

THE FEDERAL SALARY COUNCIL

Minutes of September 30, 2008

MEETING NO. 08-02

The Federal Salary Council (FSC) held its second meeting of 2008 on Tuesday, September 30, 2008. Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems at the Office of Personnel Management (OPM), was the Designated Federal Official. Ms. Terri Lacy, Chair, called the meeting to order at 10:06 a.m.

The following members attended: Ms. Terri Lacy, Chair (Partner, Andrews Kurth L.L.P.); Mr. George Nesterzuk, Vice Chair (Nesterzuk and Associates, Management Consultants); Mr. Rudy J. Maestas (Section Leader, New Mexico Department of Workforce Solutions); Mr. Thomas Bastas (President, Association of Civilian Technicians (ACT)); Mr. Richard Brown (President, National Federation of Federal Employees (NFFE)); Mr. J. David Cox (National Secretary-Treasurer of the American Federation of Government Employees (AFGE)); and Ms. Colleen M. Kelley (President, National Treasury Employees Union (NTEU)). Mr. Frank Ferris (Vice President, NTEU) and Mr. James Pasco (Executive Director, Fraternal Order of Police) were unable to attend.

In addition to OPM staff, more than 20 members of the public attended the meeting, including five representatives from the Bureau of Labor Statistics (BLS), four representatives from the media, and congressional staff from the offices of Senator Edward Kennedy (D-MA) and Representative John Olver (D-MA).

The following is a summary of the Council's discussions:

Ms. Lacy greeted the Council members and audience, welcomed everyone to the meeting, and asked the Council members to introduce themselves. She announced that Mr. Bastas planned to retire from ACT, and she thanked him for his service to the Council and wished him well. She introduced Acting OPM Director Michael W. Hager and said Mr. Hager wanted to speak briefly.

Mr. Hager greeted the Council members and audience. He said that he wanted to take a moment to recognize "the great work" the Council does and that he appreciated its commitment and leadership. He also thanked the congressional staff for attending, said he hoped the meeting would result in a "positive outcome," and wished Mr. Bastas well in his retirement.

Ms. Lacy thanked Mr. Hager and said the discussion of locality pay areas would now begin. She said she knew that speakers were present from Berkshire County, MA, and Polk County, TX. She asked if speakers from other areas were present, and none were.

Ms. Lacy asked that presentations be limited to 5 minutes if possible but said more time might be granted to speakers if necessary.

She said she would invite speakers to begin testimony in the order of names on the speaker sign-in sheet. Proceeding in that order, she called for Mr. Richard Hormiga and Mr. James Plunk, Federal employees concerned about locality pay in Polk County, TX, to begin their testimony.

Polk County, TX

Ms. Lacy welcomed Mr. Hormiga and Mr. Plunk. She said that she understood they were unable to testify as planned at the previous meeting (meeting 08-01 on September 5, 2008) because of hurricanes in Texas.

Mr. Hormiga, an Immigration and Customs Enforcement (ICE) deportation officer stationed in Polk County, TX, thanked the Council for the opportunity to speak. He said the ICE detention facility where he works is part of a new Houston Field Office for ICE, which has 30 employees. He said he and fellow employees want to be included in the Houston locality pay area because of his duty station's proximity to Houston. He provided the Council with a written proposal (Council document FSC-08-02-07) to add Polk County, TX to the Houston locality pay area. He then turned the presentation over to Mr. Plunk.

Mr. Plunk, an Immigration Agent also stationed at the ICE detention facility in Polk County, greeted the Council. He said he is part of a "growing, fledgling office" whose employment had recently increased from 7 to 30 employees. He said he believed there were now 12 counties in the Houston locality pay area and that Polk County would be the thirteenth. He said that in terms of household income, Polk County is higher than some counties in the Houston locality pay area. (The written proposal Mr. Hormiga provided the Council includes sections comparing Polk County to other counties in terms of household income and per capita and personal income.)

Mr. Hormiga said that "Lake Livingston area is a desirable area" where "real estate goes for \$150-\$250 per square foot now." He said people were coming from Houston and buying such real estate.

Mr. Hormiga added that the distance between Houston and Walker County, TX (which is part of the Houston locality pay area) is the same as the distance between Houston and Polk County, TX. He said that when locality pay areas were redefined in 2005, Walker County was included in the Houston locality pay area along with Liberty and San Jacinto Counties, TX. He said there are no Federal employees in Liberty and San Jacinto counties now.¹

Mr. Plunk said that because of the relatively short distance between Houston and his duty station, 80 percent of the Federal employees there commute from Houston. He said that despite the difference between locality pay rates for his duty station and those for the home office in Houston, only 40 miles separate the two offices. He added that soon a new office will open in Montgomery County, TX, which is included in the Houston locality pay area. He closed by thanking the Council for hearing his presentation.

