwise will have been spent on promotions between General Schedule grades that are placed in the same band. The Director of OPM will determine this amount. After the first five years, agency heads will determine annually the funds to be allocated to performance pay increases, subject to any minimum amount the Director may prescribe.
- Subject to regulations of the Director of OPM, agencies may distribute the funds allocated for performance pay increases among pay pools, and, in so doing, may take into account organizational performance and contribution to agency mission.
- Agencies will be required to establish rating/share patterns for each pay pool--that is, the relationship between a summary rating level and a single number of shares or a range of shares. A higher rating must receive a greater number of shares. For example, in a rating program with four summary rating levels (outstanding, exceeds fully successful, fully successful, and unacceptable), one possible rating/share pattern (using a single number of shares for each rating level) will be 4-2-1-0, where 4 shares are assigned to the outstanding rating, 2 shares to the exceeds fully successful rating, 1 share to the fully successful rating, and 0 shares to the unacceptable rating. An agency must assign 0 shares to any rating below fully successful since no pay increase is payable to employees with such a rating. If a rating/share pattern associates a rating with a range of shares, the agency must specify the criteria to be used in assigning employees a specific number of shares within the range. An agency may, for any pay pool, adopt a method of adjusting shares based on an employee's position in the rate range.

- Agencies will be required to determine the value of one performance share, expressed as a percentage of the employee's rate of basic pay or as a fixed dollar amount, based on the value of the pay pool and the distribution of shares among pay pool employees. An individual employee's performance pay increase will be determined by multiplying the determined value of a performance share by the number of shares assigned to the employee. On the effective date specified by the agency, this amount must be paid as an increase in the employee's rate of basic pay, but only to the extent that it does not cause the employee's rate to exceed the maximum of the employee's rate range (or any applicable limitation). At the agency's discretion, any portion of the employee's performance pay increase amount not converted to a basic pay increase may be paid out as a lump-sum payment (with no charge to the pay pool). Such a lump-sum payment is not basic pay for any purpose. An employee receiving a retained rate will not be eligible for a basic pay increase, but may receive a lump-sum payment, subject to the condition that the lump-sum payment may not exceed the amount received by an employee in the same pay pool and band whose rate was at the band maximum and who was assigned the same number of performance shares.
- Each agency must issue implementing directives regarding the proration of performance pay increases for employees who, during the period between performance pay increases, were (1) hired or promoted, (2) in leave-without-pay status, or (3) in other circumstances that make proration appropriate.
- An agency may establish an alternative method for awarding performance pay increases, after coordination with and certification of OPM. An agency alternative method must include, at a minimum, certain elements, including a bar on pay increases for employees with a rating below fully successful, at least one summary rating level of performance above fully successful with higher pay increases for higher performance levels, and a salary cost management method.
- An agency may reduce an employee's rate of basic pay within a band for unacceptable performance or conduct, subject to any applicable adverse action procedures as set forth in chapter 75 of title 5. Such a reduction may not exceed 10 percent or cause an employee's rate of basic pay to fall below the minimum rate of the employee's band or range.
- An agency may provide special within-band basic pay increases for employees within a Full Performance or higher band who possess exceptional skills in critical areas or who make exceptional contributions to mission accomplishment, or in other circumstances determined by the agency. These increases may be revoked when the agency determines that the conditions have changed. Such a revocation is not considered an adverse action under

chapter 75 and does not create an entitlement to pay retention.

- Agencies may develop pay progression policies and procedures for employees in Entry/Developmental bands that are linked to employees' acquisition and demonstration of competencies and other relevant factors, in accordance with regulations of the Director of OPM.
- Agencies may pay a lump-sum cash award either to an individual employee or to a group of employees, based on an employee's most recent rating of record (in the case of an individual award) and any other performance assessment or criteria the agency believes to be appropriate. The same rating of record, assessment, or criteria may not serve as a basis for both a lump-sum cash award and either an award under 5 U.S.C. § 4503 for superior accomplishment or a performance-based cash award under 5 U.S.C. § 4505a. A lump-sum cash award in excess of 20 percent of basic pay, including any local or special market supplement, must be approved by the agency head. Lump-sum cash awards may not be paid from funds allocated for the payment of performance pay increases.

