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TRANSFORMING THE DEPARTMENT OF DEFENSE PERSONNEL SYSTEM: FINDING THE RIGHT APPROACH

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JUNE 4, 2003

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TRANSFORMING THE DEPARTMENT OF DEFENSE PERSONNEL SYSTEM: FINDING THE RIGHT APPROACH

WEDNESDAY, JUNE 4, 2003

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:37 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins, Stevens, Voinovich, Coleman, Specter, Fitzgerald, Sununu, Levin, Akaka, Durbin, Carper, Lautenberg, and Pryor.

OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. The Committee will come to order.

The primary goal of the Federal personnel system should be the recruitment and retention of the highest quality workforce to serve the people of the United States. Unfortunately, the antiquated system now in place does not always achieve that goal. Although there are many superb Federal employees, bureaucratic barriers make it hard to reward their efforts and it has become increasingly difficult for agencies to attract and retain employees with technical expertise or special skills.

The Department of Defense has delivered to Congress a far-reaching proposal to grant the Secretary of Defense broad new authority to dramatically restructure the Department's civilian personnel system, a system that covers some 730,000 Federal workers. The Department contends its proposal will provide the flexibility and agility needed to respond effectively to changes in our national security environment.

To accomplish this objective, the administration proposes giving the Secretary of Defense not only the significant personnel flexibilities that Congress granted to the Secretary of Homeland Security, but also additional authority to unilaterally waive several other personnel laws.

Although the administration has submitted a bill that affects virtually every significant aspect of the personnel system, three personnel flexibilities are of particular importance to the Department.

First, the Department seeks authority to replace the current general schedule 12-grade pay system with a performance-based system through which workers would be compensated according to merit, not longevity. Second, the Department wants the authority

to conduct on-the-spot hiring for hard-to-fill positions. And third, the Department seeks the authority to raise collective bargaining to the national level rather than negotiating with approximately 1,300 local bargaining units.

Over the past 4 weeks, Senator Voinovich, who has been a leader on human capital issues, and I have reached out to a wide variety of interested parties in an attempt to put together a proposal that would be both fair and effective. We have been joined in our efforts by Senator Sununu, who has long had an interest in our Federal workforce, and by Senator Levin, who as the ranking member of the Senate Armed Services Committee and as a senior Member of this Committee brings a wealth of knowledge and insight to this process. Their assistance and support have been invaluable and I want to thank them for their efforts.

I had intended to offer our consensus proposal as an amendment to the Senate defense authorization bill. I was dismayed to learn, however, that our amendment was not deemed relevant by the Parliamentarian and, therefore, would be ruled out of order. The House, however, has included legislation similar to DoD's plan as part of its version of the defense authorization bill.

Quite simply, I believe that civil service reform of this magnitude is far too important an issue for the Senate to remain silent. As the conference on the defense authorization bill begins, I hope that our efforts in this Committee, which, after all, has jurisdiction over the civil service laws, will help shape the outcome of the personnel provisions in the Department of Defense bill.

Our legislation would, among other things, provide the Secretary of Defense with the three pillars of his personnel proposal and thus would allow for a much-needed overhaul of a cumbersome, unresponsive system. Our bill would grant the administration's request for a new pay system, on-the-spot hiring authority, and collective bargaining at the national level.

In addition, our legislation would enable the Secretary to offer separation pay incentives for employees nearing retirement as well as to offer special pay rates for highly-qualified experts, such as scientists, engineers, and medical personnel. It would also help mobilized Federal civilian employees whose military pay is less than their Federal civilian salaries.

But we would not propose to give the Secretary all that he asked for. Instead, we have attempted to strike the right balance between promoting a flexible system and protecting employee rights.

For example, our bill takes a different approach to the issue of employee appeals. In contrast to the DoD proposal, our legislation does not grant the Secretary the authority to omit the Merit Systems Protection Board altogether from the appeals process. Instead, our legislation calls for a gradual transition from the MSPB to a new internal appeals process and requires the Department of Defense to consult with the MSPB before issuing the regulations creating the new process. In addition, our legislation retains the MSPB as an appellate body and gives the employee the option of judicial review if that employee is adversely affected by the final decision.

Our purpose is to ensure that the civilian employees at the Department of Defense are entitled to safeguards similar to those afforded other employees in the Federal workforce.

Another important difference is that our bill does not grant the authority to the Secretary to waive the collective bargaining rights of employees. The Department has repeatedly stated that it has no desire to do this. We take the Department at its word and, therefore, do not grant the broad authority it does not intend to use. Instead, our legislation places statutory deadlines of 180 days on the amount of time any one issue can be under consideration by one of the three components of the Federal Labor Relations Authority. This alone should improve the timeliness of the bargaining process and prevent the occasional case from dragging on for years.

The bottom line is, I believe that our proposed legislation would give the authority to the Secretary that he needs to manage and sustain a vibrant civilian workforce of some 700,000 strong. We are working hard to build a consensus on this legislation and to resolve these complicated issues in a fair and equitable manner. After all, the changes that we make in the Department's personnel system will affect more than one-quarter of the total Federal civilian workforce. We need to get this right.

I welcome our witnesses today. I look forward to hearing their views and insights on this important issue. As our Committee Members can see, we have an extremely distinguished panel before us.

Before I turn to our first panel of witnesses, I would like to call on my colleagues for opening statements. I would like to begin with Senator Levin, whose help has been invaluable in drafting the consensus legislation that we have introduced. He has a great deal of experience in Department of Defense issues as a result of his ranking member status on the Armed Services Committee and is actually the senior Member on this Committee, as well, so I am very appreciative of his efforts and I would like to call on him now for any opening remarks.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Madam Chairman. Thank you for calling today's hearing. With this Committee's jurisdiction over the Federal civil service system comes the responsibility for reviewing and considering proposed changes to the system, and I particularly appreciate our Chairman's determination to address this issue completely and fairly. This is the way she approaches all issues. She has used this approach, as expected, with this issue as well. This is an extremely complicated issue with a long history, but I commend her for her determination to look at this objectively and fairly and comprehensively.

I also join her in welcoming this very distinguished panel. The importance of the issue before us is demonstrated by the fact that they are here today. In the midst of all their other extremely significant responsibilities, they are here today to talk about an issue which obviously, just by their presence, illustrates its significance.

On April 11 of this year, the administration submitted a legislative proposal that would fundamentally alter the Federal civil service system by authorizing the Secretary of Defense to waive provi-

sions of law governing employee performance, pay and allowances, labor relations, hiring and firing, training, pay administration, oversight, and appeals. The administration proposal did not include any specific legislative procedures or processes for the new civilian personnel system, however, other than the requirement that the new system be "flexible and contemporary."

The Federal civil service system was established more than a century ago to replace a patronage system that was characterized by favoritism and abuse. As we contemplate the possible reform of that system, we must take care that we do not allow those abuses to resurface.

The Defense Department proposal would give the Secretary of Defense extraordinarily broad license to hire and fire employees and to set employee compensation virtually without legislated restrictions or constraints. This would not only be the greatest shift of power to the Executive Branch in memory, it would also put us at risk of a return to some of the abuses of the past.

While it is true that this proposal would preserve the merit system principles, it is not just the principles which are important, but also the processes and procedures by which these principles are implemented and enforced. If these processes and procedures are toothless, the merit system principles could become empty letters.

In short, I believe that we need to build some protections into any new system to avoid a return to the patronage, political favoritism, and abuse that characterized Federal employment before the advent of the civil service system. It is our responsibility to counterbalance the natural temptation for future Department of Defense officials to reward loyalty over quality of performance and provide pay and promotions to those who tell senior officials what they want to hear. I join in Chairman Collins' proposal because I believe that it would go a long way towards building these critical protections into any new system.

Department of Defense officials have stated that they need this new authority so that they can establish an expedited hiring process and institute a pay-for-performance system based on the pay banding approach used under several Department of Defense pilot programs. However, the administration's proposal does not even mention the words expedited hiring, pay for performance, or pay banding, let alone give any indication of how the new system would work.

The current civil service system, as our Chairman has mentioned, is not perfect, and I agree with her and join with her in stating that it can be improved. Indeed, every serious review of the current system, including both the Clinton Administration's National Performance Review and the recent report of the Volcker Commission, has concluded that improvement is needed.

For this reason, I supported a series of so-called demonstration programs, including the Defense Acquisition Workforce Pilot Program and the Defense Laboratory Pilot Programs, under which Congress has authorized the use of pay banding, rapid hire procedures, and other personnel flexibilities by the Department of Defense. Those demonstration projects are widely viewed as having been successful and have contributed to the Department's ability to attract and reward qualified personnel.

On the basis of that experience, it is reasonable to consider extending similar authority to other areas of the Department of Defense's civilian workforce. If we are going to do so, however, we have a responsibility to go beyond slogans and to authorize specific changes to address specific problems. If we throw out the old system without saying what we are replacing it with, we will find ourselves revisiting this issue again and again, year after year, as we try to patch together answers to questions that we should have answered in the first place.

That is again why I so appreciate the constructive approach that the Chairman has taken to this issue and have cosponsored the legislation which she has introduced. It does offer specific solutions to specific problems. Our bill would give the Department of Defense the flexibility that it seeks to establish pay banding, rapid hire authority, a streamlined appeal process, and national level bargaining, but it would do so without giving up the employee protections that are needed to prevent abuse and are needed to make the civil service system work. That is real reform. It is workable reform.