Ms. Lacy asked whether the Council had any questions for Mr. Hormiga or Mr. Plunk. Mr. Brown said his understanding was that further growth is likely for the ICE detention facility in Polk County, and he asked if Mr. Hormiga or Mr. Plunk could tell him how many new

¹ The Central Personnel Data file shows a total of 11 General Schedule employees in the two counties as of June 2008, 9 in Liberty County and 2 in San Jacinto County. These counties were added to the Houston Combined Statistical Area (CSA) by the Office of Management and Budget as part of the 2003 revisions of metropolitan areas. Since they are part of the CSA, they are automatically part of the locality pay area.

employees are expected. Mr. Hormiga said 50-60 new officers have background clearances pending. Mr. Plunk added that background clearances can take a while and said that ICE resources have to be stretched until his facility can be fully staffed.

Ms. Kelley asked whether there were other Federal facilities in Polk County. Mr. Hormiga said that as far as he knew the Postal Service had the only additional Federal employees.²

Mr. Brown asked what the average General Schedule (GS) grade is in the area. Mr. Hormiga said “12 to 14 for law enforcement, and 5 to 7 for support staff.”

Ms. Lacy confirmed there were no further questions regarding Polk County and said the Council would now hear testimony on Berkshire County, MA.

Berkshire County, MA

Ms. Lacy said that four people were signed up to speak regarding Berkshire County, MA:

- Mr. Peter Romer-Friedman Senator Kennedy’s office,
- Ms. Lisa Wiehle from Representative Olver’s office,
- Mr. Patrick DeFalco of the Federal Executive Association of Western Massachusetts (FEAWM), and
- Mr. Frederick Baron, an engineer employed by the Department of the Navy in Pittsfield, MA.

Ms. Lacy said the Council would hear testimony from Mr. DeFalco and Mr. Baron first, and then the Congressional staff members’ presentations. Mr. DeFalco began.

Mr. Defalco greeted the Council and said it was his fourth time to testify at a Council meeting. He said that he had been unable to attend the previous meeting (meeting no. 08-01) but that Mr. Baron and Mr. Jeffrey Anliker had spoken at that meeting and outlined some of the problems Berkshire County faces as a result of being in the “Rest of U.S.” (RUS) locality pay area.

Mr. DeFalco said Berkshire County has significant “personnel challenges in the area of recruitment and retention;” because it is the only county in Massachusetts, Connecticut, or Rhode Island that is still part of the RUS locality pay area. He said Berkshire County is in a “unique situation” because it is situated between two locality pay areas, which exacerbates recruitment and retention challenges for Federal agencies in the county. He recommended the Council adopt the following or similar criteria and apply them to Berkshire County:

To be included in an adjacent locality pay area (within the same state), the following 4 criteria must be met for this exception: The county must be adjacent, or within 5 miles of being adjacent, to two or

² In addition to 21 General Schedule (GS) employees employed by ICE in Polk County, the June 2008 Central Personnel Data File also shows 4 GS employees at the Department of Agriculture, 2 GS employees at Department of Commerce, and 1 GS employee at the Small Business Administration.

more locality pay areas; The county must be the only county with GS employees in the state without locality pay; The county must have at least 85 GS employees; The county must have a combined commuting rate between all bordering locality pay CSA's with add-ons of at least 7.5%.

Mr. DeFalco said he doubted Berkshire County would ever meet the current GS employment criterion and would probably never have more than 100 GS employees, but he said he thought the county could meet the commuting criterion if the measurement were to the entire locality pay area rather than to the metropolitan component of the pay area.

Mr. Baron showed the Council a large map of New England locality pay areas, with Berkshire County shown as the only county on the map still receiving RUS locality pay. He then gave the Council members a packet (FSC-08-02-08). In explaining the document, he pointed out—

- that the first two pages have a statement signed by DOD employees in Berkshire County in support of the county being added to the Hartford locality pay area, and
- that at the bottom of the second page is a statement signed by Major Edwin D. Hoenig of the U.S. Army, which says that as an active duty officer stationed in Pittsfield, MA, he receives a base housing allowance that is only \$2.00 less than that for Hartford and that civilians in Pittsfield, MA “deserve to be compensated in an equally fair manner.”

