

Strategic Compensation Conference

Melissa Drummond

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inability to convert to pdf.]

Agenda

- ✓ Overview of Adjudicative Functions
- ✓ Classification Appeals Program Update
 - Proposed Regulatory Changes
 - Recent Digest Articles
- ✓ Information on FLSA Program
- ✓ Compensation and Leave Claims

Office of Merit Systems Oversight and Effectiveness

- ✓ Associate Director reports to OPM Director
- ✓ Has three major components
 - Office of Merit Systems Effectiveness
 - Office of Workforce Information
 - Office of Merit Systems Oversight
 - Five Field Components and Washington

Merit Systems Oversight Umbrella

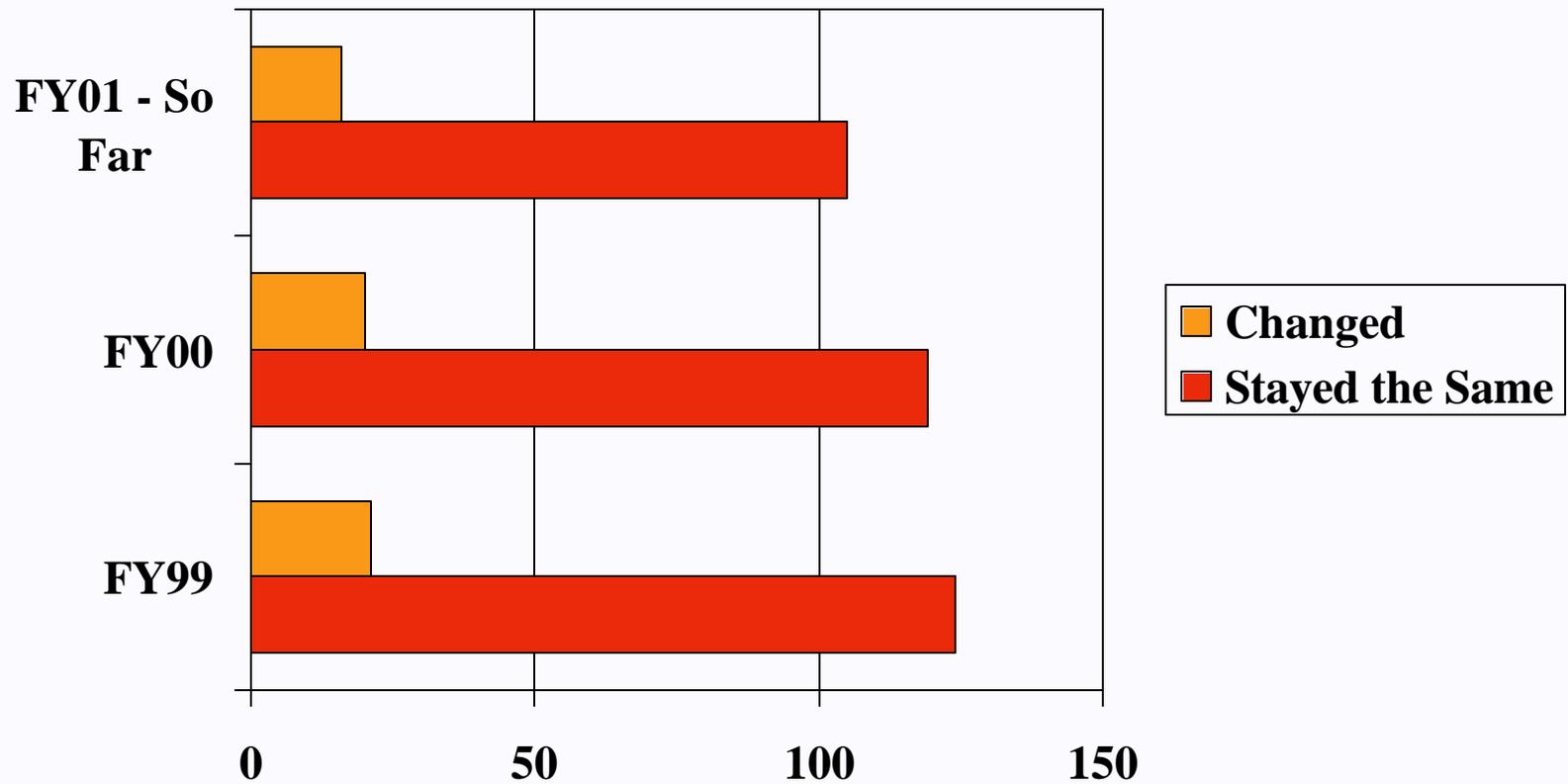
✓ Office of Merit Systems Oversight

- Agency Reviews
- Special Studies
- Adjudication Function
 - Classification Appeals
 - Fair Labor Standards Act (FLSA) Claims
 - Claims relating to Compensation and Leave (referred to as pay claims)

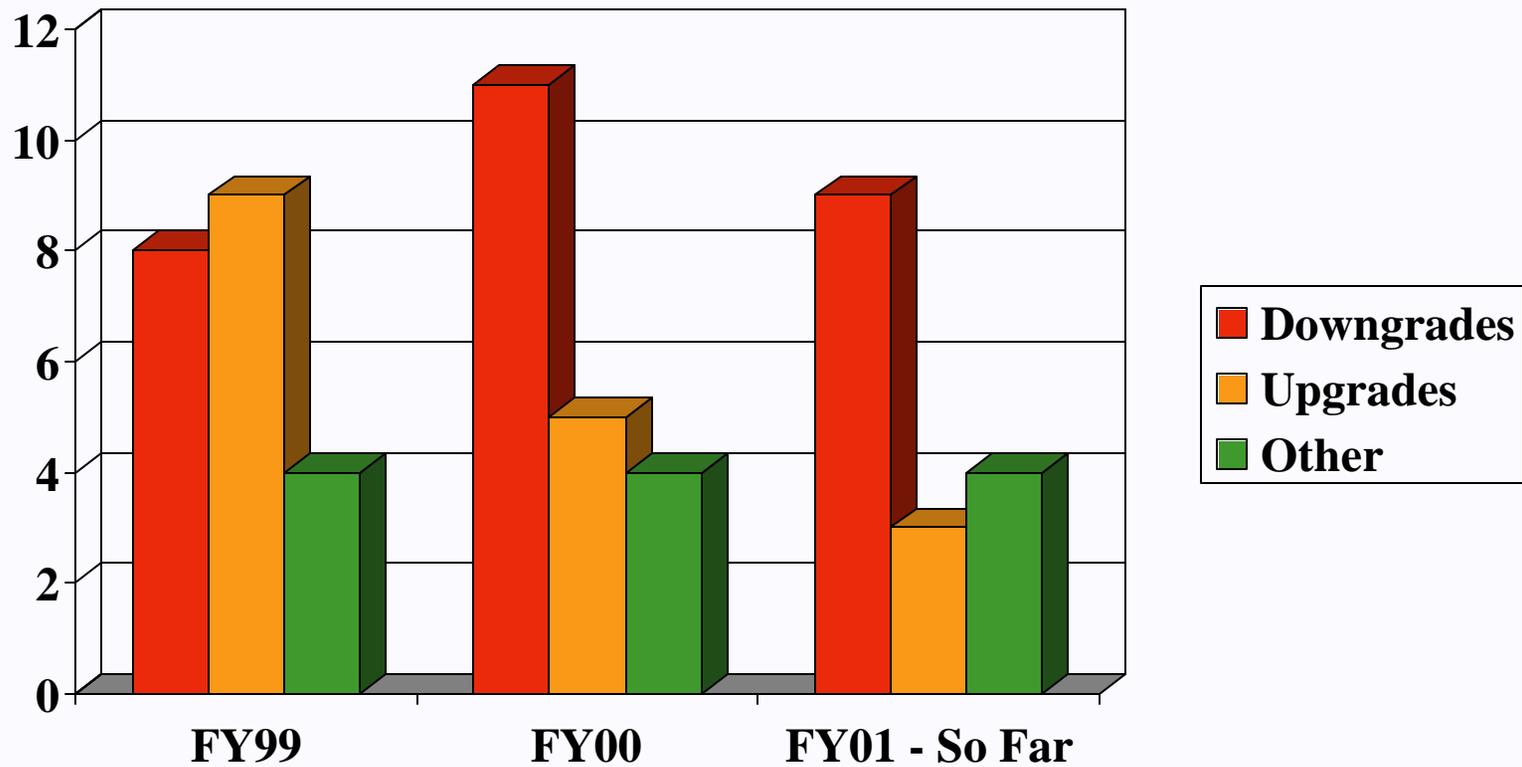
Adjudication Statistics

- ✓ Classification Appeals - 60%
 - Between 125 - 150
- ✓ Pay Claims - 30%
 - Between 60 - 75
- ✓ FLSA Claims - 10 %
 - Between 10 - 25