Again, I want to thank our Chairman for her extraordinarily constructive, detailed, and involved effort here and I again welcome our witnesses.

Chairman COLLINS. Thank you very much, Senator Levin.

I would now like to call on Senator Voinovich, who is the Subcommittee Chairman with jurisdiction over the civil service laws and has been the Committee's leader on human capital issues. He has worked very hard on this issue, as I mentioned in my opening statement, and I am delighted to call on him for his opening remarks.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Madam Chairman. I thank you for holding this hearing on the proposed National Security Personnel System for the Department of Defense. I welcome all of our witnesses, and I am especially grateful that Secretary Rumsfeld, General Myers, Admiral Clark, and Under Secretary Chu are able to join us today.

Mr. Secretary and General Myers, I commend you for your outstanding leadership during Operation Iraqi Freedom. Our world is a safer place because of the coalition you led to liberate the Iraq people and prevent a tyrant from using weapons of mass destruction.

During Desert Storm, I was Governor of Ohio and Commander in Chief of the Ohio National Guard, and because of that, paid particular attention to the way we waged war. Unfortunately, we lost 19 Ohioans in that conflict. The advances in military capabilities over the last 12 years are incredible. When I recently visited Wright-Patterson Air Force Base in Dayton, I was impressed at how proud General Lyles and his staff were of the technology that was used in Operation Iraqi Freedom, such as the Global Hawk and Predator Drone.

My discussions with General Lyles took place at a field hearing my Subcommittee conducted to examine the status of the civilian staff of the Department of Defense. It is hard to believe that there

are 740,000 civilian workers at DoD. That is about 40 percent of our entire Federal workforce. And as I noted that day, we must ensure that DoD civilians have the tools and resources they need to perform their critical mission. I was pleased that Under Secretary Chu testified along with Comptroller General David Walker, and I am glad that they are with us again today.

Madam Chairman, as you know, I have devoted a significant amount of my time to improving the culture of the Federal workforce. Over the last 4 years, my Subcommittee has held 13 hearings on the Federal Government's human capital challenges. I have worked with some of the Nation's top experts on public management to determine what new flexibilities are necessary to create a world class 21st Century workforce. Some of these include at Brookings Institution, the National Academy of Public Administration, the Volcker Commission, Harvard's Kennedy School of Government, various Federal employee groups, and members of this administration.

Four years ago, I was the primary sponsor of an amendment to the fiscal year 2000 defense authorization act that authorized 9,000 voluntary early retirement and voluntary separation incentive payments through this fiscal year. Of those 9,000 slots, 365 have been used at Wright-Patterson Air Force Base in Ohio to start reshaping their workforce. Even for such a modest reform proposal, I must tell you, it was like going through the Maginot Line to achieve this important authority for the Department of Defense. I will never forget the grief I went through just to get that little bitty change. [Laughter.]

I am gratified at how far we have come since 1999 and I am pleased that workforce reshaping reforms have helped make a difference for the Department. However, I share the concern of the Chairman and Senator Levin that some of the provisions of the current proposal go too far.

For example, the proposed removal of oversight authority and jurisdiction of the Office of Personnel Management and the Merit Systems Protection Board. I am also concerned, as Mr. Walker has observed at previous hearings, that DoD does not yet have the appraisal mechanisms in place to allow for a successful pay-for-performance system. Finally, as Dr. Chu knows, I am concerned about DoD's announced staffing reductions. These reductions are already impacting the Department's ability to reshape the civilian workforce, as was testified to by General Lyles at Wright-Patterson Air Force Base.

Madam Chairman, on many occasions in the Governmental Affairs Committee hearings, I have referred to the observations of former Defense Secretary James Schlesinger, a member of the U.S. Commission on National Security in the 21st Century, concerning the importance of Federal employees in national security agencies. Secretary Schlesinger noted that, "Fixing the personnel problem is a precondition for fixing virtually everything else that needs repair in the institutional edifice of the United States national security policy."

Mr. Secretary, I recognize we have different opinions on some of the key issues in your proposal, but I commend you for your zeal and your commitment. I know that because of your dedication to

solving this problem, we will finally make some real progress in this area. While I have some reservations about the breadth and depth of DoD's initial proposal and the House bill, I am delighted you are here and that we are finally tackling the human capital challenges at the Department of Defense. It is long overdue. Your presence here and your efforts in the House indicate that the light bulb has gone on and substantial progress will be made as a result of your efforts.

In that regard, Senators Collins, Levin, Sununu, and I have introduced S. 1166, the National Security Personnel System Act. We believe that our bipartisan legislation helps your efforts, although taking a different tack than your proposed National Security Personnel System. With the new threats of the post-September 11 world, it is appropriate that the Department of Defense is transforming its capabilities in force, and to achieve that goal, it is imperative the Department have the ability to reshape its workforce.

As a former mayor and governor, I know effective human capital management requires communication, collaboration, patience, and time. I believe managers should work with employees to establish policies that can help an agency accomplish its mission. I am pleased that the Department of Homeland Security is working with its employees to establish its personnel system, and I am pleased that some of the provisions for mandatory interaction between management and labor are contained in your proposed personnel system. It is extremely important that the employees be involved in shaping the new system.

Madam Chairman, I am sure that we are going to have a lively and engaging discussion with our distinguished witnesses today. Thank you for being here.

Chairman COLLINS. Thank you, Senator Voinovich.

I am now pleased to call on the Ranking Member of the Subcommittee, another long-time leader on civil service issues, Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Madam Chairman. I want to thank you for your personal attention to this issue and for the work you have done in forging a bipartisan bill.

I also want to thank Senator Levin and Senator Voinovich for your hard work and your efforts on this issue. The manner in which you have addressed the DoD personnel proposal is testament to the respect and commitment this Committee has for our Nation's Federal workforce.

I also wish to join my colleagues in extending my welcome and appreciation to our very distinguished witnesses.

About the same time that the Department unveiled its personnel proposals, the GAO reported that DoD's human capital strategic plans lacked key elements. Most of the Department and its components' human capital goals, objectives, and initiatives were not aligned with the overarching missions of the organization. In addition, the plans lacked information on skills and competencies needed to carry out the Department's missions. GAO found that the Department's civilian workforce shrank 38 percent from 1989 to 2002 and positions were eliminated without regard to the skills and com-

petencies need to carry out agency mission. The lesson learned was that there must be strategic planning before taking major personnel actions.

I just don't see how providing the Department the wide-ranging, broad authority it seeks without appropriate safeguards in place will appropriately address the shortcomings noted by GAO. I fear that approving DoD's proposal or the House provisions would give the Department of Defense the license to conduct surgical strikes on the civilian workforce.

For example, DoD seeks to waive Chapter 75 and 77 of Title 5 dealing with adverse actions and employee appeals. This would allow the Department to waive key employee rights, namely the right to a hearing on the record before an independent third party, current discovery rights, and the right to counsel.

It is unclear why the Department needs the authority to waive such important employee protections. Congress guaranteed these safeguards to ensure that the Federal workforce is treated fairly, in an open and transparent manner, and free from political pressures. It is inappropriate to request such authority without specific guidelines, credible management plans, accountability to Congress, and transparency of decisions.

As the ranking member of the Armed Services Readiness Subcommittee and co-chairman of the Senate Army Caucus, I am committed to a strong and viable military, and as the Ranking Member of the Governmental Affairs Subcommittee I am responsible for the Federal appeals process, and equally committed to protecting the rights of Federal employees.

Madam Chairman, I appreciate you holding today's hearing and I look forward to the testimony and discussion that will follow. Thank you.

Chairman COLLINS. Thank you, Senator.

I am now pleased to call on Senator Coleman, who has a great deal of experience with public employees as a result of serving as mayor. Senator Coleman.

OPENING STATEMENT OF SENATOR COLEMAN

Senator COLEMAN. Thank you, Madam Chairman. I want to join in thanking you for your leadership and your willingness to take on this tough issue.

This is a tough issue. When I got elected mayor in 1993, I was told that the toughest, biggest problems I was going to have were going to be on the personnel side and the human resources side and folks were right. So I applaud you for your willingness.

The reality is that we shouldn't be accepting a lesser standard of performance in government. It was very hard for me as a mayor to fire employees who weren't performing, and somehow this sense that we have a lesser standard that we will tolerate more insufficiency of performance on the public side shouldn't be.

So the challenge, then, is how do we do that? How do we maximize the human capital? How do we provide, as Senator Voinovich talked about, a world class 21st Century workforce and at the same time provide the kind of balance that we need? I want to applaud the Secretary for taking this on.

People talk about making change in government. It is not like a race car going around the track. It is like getting on an ocean liner and just kind of pointing in the right direction and hopefully it gets there. We have got to be able to move faster than that. We have got to be more efficient than that. We have got to be more capable than that. The American public deserves that.

So I want to applaud the Secretary. We certainly need to retain safeguards against arbitrary management actions. I don't think there is any question about that. We need to increase hiring flexibility and allow managers to reward the best employees. The American economy runs on paying for performance and rewarding quality and we should expect no less from government.