The third and fourth pages of the document are a letter from an employee of the Navy Shipboards Systems Office in Pittsfield, MA. She says that her job includes “recruiting employees to fill engineering, logistics, and technical documentation professionals” and that in that capacity she has seen how difficult it is “to entice new blood” to the area given high living costs and relatively low locality pay. She also says she has “personal knowledge of salary differentials between public and private jobs” and knows that local private sector pay rates for jobs comparable to those her office recruits for are “at a much more competitive level” than can be offered with Berkshire County receiving no more than RUS locality pay rates.

Mr. Baron thanked the Council and said he wished to yield the balance of his time to Congressional staff.

Ms. Lacy thanked Mr. Baron. She invited Ms. Wiehle to speak. Ms. Wiehle read a statement by Congressman John Olver (Council document FSC-08-02-06). The statement expressed Representative Olver’s support of the FEAWM proposal (Council document FSC-08-01-08). The statement also said that locality pay in Berkshire County continues to affect Representative Olver’s constituents and cause him concern about the quality of services his constituents receive as a result of the locality pay situation in Berkshire County, that vacant positions in Berkshire County cannot be filled by qualified candidates, that employees are opting to leave Berkshire County for higher locality pay, that the testimony by Mr. DeFalco and Mr. Baron cites “specific examples of critical shortages of qualified staff in high level Berkshire County GS positions. (Note: Since 1994, the “Rest of U.S.” locality pay rate has been paid in Berkshire County. In

2008, that locality payment is 13.18 percent. Also, two other Massachusetts counties, Dukes and Nantucket Counties, are in the “Rest of U.S.” locality pay area.)

Ms. Lacy turned the floor over to Peter Romer-Friedman from the office of Senator Edward Kennedy.

Mr. Romer-Friedman presented a statement signed by Senator Kennedy and Senator John Kerry. (Council document FSC-08-02-09). The statement expressed their support of the FEAWM proposal and said that for several years they had urged the Council to “extend locality pay to the hard-working Federal employees” in Berkshire County. The statement said that while locality pay can “help to narrow the substantial gap” between Federal and private sector salaries, it can also create “major obstacles for agencies in counties that lack locality pay but are nearby or adjacent to counties in existing locality pay areas.” The statement said that adopting the FEAWM proposal would “ensure that Federal agencies in Berkshire County continue to have a highly skilled and motivated workforce for years to come.”

Ms. Lacy thanked Ms. Wiehle and Mr. Romer-Friedman for their testimony. The Council had no questions for the Congressional staff.

Ms. Lacy pointed out to the Council members that their folders contained other materials concerning locality pay area boundaries. Since time constraints did not permit in-depth coverage of all the material in the meeting, she asked that the Council members review their meeting folders later as their schedules permit. She then invited BLS staff to give its presentation.

BLS Presentation

Mr. Philip Doyle, Assistant Commissioner for the BLS Office of Compensation Levels and Trends, said he was pleased to come before the Council to discuss the work his office does in support of the Council and President’s Pay Agent. Mr. Doyle’s presentation on National Compensation Survey (NCS) data is summarized here. The full text of the presentation was provided in hard copy to Council members and can be found in Council document FSC-08-02-02.

Mr. Doyle said that BLS has provided data for the Federal pay process for many years and has built a good relationship with those involved in the process, including OPM, the Pay Agent, and the Council. He said BLS has also provided additional data and explanations as needed, and as an example pointed out that BLS currently provides two sets of data -- one set including establishments with one or more workers and one set excluding establishments with fewer than 50 workers. He added that BLS also provided data for the Austin, Louisville, and Memphis areas to assist the Council and Pay Agent in deciding whether additional pay localities should be established for those areas. He said that, given existing resources, BLS believes it is meeting its requirements under the Federal Employees Pay Comparability Act of 1990 (FEPCA).

Mr. Doyle said that BLS data delivered this year include estimates based on a new sample of State and local governments, the first such new sample in approximately 10 years. He said BLS refreshes its sample of metropolitan areas and other geography after each decennial census to

better reflect the distribution of America's workforce. He said the entire sample of government operations is replaced in a single year but then remains constant for about a decade because BLS has observed that government units and the jobs they employ remain relatively stable over time.

Mr. Doyle noted that, unlike the State and local government sample, the private sector sample is continuously refreshed to better capture dynamic changes in businesses and occupations. He said that a complete introduction of the private sector sample takes about five years, and that as a result BLS could not deliver data for the Raleigh pay area in 2008. He said that collection of only the government sample was complete in Raleigh in time for delivery of 2008 NCS data to OPM but that NCS data for all other localities, including Austin, Louisville, and Memphis, "reflect a combination of new and on-going samples that provide the robust data needed" for the Council's deliberations.

