Institute for the Study of Public Policy Implementation
Leadership Forum

Summary of Proceedings
March 30, 2004
SUMMARY

GOVERNMENT LEADERS CALL FOR INCREASED PERSONNEL AND COMPENSATION FLEXIBILITIES

Federal agency leaders, participating in an Institute for the Study of Public Policy Implementation Leadership Forum Tuesday, agreed that increased personnel flexibility, including paybanding and pay-for-performance, contribute to improved agency performance, as agencies are better able to respond to fluctuations in the labor market and to compete with private sector employers.

Before new legislation is enacted, agencies need to fully fund and reduce bureaucratic barriers to implementation of existing flexibilities, such as the use of student loan repayment and bonuses as recruitment and retention incentives.

Forum participants identified characteristics of a government-wide personnel system that would provide the needed flexibilities while preserving the fabric of the federal civil service. These include:

- Office of Personnel Management oversight and coordination of the system, including establishment of upper and lower limits for government-wide white-collar paybands and established principles;
- Compensation management, based on a pay-for-performance philosophy, using salary and performance management policies developed by each agency; and
- Increased funding and reduced bureaucratic barriers to full implementation of existing recruitment, retention and performance incentives.

In addition to these flexibilities, civil service protections against favoritism and politically-motivated personnel decisions must be preserved. To this end, participants called for enhanced transparency in the application of standards and maintenance of an independent appeals and grievance process.

“Getting agreement on the minimum set of principles, or to state it another way, the maximum amount of personnel flexibility that should be given by Congress to the non DHS/DOD agencies in any future will be a challenge,” said ISPPI Director Robert M. Tobias.

The forum discussion was led by a panel of federal personnel and compensation experts, including: Steve Nelson, Director, Office of Policy and Evaluation, Merit Systems Protection Board and Dr. Howard Risher, Executive Director, HR Solutions.
“If the goal is to create a high performing federal government, what are the minimum elements (e.g. merit principles, EEO process, appeal to the MSPB, appeal to the FLRA, retirement benefits, health benefits, role of unions, pay for performance) that must be included if Congress grants an agency, or the remaining civilian agencies, personnel flexibilities similar to those granted to DHS and DOD?”

Introduction:
Institute for the Study of Public Policy Implementation (ISPPI) Director Robert M. Tobias opened the meeting with a brief overview of the mission and goals of ISPPI, followed by a group discussion of the personnel flexibilities needed to enhance agency performance.

The Title V personnel rules governing executive branch agencies are perceived to be a “straight jacket” tying the hands of government managers from recruiting the “best and the brightest”, responding to changes in the job market, and confronting performance issues. Inflexible government hiring and management rules prevent agencies from responding to rapid changes in the job market. An example from recent history is the information technology boom that drove salaries for IT professionals sky high. Government agencies were not able to compete with the private sector and therefore could not attract top professionals; by the time legislation granting the flexibility to offer bonuses and higher salaries for recruiting in the IT sector was passed, the crisis had also passed.

The Department of Defense and Department of Homeland Security, and, to a lesser extent, the National Security Agency, National Aeronautic and Space Administration and Federal Aviation Administration, have been granted Title V exemptions that include paybanding, pay-for-performance, greater use of the non-competitive hiring process, and greater flexibility in dealing with poor performers. These flexibilities are designed to allow the exempted agencies to recruit and redirect personnel capabilities in response to rapidly changing realities in the field.

The question is how should the remaining federal agencies be treated by Congress. Should Congress continue to grant personnel flexibilities on an ad hoc basis, or should Congress create one piece of legislation that is applicable to all of the federal agencies who do not have the flexibilities currently available to DHS and DOD. If Congress acts should the authority granted be the same as that granted to DHS and DOD, the more limited authority granted to NASA or something else?
Presentation by Ron Sanders  
Associate Director, Division for Strategic Human Resources Policy  
Office of Personnel Management

Echoing the opening discussion, Ron Sanders discussed the importance of first making the business case for personnel flexibilities and second balancing the benefits of flexibilities with protections.

Personnel flexibilities give agencies a better business fit, better “buy in” and better strategic planning capability. Agencies must be able to respond to changes in the business environment, ranging from short term high demand driving up salaries, such as in the IT example, to sweeping, catastrophic change like that experienced government-wide after the September 11, 2001 attacks and to changes impacting specific organizations, such as the impact of the recent Medicare reform bill on the Social Security Administration. Increased flexibility in hiring, compensation and personnel management will allow agencies to adapt to meet these challenges.

However, this “better fit” is only effective if it is accompanied by better “buy in” from stakeholders. This is the lesson of the China Lake demonstration in merit pay. Overall, the merit pay experiment failed, but it was successful at China Lake because the local managers designed their own system to meet their needs. This transformed compensation from a human resources issue to a management issue, with input from those directly affected by the changes.

The trick is designing a system for the remaining agencies that provides the flexibility to gain the advantages discussed above, without losing the identity of federal civil service, including the core rights and responsibilities of federal employees.