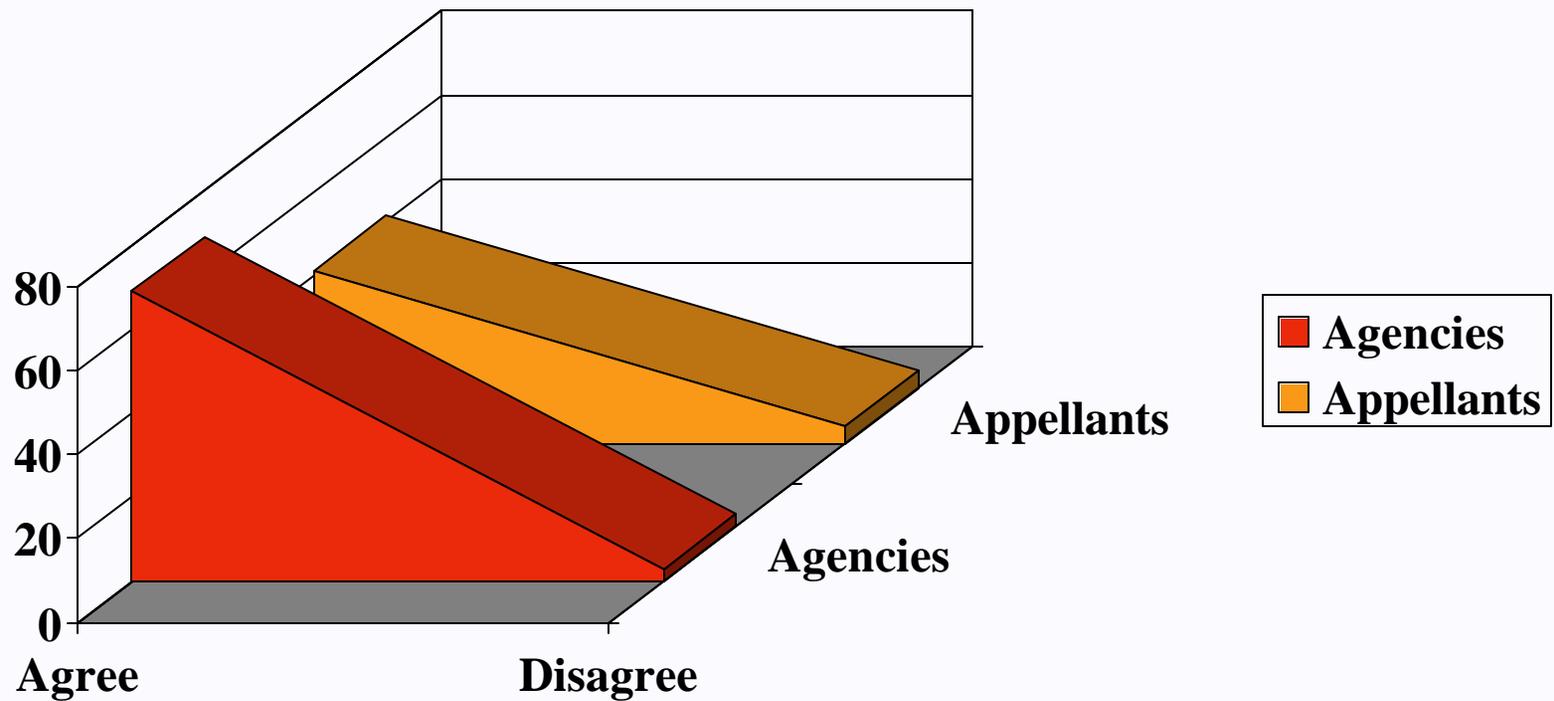
Appeal Outcomes - FY99 - FY01



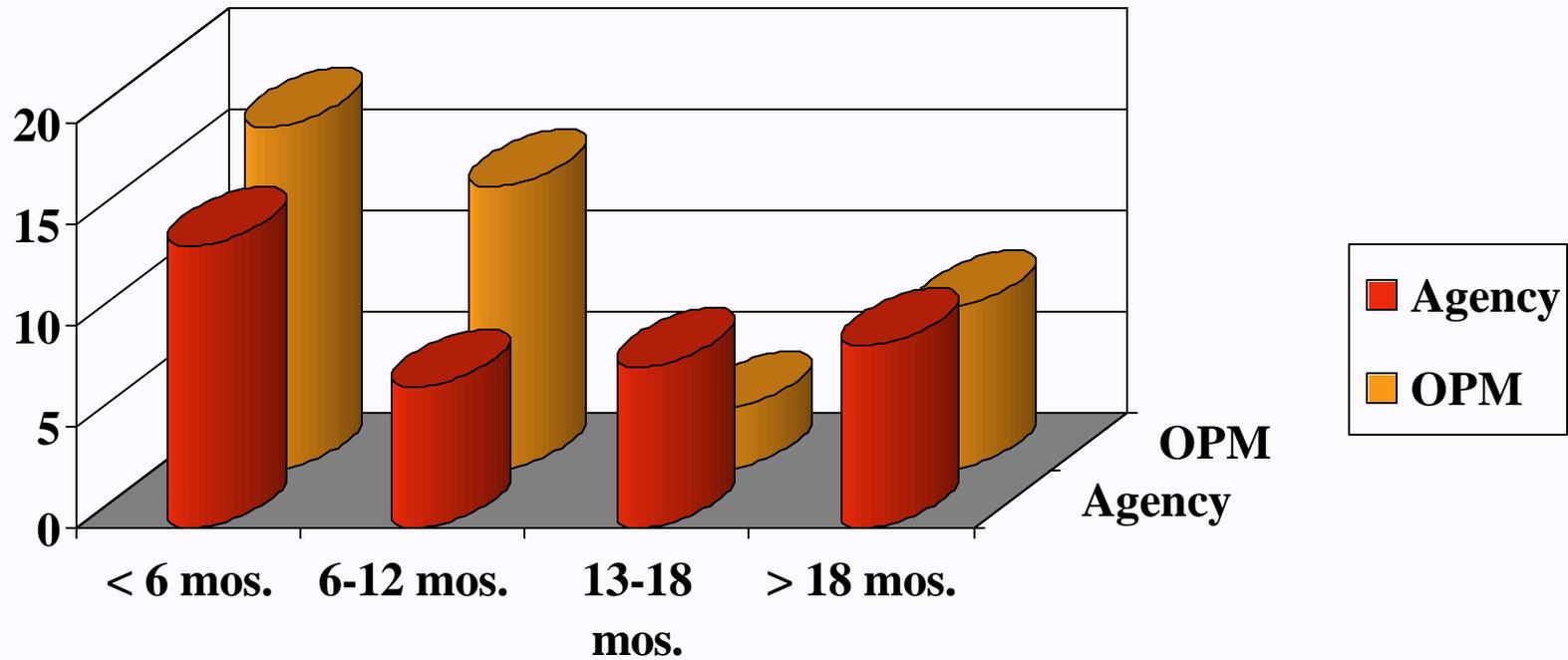
Appeal Outcomes - FY99 - FY01



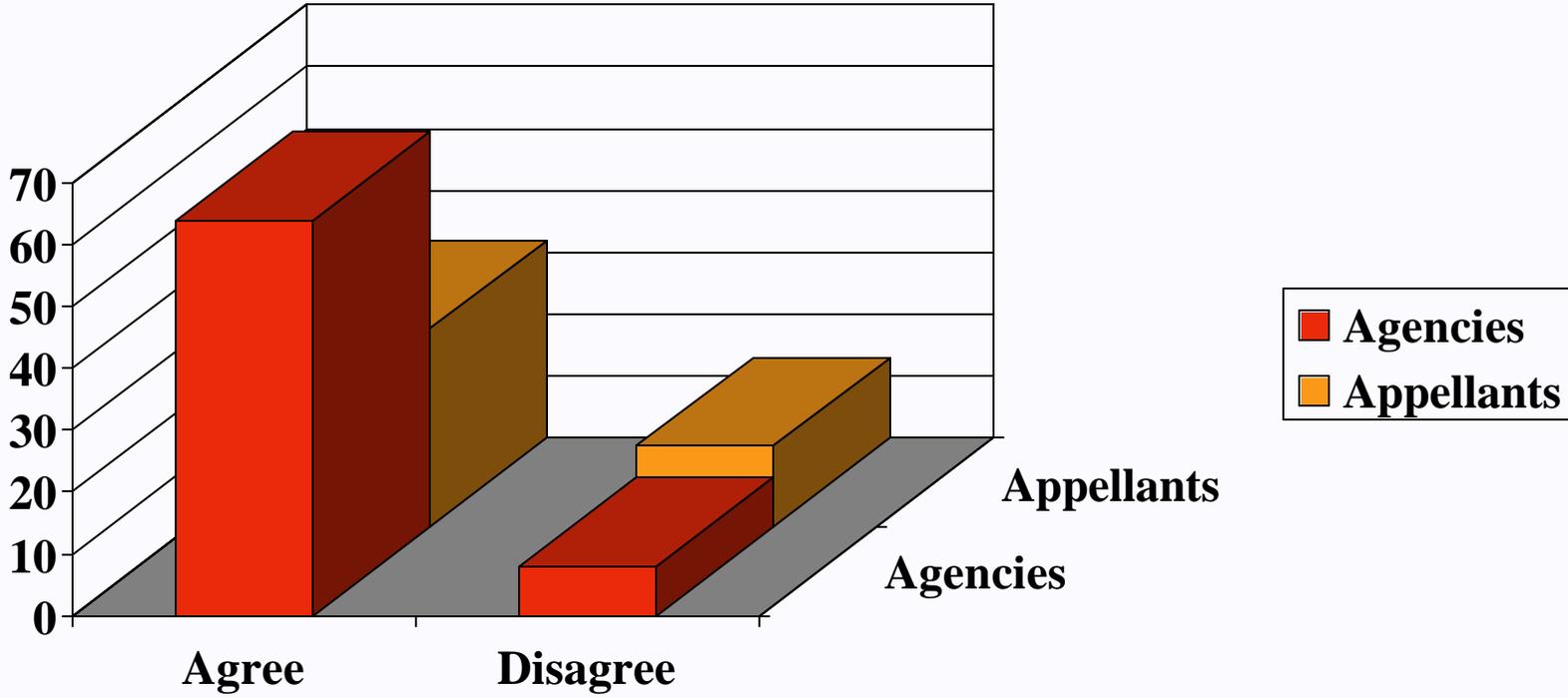
Professionalism of OPM Representatives



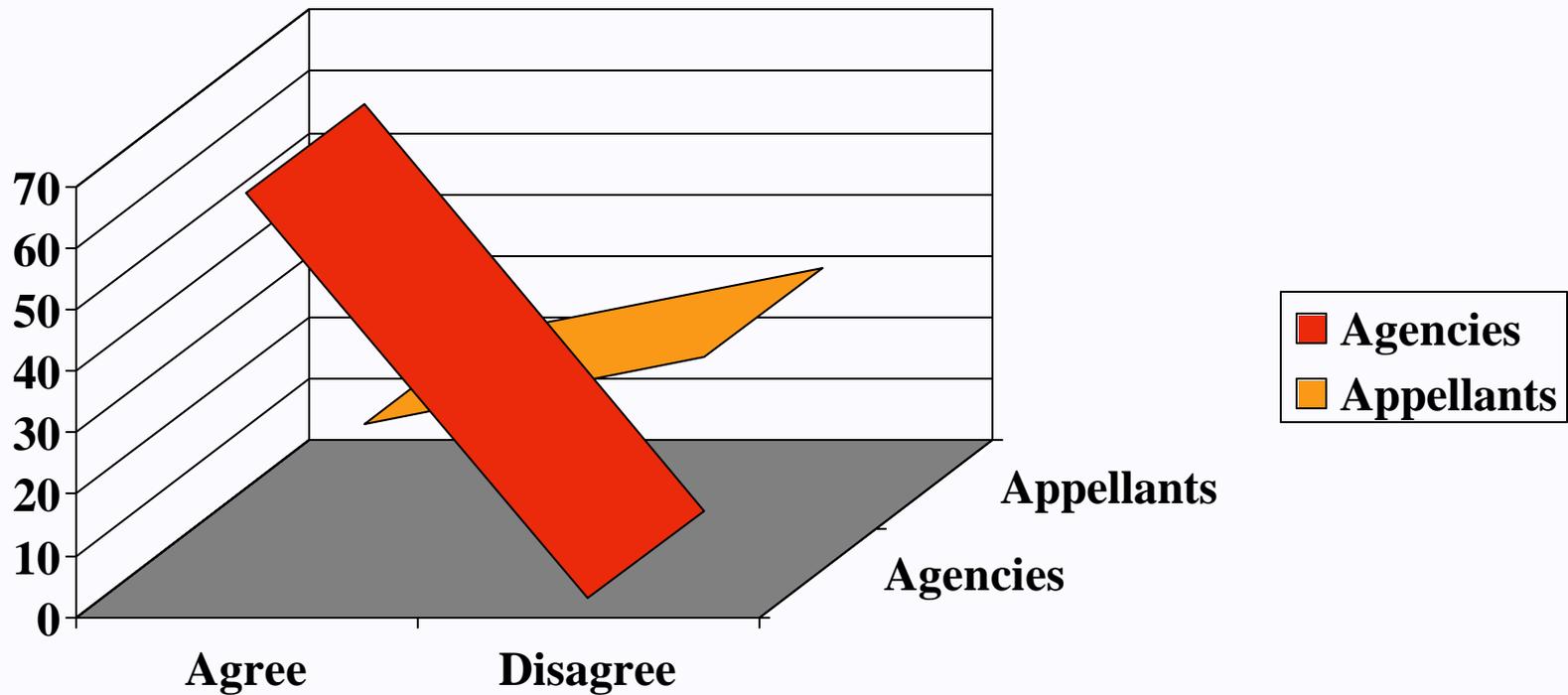
Agency Response vs. OPM



Plain Language



Addressing of Classification Issues



Classification Appeals Process

✓ GS - Hierarchical Structure

- May appeal to agency or OPM

✓ FWS

- Need to go to agency first

✓ Exemptions

- Some agencies are exempt from parts of Title 5 and the Classification Act