Mr. Doyle said that NCS data from the 2008 deliveries to OPM included some PATCO³ cells that had changed significantly from those from 2007. He attributed most of the changes to BLS' regular sample replacement schedule. He said that this year most changes attributable to sample replacement are a result of replacing the State and local government sample, but that some change can be attributed to the incentive pay⁴ component of the earnings reported for some workers. He said that incentive payments have long been included in NCS data but that in recent years the coverage of the PATCO estimates has grown to include more occupations that may receive incentive pay.

Mr. Doyle said that BLS reviews incentive pay data very carefully from the time they are collected until estimates are ready for delivery to OPM to ensure that the data are accurately recorded and otherwise conform to BLS survey standards. He assured the Council that data from the 2008 deliveries conform to those standards.

Mr. Doyle said BLS realizes that wages including incentive pay may not be appropriate for all purposes. He said that BLS produces separate estimates for time-based and incentive paid workers whenever possible and that those estimates appear in BLS locality wage publications and elsewhere. He said that for BLS' Employment Cost Index series, BLS publishes estimates for all workers and separate estimates that exclude incentive paid occupations. He said that BLS could provide similarly constructed data prepared for the Pay Agent and Council and that BLS estimates that the data could be available within about a month of a request for such data.

Mr. Doyle said BLS understands that the Council is interested in obtaining additional data in order to help it decide whether any additional areas should be designated as pay localities or areas of application. He said that BLS would like to help the Council with that but that the current BLS budget, either as embodied in the recently passed Continuing Resolution or in the proposed budget for Fiscal 2009, does not permit expansion of the NCS program. He added that the President's Fiscal 2009 budget proposal would result in a decrease in the NCS sample size.

³ PATCO" categories are five broad classes of occupations-professional (P), administrative (A), technical (T), clerical (C), and protective officer (O).

⁴ Mr. Doyle defined incentive pay as "the term used by BLS to describe a variety of wage determination systems in which pay is tied to sales or output rather than a unit of time such as an hourly rate or a monthly salary."

Mr. Doyle said that sample reductions in NCS data made in response to current budget restrictions will be spread across many of the geographic areas that make up the RUS estimates and will also impact the number of data observations available for some of the existing pay locality areas. He said that due to the lead time needed for sample preparation and collection, these sample reductions will not be seen in the data prepared for the Council and Agent until the delivery of 2011. He added, however, that smaller sample reductions made in response to budget restrictions in earlier years will be seen in the data delivered in 2009 and 2010.

Mr. Doyle said that in order to minimize the loss of data quality for existing pay localities, BLS will be unable to entertain requests for additional pay estimates using current survey methodology, including data for the proposed expansion of the Federal Employees Pay Comparability Act to cover Alaska, Hawaii and the territories. He said that while BLS conducts a survey of the Honolulu metropolitan area that might be used to supply some of the needed data, BLS is currently phasing out NCS surveys of the Anchorage, Fairbanks, and Juneau, Alaska areas as part of the transition to the new sample of areas. He added that the NCS program does not include any data for the territories.

Mr. Doyle said that BLS is aware of the increasing demand for more data. As he said in Council meeting 07-01, BLS is exploring the possibility of integrating the NCS program with the Occupational Employment Statistics (OES) program. He said integration of the two programs might offer an alternative way of meeting the need for more data. He said the OES does not include some of the detailed information reported by the NCS. For example, the OES does not distinguish between full- and part-time workers or collect information on GS work levels. However, BLS has been conducting research on ways to use existing data from the surveys to provide needed information to the Council and Agent for administration of FEPCA while accommodating budget restrictions. He said that BLS has made significant progress in that regard and hopes to have a preliminary report on that work later this year. He said the work would extend and adapt some of the modeling techniques currently used to fill in gaps in the NCS data to also tap information from the much larger OES data set. He said that if the initial results are promising, BLS will share the methodology and outputs with OPM staff, the Council, and the Pay Agent to determine whether this is a strategy worth pursuing further.

Mr. Doyle offered to answer any questions the Council might have on his presentation.

Ms. Lacy thanked Mr. Doyle. She said that prior to the meeting, she had met with Mr. Doyle and OPM staff so she could urge BLS to provide more data for the locality pay program as soon as possible. She said she was encouraged, and she thanked BLS for its efforts.

Mr. Nesterczuk asked Mr. Doyle whether, given the volatility observed in this year's NCS data along with impending sample reductions, BLS expects that the volatility might worsen in the future? He also asked how BLS handles outliers.

