



OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR

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Deborah K. Nichols
District of Columbia Auditor

017:05:DCA:gk

**Letter to Chairman Cropp on Auditor's Concerns
Regarding the Chief Financial Officer's
Pay Harmonization Program**

April 26, 2005



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The Honorable Linda W. Cropp
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, D.C. 20004

Re: "Letter to Chairman Cropp on Auditor's Concerns Regarding the Chief Financial Officer's Pay Harmonization Program"

Dear Chairman Cropp;

The purpose of this letter is to bring to the Council's attention concerns regarding the Chief Financial Officer's Pay Harmonization Program. The concerns expressed in this letter are based on an examination of information covering the period October 1, 2003 through April 15, 2005, discussions held with representatives of the Chief Financial Officer, opinions rendered by the General Counsel to the Chief Financial Officer, Attorney General of the District of Columbia, and the General Counsel to the Council of the District of Columbia. The review also included an analysis of across-the-board salary enhancements received by employees under the control and supervision of the Chief Financial Officer as a result of adjustments to the Chief Financial Officer's pay table in November 2003, April 2004, January 2005, and a planned 4% pay increase in Fiscal Year 2006.

Background in Brief

In an effort to correct perceived disparities in pay between union and non-union employees within the Office of the Chief Financial Officer, the Chief Financial Officer created and implemented the Pay Harmonization Program.¹ The Pay Harmonization Program is designed to remedy the differences in union and non-union pay scales for employees under the control and supervision of the Chief Financial Officer ("CFO") who perform the same or similar work. Further, the CFO's Pay Harmonization Program is intended to make the Office of the Chief Financial Officer ("OCFO") more attractive and competitive with the federal government and private sector employers.²

¹ See Office of the Chief Financial Officer Pay Harmonization Decision Document at 5, October 21, 2003.

² Compensation system changes affect all agencies of the OCFO, with the exception of the Department of Mental Health, which inherited a higher pay scale due to receivership, and the University of the District of Columbia, which is covered by a different pay and benefits system.

Specifically, the CFO, in connection with a global settlement of union unfair labor practices dating back to 1997, agreed to recognize and bargain with the American Federation of State, County and Municipal Employees (“AFSCME”) and accept the terms of the current Master Compensation Agreement between the Mayor and AFSCME. At the time of the settlement negotiations, the OCFO reviewed and evaluated the ensuing compensation disparity between non-union and union OCFO employees. It was at this time that the Pay Harmonization Program was developed and implemented by the CFO, without Council approval, in November 2003 to address pay inequities and other objectives.

According to information provided by the OCFO, the Pay Harmonization Program was a collaborative effort among employees detailed from across the OCFO to review and examine every OCFO employee’s personnel record to ensure proper conversion to the new pay scale. Constantly looking for ways to improve his office’s operational efficiency, Dr. Natwar M. Gandhi, the District’s CFO, fervently supported the program, believing that “a smaller number of high-performing and properly paid OCFO employees could perform the tasks of our offices more effectively and efficiently.”³ Maintaining equality of treatment and a policy of pay parity for union and non-union OCFO employees, the Pay Harmonization Program was to be a model for other District agencies. The restructuring efforts launched by the OCFO to establish a common organizational structure, including grade structure and across-the-board performance standards further reflected Dr. Gandhi’s stated commitment to the principle of “One Government” and a pledge to absorb the FY 2004 costs (first year) of implementation and transition to a single CFO pay table.

AUDITOR’S CONCERNS REGARDING THE CHIEF FINANCIAL OFFICER’S PAY HARMONIZATION PROGRAM

The manner in which the CFO’s Pay Harmonization Program was implemented in addition to its present and future fiscal impact, among other factors, has raised the following concerns:

- Chief Financial Officer possesses independent *personnel* authority but lacks expressed or implicit statutory *pay* authority. According to the General Counsel to the Council of the District of Columbia in an opinion dated September 22, 2004, only 20 agencies possess personnel authority, which includes the power to appoint, terminate, and promote, but not the power to adopt pay schedules. Of the 20 agencies, only five are expressly authorized to adopt pay schedules with Council review. Independent personnel authorities are required to “carry out the city-wide rules and regulations to be issued by the Mayor.” In other words, there must be additional authority beyond that conferred by independent personnel authority to establish compensation rates. The legislative history of the compensation provisions of the Comprehensive Merit Personnel Act (“CMPA”) indicates a concern with “unbudgeted pay increases,” such as the one conferred on CFO employees under the Pay Harmonization Program. Under § 1-617.17(i), the Mayor must certify, through the CFO, that a wage

³See FY 2003 and FY 2004 Spending and Performance by the Office of the Chief Financial Officer: hearing before the Committee on Finance and Revenue, Council Period 16, 7-9. (February 25, 2004)(Testimony of Dr. Natwar M. Gandhi, CFO).

increase is fully funded. If Pay Harmonization Program wage increases have not been budgeted, the CFO sets and approves priorities rather than the Mayor and Council.

The General Counsel's opinion further states: "There is no legal basis for the CFO to have adopted a pay schedule different from that of the District government, or to pay OCFO employees at a rate in excess of the rate approved by the Council for employees of the District government, without complying with the CMPA. It is important to differentiate between the legislative power to fix salaries and the Executive's power to determine the grades of positions of public employees. The principle of separation of powers is implicated where an executive branch employee both approves a pay increase, and implements that increase. Moreover, since the CFO has no authority to transmit pay increases to the Council, by assuming powers that do not belong to him, the CFO in both approving and implementing salary increases usurps both the Mayor and Council's authority." **(See Appendices I, II, and III for Advisory Opinions Rendered by the General Counsel to the Council of the District of Columbia, General Counsel to the CFO, and Attorney General for the District of Columbia. Also, See Appendix IV for Authority the CFO Relies Upon for Pay Authority.)**

- The CFO's Pay Harmonization Program is wasteful and unnecessarily broad in its application to address pay disparity issues of a discrete number of OCFO union and non-union employees performing the same or substantially similar functions at different pay rates, which was the initial basis for creating the program. The Pay Harmonization Program was expanded to include all OCFO employees including upper management positions and attorney positions which have no union employees among their ranks. In other words, less than 1/4 of the OCFO's employees are being used to justify and support pay increases for the remaining 3/4 of employees under the supervision and control of the CFO, with some of the highest pay increases going to non-union upper management.

In order to address the narrow issue of pay disparity between union and non-union employees performing the same or substantially similar work, the CFO's Pay Harmonization Program could have been implemented more effectively and economically by specifically targeting the disparate non-union positions for pay parity.

- The CFO's pay parity program has created a disparity in pay city-wide which will continue to grow under the policy adopted by the CFO. Many agencies of the District government compete with the CFO for candidates to fill positions. These agencies have as much interest in recruiting and retaining the best, brightest, and most experienced candidates and incumbents for their respective agencies as the CFO. However, their recruitment and retention efforts are made more difficult given the disparity in pay rates between the CFO's Pay Table and the District Service Pay Schedule as an example. **(See Attachment V for Comparison of the Disparity in Pay Rates Between the District Service Pay Schedule and the CFO's Pay Table as of November 2003, April 2004, and January 2005.)**

- A pay increase accorded to union employees under the AFSCME labor agreement is the event that triggers a pay increase for all non-union OCFO employees. As a result, salaries on the CFO's pay table have increased an average of 17% for all non-union OCFO employees since November 2003.
- The methodology used by the CFO to fund the Pay Harmonization Program is misleading in that the CFO claims the Pay Harmonization Program was funded in FY 2004 and FY 2005 through reductions in staff, streamlining the number of managerial positions, realizing operational efficiencies, abolishing positions, and converting Management Supervisory Service positions to the CFO's pay table.

Questions can be raised as to: (A) whether the actions intended to achieve savings, efficiencies, and to streamline managerial positions in fact yielded sufficient savings to underwrite the cost of Pay Harmonization or whether these goals were achieved by using a double standard under which one set of rules is applied to all non-CFO agencies and a separate set of rules are applied to operations under the control and supervision of the CFO. The double standard carried out through the Office of Budget and Planning appears to allow OCFO managers to hold positions vacant for longer periods of time than allowed other agencies before incurring a budget reduction for not promptly filling vacant positions; and (B) whether Pay Harmonization Program costs have been underwritten by operating agencies' program budgets. These questions remain unanswered from our perspective in that a significant number of OCFO managers in operating agencies have failed or refused to supply relevant information showing all sources of funding for Pay Harmonization in the present fiscal year and the out years. **(See Appendix VI for Fiscal Impact of Pay Harmonization Program for FY 2004, 2005, and 2006.)**

It is noteworthy that in FY 2006 budget testimony the CFO is requesting the addition of many new positions apparently to replace positions that were abolished to underwrite the initial unbudgeted costs of the Pay Harmonization Program. It further appears that agency CFOs are also doing the same in the FY 2006 budget request of their respective agencies.

- The size of all operations and the number of employees under the supervision and control of the CFO, and thus the true cost of the Pay Harmonization Program, cannot be easily discerned and is distorted. The principal focus of testimony presented by the CFO relates to the central offices of the OCFO which excludes the cost and the number of OCFO employees in agencies such as the Department of Health, Metropolitan Police Department, Fire Department and Emergency Medical Services, Department of Human Services, District of Columbia Public Schools, Department of Public Works, Department of Motor Vehicles, Department of Transportation, and many other offices and agencies of the District of Columbia government.
- The CFO was able to implement the Pay Harmonization Program without official Mayoral involvement and without Council approval, in large part, because the CFO controls all the systems and employees necessary to put the program into operation. For example, the CFO

controls the staff and systems of the Office of Pay and Retirement which were needed to develop and implement the CFO pay table and program the payroll system to produce pay roll checks consistent with the new pay table. In essence, there are no checks and balances or controls within the financial cluster to preclude the CFO from implementing a pay policy that has not been legislatively authorized. Operating in this manner places the CFO in an untenable policy making capacity that undermines legislative controls, the legislative process, and may potentially compromise the integrity and credibility of the District's financial operations.

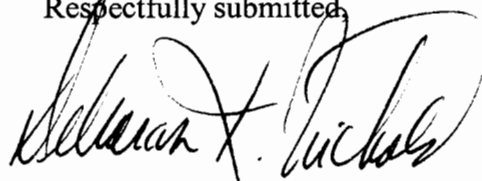
- According to the CFO, he “consulted in good faith with the Mayor and the Members of the Council regarding the proposed plan [PHP], and later testified about the nature and purpose. . . .” The CFO further stated: “At no time during this open and transparent consultative process did anyone in the Executive or Legislative branches question or challenge the CFO’s authority to go forward with the pay harmonization plan.”⁴ A consultative process is not a credible or legitimate substitute for a truly open and transparent legislative process. Informal off-the-public-record consultations with members of the legislature is not a prudent or proper course of action that gives legitimate effect to new public policy that has a significant fiscal impact upon the treasury of the District of Columbia government. Further, it does not allow the elected leadership to debate and address the broad implications of a program such as Pay Harmonization on the District government workforce as a whole. **(See Appendix VII, VIII, and IX for Relevant Testimony of the CFO on the Pay Harmonization Program dated February 25, 2004, March 9, 2005, and April 13, 2005.)**

The Office of the District of Columbia Auditor will continue its examination of the Pay Harmonization Program, the size and actual costs of the CFO's operations government-wide, and the issue of whether there are sufficient checks, balances, and controls in place to ensure the integrity, transparency, and accountability of the District's financial operations. We will continue to work cooperatively with CFO management to timely obtain sufficient credible relevant information necessary to complete this examination.

⁴See letter dated September 16, 2004 to Deborah K. Nichols, District of Columbia Auditor, from Jerry L. Malone, General Counsel, OCFO on page 3. *See also* Committee on Finance and Revenue, Public Oversight Hearing “FY 2004 and FY 2005 Spending and Performance by the Office of the Chief Financial Officer,” at 7-9, testimony of Dr. Natwar M. Gandhi, CFO, on March 9, 2005, where Dr. Gandhi indicated that he “embarked on the single OCFO-wide pay scale pursuant to the independent personnel authority of the CFO, *after consulting with the Mayor and some members of Council and hearing no objections.*” [Emphasis added]

Thank you and members of the Council of the District of Columbia for your attention to this important matter. Should you have any questions please do not hesitate to contact me at 202-727-3600.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deborah K. Nichols", written in a cursive style.

