



August 7, 2006

VIA FACSIMILE AND FIRST CLASS MAIL

Jerome Mikowicz  
Acting Deputy Associate Director  
Pay and Performance Policy  
Office of Personnel Management  
Room 7H31  
1900 E Street, NW  
Washington, DC 20415

Re: Employee Awards Program

Dear Mr. Mikowicz:

I am in receipt of your notice regarding the Office of Personnel Management's proposed regulations relating to the employee awards program. In particular, the proposal would add paragraph (h) to 5 C.F.R. § 451.104, which states, "Programs for granting performance-based cash awards on the basis of a rating of record at the fully successful level (or equivalent) or above, as designed and applied, must make meaningful distinctions based on levels of performance." Because NTEU vigorously supports the goal of increased objectivity in the employee awards programs, we are asking that you make several changes to your proposal. Our recommendations are based on substantial experience with negotiating the details of performance award systems as well as arbitrating systemic flaws in programs.

From our perspective, the proposed regulations announced appear to ignore many of the potential problems with award programs run by some agencies. These problems include—

- the lack of uniform award levels for employees performing at the same high level,
- the persistence of personal favoritism and/or bias on the part of award decision-makers, and
- secrecy.

Efforts to link awards to employee performance evaluations are only effective if employees know that their successful work will in fact be rewarded proportionately. However, in all too many cases we have found that the lack of uniformity in awards between employees performing at the same high level destroys the value of this incentive. When similarly situated employees receive different award amounts despite having equal appraisal scores for identical or similar jobs, employees quickly draw the conclusion that other factors, such as favoritism, malignant bias, or merely the personal whim of a supervisor, are just as important as the quality of their work. At best, an employee might conclude that "chance" plays as big a role as

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performance, and that conclusion does just as much harm to the credibility of the awards system as any other assumption.

Therefore, if meaningful distinctions are to be made in an awards program based on performance, such awards should be given to all employees at that performance level. Because agencies can control the requirements needed to reach a specific performance level, there should be little or no concern that it is not more directly controlling the number of awards to be granted as it does under a process where it can pick and choose among those with equal scores who will get the award. In fact, agencies could even guarantee employees equal "shares" of the budgeted awards to further protect themselves against budgeting problems. NTEU believes that OPM must place far more emphasis through this new regulation on the need to ensure equitable treatment of similarly situated employees.

A second problem related to the potential for favoritism and bias under these proposed regulations involves the amount of the awards granted to those who are not similarly situated in like positions. Since many agencies maintain one awards budget covering all employees, including supervisors and nonsupervisory personnel and all grade levels, the potential for adverse impact on certain classes of employees could actually increase with implementation of these proposed regulations. For example, the individuals making evaluation and award decisions will be directly affected monetarily by the performance evaluations and awards given to those employees they supervise because the money is coming from the same pool. This creates a direct financial conflict of interest that would be extremely difficult to combat.

Indeed, supervisory employees often receive higher performance appraisals than nonsupervisory personnel, for reasons ranging from collegiality among similarly situated evaluators to a lack of understanding of the responsibilities of lower-level employees. In NTEU's experience, it is a consistent phenomenon that employees holding introductory, administrative, or secretarial positions receive performance appraisal scores inordinately lower than professional employees. Therefore, OPM should mandate that awards budgets for bargaining unit and nonbargaining unit employees not only be kept separate and distinct, but that they also be developed based on an equitable formula. For example, OPM should not allow an agency to set aside an amount equal to five percent of total salary for the awards to be given to one class of employees while another class is only budgeted to receive two percent to total salary. A GS-4 Secretary who performs at the "Outstanding" level should receive an award that equals as a percentage of salary that given to a GS-15 Supervisory Attorney who performs at the "Outstanding" level under the same agency performance plan. Anything less signals that "Outstanding" performance by some classes of employees is more valuable to the agency than by others. It also triggers another round of doubts that employees might have about the credibility and validity of the system.

A third concern involves minorities, whether based on race or national origin, and women frequently suffer an adverse impact from changes in personnel policies. There is risk that these groups will tend to receive lower performance evaluations. Certainly, past studies have often shown this to be true. For these reasons, the Equal Employment Opportunity Commission mandates the maintenance and evaluation of race, national origin, and gender data to ensure that various employment practices do not discriminate on those bases. Consequently, NTEU recommends that before implementation of these regulations, that OPM order all federal agencies to conduct an adverse impact analysis to ensure that there will be no adverse impact on classes of employees based on race, national origin, gender, grade, or bargaining unit status. Moreover, this kind of analysis should thereafter be required yearly of the awards program.

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A fourth concern is the lack of transparency in the awards process is a consistent problem. When agencies fail to disclose award recipients, they suppress employee performance and fosters speculation among employees as to how and why awards are being administered. Open and public awards programs, however, let employees know where the stand, and ensure that they know how to achieve performance levels such that they will be rewarded. For NTEU, the rationale is clear – transparency provisions, such as awards committees which include representatives of management and employees, public announcement of awards, and other similar procedures, work best because employees can have greater confidence that awards will be based on merit rather than personal favoritism.

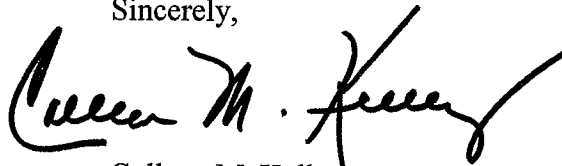
Unfortunately, the inclination towards secrecy is not merely a potential problem – agencies consistently attempt to backtrack on negotiated procedures mandating openness in the awards program. For instance, we recently won an arbitration decision against the Bureau of Customs and Border Protection (CBP) for its efforts to cancel our negotiated procedure in favor of a management-only awards board whose decisional bases would be kept secret. In testimony, NTEU brought forward testimony from employees that these changes were devastating to employee morale. The Agency has since announced that, going forward, it will attempt to implement the same secrecy provisions they had just lost in arbitration. OPM should work to ensure that these awards processes are open, providing transparency and accountability.

Finally, NTEU is concerned that some agencies will read these proposed regulations as a mandate to change current performance evaluation systems. Such provisions include pass/fail evaluation programs currently in place under Chapter 43. OPM should make clear that these regulations address only the effect that evaluation systems have on awards programs where awards are tied directly to performance ratings, and are not meant to change performance evaluation requirements. It is perfectly feasible to maintain a pass/fail system while establishing a separate system that measures distinctions in performance as the basis for awards.

In sum, NTEU supports efforts to increase objectivity in performance based awards programs. However, we feel that the proposed regulations may not go far enough, and have the potential to exacerbate some existing problems in current award program.

Thank you for your careful consideration of NTEU's concerns. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Colleen M. Kelley". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Colleen M. Kelley  
National President