F) Certification of Pay-For-Performance System

- Before an agency may implement or modify a pay-for-performance system for law enforcement employees, that pay-for performance system must be certified by the Director of OPM as meeting the following requirements:
 - Adherence to the merit systems principles in 5 U.S.C. § 2301;
 - A fair, credible, and transparent employee performance appraisal system;
 - Linkage among the pay-for-performance system, the performance; appraisal system, and the agency's overall strategic plan and specific human capital plan;
 - A mechanism for ensuring employee involvement in the design and implementation of the pay-for-performance system;
 - Recurring training of supervisors, managers, and employees in the operation of the system;
 - A process for ensuring ongoing feedback and dialogue among supervisors and employees about performance;
 - Measures to ensure that management of the system will be fair and performance-based; and

- A mechanism to ensure that the system is adequately resourced.
- When applicable, an agency must follow a process for conferring with representatives of certain labor organizations who represent law enforcement employees affected by the establishment of a pay-for-performance system. The process, which also requires publication of a Federal Register notice regarding a proposed pay-for-performance system, must also be followed with respect to any proposal for a substantive modification of previously certified pay-for-performance system.

G) Pay Administration

- Each agency, after coordination with the Director of OPM, must issue implementing directives regarding the establishment of starting rates of pay for employees who are newly placed in a band.
- Each agency may issue implementing directives, consistent with regulations promulgated by the Director of OPM, regarding the discretionary use of an individual's highest previous Federal rate of pay in setting pay in conjunction with various personnel actions such as reemployment, promotion, or transfer.
- Upon promotion, an employee is entitled to a pay increase in accordance with regulations prescribed by the Director of OPM. The Director may provide for a minimum pay increase upon promotion in specified circumstances. The rate of basic pay after promotion may not be less than the minimum rate of the higher band.
- Each agency may issue implementing directives regarding the setting of an employee's rate of basic pay upon demotion to a lower band. The agency directives, which must be consistent with regulations or the Director of OPM, must distinguish between demotions under adverse action procedures and other reductions in band or pay. A reduction in basic pay upon demotion under adverse action procedures may not exceed 10 percent unless a larger reduction is needed to place the employee at the maximum rate of the lower band.
- Each agency may issue implementing directives regarding the setting of an employee's rate of basic pay upon movement to a position in a different career/occupational group or subgroup, subject to the regulations prescribed by the Director of OPM.
- The Director of OPM will prescribe regulations regarding eligibility for pay retention of employees whose rate of basic pay would otherwise be reduced. The regulations also will address how to apply pay retention to eligible employees. For employees receiving a retained rate (that is, a rate that

exceeds the maximum rate of the employee's band), the retained rate must be adjusted at the time of any increase in the minimum rate of the employee's band by one-half of the percentage value of any increase in that minimum rate for which the employee otherwise would have been eligible.

- An employee's rate of basic pay may not be less than the minimum rate (or adjusted minimum rate) of the employee's band, except in the case of an employee who is denied a pay increase because of a rating of record below fully successful.
- An employee's rate of basic pay may not exceed the maximum rate of the employee's rate range unless the employee is receiving a retained rate.
- Each agency may issue implementing directives regarding the movement of employees to or from a band with a rate range that is increased by a special market supplement. Any such implementing directives must be consistent with regulations prescribed by the Director of OPM.
- The Director of OPM must establish representative rates for all rate ranges, for the purpose of applying reduction in force provisions.
- Agencies may issue implementing directives, consistent with regulations of the Director of OPM, to address setting pay prospectively for employees who return to service with restoration rights after performing service in the uniformed services, or after employees return to service after a period of receiving workers' compensation benefits.