Deborah K. Nichols
District of Columbia Auditor

cc: Members of the Council of the
District of Columbia

APPENDICES

ADVISORY OPINIONS

APPENDIX I: Office of the General Counsel, Council of the District of Columbia, dated September 22, 2004

APPENDIX II: Office of General Counsel, Office of the Chief Financial Officer, dated September 23, 2004

APPENDIX III: Office of the Attorney General, dated October 13, 2004 and December 14, 2004

**OFFICE OF THE GENERAL COUNSEL
COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

Memorandum

TO: Deborah Nichols
District of Columbia Auditor

FROM: Charlotte Brookins-Hudson 
General Counsel

DATE: September 22, 2004

SUBJECT: Whether the Chief Financial Officer may adopt his own pay schedule without Council approval.

QUESTION:

This is in response to your request, dated August 9, 2004, through Leigh Slaughter, for an advisory opinion on the following question: Whether the Chief Financial Officer may adopt his own pay schedule without Council approval?

ANSWER:

Congress dictated in the Home Rule Act, and each appropriations act that the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), enacted pursuant to section 422(3) of the District of Columbia Home Rule Act (D.C. Official Code §1-204.22(3)), shall apply with respect to the compensation of District of Columbia employees. Employees of the Office of the Chief Financial Officer are District of Columbia employees. Absent an exemption from the provisions of the CMPA, by Congress or the Council, the CFO must follow the provisions of the CMPA in setting pay for employees in his office, including approval of pay schedules by the Council.

Courts which have construed whether certain powers of the CFO were constrained by the CMPA, have applied the rule of statutory construction that attempts to give meaning to both statutes, and while concluding that the 'at-will' and certain collective bargaining provisions of the CMPA were superseded, have not addressed the question of the CFO's authority to increase pay in the absence of express legislative authorization. The pay provisions of the CMPA do not conflict with congressional statutes clarifying the CFO's authority over personnel, and it does not appear that the CFO adopted separate pay scales at any time during a control period.

Based on the plain language of the enabling legislation, its legislative history, testimony of the CFO, and the CFO's Director of Management and Budget, and an interpretation of judicial decisions, it is apparent that the CFO did not adopt pay schedules different from those of the District government during a control period, and is without any real or apparent authority to do so now. The CFO is required to transmit, through the Mayor, pay schedules to increase compensation for employees under his authority, both union and nonunion.¹

DISCUSSION:

The basis for all personnel authority in the District government is derived from section 422(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 790; D.C. Official Code § 1-204.22(3)), which provides, in pertinent part that:

The Mayor shall administer the personnel functions of the District covering employees of all District departments, boards, commissions, offices and agencies, except as otherwise provided by this Act. Personnel legislation enacted by Congress prior to or after the effective date of this section [January 2, 1975], including, without limitation, legislation relating to appointments, promotions, discipline, separations, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance, and veterans' preference applicable to employees of the District government as set forth in section 714(c) D.C. Official Code §1-207.14(c), shall continue to be applicable until such time as the Council shall, pursuant to this section, provide for coverage under a District government merit system.

The Council in 1978, pursuant to section 442(3) of the Home Rule Act, adopted the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139; D.C. Official Code, § 1-601.01 *et seq.*) ("CMPA"). Section 201 of the CMPA (D.C. Official Code § 1-602.01), provides that "[u]nless specifically exempted from certain provisions, this chapter shall apply to all employees of the District of Columbia government . . ."² Among the agencies expressly exempted are the courts, D.C. General Hospital, and to a varying degree, the District of Columbia Housing Authority. By its terms, the CMPA would apply to all independent and subordinate agencies that are not otherwise exempt.

¹Although we have requested data reflecting the actual grades and salaries paid to OCFO employees during the control period, we have not received that information as of the date of this opinion.

²The cited provision also applies the provisions of subchapter XV-A (whistleblower protection) to employees at certain additional agencies.

This scheme was changed by Congress during a control period³ to alter the personnel reporting and control responsibilities to provide for Mayoral or control board appointment of department heads with very little opportunity for Council review, and with respect to certain agency personnel:

Notwithstanding any other provision of law and except as provided in paragraph (3), all personnel of the departments of the government of the District of Columbia described in section 11102(b)(1) shall be appointed by and shall act under the direction and control of the head of the department involved.⁴

Personnel Authority of the Chief Financial Officer

The Chief Financial Officer's personnel authority is derived from section 424 of the District of Columbia Home Rule Act, approved April 17, 1995 (D.C. Official Code § 1-204.24; 109 Stat. 142), and a series of subsequent provisions in federal statutes that extended, but did not increase his authority beyond a control period. Section 424 of the District of Columbia Home Rule Act ("HRA") establishes the Office of the Chief Financial Officer of the District of Columbia within the executive branch of the government of the District of Columbia.⁵ Section 424a(c) provides that "[e]ffective with the appointment of the first Chief Financial Officer [under § 1-204.24b], the functions and

³A control period is defined under D.C. Official Code § 47-393(4) as any year for which a financial plan and budget approved by the Authority [control board] is in effect including Fiscal Year 1996. The control period began with the enactment of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 142; Pub. L. No. 104-8), and ended September 30, 2001.

⁴Section 11105(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Pub. L. No. 105-33; 111 Stat. 712). This provision was codified at D.C. Official Code § 47-395.01, and did not supersede the "for cause" termination requirement for career employees. The agencies involved were the departments of Administrative Services, Consumer and Regulatory Affairs, Corrections, Employment Services, Fire and Emergency Medical Services, Housing and Community Development, Human Services, Public Works, Health, and included the asset management, information resources management, personnel, and procurement functions. This provision was repealed by the District of Columbia Management Restoration Act of 1999, approved March 5, 1999 (113 Stat. 3; Pub. L. No. 106-1).

⁵Section 424(f) of the HRA states that the term "District government" has the meaning given such term under section D.C. Code § 47-393(5). D.C. Code § 47-393(5) states that the term "District government" encompasses "any department, agency or instrumentality of the government of the District of Columbia"

personnel of the following offices are transferred to the Office:

- (1) The Controller of the District of Columbia;
- (2) The Office of the Budget;
- (3) The Office of Financial Information Services; and
- (4) The Department of Finance and Revenue.”

That section also provided for the method by which the heads of those Offices were to be appointed and removed. Part Bi of the Home Rule Act (D.C. Official Code §§ 1-204.24 - 1-204.24f), contains no other personnel provision except for the following which is contained among the CFO’s list of duties.

Implementing appropriate procedures and instituting such programs, systems, and personnel policies within the Officer’s authority, to ensure that budget, accounting and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis . . .⁶

This provision does not appear to pertain to the CFO’s office, but to the District government as a whole. It is not authority to set pay. The legislative history of this provision refers only to the CFO’s duty to “implement appropriate procedures and systems to ensure that budgeting, accounting, and personnel control systems are synchronized . . .”⁷

Congress expanded the CFO’s personnel authority to extend to all financial and budget personnel in the District government (except legislative and judicial personnel) through a series of similar statutes. The first congressional act provided as follows:

Sec. 152. Notwithstanding any other provision of law, for the fiscal years ending September 30, 1996 and September 30, 1997—

(a) the heads and all personnel of the following offices, together with all other District of Columbia executive branch accounting, budget, and financial management personnel, shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer:

The Office of the Treasurer.

⁶This provision was enacted as section 302(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, and codified at D.C. Official Code § 1-204.24c(4).

⁷ H.Rep. No. 104-96, on the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (1st Sess. March 30, 1995), at 48.

The Controller of the District of Columbia.
The Office of the Budget.
The Office of Financial Information Services.
The Department of Finance and Revenue.

The District of Columbia Financial Responsibility and Management Assistance Authority established pursuant to Public Law 104-8, approved April 17, 1995, may remove such individuals from office for cause, after consultation with the Mayor and the Chief Financial Officer.

This provision first appeared in section 152 of the District of Columbia Appropriations Act, 1996 and District of Columbia School Reform Act of 1995, approved April 26, 1996 (Pub. L. No. 104-134; 110 Stat. 1321), it was repeated in the District of Columbia Appropriations Act, 1997, approved September 9, 1996 (Pub. L. No. 104-194; 110 Stat. 2356), which extended its applicability to "any control period in effect under subtitle A of title II of the District of Columbia Financial Responsibility and Management Assistance Act of 1995". The language was also altered to specifically exclude personnel of the "legislative and judicial branches of the District government".

Following the end of the control period, Congress provided that:

The authority which the Chief Financial Officer of the District of Columbia *exercised* with respect to personnel, procurement, and the preparation of fiscal impact statements during a control period (as defined in Public Law 104-8) shall remain in effect through [September 30, 2004.] (emphasis added).⁸

The sunset date was changed several times. The September 30, 2004 date is the latest iteration of the transition provision. This language, which incorporates the CFO's authority to appoint, terminate at will, and "direct and control" the heads and all executive branch accounting, budget, and financial management personnel does not expressly include the authority to set pay or compensation that is inconsistent with the CMPA, Council or Congressional approval. Moreover, the statute confers upon the CFO the authority that was *exercised* by the CFO during a control period. An examination of the CFO's personnel practices during the control period, while under the oversight and supervision of the control board, do not reflect that the CFO attempted to exercise

⁸See, Section 111 of District of Columbia Appropriations Act, 2002, approved December 21, 2001 (Pub. L. No. 107-96; 115 Stat. 923) (July 1, 2002); section 409 of the 2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States, approved August 2, 2002 (Pub. L. No. 107-206; 116 Stat. 848) (July 31, 2003); section 2302 of the Emergency Wartime Supplemental Appropriations Act, 2003, approved April 16, 2003 (Pub. L. No. 108-11; 117 Stat 593) (September 30, 2004).

the authority to adopt his own pay schedules.⁹

The legislative history of these congressional acts, upon which the CFO appears to rely do not support the position that the CFO can adopt his own pay schedules. Section 140 of the House version of the 1998 D.C. appropriations bill would have expressly exempted employees of the CFO from the provision of the CMPA. This version was not adopted by Congress.¹⁰ Other examples of legislative control and oversight of employee pay is contained in the conference agreement on the FY99 Appropriations Act, in which the provisions of the Senate bill which would have allowed the control board to set the annual salary for the Chief Financial Officer of the District of Columbia, the D.C. Inspector General, and the Executive Director of the Authority were deleted.¹¹

Finally, in the treatment of staff salaries in other portions of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 142; Pub. L. No. 104-8), the same act that created the CFO, Congress specifically excluded the Executive Director and staff of the control board from the appointment and salary provisions of District law,¹² and authorized the Executive Director to "fix the pay of additional personnel", provided that such pay could not exceed the "rate of pay for the Executive Director".¹³ However,

⁹In theory, the authority the CFO *exercised* may have been less than the authority that the CFO *possessed*, but the statute clearly confers only as much authority as the CFO exercised. There is nothing in the language or legislative history of the congressional clarification statutes to indicate an intent to expand or augment the CFO's personnel authority.

¹⁰Section 140 was entitled 'Clarification of Authority Over Financial Personnel' and stated that "[t]he heads and all personnel of the offices . . . shall act under the direction and control of the Chief Financial Officer, and shall be considered at-will employees *not covered by the District of Columbia Government Comprehensive Merit Personnel Act of 1978*. (Emphasis added). See 143 Cong Rec H 8752, H8768 (October 9, 1997) (Discussing H.R. 2607 which became the District of Columbia Appropriations Act, 1998).

¹¹Conference Committee Report on FY99 Appropriations Act, to accompany H.R. 3845, H.Rep. No. 104-70, 2nd Sess., at 1120.

¹²Section 102(c)(2) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 142; D.C. Official Code § 47-391.02(c)(2)), provides that:

District employment and procurement laws. -- The Executive Director and staff of the Authority may be appointed *and paid* without regard to the provisions of the District of Columbia Code governing appointments and salaries. (Emphasis added).

¹³D.C. Official Code § 47-391.02(b).

in the case of the CFO, Congress only exempted that office from the appointment (and termination) provisions, and did not authorize the CFO to fix pay, set compensation, or use any other language to imply that the CFO would possess such extraordinary policy making powers.