I look forward to hearing the testimony. I look forward to working with the Chairman in a bipartisan way, the other Members of the Committee, on the proposal the Chairman has set forth. I think we can provide that balance, we can provide that equilibrium, but we need to make changes. The current system is not one that Americans should accept. So again, I want to applaud the Secretary for bringing forth this proposal.

Chairman COLLINS. Thank you, Senator Coleman.

I am now delighted to call on the Senator from Illinois, Senator Fitzgerald.

OPENING STATEMENT OF SENATOR FITZGERALD

Senator FITZGERALD. Thank you, Madam Chairman. Mr. Secretary, General Myers, Admiral Clark, and Dr. Chu, I want to thank you for appearing here today and also congratulate you on the success in Iraq. It is an outstanding job and an important battle won in the longer war on terrorism.

The subject of today's hearing is transforming the Department of Defense's personnel system for the 21st Century. This is a vital issue affecting our national security and I want to thank Chairman Collins for holding this timely and important hearing today.

Mr. Secretary, you are to be commended for undertaking a monumental challenge at a challenging time in our Nation's history. That challenge is transforming our defense structure and bringing sound 21st Century management principles to a monolith of the Cold War. Our Nation is deeply engaged in the global war on terrorism. To fight and win this war, the Department of Defense needs sufficient flexibility in its civilian personnel system to expedite hiring, reward performance, and assign employees as necessary.

The terrorists who operate from the caves and threaten our country are not mired in bureaucracy. We cannot allow our red tape to become an ally of the al Qaeda. Therefore, more needs to be done to make the Department of Defense as agile as possible to confront these emerging threats, and reforming the Department's personnel process is an important step in that direction.

It is important for the Senate to have a healthy debate over the precise dimensions of the proposed National Security Personnel System. However, it is also important to recognize the main objectives the proposed system is designed to accomplish.

First, the National Security Personnel System would provide the Department of Defense with flexibility to manage its employees.

This will help the military to meet the rapidly changing security threats of the Nation by allowing managers to utilize employees' skills and services more effectively.

Second, it would strengthen the Department's performance and improve its financial management by rooting out fraud and abuse. When former Secretary of Defense James Schlesinger and Admiral Henry Trane testified last year before Congress, they stated that fixing personnel problems would pave the way for needed reforms in U.S. national security policy.

Third, it would provide for a swift and efficient defense support structure. The current civil service system uses a one-size-fits-all approach that does not suit the daily demands on the military for agility in today's security environment. Presently, it can take up to 3 months or longer for the Department to hire a civilian employee. The long hiring and promotion process discourages highly qualified candidates while at the same time impedes the mission of the Department.

I look forward to working with this Committee on legislation that would provide much needed flexibility to the Department of Defense to organize its more than 700,000 civilian employees.

Thank you for being here today, Mr. Secretary, and I look forward to your testimony. Thank you, Madam Chairman.

Chairman COLLINS. Thank you, Senator. Senator Lautenberg.

OPENING STATEMENT OF SENATOR LAUTENBERG

Senator LAUTENBERG. Thank you very much, Madam Chairman. I don't have a formal statement. I will just very quickly say that, before we get into the hard part of this exercise, I want to commend Secretary Rumsfeld, General Myers, and all those who served to accomplish the military objective that we had. Hats off to you. It was very well done. We are proud of those who did it. That doesn't mean I don't question what some of the outcomes have been, but I do salute all of you, to use the expression.

But I do want to discuss in some detail this suggestion that we transfer this huge group of employees, over 750,000, I believe is the number, to a different kind of a system, because the one that is in place doesn't work perfectly. But Mr. Secretary, I think you know I had a long experience in the corporate world before I got here and the company I helped start many years ago today employs over 40,000 people. It is a nice American success story, three poor boys who started a company that succeeded.

I found one thing, that the people who work for me in government now who are trying this a second time—the first 18 years, I didn't fully learn my lesson, so I came back to learn more—but one of the things that I have found is that the dedication, the commitment of those who work under the Federal system is unmatched. And again, I take it from my corporate experience, one of America's immodestly most successful companies, and I have seen the kind of output, throughput, commitment that is hard to find, and especially since a relatively modest wage scale is the reward for that.

The things that do supply some satisfaction, both psychic and real, are the benefits, so-called, and one of those benefits is the permanency of the employment, the ability to know that you have a job until retirement comes along.

So thank you, Madam Chairman, for the opportunity to express that and I look forward to hearing from our witnesses.

Chairman COLLINS. Thank you. Senator Stevens.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Thank you, Madam Chairman. I welcome all of you after a job well done and I consider you to be personal friends. I don't think there is a stronger supporter of the defense establishment in the Congress than I am.

I have served in the Executive Branch, both in civil service and as Presidential appointee twice, and I have been here through the periods of time of crisis in the past, from Vietnam, in particular during the Nixon fiasco. I believe that you are on the right track to modernize the concepts of dealing with personnel, civilian personnel for the Department of Defense, but I have got to ask you, what is the rush?

This bill came to us right after a success in the field. To some people, it implies that, somehow or other, civilian employees were responsible for some of the things that might have gone wrong in that period. I don't believe that is the case, but those are comments I got from home.

Beyond that, I am part of a group that was the author of creating a new executive civil service. The executive civil service concepts were to get us people trained and committed to public service who agreed upon request to transfer to any agency, including the Department of Defense, and I believe there have been those people in civil service who transferred to and from the Department of Defense. I find nothing in this bill that authorizes that.

There are some laws in this bill that I don't understand. I do believe that management should have greater ability to hire, particularly in times of stress, such as wars and emergencies, but I do believe there is an absolute necessity for a committed group of people who have decided to make civil service and the Department of Defense their careers, who can be protected against political change and personnel change above them, and can know that we value them as civil servants. Had we not had such a group during the period after the Nixon resignation and the changes that took place then, I don't think we would have had a stable government. They were the backbone of our society.

I think in this bill, there is a hint of discouragement to someone who is just out of college to think that he or she can set a goal to be a career civil servant in the Department of Defense. Instead, the emphasis seems to be that right now, we should hire the best and the brightest to do whatever job there is without looking anywhere to see who is in the Department that ought to be qualified for that job first.

I want to work with you, Madam Chairman, as a former Chairman of this Committee, and I want to work with the Department for the change that has been recommended to the Appropriations Committee as to how to handle money for all personnel, both civilian and military. These are sweeping changes and I don't think there is any rush.

I remember so well when I came here when someone told me, Mr. Secretary, that the Senate is sort of like the saucer in a cup

of coffee. You pour it a little bit, what comes over from the House, in that saucer and see how it tastes after it has cooled a little bit.

So I hope you will understand, as far as I am concerned, you have got a lot of great work in this bill that you suggested, but it is going to take some time to digest and it is going to take some time to hear those people who are going to be affected most, and they are the people who are mid-career right now who, I hope, some of them, at least, will make a decision to become career civil servants.

I congratulate you for what you have done and I particularly congratulate the command of the uniformed services. Mr. Secretary, you and your people have just done such an admirable job. I told someone the other night that my generation was called the greatest generation. This generation is all volunteers. Most of us were draftees. Every single one of the people you commanded was there because he or she chose to be there. That is what I would like to see for the whole Department, a Department of people who choose to be there and know that we will protect them once they make their decision.

I have got to go to another hearing. I thank you very much.

Chairman COLLINS. Thank you very much, Senator Stevens.

I would ask my remaining colleagues if they could give very brief statements, since the Secretary's schedule is tight, and I would call now on Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Why did you say that just before I spoke?

Chairman COLLINS. I apologize, Senator.

Senator CARPER. My reputation precedes me. [Laughter.]

Mr. Secretary, it is very good to see you, and Admiral Clark, welcome. It is always nice to have a Navy man in the room. General Myers, we have seen a lot of you. We welcome you. And Dr. Chu, thank you for coming.

Mr. Secretary, your back has been covered by former Congressman Pete Geren. He is an old colleague and we are delighted to see him, and we are watching carefully to see if his lips move when you speak, so we will see how that goes. [Laughter.]

I have a prepared statement I would like to offer for the record, if I could, Madam Chairman.

Chairman COLLINS. Without objection.

[The prepared statement of Senator Carper follows:]

PREPARED OPENING STATEMENT OF SENATOR CARPER

Thank you, Madam Chairman. I am pleased that this Committee is holding a hearing today on proposed changes to the Defense Department's civilian personnel system. As my colleagues know, these are very difficult issues. Those of us who served on this Committee during the 107th Congress when we considered the Homeland Security Act should be especially aware of that.

The Federal civil service was created in part to separate from the political process those workers who provide essential services to the American people. The old system, in which employees were often thrown out with every change in administration, bred nepotism, bribery and poor government service. I am concerned, then, that the Defense Department proposal we are considering today essentially allows the Secretary of Defense to remove 700,000 civilian employees from the civil service and put them under new work rules which can be changed at any time without any input from Congress.

That said, none of us should pretend that work rules at the Defense Department and a number of other departments and agencies do not need to be studied or changed. That is why I commend Chairman Collins for working with Senator Levin and others to develop S. 1166, a bipartisan bill that allows for change within the Defense Department's civilian workforce but does not give the Secretary of Defense the sweeping authority he seeks.