 - Final administrative recourse is the agency

Important Aspects of Classification Appeals Process

- ✓ PD Accuracy Process
 - Automated PDs
- ✓ Agency Administrative Report
- ✓ Factfinding
- ✓ Application of OPM standards
- ✓ OPM Decision is final and binding
 - Applies to similarly situated positions

Proposed Regulatory Changes for 5 CFR 511

- ✓ Require agencies to establish a classification appeal program.
- ✓ Remove the option of having appellants appeal to OPM through their agencies.
- ✓ Remove the option of filing a reconsideration request with the OPM Director.

GS

Proposed Regulatory Changes for 5 CFR 532

- ✓ Add subpart on how to comply with job grading decisions, job grading appeal decisions, and OPM job grading certificates.
- ✓ Remove the option of filing a reconsideration request with the OPM Director.

FWS

Recent Digest Articles

✓ Digest 27

✓ 'Back to the Basics'

✓ Links to Decisions

✓ Website

Interdisciplinary Positions

- ✓ GS-401 that had previously been classified as a GS-408
- ✓ Final classification is determined by quals of person selected to fill the position
- ✓ Interdisciplinary positions are applicable for professional positions only

Technician vs. Professional

- ✓ Was confident that quals
merited higher grade
- ✓ Studies were defined, planned,
and directed by professional
- ✓ Training and keeping abreast
of information is well within
the standard

303-6 and 343-12

- ✓ One-grade requesting two-grade
 - Worked with database that applied edit checks
 - Used two clearly-defined coverage exclusions and standard letters
- ✓ Two-grade downgraded to one-grade
 - Obtained basic information and used boilerplate letters