CMPA Personnel Authority

The CMPA confers upon twenty agencies personnel authority independent from that of the Mayor.¹⁴ Independent personnel authority generally includes the power to appoint, terminate, and promote, it does not include the power to adopt pay schedules. Only two of the agencies on the list are subordinate agencies.¹⁵ Sources of pay setting authority include the CMPA, Title 5 of the United States Code, Home Rule Act, appropriations, and any or other specific federal or local law. Excluding the Council, of the 20 agencies listed in the CMPA as having independent personnel authority, only five have the authority to adopt pay schedules, and all of those are subject to Council review or authorization.¹⁶

Both the Child and Family Services Agency, and the Department of Mental Health were created as subordinate agencies with statutory independent procurement and personnel authority. This independent authority is subject to legislative controls, e.g., Child and Family Services (Director shall be personnel authority for agency employees, including the authority to hire, retain, and terminate personnel consistent with the CMPA);¹⁷ Department of Mental Health (Director shall hire, retain, and terminate such personnel as appropriate consistent with the CMPA).¹⁸ In implementing this authority, the Child and Family Services adopted recruiting and retention incentives for agency personnel, following Council approval,¹⁹ and the Council approved new pay schedules for certain employees of the Department of Mental Health.²⁰ Both of these compensation changes were

¹⁴D.C. Official Code § 1-604.06(b).

¹⁵Child and Family Services Agency, and the Department of Mental Health.

¹⁶The five agencies listed in the CMPA that are authorized to set employee compensation are the Board of Education, Board of Trustees of the University of the District of Columbia, the District of Columbia Retirement Board, the Board of Elections and Ethics, and the People's Counsel.

¹⁷D.C. Official Code § 4-1303.03 (a-1)(8).

¹⁸D.C. Official Code § 7-1131.05(2).

¹⁹Personnel Recruitment and Retention Incentives for Child and Family Services Agency Compensation System Changes Emergency Approval Resolution of 2001, effective March 6, 2001 (Res. 14-53; 48 DCR 2510).

²⁰Compensation Settlement for Employees Represented by the Doctor's Council of the District of Columbia Emergency Approval Resolution of 2003, effective September 23, 2003

transmitted to the Council from the Mayor.

The committee report on the CMPA, explains that under section 406 (D.C. Official Code § 1-604.06), independent personnel authorities are required to "carry out the city-wide rules and regulations to be issued by the Mayor."²¹ Thus, for an agency to establish rates of compensation for its employees, there must be some authority beyond an assertion that it is an independent personnel authority. Examples of agencies with independent personnel authority and pay setting authority are the Retirement Board (Staff appointed by the Board shall not be subject to the provisions of subchapter XI of Chapter 6 . . . provided that staff shall not be paid at a rate greater than the highest level authorized for nonunion workers in the District Service schedule.);²² the D.C. Housing Authority pursuant to a court ordered receivership and subsequent legislation;²³ the National Capital Revitalization Corporation (Corporation shall establish a personnel system and adopt written rules and procedures relating to employment matters including, without limitation, appointments, compensation)²⁴; the Board of Elections and Ethics (Board shall select, employ, and fix the compensation for an Executive Director and such staff the Board deems necessary, subject to the pay limitations of § 1-611.16);²⁵ Housing Finance Agency (Executive Director may employ such employees, and shall determine their qualifications, duties, and compensation);²⁶ the People's Counsel (People's Counsel is authorized to employ or to retain and fix the compensation of employees or independent contractors, including attorneys, necessary to perform the functions vested in the People's Counsel);²⁷ and the Convention Center Board of Directors (Board shall develop a

(Res. 15-241; 50 DCR 8438).

²¹Report of the Committee on Government Operations on Bill 2-10, the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (An Amendment in the Nature of a Substitute), at 57 (Council of the District of Columbia, July 5, 1978).

²²D.C. Official Code 1-711(k).

²³*Murray v. Gilmore*, 231 F. Supp. 2d 82, 84 (D.D.C., 2002) (On December 8, 1995, Mr. Gilmore issued the DCHA Personnel Policy Manual, a document intended to replace the District's CMPA.). See also D.C. Official Code § 6-203(21) (Board shall develop personnel system, including employee compensation).

²⁴D.C. Official Code § 2-1219.05.

²⁵D.C. Code § 1-1001.05(e)(1).

²⁶D.C. Official Code § 42-2702.03(c).

²⁷(D.C. Official Code § 34-804(c).

personnel system including pay).²⁸

The legislative history of the compensation provisions of the CMPA indicates that one of the problems the bill sought to remedy were unbudgeted pay increases such as the one conferred by the CFO upon nonunion employees under his jurisdiction. Under D.C. Official Code § 1-617.17(i), the Mayor must certify (through the CFO) with his submission that the wage increase is fully funded. If the proposal is not included in the budget, the CFO is setting priorities, not the Council. Wage increases have an impact not only in the year they are given, but in all future years thereafter, unless they are later rolled back.

The committee report for the most recent changes to compensation provisions in the CMPA discussed how the legislation revised District law to require the Mayor, as the only one who can transmit budgets, to transmit all pay or compensation settlements, and to therefore merge the budget process and compensation settlements. The report also indicated that the Council was “[u]nwilling to act on pay raises with no knowledge of the revenue and expenditure changes necessary to fund them”²⁹ Any other settlements were to be included in a supplemental budget request submitted by the Mayor at some indeterminate date.³⁰

The Pay Harmonization Program

Materials obtained from the CFO’s office indicate that the pay harmonization program was designed to “give employees equal pay for equal work” and “reduce the inequity of union and non-union employees in the same job series, performing similar work, being compensated at different rates.”³¹ The publication quotes the Chief Financial Officer as stating “This will close the gap between union and non-union pay scales,” . . . “[w]e can no longer tolerate a workplace that pays employees different salaries for the same work.” The document also indicates that the OCFO’s separate pay scale for Management Supervisory Service employees was to be eliminated, and the CFO would be able to fund the pay harmonization program within its current fiscal year 2004 budget. CFO salaries do not appear to exceed amounts approved by the Council for union employees at grades 14 and below. However, because the Council-approved union pay scales end at grade 14, the CFO’s stated rationale of harmonizing nonunion and unionized workers is more difficult to explain for those higher grade employees.

²⁸D.C. Official Code § 10-1212(a). All rules of the Convention Center Board, including its personnel rules are subject to Council review under D.C. Official Code § 10-1212(c).

²⁹Report of the Committee of the Whole on Bill 9-662, the District of Columbia Government Comprehensive Merit Personnel Act of 1978 Compensation Settlement Review Period Amendment Act of 1992, at 5 (Council of the District of Columbia December 1, 1992).

³⁰*Id.*, at 3.

³¹See *CFO News*, dated Thursday, December 4, 2003.

The CFO's personnel practices with respect to pay during a control period did not include the adoption of separate pay scales. In testimony before the Council, *during the control period*, the Chief Financial Officer testified that "in almost all cases we act in parallel with other components of the District government on issues like pay and personnel policy."³² The CFO's comments were included in his testimony on the Independence of the CFO Establishment Act of 2001, characterizing what his independence was *not*. (Emphasis in original). The Office of the Chief Financial Officer's Director of Management and Administration has also testified that the OCFO generally follows District-wide personnel policies and practices in administering its authority, including the "use of the District's grade classification standards and pay tables."³³ Both the CFO and the Director of Management and Administration's testimony reflected the theme that "we are one government" under Home Rule.

The CFO Followed the District-wide Nonunion Pay Schedule prior to Pay Harmonization

Budget documents from both FY 2001, and FY2000 reflect that the issue of unequal pay for equal work was recognized and that the OCFO provided for the same 6 percent pay raise that all other nonunion District employees received. See, FY 2001 Proposed Operating Budget and Financial Plan (March 13, 2000), at A-128 (Change in OCFO personal services is comprised of *inter alia* 6 percent non union pay raise); and that the pay disparity between union and nonunion workers existed in the OCFO in the same manner during the control period that it did throughout the District government. See, e.g., FY 2000 Key Budget Issues (March 15, 1999), at E-4. (Current pay disparity between union and nonunion employees in comparable positions is 7.3 percent).

The salaries of employees of the Office of the Chief Financial Officer are included on a nonunion pay schedule that was approved by the Council in accordance with the CMPA on October 16, 2001.³⁴ The current salaries of unionized employees of the Office of the CFO are included on

³²Testimony of Natwar M. Gandhi, Chief Financial Officer, before the Committee of the Whole, on Bill 14-254, "Independence of the Chief Financial Officer Establishment Act of 2001", and Bill 14-247, "Independent Budget Office Establishment Act of 2001, at 2. The CMPA states as a policy that "[t]he principle of equal pay for substantially equal work will be supported . . .", and pay for employees shall be "equal for substantially equal work . . ." D.C. Official Code §§ 1-611.01(a)(2), and 1-611.03(a)(2).

³³Testimony of Jo Ann Smoak, Director Office of Management and Administration, Office of the Chief Financial Officer of the District of Columbia before the Committee on Government Operations of the Council of the District of Columbia on "Salaries and Classification Levels in the District of Columbia Government", June 23, 2003, at 1.

³⁴See, the Career Service, Excepted Service, Excepted Service, Management Supervisory Service, and Legal Service Non-Union Employees Compensation System Changes Emergency Approval Resolution of 2001, effective October 16, 2001 (Res. 14-233; 48 DCR 9724, 9726).

a pay schedule approved by the Council in accordance with the CMPA on February 17, 2004,³⁵ and prior to that the salaries of unionized CFO employees were expressly approved by the Council in accordance with the CMPA.³⁶

In his testimony before the Council's Committee on Finance and Revenue on the OCFO's 2005 Budget Request, the CFO indicated that "The FY 2004 OCFO Approved Budget of \$88.6 million will be increased by \$2.6 million for *mandated* union and nonunion raises and \$1.8 million for costs associated with the Craig lawsuit." (Emphasis added).³⁷ The only testimony indicating that the pay harmonization program was brought before the Council occurred at a February 25, 2004 oversight hearing before the Committee on Finance and Revenue. At that hearing, the CFO stated that he had "conformed the union and non-union pay of employees throughout the agency"³⁸

**No Court That Has Examined the Parameters of the CFO's Personnel Authority
Has Found that Authority to entirely Supersede the CMPA**

Judicial contructions of the CFO's personnel authority have examined whether the CFO's authority and the CMPA could be construed to give effect to all of the statutory provisions. Courts addressing the CFO's personnel authority have focused only on his authority to terminate employees

Prior nonunion compensation approval resolutions specifically exclude other agencies, but they do not exclude the Office of the Chief Financial Officer. *See, e.g.,* Career and Excepted Service Nonunion Employees Compensation System Changes Approval Resolution of 2000, effective March 21, 2000 (Res. 13-514 47 DCR 2215) (Excluding Police Service, Fire Service, Department of Corrections, Commission on Mental Health Services, and Legal Service); and the Career, Educational, and Excepted Service Nonunion Employees Compensation System Changes Emergency Approval Resolution of 1998, effective June 2, 1998 (Res 12-487; 45 DCR 3882) (Excluding Police Service, Fire Service, and Department of Corrections).

³⁵*See*, Compensation Agreement Between the District of Columbia and Compensation Units 1 and 2 Approval Resolution of 2004, effective February 17, 2004 (Res. 15-459; 51 DCR 2352).

³⁶*See*, Compensation Agreement Between the District of Columbia and Compensation Units 1 and 2 Approval Resolution of 2001, effective October 16, 2001 (Res. 14-226; 48 DCR 9679); and Compensation Settlement for Employees in Compensation Units 1 and 2 Emergency Approval Resolution of 1998, effective May 5, 1998 (Res. 12-484; 45 DCR 3268).

³⁷*See* Statement of Natwar M. Gandhi before the Committee on Finance and Revenue on the FY 2005 Budget Request of the Office of the Chief Financial Officer, April 7, 2004, at 3.

³⁸Report of the Committee on Finance and Revenue Report and Committee Recommendations on the FY 2005 Budget, at 10 (Council of the District of Columbia April 29, 2004).

without cause. In *Leonard v. District of Columbia*, 794 A.2d 618 (D.C. 2002), the D.C. Court of Appeals reversed a trial court's dismissal of a defamation claim against the CFO, while upholding the dismissal of employees job tenure and first amendment claims. In *Leonard*, the court held that the congressional authority "implicitly repealed [employees] career service status and converted them to 'at-will' employees subject to discharge without benefit of the procedures specified in the CMPA." *Id.*, at 622.

The court's manner of reviewing the two statutes is instructive to the matter being considered here. The court followed the rule of construction that in determining the meaning of a statute, the language of the statute should be construed according to its plain meaning in its usual sense. *Leonard v. District of Columbia*, 794 A.2d 618, 625 (D.C. 2002), quoting *District of Columbia v. Morrissey*, 668 A.2d 792, 797 (D.C. 1995) (citing *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (*en banc*) (other citation omitted)); and that only where that meaning cannot be obtained from the plain language of the statute, do we look to legislative history to discern the meaning of the statute. When the interaction between several statutory provisions is in question, "the statute should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous." *Id.*; *District of Columbia v. Jerry M.*, 717 A.2d 866, 871 (D.C. 1998) (quoting *Morrissey*, 668 A.2d at 798) (other citations omitted).