S. 1166 is far from perfect, however. In addition, the Defense Department has yet to demonstrate to my satisfaction the need for the kinds of dramatic changes they ask for. Our armed forces just finished fighting two very successful wars in the Middle East. The 2,000 civilian employees at the Dover Air Force Base in Delaware who I represent played a significant role in both conflicts in providing the strategic airlift capability that brought supplies, equipment and personnel to the battlefield. I know of no personnel problem occurring at Dover or anywhere else during the conflicts in Afghanistan and Iraq that threatened our national security or hindered the military's ability to fight.

It might well be best, in my belief, if any attempt to reform the civil service were a government-wide initiative. Any department—or agency—specific measures should be narrowly tailored to address specific agency needs. Unfortunately, what the Defense Department is asking for is far from being narrowly tailored. It is my hope that this Committee can continue to work in a bipartisan fashion to study what needs to be changed at the Defense Department and develop legislation that accomplishes the Department's goals in a way that is fair to employees. The Chairman's legislation is an excellent start and I commend her again for her efforts.

Senator CARPER. I am delighted that you and, I think, Senator Levin and others on both sides of the aisle, have offered legislation that deals with some of the issues that are going to be spoken to at today's hearing and I think this is especially timely, coming at the end of the war in Iraq and not long after military action in Afghanistan, where we can actually look at how the current rules with respect to personnel, civilian personnel, have helped or hindered our ability to extend our military might around the world, protect our security, and to make sure that our interests around the world are addressed.

So this is very timely and we look forward to hearing what you have to say. I also want to look at it in the context of the authorization we provided for the new Department of Homeland Security, whether what they have is working well, and if so, how that might be extended to the Department of Defense.

Again, Madam Chairman, most timely, and I think I did that in a minute.

Chairman COLLINS. You did. Thank you so much.

Senator Sununu is a cosponsor of the legislation. I appreciate his support and I would call upon him now.

OPENING STATEMENT OF SENATOR SUNUNU

Senator SUNUNU. Thank you. Welcome, Mr. Secretary. No one will ever say of Secretary of Defense Donald Rumsfeld, he feared change. [Laughter.]

But I think it is appropriate and important that that is the case because we have a whole new set of national security challenges and that has already required and will continue to require new organizational structures, new priorities, and new sets of initiatives to protect our country. I think, I believe most of the Committee Members recognize that and I hope they embrace that need for change, as well, and I think that is what we are here to talk about today.

I am pleased to have supported the Chairman in working to craft legislation that does accomplish the goals of change and moderniza-

tion within the DoD civil service. As you well know, the proposal that she has crafted is not 100 percent of what Defense was looking for, and we are going to talk about that today. But I don't for a minute believe that is because the motives of Defense in putting forward this proposal were bad or were weak in the least. This isn't about surgical strikes on any employees. It is not about retribution. It is not about blame. It is about creating a defense system that does transform and modernize the Pentagon and that ensures that we can face these new national security challenges.

The proposal that has been offered protects their rights of collective bargaining and mediation and so forth, but at the same time, it does accomplish what I hope, I believe some of the principal goals of your proposal has been, and that is to establish a pay for performance, to establish much greater flexibility in hiring, which I don't think is a bad thing and I think will only strengthen the opportunity that the Pentagon creates for new entrants and, of course, move toward national level bargaining, which only makes common sense.

I am excited that these changes are occurring. I think there is going to be a lot of work to be done, and I am sure a lot of give and take in making this proposal, legislation, as strong as it can be. I look forward to working with you and with Madam Chairman.

I would finally just ask unanimous consent that I might be able to submit some testimony from the Federation of Professional and Technical Engineers, being a former engineer and maybe being an engineer again someday. I have appreciated working with the IFPTE and would ask unanimous consent to submit their testimony for the record.[1]

Chairman COLLINS. Without objection.

Senator SUNUNU. Thank you very much.

Chairman COLLINS. Thank you, Senator. Senator Durbin.

OPENING STATEMENT OF SENATOR DURBIN

Senator DURBIN. Thank you, Madam Chairman for this hearing, and I thank the Secretary and those who have gathered with him.

Mr. Secretary, I don't know if you are aware that General Myers recently visited Chicago. If I am not mistaken, he was at the Memorial Day parade. I am sorry I couldn't join you, but I am happy to have had you there.

General MYERS. It was a great day. Thank you.

Senator DURBIN. I am going to submit my statement for the record in the interest of giving you the chance to make your statement. But I do believe that what is at issue here at this hearing is fairly fundamental. We have to answer the following questions. Is collective bargaining inconsistent with quality performance? Is membership in a union inconsistent with pursuing the goals of national security? Is our existing Federal workforce incapable of meeting the challenges of the 21st Century?

I think those are all fundamental questions. We debated some of them in the course of creating the Department of Homeland Security. We will debate them again today.

[1]The prepared statement of the International Federation of Professional and Technical Engineers appears in the Appendix on page 130.

I think those who view collective bargaining in a negative context see it as part of bureaucracy, featherbedding, a contentious work atmosphere. But there are positive sides to this which I think we must not overlook. It really does, in a way, give us a chance to create professional employees who are rewarded without fear of political retribution and unfair treatment by their superiors. It also dignifies work. It says to people, you will have a voice in your destiny. You are not just a pawn to be moved on a board, taken off when necessary, put back on when necessary. You have a place. You have a voice. And I think that is what is at the heart of this debate.

I want to salute the Chairman and Senator Levin and Senator Voinovich in particular, because he has devoted more of his time as a U.S. Senator to professionalize the Federal workforce than any one of us. I have been to many of those hearings. George, you have led the way on this and I am glad that you are part of this conversation today.

Thank you for being here, Mr. Secretary.

[The prepared statement of Senator Durbin follows:]

PREPARED OPENING STATEMENT OF SENATOR DURBIN

Thank you, Senator Collins, for scheduling this hearing to examine the Department of Defense's proposed civilian personnel reforms.

I know that you, Senator Levin, Senator Voinovich, and many others from our Committee, have worked tirelessly over the past several weeks to respond to the Department of Defense's personnel reform proposal. You have developed legislation that provides many of the Department's requested personnel flexibilities. However, you have done this while making sincere efforts to balance these new flexibilities with the continued responsibility to protect the rights of the Department's vast civilian workforce. Let me take this opportunity to say that I appreciate your efforts.

I would also like to thank each of the witnesses appearing before this Committee today. I look forward to hearing your testimony and hope to gain further insight into the issues surrounding the proposed reforms.

The civil service system in this country as we know it today was developed over the past century. The laws governing the system were created to ensure that Federal jobs were awarded on the basis of merit and competence, and not on the basis of political patronage. This system has provided, and continues to provide, vital protections to Federal employees.

Last year, Congress passed the Homeland Security Act which provided various waivers to personnel protections created as part of our civil service system. The rationale behind this decision was that more than 20 different Federal agencies operating under different personnel systems were coming together to form a new department, and the Secretary of Homeland Security needed the ability to efficiently organize the workforce.

Now the Department of Defense has requested similar personnel reforms to those given to the Department of Homeland Security. However, the Department of Defense's proposal will affect approximately 700,000 civilian employees, which is almost one-third of the Federal civilian workforce. This is over four times the number of employees affected by the Homeland Security Act. Also, unlike with the Department of Homeland Security, the Department of Defense has failed to provide a reasonable justification for its requested personnel reforms.

Because of the quantity of employees affected, and because these personnel reforms, if enacted, could serve as precedent for reform for the rest of the Federal Government, we must be cautious and deliberate about the type of personnel system we are willing to authorize for DoD. This is especially true when we consider that we do not yet know the outcome of the personnel reforms provided to the Department of Homeland Security last year.

First and foremost, we must ensure that any new personnel system protects the rights of Federal employees. Employees must have meaningful due process and appeal rights. If pay and hiring flexibilities are incorporated, DoD must have management systems in place to ensure any new personnel system operates with equity and minimizes the chances for political abuse. Finally, collective bargaining rights for

employees must be preserved so that every employee has a voice in the personnel system affecting him or her. I believe Senator Collins has made significant strides toward successfully addressing each of these issues.

I am anxious to learn more from Secretary Rumsfeld and the other witnesses from the Department of Defense about the apparent urgent need for such sweeping personnel reforms, especially when the current personnel system appeared in no way to hinder efforts during the war in Iraq. I hope you are prepared to provide us with a justification for the proposed reforms and will detail DoD's use of current statutory personnel flexibilities.

Once again, I want to thank Senator Collins for calling this timely hearing. I look forward to continuing my work with you on this issue.

Chairman COLLINS. Thank you. Senator Pryor.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Thank you, Madam Chairman I wasn't going to say anything other than thank you for having this hearing today. It is very important and it is very important for our long-term security. It is also very important for the Senate to hear these matters and try to have our oversight responsibility fulfilled. So thank you for doing this.

Chairman COLLINS. Thank you.

Well, at long last, we now will move to our first panel of witnesses. I want to thank you for your patience. As you can see, this issue is of great importance to many Members who were eager to express their views on it.

I want to welcome our Secretary of Defense, Donald Rumsfeld. I want to join my colleagues in commending you for your outstanding leadership of the war against terrorism. We are very pleased to have you take the time today to be with us to present the Department's views.