H) Special Payments

- Agencies may provide certain special payments (differentials or lump sums) for special skills or assignments and for situations where agencies are experiencing recruitment and/or retention problems.
- Special payments will not be treated as basic pay for any purpose.
- Special payments may be terminated or reduced at any time without triggering pay retention or adverse action procedures.

I) Premium Pay

- In order to bring consistency to premium pay, the Director of OPM will have the authority (regardless of any other provision of law) to apply subchapter V of chapter 55 to employees in law enforcement positions and to establish, by

regulation, alternative premium pay provisions in lieu of the provisions in subchapter V of chapter 55.

J) Awards, Bonuses, Lump-Sum Payments and the Thrift Savings Plan

- The Civil Service Retirement System law and the Federal Employees Retirement System law will be amended to permit an employee who is contributing to the Thrift Savings Fund from his or her basic pay to also contribute to that Fund all or part of an award, bonus, or lump-sum payment. No employee will be entitled to any matching funds from his or her employing agency based on any contribution of an award, bonus, or lump-sum payment.

VII) Interim Pay Authority

- The Director of OPM, in consultation with the President's pay agent and the Federal Law Enforcement Pay Council, may adjust the compensation of LEO's in certain high-cost-of-living cities if a demonstrable pay gap exists between state and local law enforcement officers and their federal counterparts until the new compensation system is established.

VIII) Staffing Modernization

- The system will include employment authorities and types of appointments in order to consolidate the categories of appointments into two broad categories – career and time-limited, thereby eliminating career–conditional appointments.
- The system will include direct hire authority.
- Agencies will be able to use targeted recruiting strategies.
- Agencies will have the authority to reduce, realign, and reorganize in a manner consistent with performance-based human resources system.

IX) Labor-Management Relations, Adverse Actions, and Appeals

- Modifications to the classification, compensation, and benefits of federal law enforcement officers outlined in this options paper may require adjustments to the Labor Management Relations, Adverse Actions, and Appeals chapters in title 5 U.S.C. Therefore, in keeping with the spirit of the options paper, we are interested in the comments and suggestions from the stakeholder community on what, if any, changes to chapters 71, 75, and 77 are required.

X) Retirement Program

A) Retirement Option 1

- The Law Enforcement Personnel Retirement Program (LEPRP) will be established only under the Federal Employees' Retirement System (FERS).
- Position Composition
 - The LEPRP will be divided into a Tier I and Tier II. Composition of these groups will be determined under regulations promulgated by the Director of OPM.
 - Tier I will largely be composed of the same types of positions as are currently covered under LEO retirement, including Detention Auxiliary Positions. Tier I Law Enforcement Positions (LEP) will include a requirement to meet government-wide consensus physical standards, to be established by Director of OPM in consultation with agencies employing substantial numbers of LEPs.
 - All current employees who are FERS LEOs will be grandfathered into Tier I as long as they are continuously employed in a Tier I or II position.
- Early Retirement Eligibility
 - Tier I – Age 52 with 20 years of LEO and/or Tier I service
 - Tier II – FERS Minimum Retirement Age (MRA, from 55 to 57, depending on year of birth) with 20 years of LEO, Tier I and II service.
- Mandatory Retirement
 - Tier I – Same as current law, age 57, with possible extension to age 62
 - Tier II – Age 62
- Special Computation Eligibility
 - Tier I – Must meet the early retirement eligibility requirements
 - Tier II – Five years of Tier I and/or Tier II service
- Benefit Computation

- Tier I – Same as current law, 20 years at 1.7 percent with additional service at 1 percent
- Tier II – Up to 20 years of Tier I and/or Tier II at 1.25 percent, with additional service at 1 percent
- Maximum Entry Age
 - Tier I – Age 37 for initial appointment, with reentry based upon ability to complete 20 years of Tier I service prior to age 57
 - Tier II – None