The court went further to state that "implied repeals are not favored." *Rodriguez v. United States*, 480 U.S. 522, 524 (1987) (other citations omitted), and that a later enacted statute "will not be held to have implicitly repealed an earlier one unless there is a clear repugnancy between the two." *United States v. Fausto*, 484 U.S. 439, 452-53, 98 L. Ed. 2d 830, 108 S. Ct. 668 (1988) (citing *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 456-57, 89 L. Ed. 1051, 65 S. Ct. 716 (1945)) (other citations omitted); *Leonard v. District of Columbia*, 794 A.2d 618, 626 (D.C., 2002). It is difficult to construe the limited language contained in the congressional acts as repealing the comprehensive pay setting scheme contained in the CMPA.

Prior to *Leonard*, in *District Council 20 v. District of Columbia*, 1997 U.S. Dist. LEXIS 11798, (D.D.C. 1997), the U.S. District Court for the District of Columbia (Sullivan, J.), also found the congressional acts to repeal the for cause provisions of the CMPA. (Plain meaning of section 152 seems to supplant all preexisting statutory proscriptions inconsistent with that section). The same limited conclusion was reached in *Alexis v. District of Columbia*, 44 F. Supp. 2d 331 (D.D.C., 1999), *reconsideration denied* 1999 U.S. Dist. LEXIS 13482 (D.D.C. June 15, 1999) (court denied employees' claims of loss of a liberty interest and foreclosure of job opportunities, and upheld the constitutionality of section 152, holding that section 152 of the 1996 Appropriations Act converted employees to at-will status, thereby ending any right to pre-termination procedural protections.). None of these cases addressed the authority of the CFO to set pay without express legislative authorization.

When a statute sets up a general or exclusive system covering the entire subject matter of a former statute and is intended as a substitute for the former statute upon the same subject, the former statute is impliedly repealed. Sutherland Stat Const § 23.09 (5th Ed.). The pay provisions

of the CMPA are not inconsistent with the personnel authority conferred by Congress upon the CFO. The congressional act[s] provide the parameters of the CFO's personnel authority – that employees under his authority shall be “appointed by, serve at the pleasure of, and act under the direction and control” of the CFO. The congressional acts transferred all “budget, accounting and financial management personnel in the executive branch of the District government from the Mayor's authority to the CFO's authority.”³⁹ By contrast, the charter requires the adoption of personnel legislation that governs appointments, promotions, discipline, separations, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance, and veterans' preference.

In the absence of some affirmative showing of an intention to repeal, the “only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable or if the later act covers the whole subject of the earlier one and is clearly intended as a substitute. Sutherland Stat Const § 23.09 (5th Ed.) (citing *Polos v. United States*, 621 F.2d 385 (Ct. Cl. 1980); *Harris v. United States*, 19 F.3d 1090 (1994); see also *Licensed Beverage Ass'n v. Board of Educ.*, 669 A.2d 447 (Pa. 1995) (court held that the act was not impliedly repealed because there was no evidence that another statute covered the entire subject matter of the act so as to substitute for the act). The CFO's authority only covers appointments, reporting, and separations. The Congressional acts do not purport to govern such matters as qualifications for step increases, promotions, retirement, computation of annual or sick leave, disability pay, insurance, overtime or compensatory time, hours of work, or a myriad of other subjects covered comprehensively by the CMPA.

Conclusions

There is no legal basis for the CFO to have adopted a pay schedule different from that of the District government, or to pay OCFO employees at a rate in excess of the rate approved by the Council for employees of the District government, without complying with the CMPA. It is important to differentiate between the legislative power to fix salaries and the Executive's power to determine the grades of positions of public employees. The principle of separation of powers is implicated where an executive branch employee both approves a pay increase, and implements that increase.⁴⁰ Moreover, since the CFO has no authority to transmit pay increases to the Council, by

³⁹See *Leonard v. District of Columbia*, 794 A.2d 618, 624 (2002).

⁴⁰*House Speaker v. Governor*, 443 Mich. 560, 587 (Mich., 1993) (Noting that certain statutes expressly conferred upon the governor the *legislative power* to establish pay rates and regulate conditions of employment in the classified service.); *Atkinson v. McClanahan*, 520 S.W.2d 348 (Tenn. 1974) (Court was acting in mandamus directed to the quarterly county court in its legislative capacity when establishing salaries of deputies); *City of Amsterdam v. Helsby*, 332 N.E.2d 290 (N.Y. 1975). (Legislature may delegate constitutional authority to regulate hours of work and set compensation of the Public Employment Relations Board); *Dempsey v. Romer*, 825 P.2d 44 (Colo., 1992) (Agency head was prohibited from developing pay plans

assuming powers that do not belong to him, the CFO in both *approving and implementing* salary increases usurps both the Mayor and Council's authority.

I am not aware of any office or agency in the District government in which the salaries of employees are not (1) set or expressly authorized by the Council or Congress, (2) covered by, or specifically exempted from the CMPA, or (3) required to submit their personnel system, including compensation, to the Council for review. In the absence of legislative controls, an agency head would have unfettered authority to set rates of pay for personnel under his authority, including in this instance, personnel in most District agencies. The position that the salaries of employees of the CFO is not subject to any legislative control is untenable. If that interpretation was to prevail, the CFO would have greater powers than the Mayor, City Administrator, Council, Court system, and more power than the Financial Control Board itself possessed.⁴¹ In at least two appropriation acts, Congress recognized the control board's overpayment of certain salaries in excess of the statutory ceiling that had been identified by the Comptroller General in letter report BB279095.2, and prohibited the control board from continuing to exceed those limits.⁴²

If pay parity is truly the issue, then the CFO's nonunion employees, including those in subordinate agencies should be "harmonized" to be equal to all other nonunion District employees at the same pay grades. But that is a decision to be made by the District's policy makers, not its Chief Financial Officer.⁴³

compensating state employees in excess of levels established by the legislature); *Kremer v. Barbieri*, 48 Pa. Commw. 557, 565 (Pa. Commw. Ct., 1980) (Power to fix judicial compensation is committed to the legislature), *affirmed* 417 A.2d 121 (Pa. 1980); *Venhaus v. State*, 285 Ark. 23 (Ark., 1985) (Act was unconstitutional because it vested unbridled discretion in the circuit judge to set the salaries of probation officers and therefore contravened the separation of powers doctrine).

⁴¹See section 102(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 142; D.C. Official Code § 47-391.02(a)) (Executive Director shall be paid at a rate determined by the Authority, except that such rate may not exceed the rate of basic pay payable for level IV of the Executive Schedule).

⁴²See District of Columbia Appropriations Act, 1999, approved October 21, 1998 (Pub. L. No. 105-277; 112 Stat. 2681[142]) (DCFRA Title); District of Columbia Appropriations Act, 2001, approved November 22, 2000 (Pub. L. No. 106-522; 114 Stat. 2440) (DCFRA Title); and H.R. Rep. No. 106-000 (2d Sess., July 2000), on the District of Columbia Appropriations Bill, 2001, at 48 (Committee recommends that language be continues concerning salary levels of Executive Director and General Counsel to require Authority to comply with GAO opinion).

⁴³It is not clear when the pay increase went into effect. The *CFO News* dated December 4, 2003, states that the salary increase will be "reflected in [the] Dec. 9 or 12, 2003, paycheck."

It is undisputed that the CFO has not submitted the new salaries or pay schedules to the Mayor for transmittal to the Council. The Mayor is required to submit all changes in salary and pay schedules to the Council under D.C. Official Code §§ 1-611.05(d), and 1-611.06, including those of all independent personnel authorities except for the Board of Education and Board of Trustees of the University of the District of Columbia.⁴⁴ Finally, the CMPA contains language prohibiting the payment of a salary in excess of that authorized under its provisions. D.C. Official Code § 1-611.16. Thus, without express authority or compliance with the CMPA's procedures, the CFO's pay harmonization is contrary to District law.

a04-20/bkf

The actual pay schedule contains an April 4, 2004 effective date.

⁴⁴See D.C. Official Code § 1-611.11(4) (Each Board shall submit to the Council by October 1st of each year proposed pay changes and adjustments).

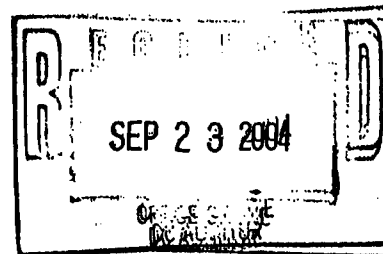
**Government of the District of Columbia
Office of the Chief Financial Officer**



Office of General Counsel

September 23, 2004

Ms. Deborah K. Nichols
District of Columbia Auditor
717 14th Street, N.W.
Suite 900
Washington, D.C. 20005



Re: OCFO Pay Harmonization Program

Dear Ms. Nichols:

This correspondence addresses the issues identified in your correspondence dated July 16, 2004, regarding the legal authority of the Chief Financial Officer (CFO) of the Government of the District of Columbia (District) to determine compensation to be paid to individuals subject to his exclusive personnel authority, most recently re-confirmed by Congress in Section 2302 of Pub.L.No. 108-11, April 16, 2003, 117 Stat. 593.

The legislative history of the CFO's unique personnel authority dates to passage of the Financial Responsibility and Management Assistance Act (FRMMA), Pub.L.No. 104-8 (1995). FRMMA §302(a) transferred to the CFO the functions and personnel of the Controller of the District of Columbia, the Office of the Budget, the Office of Financial Information Service, and the Department of Finance and Revenue, and charged the CFO, *inter alia*, with "implementing appropriate procedures and instituting such programs, systems and personnel policies within the CFO's authority, to ensure that budget, accounting and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis." Congress enhanced the CFO's personnel powers through passage of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (OCRAA), Pub.L.No. 104-134, 110 Stat. 1321 (1996). OCRAA §152, now codified at D.C. Code §47-317.03a, temporarily converted the heads of all personnel for the Office of the Treasurer, the Controller, Budget, Financial Information Services, and the Department of Finance and Revenue, together with all other District of Columbia executive branch accounting, budget and financial management personnel, into at-will employees serving at the pleasure of the CFO, and under the CFO's direction and control.

In July 1996, to emphasize the broad scope of the CFO's personnel authority, the chairmen of the Congressional oversight committees directing the District's affairs during the 104th Congress, Senator Jeffords and Representative Walsh, stated in writing that it was the intent of the Congress to exempt

the CFO from compliance with the District's Comprehensive Merit Personnel Act (CMPA) in its entirety.¹ In August 1996, with the support and approval of the House and Senate oversight committees, Congress passed the District's 1997 Appropriations Act, Pub.L.No. 104-194, 110 Stat. 2356 (1996), which extended the scope and duration of the CFO's at-will authority to include budget, accounting, and financial management personnel employed throughout all of the District's executive and independent agencies, as well as instrumentalities, for the duration of the control period.² As you are aware, the CFO has exercised at will authority in terminating substantial numbers of employees who failed to satisfy the performance standards set by the CFO. The CFO's authority to remove employees without satisfying the requirements of the CMPA has consistently been upheld by all courts and administrative agencies presented with the issue.³

Early on, the CFO established the Office of Mission Support (OMS) to develop the independent personnel policies and systems required under FRMMA §302(a), and to assist the CFO in identifying the appropriate skill sets required to transform the District's dysfunctional budget, accounting and financial management systems. This required the CFO to redefine job duties and educational requirements, and to establish a market driven, competitive compensation plan to recruit the best and the brightest. The CFO had the authority to carry out these tasks under §§152 and 142 of the 1996 and 1997 Appropriations Acts, each of which required the Mayor and the Council to honor the CFO's annual estimates of expenditures, which included funding for the CFO's pay and classification decisions. Significantly, at no time since the establishment of the Office of the Chief Financial Officer by Congress has either the Mayor or the Council challenged the CFO's authority to develop and execute an independent pay and classification system for District employees serving at the pleasure of the CFO.

In May 2003, in connection with the global settlement of union unfair labor practice charges dating to 1997, the CFO agreed to recognize and bargain with the American Federal of State County and Municipal Employees (AFSCME) as exclusive bargaining agent for certain non-supervisory employees, and to accept the terms of the current Master Compensation Agreement between the Mayor and AFSCME. Concurrently, the CFO determined to evaluate the compensation of managers, supervisors and other non-represented employees under his personnel authority to ensure that an

¹ The statement is contained in a letter directed to the District's first CFO, the Honorable Anthony Williams. A copy of the Walsh-Jeffords letter is attached as Exhibit A.