Accompanying the Secretary are General Richard B. Myers, the Chairman of the Joint Chiefs of Staff; Admiral Vern Clark, the Chief of Naval Operations; and Dr. David Chu, the Under Secretary of Defense for Personnel and Readiness. Welcome.

Secretary Rumsfeld, you may proceed.

TESTIMONY OF HON. DONALD H. RUMSFELD,[1] SECRETARY, U.S. DEPARTMENT OF DEFENSE; ACCOMPANIED BY GENERAL RICHARD B. MYERS, CHAIRMAN OF THE JOINT CHIEFS OF STAFF, U.S. DEPARTMENT OF DEFENSE; DAVID S.C. CHU, PH.D., UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS, U.S. DEPARTMENT OF DEFENSE; AND ADMIRAL VERN CLARK, CHIEF OF NAVAL OPERATIONS, U.S. NAVY

Secretary RUMSFELD. Thank you very much. Madam Chairman, Members of the Committee, I thank you for your statements and comments and interest and also for the opportunity for us to discuss this proposal by the President for the National Security Personnel System.

As was mentioned, it is extremely important to the Department of Defense. That is clear by the presence of the Chairman of the Joint Chiefs of Staff, by the Chief of Naval Operation, by Under Secretary Chu, who has spent much of his life and leads the Pentagon effort with respect to these matters.

[1] The prepared statement of Secretary Rumsfeld appears in the Appendix on page 55.

As the Members well know, we are in a new security environment, an unprecedented global war on terror, and we need to be able to deal with the emerging new threats with a Department of Defense that is fashioned for the information age and the 21st Century. The threats we are facing are notably different, as each of the Senators here know well. And to deal with the new threats, we believe we not only need new military capabilities that are flexible, light, and agile so we can respond quickly and deal with surprise, but we also need a Department that operates in a way that enables it to demonstrate flexibility, as well, so that it can respond skillfully.

Today, we just simply don't have that kind of agility. In an age when terrorists move information at the speed of an E-mail or money at the speed of a wire transfer and fly around in commercial jetliners, we still do have bureaucratic processes of the industrial age as opposed to the information age. Consider a few examples.

Today we have, I am told by Dr. Chu, some 300,000 to 320,000 uniformed personnel, men and women in uniform, who volunteered to serve in a military capacity performing non-military jobs. Now, there is something wrong with that picture. I suspect we also have some very large number of contractors performing tasks that ought to be performed by career civil service personnel.

Three-hundred-and-twenty-thousand military people performing civilian functions is more than two-and-a-half times the number of troops that were on the ground in Iraq when Baghdad fell, and why is that? Well, it is because managers are rational. They have a task, they are going to be held accountable for that task, and they are asked to do it.

So they go out and they reach for somebody that can help them do that and they reach for military people because they know they can bring them in, they can calibrate them, they can move them, transfer them someplace else when the time comes, and they give them the flexibility to do the job that they are being held accountable to perform. Or they reach for civilian contractors because they know they can do the same thing. They can bring them in, ask them to do a job, stop them from doing the job, move them where the job needs to be done. And they avoid reaching for the career civil service.

That is why we have 320,000 military people doing civilian jobs, because managers are rational. They can do those things in the contracting world and in the military world without a lot of delays or bureaucratic obstacles. But they can't do that with the civil service, unfortunately.

The unwillingness to put civilians into hundreds of thousands of jobs that do not need to be performed by the uniform or by contractors really puts a strain on our system. It is not right, especially at a time when we are calling up the Guard and Reserve and asking them to serve, it is not right to have that many military personnel doing civilian functions at a time when we have stop loss imposed and we are not letting people out who have completed their tours and are asking to be released from the military and we are preventing that because we need them on active duty.

It has to be also demoralizing for the civilian personnel themselves. These are patriotic, terrific people, and we all know that

and you have mentioned that. They come into government because they want to make a contribution, and when a challenge arises or a crisis and their skills and talents are needed, they want the phone to ring. But if the phone doesn't ring, the phone rings for the military or the phone rings for contractors but not for the civilian personnel, it has to be demoralizing.

Consider this. In Operation Iraqi Freedom, 83 percent of the civilians that were deployed into the theater of central demand were contractors. Only 17 percent were civilian Federal workers. Why would that be the case? Well, it is because in most cases, the complex web of rules and regulation prevents the Department managers from moving DoD civilians to new tasks quickly. As a natural result, the managers turn to the military or the private contractors. Because of these rules, we have to cope with that we are losing talented young people to private sector competitors.

When the DoD recruiters go to a job fair at a college and they walk in and the person sitting next to them is from a corporation, the corporation can offer that young person looking for a job a job. They can say, here is what your salary will be. Here is what the bonus will be. Here is where you will work. Say yes, no, or maybe.

What does the government person from DoD do? They walk into the job fair and all they can do, sitting right next to a corporation, all they can do is hand them a ream of paper to fill out and tell them, sorry, we can't offer you a job. Fill all this out. It will take months before we will know. And I guess it should come as no surprise that many talented young people are working somewhere other than the Department.

This is a problem that will grow more acute every year as the baby boomer generation employees start to retire. As Members of this Committee, you have been told, as I have, that it is estimated that up to 50 percent of the Federal employees will be eligible to retire over the next 5-plus years. According to one institute, a recent survey of college students found that most would not consider a career in government because, among other things, the hiring process is byzantine.

I served on the first Volcker Commission on public service and I was over with Paul Volcker yesterday and he was discussing this problem as a very serious one, and some studies they have done of young people's attitude about government service. The future of our national security depends on our ability to make it less byzantine and less burdensome on the employees.

In addition, the current system prevents us from dealing effectively with fraud. I am told that the recent scandals you have read about regarding the abuse of government purchasing cards, that with respect to military—they were being used to buy cameras and various things that they shouldn't have been used to buy for. With DoD personnel, uniformed personnel, if abuse like that occurs, we have the ability to garnish their wages and we can recover the stolen funds, but not so with civilian personnel. In fact, Dr. Chu tells me that DoD has been negotiating now for more than 2 years with more than 1,300 union locals for the right to garnish wages in the event that there is fraud in the use of purchasing cards, and we still have 30 more unions to go.

Now, I think it is unacceptable that it takes us years to try to deal responsibly with employees that are stealing the taxpayers' money. If a private company ran its affairs that way, it would go broke and it ought to go broke.

There are other such examples that the Chief of Naval Operations, Vern Clark, and others can mention.

I would like to interrupt my comments for a moment and let Admiral Clark, who has invested an enormous amount of time on this subject—and I know Dick Myers has a statement after Vern Clark and I complete my remarks, but I think, Vern, you might want to comment on some of the things you are wrestling with.

Admiral CLARK. Thank you, Mr. Secretary and Madam Chairman. It is great to be with you this morning.

Let me just cut right to the chase. I am encouraged by the support of all the Members of this Committee and the recognition that we need to reform the system. I have a responsibility given to me by law, Title 10, that lays out what Vern Clark is responsible for, and it is straightforward. The law says, organize, train, and equip the force. And then I turn it over to guys like Tommy Franks, who go and command and lead and fight the Nation's wars.

The fact of the matter is, and I wrote down some of the things that were said here, we do have to recruit and retain the right people to have the kind of fighting force that will win tomorrow's wars. I couldn't agree more with, Madam Chairman, your comment that the system today is not responsive, and that is the problem. I also couldn't agree more, Senator Voinovich, your comment that James Schlesinger said that you have to fix the personnel system before any of the other pieces are really going to be whole.

And I would like to testify, and many of you have heard me testify in other committees—this is the first time I have been to this Committee—but in the military committees that on the military side, I believe that in the Navy, we have proven that. For 3 years, we have had as our No. 1 priority the battle for people, and what happened in Operation Iraqi Freedom and Enduring Freedom happened because our personnel readiness is better than it has ever been before.

But my whole personnel system is not just the uniformed piece, and the Secretary talked about 300,000 uniformed members, and so forth. It is, and this is the thing that I have learned since I have been in this position, that it is the combination of the military structure, it is my reserve structure, it is the 200,000 civilians that I have, and Secretary England gave me the number when we were researching this that I have fundamentally 234,000 contractors in the system and they are in the system because of the principles and the faults with the civilian personnel system that the Secretary is outlining.

I can give you case after case where the lack of responsiveness that we have in our civilian personnel system is preventing us from having the right kind of system to make our Navy and the rest of our military what it needs to be. If the rest of the Chiefs were sitting here, and fundamentally, I am here as one of them, they all have the same kinds of problems. They would tell you that we—and my belief is that no navy is going to go toe-to-toe with me in the future, with our Navy. They are not going to do that. Our Navy

is too strong. What they are going to do is that they are going to come at us with asymmetric methods.

Our asymmetric advantage is our people. Our advantage is the ability to bring the genius of the American citizen, sons and daughters of America, to the task. And I have case after case that shows that the system that I have today is preventing me from executing my Title 10 responsibility to provide, organize, train, and equip in the most efficient manner and to produce the fighting capability that I am being called upon to deliver for this Nation.

So, Madam Chairman, that is why I have spoken everywhere I get a chance to speak to the requirement for us to transform this system, and I appreciate, Mr. Secretary, you giving me the chance to come and speak here today. Thank you.