Mr. Doyle said BLS had validation methods to ensure NCS data conform to NCS survey definitions and concepts. He said that once survey data passes through BLS validation methods,

it’s “moved forward.” He said that while BLS realizes other programs have ways of handling outliers, there are no objective criteria in place at present to filter outliers.

Mr. Brown said it was shame that BLS can’t do a more thorough job with current surveys or add additional survey areas because of a lack of funding. Mr. Doyle said that BLS would welcome additional funding.

Ms. Lacy thanked Mr. Doyle again for the presentation and said it was now time to turn to the next item on the agenda, the report of the Council’s Working Group.

Report of the Working Group

Mr. Nesterczuk read and summarized major sections of the Working Group Report (Council document FSC-08-02-03). The issues, recommendations of the Working Group, and Council action are summarized in the chart below, which is followed by a summary of the Council’s discussion of each issue. (The Working Group’s rationale for each recommendation to the full Council can be found, along with detailed discussion, in the Working Group report.)

Issue	Recommendation of the Working Group	Council Action
Which data should the Council use for its recommendations on locality pay for 2010, the all establishments data or the data from establishments with 50 or more employees?	Use the “all establishments” data (data including firms with employment of fewer than 50), since using those data covers more nonfederal employees, results in a slight reduction in modeling data, and puts to rest the argument that using only data from large establishments biases the results.	Council voted to recommend use of the “all establishments” data, with one member voting against the motion.
What recommendation should the Council make about BLS’ resampling plan for State and local governments?	The Working Group said the Council should discuss this aspect of BLS’ survey design and look for ways to increase survey samples.	Council unanimously voted to accept the BLS resampling plan for State and local government.
What should the Council recommend about anomalies in the data caused by extremely high levels of incentive pay for this year?	The Working Group made no recommendation in its report and instead decided to leave this issue for discussion at the meeting.	Council voted to use the BLS data as is, with one member voting against the motion to do so.
What future procedures should the Council recommend about incentive pay or dealing with outliers in survey data?	The Working Group made no recommendation in its report and instead decided to leave this issue for discussion at the meeting.	Council unanimously voted to convene a Working Group to develop a recommendation for dealing with outliers

Issue	Recommendation of the Working Group	Council Action
		in NCS data.
<p>What locality rates should the Council recommend for 2010? Those shown in Attachment 3? What about RUS and the five locations below RUS?</p>	<p>The Working Group made no recommendation in its report and instead decided to leave this issue for discussion at the meeting.</p>	<p>Council unanimously voted to recommend the locality payments in Attachment 3 of the Working Group Report. Because of the Council's vote to use incentive data "as is," five locations have pay gaps falling below that for RUS. Pay gaps in these locations should be combined with that for RUS in a cost-neutral fashion for the 2010 locality payments.</p>
<p>Should Raleigh continue as a separate locality pay area in 2010?</p>	<p>The Working Group recommended that Raleigh remain a separate locality pay area in 2010.</p>	<p>Council unanimously voted to adopt the Working Group's recommendation concerning the Raleigh locality pay area.</p>
<p>Should the Council continue to monitor pay gaps in Austin, Louisville, and Memphis?</p>	<p>The Working Group made no recommendation in its report and instead decided to leave this issue for discussion at the meeting.</p>	<p>Council unanimously voted to require affirmative action on this issue next year. The Council will monitor the three areas for one more year, and if the pay gaps do not warrant establishing separate locality pay areas, discontinue the monitoring unless the Council votes to extend the monitoring at the 2009 meeting.</p>
<p>What should the Council recommend about evaluating locations adjacent to the</p>	<p>The Working Group made no recommendation in its report and instead decided to leave this issue</p>	<p>Council unanimously votes to convene a Working Group to</p>

Issue	Recommendation of the Working Group	Council Action
Metropolitan Statistical Area/Combined Statistical Area portion of an existing locality pay area for inclusion in the pay area?	for discussion at the meeting.	reevaluate current criteria and consider holding a meeting in Spring 2009 to discuss the Working Group's findings.
What should the Council recommend about new locality pay areas?	The Working Group made no recommendation in its report and instead decided to leave this issue for discussion at the meeting.	Council unanimously votes to convene a Working Group to explore how other BLS data might be used to establish new locality pay areas.
What locality pay areas should the Council recommend for 2010?	The Working Group report included the existing locality pay areas pending the Council's recommendations on what should be done about the area of application criteria and BLS' report on using OES data for the locality pay program.	Council unanimously votes that locality pay area definitions for 2010 remain the same as in 2008.
What should the Council recommend about pay increases in 2009?	Working Group recommends that pay raises be distributed so that areas with the largest pay gaps receive the largest pay increases, that the details of the pay increase distribution be left to the President, and that employees in all areas receive some of the funds for locality pay after payment of at least a 2.9 percent base pay raise.	Council unanimously adopts the recommendation for submission to the Pay Agent.