² As you are aware based on our previous discussions, Congress has voted to extend the CFO's at will authority twice after the control period ended. The CFO implemented the pay harmonization program during the most recent extension period.

³ See Leonard v. District of Columbia, 794 A.2d 618 (2002); Alexis v. District of Columbia, 44 F.Supp.2d 331 (D.D.C. 1999); District Council 20 v. District of Columbia, 1997 WL 446254 (D.D.C. 1997), remanded on other grounds, 159 F.3rd 636 (D.C. Cir. 1998).

Ms. Deborah K. Nichols
September 16, 2004
Page 3

equitable compensation scheme was being maintained throughout the CFO's organization based on the comparative skills and responsibilities of all members of the CFO's workforce.

After developing a pay harmonization proposal to address existing inequities, the CFO consulted in good faith with the Mayor and the Members of the Council regarding the proposed plan, and later testified about the nature and purpose of the pay harmonization plan during legislative oversight hearings. At no time during this open and transparent consultative process did anyone in the Executive or Legislative branches question or challenge the CFO's authority to go forward with the pay harmonization plan. To the contrary, the Mayor, the Acting Director of the District's Office of Personnel, and the Council Chair understood that the CFO, having heard no objections regarding the CFO's Authority, would be moving forward with immediate implementation of the plan. The CFO did so pursuant to the authority vested in him.

The final question in your letter asks us to opine about the personnel authority of other independent agencies of the District with respect to establishing pay and compensation. These are matters beyond our knowledge and jurisdiction and we express no opinion as to what powers such unidentified agencies may possess.

I have enclosed documents responsive to your request regarding this plan. The CFO stands ready to assist as you may later request.

Sincerely,



Jerry L. Malone
General Counsel

Enclosures

cc: Natwar M. Gandhi, Chief Financial Officer

Enclosures

1. **Office of the Chief Financial Officer (OCFO) Pay Harmonization Discussion Points with Chairman Cropp**
2. **OCFO Spending Restrictions – FY 2004 (Memorandum)**
3. **OCFO Pay Harmonization Decision Document**
4. **OCFO Year to Date 04 485 FTE Count**
5. **OCFO FY-04 Pay Harmony Analysis, By Program Area and Cluster Operation**
6. **Oversight Hearing Testimony**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



ATTORNEY GENERAL

October 13, 2004

Deborah K. Nichols
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005

Dear Ms. Nichols:

This is in response to your letter of September 24, 2004, wherein you request advice concerning the Chief Financial Officer's (CFO) Pay Harmonization Program (PHP). We understand the PHP to be a program created by the CFO to reduce the inequities between union and non-union pay scales within the Office of the Chief Financial Officer (OCFO).

Your specific questions and our responses are as follows:

1. What authority did the CFO rely upon to support and justify the implementation of the [PHP]?

Response:

I understand that you have already obtained this information from the OCFO. Thus, I need not reiterate the OCFO's position on this issue, which apparently was developed without any input from this Office.

To the extent you are seeking my views as to the legal sufficiency of the OCFO's position, let me add that, without attempting to provide a definitive response in the limited time available, my preliminary view is that the OCFO's position is plausible. Let me explain why.

Section 302 (a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995, Pub. L. 104-8, 109 Stat. 97 amended Title IV (Charter) of the District of Columbia Home Rule Act (Home Rule Act), approved December 24, 1973, 87 Stat. 785, D.C. Official Code § 1-204.01 *et seq* (2001), to add a new section 424 establishing the OCFO. Section 424 (a) (3) of the Home Rule Act (D.C. Official Code § 1-204.24a (c)) (2001) transferred to the OCFO the functions and personnel of the Controller of the District of Columbia (Controller), the Office of the Budget (OB), the Office of Financial Information Services (FIS), and the Department of Finance and Revenue (FR). Section 424 (c) (4) of the

Home Rule Act (D.C. Official Code § 1-204.24c (4)) (2001) charges the CFO, during a control year, with:

[i]mplementing appropriate procedures and instituting such programs, systems, and personnel policies within the Officer's [CFO's] authority, to ensure that budget, accounting and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis.

(Emphasis added.) Most important, pursuant to section 142 (a) of the District of Columbia Appropriations Act, 1997 (Appropriations Act), approved September 9, 1996, 110 Stat. 2375, D.C. Official Code § 47-317.03a (a) (1) (2001), Congress expanded the CFO's authority with respect to its personnel. Specifically, Congress provided that, notwithstanding any other provisions of law, during any control period, the heads and all personnel of the Controller, OB, FIS, FR, and the Office of the Treasurer, together with all other District of Columbia accounting, budget, and financial management personnel (excluding personnel of the legislative and judicial branches of the District government), shall be appointed by, serve at the pleasure of, and act under the direction and control of, the CFO.

The phrase "notwithstanding any other provisions of law," when read in context with the broad grants of authority otherwise vested in the OCFO, appear to exclude any requirement for the OCFO to comply with the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979, D.C. Law 2-139, D.C. Official Code § 1-604.01 *et seq.* (2001), pursuant to which the OCFO would be required, among other things, to: (1) follow specified administrative procedures before engaging in the discipline (including termination) of the broad group of employees described in section 142(a) of the Appropriations Act; and (2) secure Council approval for changes in compensation for these personnel. Indeed, the at-will status of these employees is a major deviation from the CMPA and thus can be construed as reflecting congressional intent under section 142(a) that the OCFO be independent from the CMPA concerning the group of employees named in section 142(a). Since the requirement for Council approval of the pay of District government employees is confined to the CMPA, any exemption of OCFO employees from the CMPA can reasonably be construed as exempting them from that requirement as well and as placing such authority in the CFO.

Under D.C. Official Code § 1-602.01(a) (2001), the CMPA applies to all employees of the District of Columbia government "unless specifically exempted from certain provisions" Employees who are appointed under statutes that expressly exempt an agency from the CMPA are, of course, not covered by it. Similarly, employees who are appointed under statutes that expressly provide an agency with major personnel authority at odds with the CMPA are arguably exempted from the CMPA by necessary implication. The latter kind of exemption appears to apply to the OCFO employees identified in section 142(a) of the Appropriations Act.

Support for this exceptional treatment for employees under the jurisdiction of the CFO is found in the D.C. Court of Appeals' decision in *Leonard, et al. v. District of Columbia, et al.*

(*Leonard*), 794 A.2d 618 (D.C. 2002).¹ In *Leonard*, the court construed the meaning of the phrase “notwithstanding any other provision of law”, as found in section 152 of the OCRAA, which is very similar, with the exception of the designation of years, to that found in section 142(a) of the Appropriations Act. The court stated that language such as “notwithstanding any other provision of law” . . . customarily evidences an intention of the legislature that the enactment control in spite of any earlier law to the contrary addressing the subject.” *Id.* at 626.²

The legislative authority granted the CFO in provisions of D.C. Official Code § 47-317.03a (a) (1) (2001) has been extended, through various appropriations acts, each year following the cessation of control periods that were in effect during the existence of the District of Columbia Financial Responsibility and Management Assistance Authority. Thus, section 2302 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Wartime Act), approved April 16, 2003, P.L. 108-11, 117 Stat. 594, states:

The authority which the [CFO] exercised with respect to personnel, procurement, and the preparation of fiscal impact statements during a control period (as defined in Public Law 104-8) shall remain in effect through September 30, 2004.

The date of September 30, 2004 in section 2302 of the Wartime Act was recently extended to November 20, 2004, pursuant to section 107 of House Joint Resolution 107, approved September 29, 2004.

In view of the referenced statutes, a reasonable argument can be made that the CFO has full personnel and pay authority with respect to the group of employees identified in section 142(a) of the Appropriations Act.

¹ In *Leonard*, former career service District employees who were placed under the control of the CFO were deemed to have been converted, by section 152 of the Omnibus Consolidated Rescission and Appropriations Act of 1996 (OCRAA), approved 110 Stat. 1321, Pub. L. 104-134, to at-will employees and thus properly terminable without due process.

Section 152 of the OCRAA provides, *inter alia*:

Notwithstanding any other provision of law, for the fiscal years ending September 30, 1996 and September 30, 1997 –

(a) the heads and all personnel of the following offices, together with all other District of Columbia executive branch accounting, budget, and financial management personnel, shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer:....

² While not controlling as legislative history, it should be noted that a July 16, 1996 letter from the Chairmen of the congressional oversight committees for the District states that the intent of section 152 of the OCRAA was to relieve “the CFO from the obligation to follow any and all regulations, including the [CMPA].”

2. Other than the personnel authority cited in Section 2302 of [the Wartime Act], what is the legal basis for the creation of the [PHP] and resulting pay scale?

Response:

I understand you have already obtained this information from the OCFO. Please see the response to item #1 above for my preliminary thoughts regarding the same question.

3. How does the CFO's personnel authority also translate into pay authority?

Response:

I understand you have already obtained this information from the OCFO. Please see the response to item #1 above for my preliminary thoughts regarding the same question.

4. What is the rationale and planned long-range purpose of the [PHP]?

Response:

I understand you have already obtained this information from the OCFO. My understanding is that the PHP was necessitated by pay inequities that occurred with employees under the CFO's jurisdiction when some OCFO employees became unionized. Thereafter, the CFO developed the PHP to correct the pay inequalities with the intent of maintaining an equitable compensation scheme based on employees' skills and responsibilities.

5. By what authority can the CFO adopt his own pay scale without it being approved by the Council of the District of Columbia?

Response:

I understand you have already obtained this information from the OCFO. Please see the response under item #1 above for my preliminary thoughts regarding the same question.

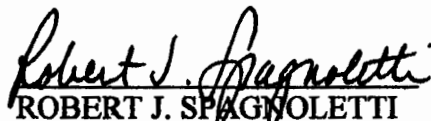
6. Can other independent agencies of the District with personnel authority create similar programs and attendant pay scales for their employees?

Response:

The authority of independent agencies to create compensation programs must be commensurate with their statutory authority. Whether an independent agency has independent pay authority must be determined on a case-by-case basis. Without such explicit statutory authority, an independent agency could not lawfully create a program, and accompanying pay scale, such as the PHP.

Should you have questions regarding the responses in this letter, please contact me directly or Wayne C. Witkowski, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,


ROBERT J. SPAGNOLETTI
Attorney General

cc: Jerry L. Malone
General Counsel
Office of the Chief Financial Officer

RJS/phg

(AL-04-562) (MID 128576)

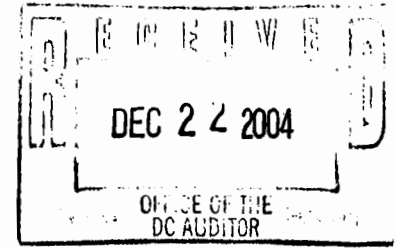
**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**

ATTORNEY GENERAL



December 14, 2004

Deborah K. Nichols
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005



Dear Ms. Nichols:

This responds to your letter of November 30, 2004 (November letter), regarding my October 13, 2004 letter (copy enclosed), responding to your request for an advisory opinion on the Pay Harmonization Program (Program) in the Office of the Chief Financial Officer (OCFO). You state, in your November letter, that I did not respond to several of the questions in your September 24, 2004 letter and that I should not have indicated that you had already received certain information from the OCFO. In that regard, you state that you had "hoped to receive an independent analysis that did not defer to, or assume the correctness of, the OCFO's limited self-serving view of [the lawfulness of the Program]."

You also state, in your letter, that you agree that the Chief Financial Officer's (CFO's) personnel authority originates from section 424 (a) of the District of Columbia Home Rule Act (Home Rule Act), approved December 24, 1973, 87 Stat. 785, D.C. Official Code § 1-204.24a (2001), which established the OCFO, as well as several successive federal statutes (collectively, referenced statutes)¹ that "further defined and enhanced the CFO's authority during a control period, but did not increase it." However, you state your uncertainty, and therefore seek my advice, concerning whether the referenced statutes point to a specific grant of authority for the CFO to establish pay schedules for employees under his jurisdiction without Council approval. You also state that if section 422 (3) of the Home Rule Act (D.C. Official Code § 1-204.22 (3)) (2001) is the source of personnel authority for District government employees, and if the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979, D.C. Law 2-139, D.C. Official Code § 1-601.01 *et seq.* (2001), applies to all employees, the OCFO would be covered unless specifically exempted. In that regard,

¹ The phrase, "referenced statutes", as used herein, includes: section 2302 of the Emergency Wartime Supplemental Appropriations Act, 2003, approved April 16, 2003, Pub. L. 108-11, 117 Stat. 594; section 152 of the Omnibus Consolidated Rescission and Appropriations Act of 1996 (OCRAA), approved April 26, 1996, 110 Stat. 1321, Pub. L. 104-134; and section 142 (a) of the District of Columbia Appropriations Act, 1997 (1997 Appropriations Act), approved September 9, 1996, 110 Stat. 2375, D.C. Official Code § 47-317.03a (a) (1) (2001).

you ask my opinion regarding whether the OCFO's exemption from the appointment and termination provisions of the CMPA is broader than it appears on its face. If I conclude that the OCFO's exemption from the appointment and termination provisions of the CMPA is not broader than appears on its face, you have asked that I clarify how the CFO can lawfully establish a pay schedule without Council approval.