Secretary RUMSFELD. Madam Chairman, if I could just proceed, we find that it is currently taking us about 5 months to hire a new Federal worker and it takes 18 months to fire a Federal worker. Pay raises are based on longevity, not performance, in large measure.

Over the past several months, we have worked with the Congress and tried to fashion language that would give us the needed flexibility. A portion of that proposal we made was approved by the House, as you mentioned. These proposals did not come out of midair. These are based on personnel management systems that Congress approved last year for Homeland Security and many years of experience with a number of successful congressionally authorized programs, including the China Lake program, which went back two decades.

So a lot of the things that we are talking about here have been tested and proven out. The pilot programs, which now involve over 30,000 DoD employees, tested many of those reforms, including pay banding systems, simplified job classifications, pay for performance, recruiting and staffing reforms, scholastic achievement appointments, and enhanced training and development opportunities. In each of those demonstration programs, when measured, employee satisfaction has been high and the employers are retaining more of their top performers.

Our objective is to take those successful congressionally approved pilot programs and expand them throughout DoD so that more civil service employees can benefit from the increased opportunities that they have created, and so that their greater effectiveness can be applied across the Department.

Let me also say, I have watched this debate and I know that there is resistance to this change, and Senator Sununu mentioned how tough change is, and it is hard. But there has been a good deal of misinformation circulating about these proposals, and let me put a couple of the myths to rest.

Here is what the National Security Personnel System we are proposing will not do, contrary to what you may have read or heard. It will not remove whistleblowing protections. Those who report management, mismanagement, fraud, other abuses, will have the same protections that they have today. It will not eliminate or alter access of DoD employees to the Equal Opportunity complaint process.

Nothing in this proposal affects the rights of DoD employees under our country's civil rights laws. I was in Congress in the 1960's. I voted for all the civil rights legislation and I can tell you that is a red herring.

Notwithstanding the allegations to the contrary, these proposals will not remove prohibitions on nepotism or political favoritism, as has been charged. Those things will properly continue to be prohibited. It will not eliminate veterans' preference. That also is a false charge.

It will not end collective bargaining, as has been suggested. To the contrary, the right of defense employees to bargain collectively would be continued. What it would do is bring collective bargaining to the national level so that the Department could negotiate with national unions instead of dealing with more than 1,300 different union locals, a process that is inefficient. It simply is grossly inefficient.

It will not give the Department a blank check to change the civil service system unilaterally. Like the system Congress approved for the Department of Homeland Security, before any changes are made to the civil service system, the employees' unions must be consulted. The Office of Personnel Management is involved in design and any disagreements would have to be reported to Congress.

What it would do would be to give the President a national security waiver that would allow him to give DoD flexibility to respond in the event our national security requires us to respond and act quickly. Congress has regularly approved such national security waivers and various laws involving defense and foreign policy matters, recognizing the need of the Commander in Chief to deal with unforseen threats and circumstances.

The National Security Personnel System will not result in the loss of job opportunities for civil service employees. That is a charge that has been made. To the contrary, it is the current system that limits opportunities for DoD civilians by creating perverse incentives for managers to give civilian tasks to the military personnel and to give civilian tasks to contractors. We believe that the transforming initiatives we are proposing would most likely generate more opportunities for DoD civilians, not less.

I can assure you, I do not want 300,000 or 320,000 men and women in uniform doing jobs that are not the responsibilities of uniformed personnel. We don't. We want them doing military tasks, and that is why they joined the military in the first place.

Members of the Committee, we need a performance-based promotion system for our civilian workforce. We need a system that rewards excellence, similar to the one Congress insisted on for the men and women in uniform.

Congress has granted the Department of Defense the flexibility to manage the Nation's largest workforce, the uniformed military personnel. It works. The results are there for all to see. They are disciplined, they are well trained, they are highly effective, they are successful, and I would add they are also a model of equal opportunity employment. We are simply asking that Congress extend the kinds of flexibilities they need to give us in managing the men and women in uniform, also to manage the civilians.

As Paul Volcker put it yesterday when he supported our approach, he said we have an opportunity to make real and constructive change in the way the civil service is managed in the United States. If the Department of Defense is to stay prepared for security challenges in the 21st Century, we have to transform not just our defense strategies, not just our military capabilities, but we have to also transform the way we conduct our business.

One thing we know from the recent conflicts in Afghanistan and Iraq. The enemy is watching us and they are going to school on us. They are studying how we were successfully attacked. They are studying how we responded and how we might be vulnerable again. And in doing so, they are developing new ways to harm our people, new ways that they can attack to kill innocent men, women, and children. And as was mentioned earlier, they are not burdened or struggling with massive bureaucratic red tape fashioned in the last century.

What this means is that we need to work together to ensure that the Department has the flexibility to keep up with these new emerging threats. The lives of the men and women in uniform and, indeed, the American people depend on it. I hope that you will help us try to bring this Department into the 21st Century, and I thank you, Madam Chairman, for the opportunity to testify on this important national security issue.

Chairman COLLINS. Thank you. General Myers.

General MYERS. Thank you, Madam Chairman and Members of the Committee. I have just a short statement and I thank you for the opportunity to be able to be before you today and to reiterate Secretary Rumsfeld's and Admiral Clark's requests for your support of this important initiative.

First, let me begin by focusing on our soldiers, sailors, airmen, Marines, Coast Guardsmen, and DoD civilians. As Senator Stevens said, our success in Operation Iraqi Freedom and the war on terrorism in general are really a testament to their dedication and their professionalism and I thank all of you for supporting all our efforts.

With regard to transformation, we have got to transform if we are going to continue to be successful in the 21st Century. We must continue our emphasis on more agile forces, on improved command and control systems, on more precise combat power, on better integrated joint team from the planning through execution.

But our vital civilian workforce must also be part of this transformation. My calculations show that of our active duty workforce, the folks that show up every day, excluding the reserve component, about 36 percent of that workforce are civilians. So they have got to transform, as well. We have got to transform that system so they are more agile and responsive in terms of hiring, in terms of the task management, the ability to assign different tasks, and, of course, in rewarding performance.

As you heard from Vern Clark and the Secretary, taking care of our people, whether in uniform or not, is a responsibility we take very seriously, and we are obviously dedicated to the best practices that benefit the workforce as well as the Department of Defense. Clearly, fair, ethical treatment of employees, employee safeguards are essential to all that and are part of these proposals.

As Vern Clark told you, the Joint Chiefs of Staff have been working on this issue with Secretary Rumsfeld and his staff now for many months and all services are just as concerned as the U.S. Navy, represented by Admiral Clark, and frankly, we need your help. As Vern said, we need your help to be able to do our job.

As the Secretary said, we don't know what the crisis or contingency is really going to look like. It will probably not look like the operation we just saw in Iraq. And so what we need is your support so we can be responsive to whatever challenge we face here in this 21st Century, and we thank you for your support and your continued support. Thank you.

Chairman COLLINS. Thank you, General Myers.

Dr. Chu, do you have a statement?

Mr. CHU. No, ma'am. I have nothing to add.

Chairman COLLINS. Thank you.

Secretary RUMSFELD. He has the answers to all the questions, Madam Chairman. [Laughter.]

Chairman COLLINS. Mr. Secretary, many of us will direct them to you, but you do have the right to be able to ask others to answer. We now will turn to 6-minute rounds of questioning.

Mr. Secretary, as you are well aware, just last year, the Congress granted to the Department of Homeland Security unprecedented authority to develop a modern, flexible personnel system for its 170,000 employees. Now, many people have argued that it would make more sense to wait until that major undertaking were complete to learn from DHS's experience before undertaking another wholesale revamping of the personnel system for hundreds of thousands of additional Federal workers. What is your response to that concern?

Secretary RUMSFELD. I would make a couple of comments. My understanding is that the kinds of flexibilities we are requesting, some are very similar to the Department of Homeland Security. Others are things that have been granted to other departments and agencies previously. Indeed, there are a number of agencies that have a number of the flexibilities that we are requesting.

I would also say that a number of the things that we are proposing date back as far as 20 years to the China Lake effort. In other words, Congress authorized the experiments and the pilot programs. We have done them. We have tested them. It is not as though these things are new, in many respects.

I would also say that there is always a fair argument about changing anything, that is "Let us wait," and my problem with it is that we have enormous challenges in the world and that we could look at the outcomes, and we know the outcomes are wrong. The outcomes are unhappy outcomes. The fact that we have got 300,000-plus military people doing civilian jobs did not just happen. It happened because people looked at what they needed done and they went right to the military or they went right to contractors and they stayed away from the military service and they did it because they are rational, because they were being held accountable for performing important national security responsibilities and they made a judgment. They voted with their feet. They said, "I am going to do that."

I think the evidence is so overwhelming that the changes need to be made, my feeling is that while it would be nice to test any conceivable change, and I don't disagree with that and I see the logic to it, I think that we are well past that point in our circumstance.

Chairman COLLINS. Mr. Secretary, one of the major differences between our approaches concerns the appeals process for employees. Now, I agree with you that the current system is too slow, it is too complicated, and it is too inflexible, but in designing a new system, we need to ensure that it is not only fair, but that it is perceived as fair by Federal employees. That means that there has to be adequate due process and there has to be an independent decision maker, in my view.