Council Discussion Regarding Use of “All Establishments” Data

During the discussion of whether to recommend use of the “all establishments data” or the data from establishments with 50 or more employees, Mr. Cox asked for confirmation of his understanding that the Council had only seen two years of “all establishments” data, and Mr. Nesterczuk said that understanding was correct. Mr. Cox then asked if anyone knew how many years of data the Council would normally consider before recommending such a change?

Ms. Lacy said she knew of no set pattern the Council could consider in making the decision, and she asked for confirmation from OPM staff. Mr. Allan Hearne, Team Leader for the locality pay program, confirmed there was no applicable Council rule or past practice to consider, and he added that it would take five years to go through an entire sample replacement if the Council

wanted to compare “all establishments” to “large establishments” survey data through an entire sample rotation.

Mr. Brown said it had been his experience that the Council doesn’t allow itself to be bound by waiting periods without good reason and generally acts when it needs to act.

Mr. Nesterczuk said that last year the four-factor job leveling methodology had been applied to a smaller percentage of the data, so the Council had chosen to wait another year before using the “all establishments” data in case further implementation of the new leveling methodology changed the results of the comparison between “all establishments” data and “large establishments” data.

Council Discussion Regarding BLS’ Resampling Plan for State and Local Governments

Ms. Lacy made a motion that the Council accept the BLS plan for resampling state and local governments, and the motion passed unanimously.

Council Discussion Regarding High Incentive Pay in BLS Data

During the discussion of what to recommend regarding anomalies in the NCS data caused by extremely high levels of incentive pay, Ms. Kelley said that while the locality pay system is imperfect, it is transparent. She said that the Council had always strived to make appropriate decisions based on “apples to apples” comparisons, had never “reached in and changed the data” as a “knee-jerk reaction” and that doing so now would not be appropriate. She said that, to her knowledge, incentive data always had been included in the BLS surveys. She said the Council’s policy of not making changes too quickly had “lent credibility to the process” in the past. She said the Council should “take the BLS data as is” but should continue to monitor the data for outliers in the future.

Mr. Brown said the data should be used “as is,” that “data are data,” and that since private sector pay is “market driven” and the Government is trying to “lean toward the same thing,” the data should be used as it was received from BLS.

Mr. Bastas agreed that the BLS data should be used as is. He added that if any future changes are made to BLS data, the Council ought to think it over very carefully first.

Mr. Cox agreed the data should be used “as is” and said that “the GS system is supposed to resemble the private sector market” and that, regarding the incentive data, “that’s what the private sector is paying, and that’s what affects the Government’s recruitment and retention ability.”

Mr. Nesterczuk commented that he took issue with Ms. Kelley’s comment about “apples to apples comparisons.” He said if the Council truly wants “apples to apples,” it would have to limit the jobs in pay comparisons to jobs exposed to similar risks. He said that while incentive data had been included in the past, this was the first year such aberrant data were observed, though prior incentive data may have distorted the pay comparisons to a lesser extent. He said

that the incentive data in question affected not only the pay gap for RUS but would also affect the salary data for other areas. He said he had no problem with high paying jobs being included in the BLS data but believed comparing jobs with “entirely different compensation philosophies is inappropriate.” He said he believed the Council should rethink using the incentive data, should consider pay gaps calculated without those data, and might need to “tweak the model.”

Ms. Lacy asked if Mr. Nesterczuk was saying that BLS should “rerun the data.” Mr. Nesterczuk said yes, that BLS would have to “rerun the model” if the data point in question were removed.

Ms. Kelley clarified her earlier comment about “apples to apples” comparisons by saying she meant that incentive data had never been excluded in the past and that if such data were excluded now this year’s pay gaps couldn’t meaningfully be compared to those from previous years. She said the concern had never arisen before that the BLS data might include “the wrong kinds of jobs.” She said that perhaps some members of the Council in previous years had felt that “1 or 2 percent anomalies” weren’t cause for concern, but that it was unclear to her what the “trigger point” should be.

Mr. Maestas said his understanding of incentive payments is that they can vary substantially year after year and hinge upon employees meeting performance goals.

Ms. Kelley acknowledged that incentive data can vary from year to year but said that the BLS data “as is” are “what’s available” and that the high incentive rate is “what’s in the data.”