In addition to the foregoing two questions, you ask that I respond to the questions submitted in your November letter.

I initially note that my October 13th letter did respond to all six questions in your September 24th letter. In addition, my letter represented an analysis of the law applicable to the Program that is independent of the earlier analysis you received from the OCFO itself. My reference to your office having received information from the OCFO is simply a statement of my awareness that the OCFO had earlier responded to you. My answer to question # 1 of your September 24th letter contains my independent legal analysis regarding the lawfulness of the Program and, in doing so, also responds to your questions # 2, 3, and 5. Question # 4 of your September 24, 2004 letter incorrectly assumed I know the purpose of the Program, apart from information supplied by the OCFO. I do not. Thus, my answer to question # 4 necessarily was based on what the OCFO had told us. I also fully answered your question # 6. I respectfully believe that I have already answered the questions in your September 24th letter and need not do so again here.

Your November 30th letter contains two more questions. Although these additional questions are essentially the same questions as those set forth in your September 24th letter, I respond to them separately below.

Question # 1

Do the Home Rule Act, the CMPA, and the referenced statutes point to a specific grant of pay authority for the CFO to establish pay schedules for employees under his jurisdiction without Council approval?

Response:

The short answer to your question is that I believe the Home Rule Act, the CMPA, and the referenced statutes, when read as a whole, lead to the conclusion that the CFO has legal authority to establish pay schedules for employees under his jurisdiction without Council approval.

The reasons for this conclusion are already discussed in my October 13th response to question # 1 of your September 24th letter. To summarize that discussion, section 424 (c) (4) of the Home Rule Act (D.C. Official Code § 1-204.24c (4)) (2001) charged the CFO, during a control year, with:

implementing appropriate procedures and instituting such programs, systems, and personnel policies within the Officer's [CFO's] authority,

to ensure that budget, accounting and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis.

Subsequently, in section 142 (a) of the 1997 Appropriations Act (D.C. Official Code § 47-317.03a (a) (1)) (2001), Congress – notwithstanding the Mayor’s personnel authority under section 422 (3) of the Home Rule Act – expanded the CFO’s personnel authority with comprehensive language that provided that certain of the CFO’s employees² shall be appointed by, serve at the pleasure of, and act under the direction and control of the CFO, notwithstanding any other provision of law. The “notwithstanding any other provision of law” clause certainly applies to the CMPA. Although the District government is no longer subject to a control year, the referenced statutes have extended the control year authority granted to the CFO. As of my October 13th letter, the CFO’s control year authority over personnel in the OCFO had been extended to November 20, 2004. Pursuant to section 336 of the District of Columbia Appropriations Act, 2005, Pub. L. 180-335, 118 Stat. 1347-48, approved October 18, 2004, the CFO’s control year authority has now been extended to September 30, 2005.³ These various statutes, the fact that Congress as recently as this fiscal year has again given the OCFO unique statutory authority, and the absence of any statutory language to the contrary, cause me to continue to conclude that the Program for the employees identified in my October 13th letter, and the accompanying pay schedules, are within the lawful jurisdiction of the OCFO and that Council approval of these schedules is therefore not required.

Question # 2

Is the OCFO’s exemption from the appointment and termination provisions of the CMPA broad enough to also exclude the OCFO from the other requirements of the CMPA that are otherwise applicable to District government employees? If not, clarify how the CFO may lawfully establish a pay scale, such as that under the Program, in the absence of Council approval.

Response:

Again, the short answer to your question is that I believe the OCFO is not only exempt from the appointment and termination provisions of the CMPA with respect to its covered employees, but also is entirely exempt from the CMPA and all of its requirements that would otherwise be applicable to them. This point is already addressed in my October 13th letter in more detail. To summarize, Congress’ use of the phrase

² See my October 13th letter for an identification of these employees.

³ I also noted, in footnote 2 of my October 13th letter, that, while not controlling as legislative history, a July 16, 1996 letter from the Chairmen of the congressional oversight committees for the District states that the intent of section 152 of the OCRAA was to relieve the CFO from the obligation to follow any and all regulations, including the CMPA. Section 152 of OCRAA contains the same language, with respect to the CFO’s personnel authority, as that found in section 142 (a) of the 1997 Appropriations Act, as extended by the later congressional acts to September 30, 2005.

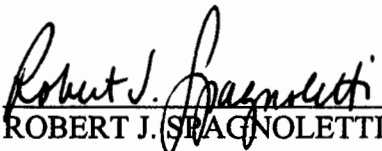
“notwithstanding any other provisions of law” (which includes the CMPA) in the 1997 Appropriations Act, with respect to the OCFO’s jurisdiction over personnel assigned to it, together with Congress’ subsequent consistent actions in the referenced statutes and the 2005 Appropriations Act, support the conclusion that the OCFO is exempt from the CMPA in all respects, including the requirement of Council approval of a pay schedule for the employees of the OCFO who are identified in my October 13th letter.

The CMPA applies to all District government employees, unless there are specific exemptions from its provisions. I conclude such an exemption exists when an agency, such as the OCFO, is provided with major personnel authority which so differs from the requirements of the CMPA that the agency must necessarily, by implication, be wholly exempt from the CMPA. See the discussion of the D.C. Court of Appeals’ decision in *Leonard, et al. v. District of Columbia, et al.*, 794 A.2d 618 (D.C. 2002), in my October 13th letter. Had Congress, in its several extensions of the OCFO’s personnel authority over the employees identified in my October 13th letter, intended that the OCFO be limited to only appointment or termination authority, but otherwise subject to the CMPA, it likely would have expressly so provided that any other personnel or pay actions with respect to the identified employees are subject to the CMPA. Doing that is standard practice in District law. See, e.g., D.C. Official Code § 4-1303.03 (a-1) (8) (2004 Supp.) (authorizing the Director of the Child and Family Services Agency to “be the personnel authority for all employees of the agency, including the exercise of full authority to hire, retain, and terminate personnel, consistent with Chapter 6 of Title 1” [the CMPA]. (emphasis added)); D.C. Official Code § 7-1131.05 (2) (2004 Supp.) (authorizing the Director of the Department of Mental Health to “[h]ire, retain, and terminate such personnel [of the Department] as appropriate to perform the functions of the Department consistent with Chapter 6 of Title 1” [the CMPA] (emphasis added)).

However, the congressional language authorizing the OCFO’s authority is intentionally much broader – *i.e.*, “implementing appropriate procedures and instituting... programs, systems, and personnel policies...” and “notwithstanding any other provision of law.” Congress’ language here, which it has not provided with respect to any other District agency, authorized the CFO to establish a comprehensive personnel system for the identified employees. The CMPA also provides for a comprehensive personnel system for those employees who are subject to its provisions. With respect to the CFO, Congress provided for the initial personnel action – appointment – and for the major follow-on actions – direction, control, and termination – of the identified employees to be wholly under personnel rules created by the CFO outside the parameters and requirements of the CMPA. Therefore, the most reasonable inference is that Congress did not intend the CFO, having once appointed people pursuant to his own personnel rules, in a “start to finish” personnel system of his own choosing, to still be bound by other provisions of the CMPA. Rather, I conclude that Congress intended to authorize the CFO to create a comprehensive personnel system, which naturally includes the authority to adopt pay schedules of his own choosing, in keeping with available appropriations and without being bound in any way by the alternative and conflicting personnel system established by the CMPA.

Should you have questions regarding any of these responses, please do not hesitate to call me or Wayne C. Witkowski, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,


ROBERT J. SPAGNOLETTI
Attorney General

Enclosure

cc: Robert C. Bobb
Deputy Mayor/City Administrator

Honorable Linda W. Cropp
Chairman
Council of the District of Columbia

Honorable Kathy Patterson
Chairperson
Committee on the Judiciary

Honorable Jack Evans
Chairperson
Committee on Finance and Revenue

RJS/phg

(AL-04-562 B) (MID 128576)

APPENDIX IV

The legal authority the Chief Financial Officer of District of Columbia is purportedly relying upon to determine compensation.

Section 2302 of Pub.L.No. 108-11, April 16, 2003, [Page 117 STAT. 593]—extended personnel authority of CFO until September 30, 2004:

“Sec. 2302. The authority which the Chief Financial Officer of the District of Columbia exercised with respect to personnel, procurement, and the preparation of fiscal impact statements during a control period (as defined in Public Law 104-8) shall remain in effect through September 30, 2004.”

Section 336 extended the personnel authority until September 30, 2005 in Pub.L.No. 108-335, (District of Columbia Appropriations Act, 2005, approved October 18, 2004) and codified as a note to D.C. Official Code §1-204.24c in the 2004 Interim Supplement and

“Sec. 336. (a) Continuation of Certain Authority of Chief Financial Officer.--Section 2302 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11; 117 [[Page 118 STAT. 1348]] Stat. 593), is amended by striking “September 30, 2004” and inserting “September 30, 2005”. (b) Effective Date.--The amendment made by subsection (a) shall take effect as if included in the enactment of the Emergency Wartime Supplemental Appropriations Act, 2003.”

Source: [Legal](#) > [States Legal - U.S.](#) > [District of Columbia](#) > [Statutes & Regulations](#) > **DC - District of Columbia Code Annotated** 

TOC: [District of Columbia Code Annotated](#) > [/](#) > [PART Bi. CHIEF FINANCIAL OFFICER](#) > **§ 1-204.24c. Functions [Formerly § 47-317.3]**

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D.C. Code § 1-204.24c

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*** CURRENT THROUGH D.C. LAW 15-238, EFFECTIVE MARCH 16, 2005 ***
*** ANNOTATIONS CURRENT THROUGH DECEMBER 23, 2004 ***

TITLE 1. GOVERNMENT ORGANIZATION
CHAPTER 2. DISTRICT OF COLUMBIA HOME RULE
SUBCHAPTER IV. THE DISTRICT CHARTER
PART Bi. CHIEF FINANCIAL OFFICER

♦ **GO TO DISTRICT OF COLUMBIA CODE ARCHIVE DIRECTORY**

D.C. Code § 1-**204.24c**

§ 1-**204.24c**. Functions [Formerly § 47-317.3]

The Chief Financial Officer shall have the following duties:

(1) During a control year, preparing the financial plan and budget for the use of the Mayor for purposes of subpart B of subchapter VII of Chapter 3 of Title 47;

(2) Preparing the budgets of the District of Columbia for the year for the use of the Mayor for purposes of §§ 1-204.41 to 1-204.53 and 1-204.55 to 1-204.56e.

(3) During a control year, assuring that all financial information presented by the Mayor is presented in a manner, and is otherwise consistent with, the requirements of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [Pub. L. 104-8];

(4) Implementing appropriate procedures and instituting such programs, systems, and personnel policies within the Officer's authority, to ensure that budget, accounting and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis;

(5) Preparing and submitting to the Mayor and the Council, with the approval of the Authority during a control year:

(A) Annual estimates of all revenues of the District of Columbia (without regard to the source of such revenues), including proposed revenues, which shall be binding on the Mayor and the Council for purposes of preparing and submitting the budget of the District government for the year under §§ 1-204.41 to 1-204.53 and 1-204.55 to 1-204.56e, except that the Mayor and the Council may prepare the budget based on estimates of revenues

which are lower than those prepared by the Chief Financial Officer; and

(B) Quarterly re-estimates of the revenues of the District of Columbia during the year.

(6) Supervising and assuming responsibility for financial transactions to ensure adequate control of revenues and resources, and to ensure that appropriations are not exceeded.

(7) Maintaining systems of accounting and internal control designed to provide -

(A) Full disclosure of the financial impact of the activities of the District government;

(B) Adequate financial information needed by the District government for management purposes;

(C) Effective control over, and accountability for, all funds, property, and other assets of the District of Columbia; and

(D) Reliable accounting results to serve as the basis for preparing and supporting agency budget requests and controlling the execution of the budget.