The Department has proposed doing away with the role of the Merit Systems Protection Board altogether and instead coming up with an appeals process that would be internal to DoD. If the Department essentially sets up an appeals process whereby Department employees will be judging the action of the Department's own supervisors, my concern is, will you be able to assure employees that the decisions that are rendered are fair and impartial? If there is no appeal of adverse decisions to an outside, independent entity, other than going to Federal Court with all the problems that entails, how will your employees be assured of a truly independent and unbiased review and decision?

Secretary RUMSFELD. I would like to ask Dr. Chu to answer that question, and it is because I am plucky, but I am not stupid. I know this is a very complicated area and I agree completely with you that it is important that any process be seen as fair if you are going to be able to attract and retain the people you need. You have to have that element of perceived fairness. My reading of the process that Dr. Chu has proposed here and that we are proposing is that it would have that perception of fairness.

Do you want to comment on it, Mr. Chu?

Chairman COLLINS. Dr. Chu.

Mr. CHU. I would be delighted to. First, let me emphasize that our proposal envisages working with the Merit Systems Protection Board in designing an alternative appeals process under the construct that we have advanced.

Second, I want to emphasize that we are not the only critics of the appeal process. There is a very good GAO report, testimony from 1996 to the Congress on this issue, and it says, "Its protracted processes and requirements," referring to the appeals process, "divert managers from more productive activities and inhibit some of them from taking legitimate actions in response to performance or conduct problems."

And that is, indeed, our experience. We have a nice list of—unfortunately, I should emphasize—a list of cases where employees, in our judgment, misbehaved very substantially—sexual harassment, or trying to run over your supervisor with your own vehicle. The Department's sanction, as would be in the military, would be to fire the individual. The appeal to the external review party, in this case the Merit Systems Protection Board, led to substantial downgrading to only suspension, and I think you have too much di-

vergence in the current system between the immediacy of the facts that we confront and the remoteness of the appeal authority.

The use of the internal appeal process—we would have an appeal process if Congress would grant us the authority we are seeking in this statute, but it would be internal to the Department of Defense. I think there is ample precedent to demonstrate the Department can handle that in a responsible fashion. That is true of military crimes already, the Court of Military Appeals inside the Department of Defense. It is true of contract disputes with the Board of Contract Appeals.

So I think there is plenty of history, evidence, structure, and analogy within the Department that would allow an internal process to be more expeditious and, I think, more fair ultimately to all the employees who do perform well, who do exemplify high standards of behavior. They don't want, in my judgment, and I think survey evidence supports this, they don't want the rotten apples in their midst, either, and they resent it when the outcome is a slap on the wrist for what everyone sees as a horrendous offense.

Chairman COLLINS. My time has expired, but let me just make one quick point. One of the key differences between our two proposals is you would eliminate the role of the Merit Systems Protection Board altogether other than having a consulting role as you are setting up your new internal appeals process. We would change the role of the Merit Systems Protection Board by changing it to an appellate body. It would no longer do a *de novo* review of the case. So you could solve a lot of the timeliness problems, a lot of the cumbersome, complicated process, but you would still have the ability for an employee to appeal an adverse decision outside of the Department, and I think that is an important protection.

Senator Levin.

Senator LEVIN. Thank you, Madam Chairman.

Mr. Secretary, you have stated that the Department currently has 300,000 positions occupied by military personnel that could be performed by civilians. Has the Department made a formal study to lead you to that conclusion? Where does that number come from?

Secretary RUMSFELD. From Dr. Chu. [Laughter.]

Mr. CHU. It comes originally from the Task Force on Defense Reform that the previous administration constituted. We maintain a series of inventories of government, of all our positions against this issue of what is inherently governmental, what can be considered commercial activity, etc.

Senator LEVIN. Can you give us that inventory, share that with the Committee?

Mr. CHU. We will be delighted to provide that information.[1]

Senator LEVIN. And that inventory totals 320,000?

Mr. CHU. Our conclusion is there are as many as 320,000 military positions that could conceivably be performed by civilian personnel, yes, sir.

Senator LEVIN. My question, though, is does the inventory that you referred to total 320,000?

Mr. CHU. There are several inventories, to be precise about this——

[1] The information from Mr. Chu appears in the Appendix on page 156.

Senator LEVIN. Does any inventory total 320,000?

Mr. CHU. The short answer is yes, sir.

Senator LEVIN. Thank you. One of the most important rules that precludes the—and if you will get us all the inventories, I would appreciate it.

One of the most important rules that precludes the Department of Defense from hiring civilian employees to perform new functions is the limit on the number of civilian employees, the so-called full-time equivalent or FTE ceiling that is imposed by OMB. I am wondering whether the administration has any plan to eliminate that FTE ceiling, Mr. Secretary.

Mr. CHU. If I may, sir, this is one of the many red herrings the Secretary has referred to. I have signed more than one memorandum within the Department emphasizing, as Congress has directed, we are not to manage by FTEs. We manage by money as far as civilians are concerned.

So I don't want to be naive about this. There is a large culture out there that in terms of convenience in management still thinks about itself in terms of FTEs, but we are trying to get the Department off this outdated concept.

Senator LEVIN. Is there an FTE ceiling imposed by OMB?

Mr. CHU. Not that I am aware of.

Senator LEVIN. Next, Mr. Secretary, you have referred to the high percentage of civilians in the Iraq theater who are contractors. Many of these civilians are performing short-term surge-type functions——

Secretary RUMSFELD. That is true.

Senator LEVIN [continuing]. Such as responding to oil well problems, rebuilding bridges, port facilities, and the like. Are you suggesting that the Department of Defense should hire civilian employees on a short-term basis to perform functions like those?

Secretary RUMSFELD. No, I am really not. You are quite right. The number of civilians in the theater are involved in a full spectrum of activities, some of which are undoubtedly not appropriate for permanent employees. On the other hand, the 83 percent to 17 percent seemed to me like a disproportionately large number.

Senator LEVIN. Well, it might be useful if you could——

Secretary RUMSFELD. What it ought to be, I don't know, and no one would know. You would have to go down and try to look at all those functions and disaggregate it, but——

Senator LEVIN. Well, you might give us an estimate and disaggregate it, because when you use that testimony, that 83 percent of the civilians deployed in the theater are contractors, you are suggesting that a significant percentage of those civilians should be Department of Defense civilian employees instead and it would be interesting if you could have somebody just give us an estimate as to what part of the 83 percent you believe, if the rules were different, would be Department of Defense civilian employees, for the record, if you could supply that.[1]

Secretary RUMSFELD. I will try.

Senator LEVIN. Well, you have given the testimony——

Secretary RUMSFELD. Right.

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[1] The information provided by Mr. Rumsfeld appears in the Appendix on page 157.

Senator LEVIN [continuing]. And it seems to me you ought to back it up with some kind of an estimate.

Secretary RUMSFELD. We will try to take the total and see if we can't come up with some number that might logically fit. I would, for example, cite things like linguists might be people that would be internal as opposed to external——

Senator LEVIN. You have tried to hire——

Secretary RUMSFELD [continuing]. As opposed to someone putting out an oil well fire. That would be much more likely, obviously, to be a contractor, and I understand that.

Senator LEVIN. That would be helpful, and to give us the groups, the types of employment and about how many are in each group.

Dr. Chu, you have testified the Department needs authority to bargain with unions at the national level because it is impractical, and I think the Secretary also testified to this effect, to continue bargaining with 1,400 separate bargaining units. I think that more accurately is the Secretary's testimony.

The legislative proposal would specifically authorize bargaining at a national level. It seems to me that is one issue. That is one important point that you are making. But you are going way beyond that, because you are also authorizing, or would seek to authorize the total waiver of Chapter 71 of Title 5, and that is the part of the U.S. Code that addresses bargaining rights in general.

Does the Department intend to modify provisions, if you were given this authority, regarding unfair labor practices and the duty to bargain in good faith, for instance? Is that your intention if we gave you the authority you seek to waive Chapter 71 of Title 5?

Mr. CHU. We don't intend to engage in unfair practices, no, sir. We do seek to——

Senator LEVIN. No.

Mr. CHU. I am sorry.

Senator LEVIN. That is not my question.

Mr. CHU. I am sorry, sir.

Senator LEVIN. The question is, do you intend to modify the provisions of Chapter 71 of Title 5 relative to unfair labor practices.

Mr. CHU. We don't have such an intent, sir.

Senator LEVIN. Then my question——

Mr. CHU. I should emphasize, this is a power, the waiver of Chapter 71, already granted Homeland Security.

Senator LEVIN. Now, my question is this. Why isn't the authority to bargain at the national level sufficient, just that authority, given your argument about having to deal with 1,400 separate bargaining units? Why wouldn't the authority to bargain at a national level be sufficient? Why do you need the authority to waive the requirements of Chapter 71 in their entirety given your immediate statement that you have no intent to exercise that waiver?

Mr. CHU. Because you have to get the bargaining to come to a conclusion, sir. Our experience is, many bargaining efforts don't come to a conclusion. I would cite an Air Force installation which is still bargaining since 1990 over the issue of——

Senator LEVIN. That is the authority to bargain at a national level.

Mr. CHU. The bargaining process needs to have a conclusion for it.