647-5

- ✓ Automated pd credited Level 2-3
- ✓ Complex procedures were performed less than 25% of the time
- ✓ Work was closely monitored and at times performed by higher-graded employees
- ✓ Automated PDs are not equivalent to benchmark PDs

963-8 upgrade to 9

- ✓ Appellant requested classification as 343-9
- ✓ Work clearly met the 963 series definition
- ✓ OPM found that the appellant had signatory authority equivalent to Level 2-4
- ✓ Performance or delivery of line program operations or services are not normally classified in the GS-343 series

905-12 upgrade to 13

- ✓ Standard allows for the “effect of individual stature” concept for borderline situations
- ✓ OPM found that experience credited under Responsibility but could not be considered again under “stature”
- ✓ Specific standard instructions take precedence over general guidance

RGEG

- ✓ Allows for intermediate point values
- ✓ Appellants believed that exceeding one degree in any aspect merited credit at the next degree
- ✓ Some aspects exceeded but others fell short
- ✓ Counterbalance nullified crediting of higher level

GS-110 - RGEG Coverage

- ✓ Appellant requested that his economic research be evaluated using the GS-110 standard
- ✓ RGEG specifically *excludes* research in the social sciences
- ✓ This type of research does not typically involve the types of investigative processes representative of RGEG work

GSSG

- ✓ Agency credited 3-4 to a field manager with 70 employees
- ✓ All of 3-3a was not met due to the lack of delegation of program responsibility - nullified 3-4 crediting
- ✓ Activities were stable and did not require significant flexibility in structure of work

GS-801 - GSSG Coverage

- ✓ Full supervision of two GS-12s and assumed supervisor's duties when absent
- ✓ Two GS-12s exercised considerable independence
- ✓ In analyzing a supervisory position, subordinate positions may need to be reviewed

WG-2604 - FWS vs. GS

- ✓ What is the paramount knowledge of the position/job?
- ✓ Job required knowledge of electronic principles but for the primary purpose of recognizing improper operation, determining cause of malfunctions, correcting defects

FWS JGS for WL

- ✓ Appellant requested additional credit for variety of skills/work
- ✓ OPM determined the target grade of the work being led
- ✓ Training involved formal organized training programs covering a recognized trade combined with on-the-job practice designed to progressively improve the students' skills

FLSA Information

- ✓ Federal Sector Administration - OPM
 - FLSA Program Office
 - Coverage and Claims
 - Pay and Leave Administration Division
- ✓ Private Sector - Department of Labor

Hot Topics

- ✓ Issue of Back Pay Interest
 - U.S. vs. Rowdy Adams, February 13, 2001
- ✓ Temporary Work
- ✓ Misclassifications discovered during FLSA factfinding
- ✓ Reconsideration of FLSA Decisions
- ✓ Centralization of FLSA Claims function

Important FLSA Moments

- ✓ **1938** - The Act is passed by Congress
- ✓ **1974** - Becomes applicable to public employees
- ✓ **1990** - Carter vs. Gibbs
- ✓ **1994** - Statute of Limitations Changes
 - 6 to 2 years (3 years for willful violation)
- ✓ **1995** - Treasury Appropriations Act upholds 2 year statute after June 30, 1994

Important FLSA Terminology

- ✓ **Exemption Status** - an employee's designation by the agency
- ✓ **Exempt** - not covered by minimum wage/overtime provisions
- ✓ **Nonexempt** - covered by minimum wage/overtime provisions
- ✓ **Primary duty** - duty that constitutes the major part of an employee's work

General Principles of Exemption

- ✓ Each employee is presumed to be FLSA **non-exempt**
- ✓ If there is reasonable doubt on meeting exemption criteria, the employee should be FLSA **non-exempt**
- ✓ Burden of proof rests with the agency

Summary of General Exemption Principles

- ✓ Separate exemption criteria are not mutually exclusive
- ✓ Failure to meet exemption criteria under one category does not preclude exemption from under another category
- ✓ FLSA designation ultimately rests on the duties actually being performed by the employee

Making Exemption Determinations

✓ Preparation

- Gather Materials and confirm PD accuracy

✓ Analysis

- Eliminate primary duty tests that are not met
- Analyze the pd and evaluation statement with regulatory guidance

✓ Conclusion

Executive Exemption Criteria

- ✓ Is the primary duty test met?
 - Makes personnel changes & has authority to recommend personnel changes
- ✓ Is the 80-percent test met?
 - 80% or more of workweek on supervisory and closely related work

Administrative Exemption Criteria

- ✓ Is the primary duty test met?
- ✓ Is the nonmanual work test met?
 - Intellectual OR specialized training/experience
- ✓ Is discretion/independent judgment used?
- ✓ Is the 80-percent test met?