Across government, the rights of veteran’s preference, protection against discrimination and prohibited personnel practices and merit principles must be uniformly applied. In addition, in creating new legislation, we must be mindful of maintaining “scale economies” (e.g. health insurance and retirement insurance), and creating links across government (e.g. human resource IT infrastructure).
Steve Nelson agreed with Sanders’ assessment that granting increased personnel flexibilities is a balancing act between protecting employee rights, transparency, equality and connectivity across agencies on one side and providing agencies with the agility needed to be responsive to changing realities on the other.

Nelson also reiterated the point from the opening discussion that significant personnel flexibilities have already been granted that are underutilized, due to lack of funding or bureaucratic barriers to implementation, such as the categorical ranking option.

Connectivity and fairness throughout government when recruiting new employees is another issue that requires careful balance. The bottom line is that, while agencies will sometimes compete for the same personnel, the federal government is in many ways one employer. Personnel rules must be applied the same way across the government, so that differences in compensation and other benefits are based in job roles rather than agency politics.

DOD and DHS are very large employers; however, 52 percent of Executive Branch personnel work in other agencies still subject to Title V. Common elements to any revised personnel system or to further exemptions of Title V for all agencies include:

1) Involvement of stakeholders: involve senior managers and representatives of collective bargaining units in the design of the new program to enhance “buy in” and ensure that the increased flexibilities meet the business needs and strategic objectives of the organization;

2) Transparency in application of standards: in the 1996 Merit Principles Survey, more than 50 percent of respondents said they believed supervisors would not exercise flexibilities fairly and effectively in setting compensation; applying standards universally and transparently will go a long way to allaying fears of favoritism and distrust.

3) Accountability: transform compensation from a human resources issue to a management issue by holding managers accountable.

4) Internal safeguards: allow for an independent review of performance and pay decisions that encourages early resolution and fits with other avenues of recourse, such as EEO, negotiated process arbitration and grievance; establish uniform standards of evidence for deciding adverse actions (whether it be preponderance of evidence, substantial evidence, or another standard).

5) Phase in changes: implementing greater personnel flexibilities will require a significant cultural change in government agencies; the concept of equity across agencies must be reconciled with different treatment based on achievement, education.

6) Pre-deployment training: offer training to managers and impacted employees in advance to improve transparency and fairness, facilitate the cultural change required.

7) Link flexibilities to agency strategic plan: the implemented changes must be designed to fulfill a business or mission need.

One process would be for Congress to grant a wide range of personnel flexibilities but an agency would have to make a business case for using one or more of the flexibilities granted. The business case would justify being treated differently from other agencies. In addition, agencies would have to consider the legal impact - how many different sets of case law relating to personnel rules (Title V Chapter 75 and Chapter 43) are tolerable? There are currently three: DOD, DHS and the remaining agencies.
Dr. Howard Risher is an independent human resources consultant working with the National Academy of Public Administration to design a new personnel/salary system to replace the General Schedule.

Pay for performance and broadbanding/paybanding are proven concepts that are now generally accepted within HR community. In the private sector, the term “pay for performance” has the positive connotation of rewarding good performance; in government, by contrast, it has the negative connotation of punishing those at the bottom. As a result, the federal government is behind the curve in embracing pay for performance.

This negative perspective is rooted in the lack of trust in federal government leaders, as well as the absence of the simple “bottom line” for determining success or failure.

Visionary leadership and instilling a high level of commitment to the mission are critical components of creating a high performing organization. For example, consider the emotional commitment of the scientists, engineers and pilots at NASA that brought the Apollo 13 crew safely home: the conviction of leaders and the charged, crisis environment instilled the commitment to achieve the mission.

At the opposite end of the spectrum is the government employee who starts looking forward to retirement at the age of 35 or 40: he isn’t committed to this mission of the agency, he is just waiting for his retirement benefits. The current government personnel system fosters this behavior because it guarantees employees will receive salary increases regularly and, in the beginning, at a far faster rate than their private sector counterparts.

The process issues for transitioning to a government-wide pay for performance system that have been discussed in today’s forum are critically important; there must be a consistent framework applied across government. Such a framework may consist of broad paybands based on job roles (for example, one payband for electrical engineers, one payband for medical professionals, etc.) established by the Office of Personnel Management that would float with the market. Agencies would then design their organization-specific personnel systems within the framework of these OPM-specified paybands, establishing core competencies and measures of performance.
**Wrap-Up**

*Based on today’s discussion, what are the critical personnel flexibilities that should be implemented government-wide to improve performance?*

- Personnel flexibilities must be applied transparently according to universal standards.
- Managers, impacted employees and human resources professionals must receive education/training on the new system prior to implementation.
- Existing performance rewards and flexibilities, such as the use of bonuses and student loan repayment as recruitment and retention tools, must be fully funded and implemented; bureaucratic barriers to these programs must be eliminated.
- Uniform retirement benefits across the federal government should be maintained.
- The appeals process, whistleblower protections, and EEO process must be upheld and protected.