Mr. Brown said that some pay systems in the Government now, such as in the National Security Personnel System (NSPS), “are leaning towards incentive payments.”

Ms. Lacy asked Mr. Doyle to comment. He confirmed that BLS collects incentive data, that incentive payments in an establishment can change from year to year, and that incentive data in NCS surveys can change from year to year due to companies rotating in and out of the sample in a survey area.

Mr. Nesterczuk pointed out that the company in the RUS sample that made the high incentive payment could rotate out, and he asked Mr. Doyle what the impact of that could be. Mr. Doyle said that the test OPM staff did, replacing this year’s GS 12 administrative data with that from last year aged to March 2008, showed clearly the impact such an outcome might have.

Mr. Brown said the discussion about what could happen with the incentive data for next year was merely speculation at this point. Ms. Kelley agreed and said she didn’t think the Council should recommend making changes to the data based on speculation.

Mr. Nesterczuk said that if the incentive data rotated out or otherwise substantially decreased the RUS pay gap and/or caused changes in the pay gaps for other areas, the Council would find itself in the position of needing to explain what had happened. Ms. Kelley responded that since locality rates still fall considerably short of actual pay gaps, “it’s not as if there would be a huge impact anyway.”

Ms. Lacy asked staff to explain how the Council's decision on a recommendation for this issue would affect locality payments for 2010. Mr. Hearne said the RUS gap in the Council recommendations to the Pay Agent will be either higher or lower based on the Council's decision on this issue. He said that if the incentive data were left as is, then some areas would have gaps below that for RUS. He said that when areas have pay gaps below that for RUS the Council's practice has been to average those areas into RUS to calculate an adjusted RUS rate, which would be applicable for RUS and for the areas with pay gaps below that for RUS.

Ms. Lacy thanked Mr. Hearne for the explanation. Mr. Nesterczuk asked Mr. Hearne if, in the event the BLS data were not changed, five areas would have pay gaps below the RUS pay gap and need to be averaged into RUS if the Council followed past practice. Mr. Hearne said that was correct and that the five areas would not have a decrease but would have locality payments calculated based on the same pay gap as that for RUS.

Ms. Kelley reiterated her earlier point that FEPCA was not fully implemented and said that "we would be having a very different conversation" if it were. She said she would "welcome the opportunity" to have such a conversation, but "that's not where we are."

Mr. Bastas said he was reluctant to "play with data." He said, "If it goes down next year, maybe people will expect us to play with it then too."

Mr. Nesterczuk said that averaging RUS with the five areas to calculate an adjusted RUS gap and using that gap for the five areas that would fall below RUS is also manipulating data and that "either way, we intervene for the sake of stability."

Ms. Lacy said she thought everyone knew her preference is always for the Council to reach a consensus. She asked if anyone wanted to make a motion on the issue under discussion. Mr. Cox said he would make a motion that the Council accept the data "as is." Mr. Brown seconded the motion. The motion carried.

Ms. Lacy suggested the Council consider what future procedures might be established for dealing with incentive data. Ms. Kelley said she would like the Working Group to study this question, with the help of OPM staff.

Ms. Lacy put Ms. Kelley's suggestion to a vote, and the Council voted to convene a Working Group to consider the question of outliers in NCS data.

Ms. Lacy asked Mr. Hearne to repeat what he had said regarding how the RUS pay gap and the five areas with gaps below RUS could be handled consistently with past practice. Mr. Hearne referred the Council to attachment 3 of the Working Group report and clarified how the five areas would be averaged with RUS.⁵ He added that attachment 3 would be modified to reflect the decision if the Council decided to recommend this approach.

⁵ Each of the six pay gaps (the RUS pay gap and the five pay gaps that fell below that for RUS) is weighted by payroll, and the average pay gap for RUS and the five areas becomes the "RUS adjusted gap," which is used in RUS and the five areas (Cincinnati, Dayton, Indianapolis, Raleigh, and Richmond).

Ms. Lacy called for a vote on whether recommendations to the Pay Agent should include using the approach Mr. Hearne described, and the Council voted to do so.

Council Discussion Regarding Raleigh

Ms. Lacy made a motion that the Council adopt the Working Group recommendation that Raleigh remain a separate locality pay area in 2010, and the motion passed unanimously.

Council Discussion Regarding Monitoring of Pay Gaps in Austin, Louisville, and Memphis

During the discussion of whether the Council should continue to monitor pay gaps in Austin, Louisville, and Memphis, Mr. Cox said he would prefer to continue the monitoring.