Professional Exemption Criteria

- ✓ Is the primary duty test met?
- ✓ Does the work require creative or analytical thought processes?
- ✓ Is discretion/independent judgment used?
- ✓ Is the 80-percent test met?

Temporary Work

- ✓ Does the period of temporary work exceed 30 consecutive calendar days?
- ✓ Does the work not support the current FLSA designation?
- ✓ Emergency Work
 - Affects exempt employees if nonexempt duties are performed for more than 20% of the workweek

Foreign Exemptions

- ✓ Spends all hours of work in one or more exempt area
- ✓ **Exempt area** - any foreign country/territory under U.S. jurisdiction except -
 - All States & Washington, DC
 - Puerto Rico, Virgin Islands
 - American Samoa, Guam

Are Your FLSA Designations Correct?

✓ Cabinet-Level Agencies

- 1,527 GS-04 Exempt Employees
- 149 Nonexempt GS Supervisors
- 598 Nonexempt GS-13s

✓ Independent Agencies

- 14 Nonexempt GS Supervisors
- 545 Nonexempt GS-13s

✓ Small Agencies

- 8 Nonexempt GS-13s

FLSA Claims

- ✓ Federal Employees file with OPM
 - Preserve the Claim Period
 - Burden of Proof is on the Claimant
 - Exemption Status
 - Burden of Proof is on the Agency
 - Must follow NGPs if covered by a collective bargaining agreement

Pay Claims

✓ Similarities with FLSA

- Must follow NGPs if covered by an agreement

✓ Differences with FLSA Claims

- Agency denial is required
- 6-year Statute of Limitations
- Burden of Proof is on the claimant
- Decision is based upon the written record

Authority for Adjudication of Claims

- ✓ Legislative Branch Appropriations Act of 1996
 - Uniformed service members' claims to DOD
 - Travel, transportation, and relocation expenses to GSA
 - Compensation and Leave claims for civilian employees to OPM

Basic Principles of Pay Claims Function

- ✓ Regulatory guidance
 - CFR
 - Reconsiderations are not accepted
 - Civilian Personnel Manual
 - Department of State Standardized Regulations
 - Comptroller General
Decisions

Types of Claims

✓ Compensation

- Back pay for performance of higher duties
- Standby vs. On-call

✓ Leave

- Forfeited Annual Leave

✓ Unpaid Compensation

- Divorce Decree
- Resignation

Findings of Pay Claims

- ✓ Carter v. Gibbs
- ✓ 6-year Statute of Limitations
- ✓ Majority find in favor of the agency
 - Clear and convincing evidence before overturning an agency
- ✓ OPM decision is final
- ✓ Claimants may pursue further in court

Discussion Topics

- ✓ Issuance of new/revised standards in conjunction with the issuance of a classification appeal decision
- ✓ Up-to-date information on appellate authorities and claim offices within agencies

Excellent Representation

- ✓ Atlanta - Tim Heath *
- ✓ Chicago - Douglas Schauer
- ✓ Dallas - Bonnie Brandon
- ✓ Philadelphia - Bob Hendler
- ✓ San Francisco - Carlos Torrico
- ✓ Linda Kazinetz - Washington
- ✓ FLSA/Pay - Vacant

*Acting

QUESTIONS AND ANSWERS

- ✓ FEDCLASS_APPEALS@OPM.GOV
- ✓ FEDERAL_FLSA@OPM.GOV
- ✓ MADRUMMO@OPM.GOV
- ✓ (202) 606-2990
- ✓ WWW.OPM.GOV
 - Class. Appeals and FLSA - 1996
 - Comp. And Leave - 2000