B) Retirement Option 2

- The Law Enforcement Personnel Retirement Program (LEPRP) will be established only under the Federal Employees' Retirement System (FERS).
- Position Composition
 - The LEPRP will be divided into a Tier I and Tier II. Composition of these groups will be determined under regulations promulgated by the Director of OPM.
 - Tier I will largely be composed of the same types of positions as are currently covered under LEO retirement, with the exception of Detention Auxiliary Positions (DAPs). Tier I Law Enforcement Positions (LEP) will include a requirement to meet government-wide consensus physical standards, to be established by Director of OPM in consultation with agencies employing substantial numbers of LEPs.
 - All current employees who are FERS LEOs will be retain current defined benefits as long as they are continuously employed in a Tier I or Tier II position.
- Early Retirement Eligibility
 - Early retirement at age 52 after 20 years of service in any law enforcement position. There would be no requirement for continuous service in a law enforcement position.
- Mandatory Retirement
 - Tier I – Same as current law, age 57 with 20 years of Tier I service, with possible extension to age 62

- Tier II – Age 62
- Enhanced Agency Automatic TSP Contributions
 - 5% increase in agency automatic TSP contributions for employees in law enforcement positions which involve investigation, apprehension, or detention of criminals (e.g., criminal investigator, GS-1811 positions), or protection of officials.
 - 2.5% increase in agency automatic TSP contributions for employees in law enforcement positions which involve prevention, detection, or personnel engaged in protection duties.
- Maximum Entry Age
 - Tier I – Age 37 for initial appointment, with reentry based upon ability to complete 20 years of Tier I service prior to age 57
 - Tier II – None
- Supervisory and Administrative Positions
 - An employee would be entitled to a higher level of automatic agency TSP contributions for any service in a supervisory or administrative law enforcement positions. The level of automatic TSP contributions (Tier I or Tier II) would depend on the program for which the supervisory/administrative position is responsible. A supervisory/administrative position directing employees in Tier I positions would be a Tier I position. A supervisory/administrative position directing employees in Tier II positions would be a Tier II position.
 - An employee in a supervisory/administrative position would be entitled to the higher level of automatic agency TSP contributions even if the employee had a break in service greater than three days (i.e., an employee would not have to transfer from a primary position to supervisory/administrative without a break in service).

XI) Housing Allowance

- The bill will provide OPM with the authority to establish a Housing Allowance Trust Fund and funds will be authorized for the Fund.
- The Housing Allowance Program will provide a housing allowance to law enforcement personnel in certain circumstances. To be eligible, a law enforcement officer will have to have entered into a mobility agreement, and will

have to be assigned to a high housing cost area, as determined by the Director of OPM.

- The amount of the allowance will be 10 percent of the median value of homes in the area.
- If a recipient of a housing allowance receives a gain of 20 percent or more upon the sale of a home for which a housing allowance was received, the recipient will have to pay 5 percent of the total sale price of the home to the housing allowance fund. If the recipient incurs a loss upon the sale of a home, the recipient will not have to pay any money to the Housing Allowance Trust Fund.

XII) Consolidation of Federal Police Forces

- Police forces within the Executive Branch, with the exception of police forces within DoD and DHS, will be consolidated into the newly created U.S. Executive Branch Police within the Department of Justice. The U.S. Executive Branch Police will be included under the comprehensive system of pay and retirement benefits, as described in this paper.

XIII) The Homeland Security Reserve Force

- The legislation will establish a Homeland Security Reserve Force (DHS Reserve Force). The DHS Reserve Force will consist of retired law enforcement employees.
- The Secretary of the Department of Homeland Security will have the authority to activate the DHS Reserve Force during a national emergency, a heightened threat level, or a state of emergency declared by the President or the Governor of a State. The DHS Reserve Force could only be activated during the duration of the national emergency, heightened threat level, or declared state of emergency.