(8) Submitting to the Council a financial statement of the District government, containing such details and at such times as the Council may specify;

(9) Supervising and assuming responsibility for the assessment of all property subject to assessment and special assessments within the corporate limits of the District of Columbia for taxation, preparing tax maps, and providing such notice of taxes and special assessments (as may be required by law);

(10) Supervising and assuming responsibility for the levying and collection of all taxes, special assessments, licensing fees, and other revenues of the District of Columbia (as may be required by law), and receiving all amounts paid to the District of Columbia from any source (including the Authority);

(11) Maintaining custody of all public funds belonging to or under the control of the District government (or any department or agency of the District government), and depositing all amounts paid in such depositories and under such terms and conditions as may be designated by the Council (or by the Authority during a control year);

(12) Maintaining custody of all investment and invested funds of the District government or in possession of the District government in a fiduciary capacity, and maintaining the safekeeping of all bonds and notes of the District government and the receipt and delivery of District government bonds and notes for transfer, registration, or exchange;

(13) Apportioning the total of all appropriations and funds made available during the year for obligation so as to prevent obligation or expenditure in a manner which would result in a deficiency or a need for supplemental appropriations during the year, and (with respect to appropriations and funds available for an indefinite period and all authorizations to create obligations by contract in advance of appropriations) apportioning the total of such appropriations, funds, or authorizations in the most effective and economical manner;

(14) Certifying all contracts (whether directly or through delegation) prior to execution as to the availability of funds to meet the obligations expected to be incurred by the District government under such contracts during the year;

(15) Prescribing the forms of receipts, vouchers, bills, and claims to be used by all agencies, offices, and instrumentalities of the District government;

(16) Certifying and approving prior to payment all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government, and determining the regularity, legality, and correctness of such bills, invoices, payrolls, claims, demands, or charges;

(17) In coordination with the Inspector General of the District of Columbia, performing internal audits of accounts and operations and records of the District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness of accounting systems, internal control, and related administrative practices of the departments and agencies of the District government;

(18) Exercising responsibility for the administration and supervision of the District of Columbia Treasurer (except that the Chief Financial Officer may delegate any portion of such responsibility as the Chief Financial Officer considers appropriate and consistent with efficiency);

(19) Administering all borrowing programs of the District government for the issuance of long-term and short-term indebtedness;

(20) Administering the cash management program of the District government, including the investment of surplus funds in governmental and non-governmental interest-bearing securities and accounts;

(21) Administering the centralized District government payroll and retirement systems (other than the retirement system for police officers, fire fighters, and teachers);

(22) Governing the accounting policies and systems applicable to the District government;

(23) Preparing appropriate annual, quarterly, and monthly financial reports of the accounting and financial operations of the District government; and

(24) Not later than 120 days after the end of each fiscal year, preparing the complete financial statement and report on the activities of the District government for such fiscal year, for the use of the Mayor under § 1-204.48(a)(4).

HISTORY: Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424(c), as added Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 302(a); 1981 Ed., § 47-317.3; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 155(b)(1); Dec. 21, 2000, 114 Stat. 2762, Pub. L. 106-553, § 155(b)(1); Dec. 23, 2004, 118 Stat. 3966, Pub. L. 108-489, § 4(a).

NOTES:

EFFECT OF AMENDMENTS. --Public Law 104-8 added this section.

Public Law 106-553 deleted "During a control year" from the beginning of the introductory language; added "During a control year" to the beginning of (1) and (3); rewrote (5); substituted "(or by the Authority during a control year)" for "or the Authority" in (11); and added (18) through (24).

Public Law 108-489 added "(other than the retirement system for police officers, fire fighters, and teachers)" in (21).

EDITOR'S NOTES. --Section 2302 of Public Law 104-8, as amended by Public Law 108-335, § 336, provided: "The authority which the Chief Financial Officer of the District of Columbia exercised with respect to personnel, procurement, and the preparation of fiscal impact statements during a control period (as defined in Public Law 104-8) shall remain in effect through September 30, 2005."

Section 315(b) of Public Law 108-335 provided: "The Chief Financial Officer of the District

of Columbia shall submit by March 1, 2005, an inventory, as of September 30, 2004, of all vehicles owned, leased or operated by the District of Columbia government. The inventory shall include, but not be limited to, the department to which the vehicle is assigned; the year and make of the vehicle; the acquisition date and cost; the general condition of the vehicle; annual operating and maintenance costs; current mileage; and whether the vehicle is allowed to be taken home by a District officer or employee and if so, the officer or employee's title and resident location."

Section 328 of Public Law 108-335 provided: "The Chief Financial Officer of the District of Columbia shall require attorneys in special education cases brought under the Individuals with Disabilities Act (IDEA) in the District of Columbia to certify in writing that the attorney or representative rendered any and all services for which they receive awards, including those received under a settlement agreement or as part of an administrative proceeding, under the IDEA from the District of Columbia. As part of the certification, the Chief Financial Officer of the District of Columbia shall require all attorneys in IDEA cases to disclose any financial, corporate, legal, memberships on boards of directors, or other relationships with any special education diagnostic services, schools, or other special education service providers to which the attorneys have referred any clients as part of this certification. The Chief Financial Officer shall prepare and submit quarterly reports to the Committees on Appropriations of the House of Representatives and Senate on the certification of and the amount paid by the government of the District of Columbia, including the District of Columbia Public Schools, to attorneys in cases brought under IDEA. The Inspector General of the District of Columbia may conduct investigations to determine the accuracy of the certifications."

Section 4(b) of Pub. L. 108-489 provided that the amendment made by Pub. L. 108-489, § 4(a) shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

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PAY DISPARITY TABLES

APPENDIX V: Comparison of Disparity in Pay Rates Between District Service Pay Schedule and CFO's Pay Table

**Comparison of Disparity in Pay Rates Between
District Service Pay Schedule and CFO's Pay Table**

Grade 9	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
District Pay Table As of 10/5/03	32,361	33,399	34,436	35,473	36,511	37,548	38,585	39,622	40,660	41,697
CFO Pay Table As of 11/16/03	35,719	36,863	38,008	39,151	40,295	41,440	42,583	43,727	44,871	46,015
CFO Pay Table As of 4/4/04	36,612	37,785	38,958	40,130	41,302	42,476	43,648	44,820	45,993	47,165
CFO Pay Table As of 1/9/05	37,893	39,107	40,322	41,535	42,748	43,963	45,176	46,389	47,603	48,816
TOTAL	5,532	5,708	5,886	6,062	6,237	6,415	6,591	6,767	6,943	7,119
DISPARITY %	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%

Note: disparity represents the difference between the city-wide district Service pay table as of 10/05/03 and the latest CFO pay table as of 01/09/05.

Grade 10	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
District Pay Table As of 10/5/03	35,517	36,654	37,792	38,930	40,066	41,204	42,342	43,478	44,616	45,754
CFO Pay Table As of 11/16/03	39,196	40,451	41,707	42,964	44,220	45,477	46,733	47,991	49,246	50,503
CFO Pay Table As of 4/4/04	40,176	41,462	42,750	44,038	45,326	46,614	47,901	49,191	50,477	51,766
CFO Pay Table As of 1/9/05	41,582	42,913	44,246	45,579	46,912	48,245	49,578	50,913	52,244	53,578
TOTAL	6,065	6,259	6,454	6,649	6,846	7,041	7,236	7,435	7,628	7,824
DISPARITY %	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%

APPENDIX V

Grade 11	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
District Pay Table As of 10/5/03	39,020	40,269	41,519	42,768	44,018	45,267	46,516	47,765	49,014	50,264
CFO Pay Table As of 11/16/03	43,053	44,435	45,817	47,200	48,584	49,966	51,348	52,730	54,112	55,494
CFO Pay Table As of 4/4/04	44,129	45,456	46,962	48,380	49,799	51,215	52,632	54,046	55,465	56,881
CFO Pay Table As of 1/9/05	45,674	47,140	48,606	50,073	51,542	53,008	54,474	55,940	57,406	58,872
TOTAL INCREASE	<u>6,654</u>	<u>6,871</u>	<u>7,087</u>	<u>7,305</u>	<u>7,524</u>	<u>7,741</u>	<u>7,958</u>	<u>8,175</u>	<u>8,392</u>	<u>8,608</u>
DISPARITY %	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>

Grade 12	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
District Pay Table As of 10/5/03	46,770	48,266	49,763	51,259	52,757	54,253	55,750	57,246	58,743	60,239
CFO Pay Table As of 11/16/03	51,612	53,266	54,919	56,573	58,226	59,879	61,534	63,187	64,841	66,494
CFO Pay Table As of 4/4/04	52,902	54,598	56,292	57,987	59,682	61,376	63,072	64,767	66,462	68,156
CFO Pay Table As of 1/9/05	54,754	56,509	58,262	60,017	61,771	63,524	65,280	67,034	68,788	70,541
TOTAL DISPARITY	<u>7,984</u>	<u>8,243</u>	<u>8,499</u>	<u>8,758</u>	<u>9,014</u>	<u>9,271</u>	<u>9,530</u>	<u>9,788</u>	<u>10,045</u>	<u>10,302</u>
DISPARITY %	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>	<u>17.1%</u>

APPENDIX V

Grade 13 **Step 1** **Step 2** **Step 3** **Step 4** **Step 5** **Step 6** **Step 7** **Step 8** **Step 9** **Step 10**

District Pay Table As of 10/5/03	55,602	57,386	59,169	60,953	62,736	64,520	66,303	68,087	69,870	71,654
CFO Pay Table As of 11/16/03	61,370	63,337	65,305	67,272	69,240	71,207	73,174	75,142	77,110	79,076
CFO Pay Table As of 4/4/04	62,904	64,920	66,938	68,954	70,971	72,987	75,003	77,021	79,038	81,053
CFO Pay Table As of 1/9/05	65,106	67,192	69,281	71,367	73,455	75,542	77,628	79,717	81,804	83,890
TOTAL	9,504	9,806	10,112	10,414	10,719	11,022	11,325	11,630	11,934	12,236
DISPARITY										
DISPARITY %	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%

Grade 14 **Step 1** **Step 2** **Step 3** **Step 4** **Step 5** **Step 6** **Step 7** **Step 8** **Step 9** **Step 10**

District Pay Table As of 10/5/03	65,705	67,814	69,922	72,031	74,139	76,248	78,356	80,465	82,573	84,682
CFO Pay Table As of 11/16/03	72,521	74,848	77,173	79,500	81,826	84,152	86,478	88,805	91,131	93,456
CFO Pay Table As of 4/4/04	74,334	76,719	79,102	81,488	83,872	86,256	88,640	91,025	93,409	95,792
CFO Pay Table As of 1/9/05	76,936	79,404	81,871	84,340	86,808	89,275	91,742	94,211	96,678	99,145
TOTAL	11,231	11,590	11,949	12,309	12,669	13,027	13,386	13,746	14,105	14,463
DISPARITY										
DISPARITY %	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%	17.1%

APPENDIX V

Grade 15 **Step 1** **Step 2** **Step 3** **Step 4** **Step 5** **Step 6** **Step 7** **Step 8** **Step 9** **Step 10**

District Pay Table As of 10/5/03	74,310	76,696	79,081	81,466	83,851	86,236	88,622	91,007	93,392	95,777
CFO Pay Table As of 11/16/03	85,176	87,900	90,624	93,348	96,072	98,796	101,520	104,244	106,968	109,692
CFO Pay Table As of 4/4/04	87,305	90,098	92,890	95,682	98,474	101,266	104,058	106,850	109,642	112,434
CFO Pay Table As of 1/9/05	90,361	93,251	96,141	99,031	101,921	104,810	107,700	110,590	113,479	116,369
TOTAL DISPARITY	<u>16,051</u>	<u>16,555</u>	<u>17,060</u>	<u>17,565</u>	<u>18,070</u>	<u>18,574</u>	<u>19,078</u>	<u>19,583</u>	<u>20,087</u>	<u>20,592</u>
DISPARITY %	<u>21.6%</u>	<u>21.6%</u>	<u>21.6%</u>	<u>21.6%</u>	<u>21.6%</u>	<u>21.5%</u>	<u>21.5%</u>	<u>21.5%</u>	<u>21.5%</u>	<u>21.5%</u>

Grade 16 **Step 1** **Step 2** **Step 3** **Step 4** **Step 5** **Step 6** **Step 7** **Step 8** **Step 9** **Step 10**