Mr. Nesterczuk said he would like closure and pointed out that the Council had been monitoring the three areas for five years. He said this should be the last year. Mr. Maestas agreed and said, "We could study it forever."

Ms. Lacy suggested a motion that the three areas be monitored for one more year, but that if there was no significant change the Council seriously consider discontinuing the monitoring.

Mr. Nesterczuk suggested the motion be that the Council "drop it next year unless there is affirmative action to continue the monitoring."

Mr. Brown said he didn't object to Mr. Nesterczuk's approach since the Council "could take up the issue later anyway."

Ms. Kelley said she could go along with the proposed motion "as long as there's affirmative action required so we don't forget about the issue."

The Council unanimously voted to require affirmative action on this issue next year. The Council will monitor the three areas for one more year, and if the pay gaps do not warrant establishing separate locality pay areas, discontinue the monitoring unless the Council votes to extend the monitoring at the 2009 meeting.

Council Discussion Regarding Locality Pay Area Boundaries

Ms. Lacy said she realized the groups from Berkshire County, MA, and Polk County, TX, had traveled far to address the Council about locality pay area boundaries. She recommended the Council convene a Working Group to undertake an in-depth study of criteria for evaluating adjacent areas and to explore how BLS data might be used to establish new locality pay areas. Mr. Brown said that since the Council developed its criteria for evaluating adjacent areas there had been "lots of changes," that many employees had been "shifted around" by NSPS, which had affected GS employment numbers, and that commuting rates had also likely changed since the 2000 Census. He said the "whole landscape" of Federal employment was changing, "so the rules need to be changed" accordingly. He said it was NFFE's view that such changes definitely need

to be taken into account. He said that the speakers today raised legitimate concerns, and he would like to see the Council do what it can “to include rather than exclude.”

Mr. Maestas said he agreed. He said he had come on board in 2002, that the biggest changes he had seen were in 2003 and that Beaumont and other areas were “isolated,” that “this is not fair to them” and that the Council needs to do something.

Ms. Kelley said the Council had in the past recommended significant changes in the locality pay program based on Working Group findings. She said the Council should continually reevaluate its practices. She said that the Council should do what it can so that the locality pay program can help agencies meet their staffing needs “with the best and brightest” employees. She said the time had come for the Council to revisit its criteria by “looking at what we have learned in the past.”

Mr. Cox said that his major concern is like Mr. Nesterczuk’s earlier concern, that “we study forever and a day.” He said he thinks the Council needs to establish a direction for the Working Group to go and also specify a time for delivery of findings.

Ms. Lacy made a motion that two decision points be referred to the Working Group “for immediate study:”

- What should the Council recommend about evaluating locations adjacent to the Metropolitan Statistical Area/Combined Statistical Area portion of an existing locality pay area for inclusion in the pay area?
- What should the Council recommend about new locality pay areas?

Mr. Cox asked what the timeline would be for the Working Group to convene. Ms. Lacy asked OPM staff to help the Council identify options for appropriate timing.

Mr. Hearne said that in order for a Working Group recommendation to be implemented, it would need to be adopted by the Council and approved in the Pay Agent report. He said there wasn’t time enough for results of a future Working Group study to culminate in recommendations by the Council and then approved by the Pay Agent in this year’s Pay Agent report (which is due November 30, 2008), but that it was possible for next year’s Pay Agent report.

Ms. Kelley suggested the Council have a separate public meeting next spring to discuss locality pay areas, as it did this year. She said the Council had always found itself “up against other timelines” but had now established “a calendar and a process to avoid these problems in the future.”

Ms. Lacy repeated the motion that the two decision points be referred to the Working Group “for immediate study. The Council unanimously passed the motion.

Ms Lacy made a motion that locality pay area definitions for 2010 remain the same as in 2008. The Council unanimously passed the motion.

Council Discussion Regarding Pay Increases in 2009

The Working Group recommends that pay raises be distributed so that areas with the largest pay gaps receive the largest pay increases, that the details of the pay increase distribution be left to the President, and that employees in all areas receive some of the funds for locality pay after payment of at least a 2.9 percent base pay increase. Ms. Lacy made a motion to adopt that Working Group recommendation as part of the Council's recommendations to the Pay Agent. The motion passed unanimously.

Conclusion

Ms. Lacy asked OPM staff to draft recommendations to the Pay Agent reflecting the Council's decisions in the meeting and to circulate the draft to Council members for comment. After providing an opportunity for further public comment, and hearing none, Ms. Lacy adjourned the meeting at 12:09 p.m.

CERTIFIED

SIGNED _____
Terri Lacy
Chair