District Pay Table As of 10/5/03	84,945	87,675	90,405	93,135	95,865	98,595	101,325	104,055	106,785	109,515
CFO Pay Table As of 11/16/03	98,752	101,911	105,070	108,229	111,388	114,547	117,706	120,865	124,024	127,183
CFO Pay Table As of 4/4/04	101,221	104,459	107,697	110,935	114,173	117,411	120,649	123,887	127,125	127,125
CFO Pay Table As of 1/9/05	104,764	108,115	111,466	114,818	118,169	121,520	124,872	127,125	127,125	127,125
TOTAL DISPARITY	<u>19,819</u>	<u>20,440</u>	<u>21,061</u>	<u>21,683</u>	<u>22,304</u>	<u>22,925</u>	<u>23,547</u>	<u>23,070</u>	<u>20,340</u>	<u>17,610</u>
DISPARITY %	<u>18.9%</u>	<u>18.9%</u>	<u>18.9%</u>	<u>18.9%</u>	<u>18.9%</u>	<u>18.9%</u>	<u>18.9%</u>	<u>18.1%</u>	<u>16.0%</u>	<u>13.9%</u>

APPENDIX V

Grade 17	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
District Pay Table As of 10/5/03	98,762	102,050	105,338	108,626	111,914	115,202	118,490	121,778	125,066	128,354
CFO Pay Table As of 11/16/03	113,516	117,149	120,782	124,415	128,048	131,681	135,314	137,647	137,647	137,647
CFO Pay Table As of 4/4/04	116,354	120,078	123,802	127,525	128,048	128,048	128,048	128,048	128,048	128,048
CFO Pay Table As of 1/9/05	120,426	124,281	128,048	128,048	128,048	128,048	128,048	128,048	128,048	128,048
TOTAL DISPARITY	21,664	22,231	22,710	19,422	16,134	12,846	9,558	6,270	2,982	(306)
DISPARITY %	21.9%	21.8%	21.6%	17.9%	14.4%	11.2%	8.1%	5.1%	2.4%	-0.2%

Grade 18	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
District Pay Table As of 10/5/03	112,324	116,326	120,328	124,330	128,332	132,334	132,334	132,334	132,334	132,334
CFO Pay Table As of 11/16/03	129,363	133,505	137,647	137,647	137,647	137,647	137,647	137,647	137,647	137,647
CFO Pay Table As of 4/4/04	132,597	136,843	137,647	137,647	137,647	137,647	137,647	137,647	137,647	137,647
CFO Pay Table As of 1/9/05	137,238	137,647	137,647	137,647	137,647	137,647	137,647	137,647	137,647	137,647
TOTAL DISPARITY	24,914	21,321	17,319	13,317	9,315	5,313	5,313	5,313	5,313	5,313
DISPARITY %	22.2%	18.3%	14.4%	10.7%	7.3%	4.0%	4.0%	4.0%	4.0%	4.0%

PAY HARMONIZATION COST

APPENDIX VI: OCFO Pay Harmonization Program Fiscal Impact for Fiscal Years 2004, 2005, and 2006

**OCFO Pay Harmonization Program Fiscal Impact
for Fiscal Years 2004, 2005 and 2006**

OCFO CLUSTERS:	FY 2004	FY 2005	FY 2006
CENTRAL OFFICES	\$1,391,855	\$2,601,919	\$3,444,801
GOVERNMENT SERVICES	159,420	277,519	358,348
ECONOMIC DEVELOPMENT	161,587	298,058	368,606
PUBLIC SAFETY & JUSTICE	115,220	224,480	302,353
HUMAN SUPPORT SERVICES	343,487	649,008	830,646
GOVERNMENT SERVICES	123,048	253,737	356,810
DC LOTTERY	262,485	512,046	573,297
DC PUBLIC SCHOOLS	<u>118,096</u>	<u>203,209</u>	<u>261,058</u>
TOTAL	\$ 2,675,198⁽¹⁾	\$ 5,019,976⁽²⁾	\$ 6,495,919⁽³⁾

(1) Represents the initial start-up cost for the FY 2004 Pay Harmonization Program and the April 4, 2004 2.5% pay increase

(2) Represents the outyear cost for (1) above and the January 9, 2005 to July 1, 2005 3.5% pay increase cost. It should be noted that effective July 2005, the City will be funding a District-wide 3.5% non-union pay increase.

(3) Represents the outyear cost for (1) above and the planned FY 2006 4% pay increase

**TESTIMONIES OF NATWAR M. GANDHI
CHIEF FINANCIAL OFFICER
GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Before the
Committee on Finance & Revenue
Council of the District of Columbia

APPENDIX VII: Public Oversight Hearing on FY 2003 and
FY 2004 Spending and Performance by the Office of the Chief
Financial Officer, February 25, 2004

APPENDIX VIII: Public Oversight Hearing on FY 2004 and
FY 2005 Spending and Performance by the Office of the Chief
Financial Officer (OCFO), March 9, 2005

APPENDIX IX: Public Hearing on The Fiscal Year 2006
Budget Request of the Office of the Chief Financial Officer
(OCFO), April 13, 2005

PUBLIC OVERSIGHT HEARING
FY 2003 AND FY 2004 SPENDING AND PERFORMANCE
BY THE OFFICE OF THE CHIEF FINANCIAL OFFICER

Before the
Committee on Finance and Revenue
Council of the District of Columbia

The Honorable Jack Evans, Chairman

February 25, 2004, 9:00 a.m.
Council Chamber



Natwar M. Gandhi
Chief Financial Officer
Government of the District of Columbia

Organizational Improvements in the OCFO

My senior managers and I are constantly looking for ways to improve our organization and make it as effective and efficient as possible. This takes many forms, including changes to staff, salaries, and organizational structure. Let me offer one example.

Within the OCFO, we have conformed the pay of union and non-union employees throughout our organization. With the exceptions of Department of Mental Health CFO employees (who are on a higher pay table inherited from that organization's days in receivership) and UDC CFO employees (who are covered by a different pay and benefits system), all CFO non-union employees are on a single pay table that mirrors that of union employees. We have eliminated the separate pay tables for management and supervisory system employees (MSS) and for attorneys.

Ever since I started work for the Government of the District of Columbia, employees have brought to my attention the basic inequity of a pay system that pays union employees at a higher rate of pay than non-union employees performing the same work or work of similar scope and complexity. This condition contributes to poor morale in the work place, and discourages employees from accepting management positions. It also leads to distortions of the personnel system as managers look to use position classification to address pay inequities. As an executive team, we should all be committed to rectifying this situation.

It was my judgement that a smaller number of high-performing and properly paid OCFO employees could perform the tasks of our offices more effectively and efficiently. As a result, we committed as a team to absorbing the first year (FY 2004) cost of the transition to a single pay table through organizational efficiencies and reductions in staff.

We have been successful in doing so and believe our experience can be a model for other District organizations. However, going forward we need support to maintain this equality of treatment. As the District increases the pay of non-union employees in subsequent years, it should be our policy to maintain parity in those

instances where it has been achieved, and expand the number of organizations where pay parity exists.

This is but one part of the OCFO restructuring efforts over the past few years. Our overall goal was to establish a common organizational structure, grade structure, span of control, and performance standards across agency CFO organizations, to improve efficiency, management, and communications. As a result, we now have a CFO structure that mirrors the Deputy Mayors; has improved direction, information and systems controls; and streamlined back-office financial operations based on consolidated accounting functions. Many of these changes have been accomplished in the past year, and between FY 2003 and FY 2004, OCFO resources dropped by 83 FTEs and \$4.1 million at a time when most city agencies were increasing their budgets.

**PUBLIC OVERSIGHT HEARING ON
THE FISCAL YEAR 2004 AND 2005 SPENDING AND
PERFORMANCE BY THE OFFICE OF THE CHIEF
FINANCIAL OFFICER (OCFO)**

**Before the
Committee on Finance & Revenue
Council of the District of Columbia**

The Honorable Jack Evans, Chairman

**March 9, 2005; 10:00 a.m.
Council Chamber, John A. Wilson Building**



**Testimony of
Natwar M. Gandhi
Chief Financial Officer
Government of the District of Columbia**

Pay Harmony

As I testified last year at my oversight hearing, within the OCFO, we have conformed the pay of union and non-union employees throughout our organization. With the exceptions of Department of Mental Health CFO employees, who are on a higher pay table (inherited from that organization's days in receivership) and UDC CFO employees (who are covered by a different pay and benefits system), all CFO non-union employees are on a single pay table that mirrors that of union employees. We have eliminated the separate pay tables for management and supervisory employees (MSS) and for attorneys.

As I have said many times, ever since I started work for the Government of the District of Columbia, employees have brought to my attention the basic inequity of a pay system that pays union employees at a higher rate of pay than non-union employees performing the same work or work of similar scope and complexity. This condition contributes to poor morale in the work place and discourages employees from accepting management positions. It also leads to distortions of the personnel system as managers look to use position classification to address pay

inequities. As an executive team, I am sure we are all committed to rectifying this situation in a meaningful way.

In May 2003, in connection with the global settlement of union unfair labor practice charges dating to 1997, I agreed to recognize and bargain with AFSCME and to accept the terms of the Master Compensation Agreement. As a result, in the summer of 2003, a total of 306 OCFO employees were placed on the union pay scale, receiving an average increase of 9.5 percent, effective as of April 1, 2003. This settlement had the effect of both abruptly expanding the pay gap between union and non-union employees in the OCFO, from 3.5 percent to 13 percent, and greatly enlarging the number of unionized employees in the OCFO, from 150 to 456, or from 14 percent to 44 percent of the OCFO workforce (Further union additions combined with FTE reductions have increased the unionized portion of our workforce to nearly 50 percent.).

Therefore, it was the appropriate time in the OCFO to create a single pay scale for all employees and to do something meaningful to close the gap. In October 2003 and November 2003, between the 2-1/2 percent city-wide non union pay increase and OCFO pay harmony, all OCFO employees were put on a single pay scale consistent with the union pay scale, but the complete gap of 13 percent was not closed. The gap was closed only for those employees at step 1 of a grade on the pay scale; an average gap of roughly 6-1/2 percent remained, but it would not, and should not, get bigger. This single pay scale for all OCFO employees, union and non-union, has been maintained since then, with each successive union pay increase. It just doesn't make sense to narrow the pay gap once but let it grow again.

I embarked on this single OCFO-wide pay scale pursuant to the independent personnel authority of the CFO, after consulting with the Mayor and some members of Council and hearing no objections. Since then, the Office of the Attorney General, in response to a request from the D.C. Auditor, has expressed agreement that the independent personnel authority of the CFO extends to pay authority; since the requirement for Council approval of the pay of District government employees is confined to the Comprehensive Merit Personnel Act (CMPA), the exemption of OCFO employees from the CMPA can be reasonably construed as exempting them from the requirement for Council approval of pay.

It was my judgment that a smaller number of properly paid employees could perform the tasks of our office more effectively and efficiently. From October 2003 to August 2004, the on-board staff in the central OCFO dropped from 907 to 853, and in February 2005 it remained at 853.

Perhaps more important than the organizational efficiencies, achieving pay harmony was crucial to addressing deteriorating morale, which in OTR would threaten the District's revenue collection and, in turn, its financial position. Maintaining pay harmony is critical to preventing the OTR organization from returning to the dysfunction in which I found it back in 1997. We believe our experiences can be a model for other District organizations.

As the District increases the pay of union employees in subsequent years, it should be the District's policy to maintain parity in those instances where it has been achieved and expand the number of organizations where pay parity exists.

PUBLIC HEARING ON
THE FISCAL YEAR 2006 BUDGET REQUEST OF THE
OFFICE OF THE CHIEF FINANCIAL OFFICER (OCFO)

Before the
Committee on Finance and Revenue
Council of the District of Columbia

The Honorable Jack Evans, Chairman

April 13, 2005
Council Chamber, John A. Wilson Building



Testimony of
Natwar M. Gandhi
Chief Financial Officer
Government of the District of Columbia

Pay Harmony

The FY 2006 baseline budget included \$3.9 million to cover the entire cost of pay harmony since FY 2004. As I testified last year and at my recent oversight hearing, within the OCFO, we have conformed the pay of union and non-union employees throughout our organization.

With the exceptions of Department of Mental Health CFO employees, who are on a higher pay table inherited from that organization's days in receivership, and University of the District of Columbia CFO employees, who are covered by a different pay and benefits system, all CFO non-union employees are on a single pay table that mirrors that of union employees. We have eliminated the separate pay tables for management and supervisory employees (MSS) and for attorneys.

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As the District increases the pay of union employees in subsequent years, it should be the District's policy to maintain parity in those instances where it has been achieved and expand the number of organizations where pay parity exists.