Senator LEVIN. We agree obviously on that. But is the waiver of those other protections in Chapter 71 necessary to get bargaining to a conclusion?

Mr. CHU. We think so, sir. I would point out that the spirit of that is in the provisions that apply to a large list of other agencies—the General Accounting Office, the FBI, the CIA, the National Security Agency, TVA, and the Federal Labor Relations Authority itself. So this is not an unprecedented proposal.

Senator LEVIN. That is not my question, but thanks anyway.

Chairman COLLINS. Thank you, Senator Levin.

Dr. Chu, before I call on Senator Voinovich, I would point out, following up on Senator Levin's point, that we put within the bill a deadline for how long disputes can be before any one component of the FLRA and we put a 180-day limit so that issues would come to conclusion. They would not hang on for years and years, as occasionally cases do now. So I think there are other ways to ensure that bargaining comes to a conclusion than having the authority to waive the entire chapter governing collective bargaining.

Senator Voinovich.

Senator VOINOVICH. First of all, I would like to make a comment before I ask a question, and that is that I think everyone should understand your proposal, Mr. Secretary, didn't happen overnight. Dr. Chu and I talked about flexibility for the Department of Defense over a year and a half ago when we were up at Harvard at one of our executive sessions, so I think that is important.

It was also mentioned that it takes 5 months to hire someone, Admiral, and I had hearings and brought in some college students in Dayton to gauge whether they were interested in going to work for the Federal Government. I will never forget that the military person that was there said to one of the young men, we want to hire you. You are just what we need. We have this work-study program. And the kid's face was just this big smile. And I asked the military person, how long will it take for him to find out whether he is hired? Six months.

Now, that really doesn't have to do, I don't think, with this legislation. I think that deals with streamlining the process in terms of hiring that could be done. I am not sure you need legislation in order to take care of a 5-month delay. It seems to me that could be handled through more efficient internal management systems.

My question, Mr. Secretary, is related to the proposed National Security Personnel System, which would waive significant portions of Title 5. My staff has attended several briefings over the past few months in which the Department has offered its rationale for these flexibilities. In some cases, it seems that DoD has requested waivers, as mentioned by Senator Levin and our Chairman, that are significantly broader than necessary to make the desired reforms to its personnel system.

For example, the NSPS would include consultation with OPM. However, it would allow the Secretary to break a tie when there is a disagreement between DoD and OPM. The bill that Senator Levin and the Chairman have introduced would retain OPM's oversight role as an equal partner instead of granting the Secretary, "sole and exclusive authority to make personnel decisions."

Title 5 was waived for the Transportation Security Agency, and I must tell you, it has not been as successful as intended in the personnel area. In fact, there is probably going to be, in the next day or so, a disclosure that some of the people that were hired were on the FBI's "do not hire" list. So I am concerned about putting OPM aside in terms of their traditional role that they played with Federal agencies.

Another concern deals with Senator Levin's comments, and that is the issue of your request for authority to bargain collectively at the national level. That seems to make a great deal of sense. But at the same time you want this extraordinary new power, you seek to opt out of Chapter 71. Our bill would provide that you would remain in Chapter 71, as explained by our Chairman.

So I would like you to explain some more about the Department's thinking behind these proposed waivers. Why remove DoD completely from OPM oversight and change the relationship between the Defense Department and OPM as it has not been changed for most of the other agencies in the Federal Government? And second of all, if you get this broad authority to bargain collectively, and that is a big deal, why not preserve the other labor-management rights under Chapter 71?

Mr. CHU. Sir, to this issue of the OPM role, I think we, in the legislation, tabled and that was further, on this point strengthened by the House mark, we proposed that the regulations would be jointly developed. What we did add, as you indicated, sir, is a national security waiver, as the Secretary testified, that would say, if it is a national security issue, the Secretary reached the conclusion that it is not going to work for this Department. He may take a different course than might be true from other cabinet departments. It is subject to the President's ultimate decision in the way the House has worded that language.

Second—so we look forward to partnership with OPM. In fact, we have used OPM's excellent studies in the last several years as our guide to how we should be designing the structure of this system.

In terms of Chapter 71, what I would reiterate, sir, that is the step that Congress already took with the Homeland Security Department. That statute does waive Chapter 71. We are merely being more explicit, I think, than that statute is as to what we intend to do with that authority. That is to say, we would like, broad cross-cutting human resource issues, to move to national bargaining as opposed to local bargaining. It is too slow, too cumbersome, doesn't get to a consistent result for the Department in a timely fashion.

Let me come back, if I may just a minute, to the OPM role. The Congress has already given this Department in certain targeted areas authority outside of strict joint development. The laboratory community is an example of that authority. The Senate's recent decision in the armed services bill on expanding the Acquisition Workforce Demonstration Project has some of the same flavor to it.

We think it would be in partnership with OPM under these kinds of broader authorities, but we do think it is important, and I think the Congress has agreed over the years with that principle, to preserve the notion that there is often a difference when na-

tional security is involved and that difference needs to be respected.

Senator VOINOVICH. What it really boils down to, though, is that you would remove an enormous number of people from OPM oversight. We will wake up one day and God only knows what we will have all over the Federal system, and I think that there needs to be some consistency across the board and it seems that there is a difference of opinion on this issue. I think that somebody also ought to be looking at the big picture, particularly if you are given all of the other flexibilities that you are asking for in your proposed legislation.

Secretary RUMSFELD. Senator, if you think about it, the Department of Defense is in 91 countries in various ways. We are in every time zone. We have working conditions often that are harsh and dangerous. We have a circumstance that is, I think, notably different than other departments and agencies. And yet for the most part, what Dr. Chu has been testifying to is a reflection of, for the most part, authorities and flexibilities that, possibly not in total but in part, have been given to a variety of other departments and agencies for some time, a set of flexibilities which have been tested in the Department of Defense under authorizations by Congress for many years.

I think that it is—you are right, it does involve a lot of people because the Department of Defense is a big Department, but it also goes to the kinds of things that Admiral Clark and General Myers are talking about, that we do have a responsibility for national security and that they are having trouble managing to meet those responsibilities in a way that is appropriate and that the Congress, with its oversight responsibilities, would want to know that they could do so that they could hold people accountable for their performance.

Senator VOINOVICH. It seems to me, though, that among those widely varied categories of employees, you might restrict it to those categories of employees who are the kind of people that you are talking to and not the vast number of people that are working in the Department in a lot of jobs, for example, in the State of Ohio at DFAS and some of the other facilities that we have and maybe distinguish between them. It is the same thing with the issue of performance evaluation and pay for performance. I have been through this. This is tough stuff.

Secretary RUMSFELD. It is.

Senator VOINOVICH. And if you don't have the people that have the training and the skills to get the job done, it can be a big disaster, and it seems to me if you are going to get started on something like that, you would cascade it by designating certain areas where you are going to initiate reforms, but not just in one fell swoop go forward and start the system.

Secretary RUMSFELD. Let me make two comments. One is, we kind of have done what you are suggesting over a period of time by these pilot programs which have involved tens of thousands of people. And second, one of the complaints I hear from managers is that they have to manage to a variety of different personnel systems. Is this something you want to comment on?

Mr. CHU. Yes, sir. We have units where there are fewer than 100 employees under a single overall supervisor, which operate under as many as five or so different personnel systems. At that level, it is a nightmare for the supervisor. You have employees who are working side by side, who are governed by different rules as to how you can reward them, how you discipline them, how you counsel them, what you must do to advance their careers. We need a cohesive system for the Department as a whole, very much, I think, as General Myers and Admiral Clark have testified. It is all part of the same——

Senator VOINOVICH. We have no problem with that. It is the same thing we are trying to do in the Homeland Security Department, that is, to try and have a system that is understandable and consistent across the board. So we have no problem with that. There are just some of these things that cause concern in terms of how far do you go and how fast do you go in an enormous undertaking that you are making. We are trying to be helpful, not harmful, to what you are trying to accomplish.

Chairman COLLINS. Thank you. Senator Akaka.

Senator AKAKA. Thank you very much, Madam Chairman.

Secretary Rumsfeld, you are seeking to waive Chapter 53 of Title 5 which governs the Federal wage system that pays Federal blue collar employees. DoD employs over half of the government's blue collar workers and nearly half of those employees are veterans. As DoD moves to a pay-for-performance system from the GS-based system, which includes guaranteed annual pay increases, my question is, what happens to the cap on blue collar pay?

Mr. CHU. We are seeking, sir—you are accurately summarizing our preferences. We are seeking to bring essentially the entire Department under a pay banding system. That is why we are seeking to waive those parts of Chapter 53 that would otherwise restrain the inclusion of blue collar employees in such a system.

We do, of course, set blue collar wages based upon wage surveys, and that would continue to be the practice that we would use in the future. I think we have precedent here in how we handle our non-appropriated fund employees. I don't think there should be a big issue here.

Senator AKAKA. Let me ask another part to that. If you decide to retain the Federal wage system for the Department's blue collar workers, will you abide by the Monroney amendment which Congress specifically required the Department to follow in 2001? The Monroney amendment requires that when the government had a dominant industry in a particular area, the private sector wage data had to come from the same industry. So my question is, would you abide by that amendment?

Mr. CHU. We will abide by whatever law the Congress enacts, yes, sir.

Senator AKAKA. The Department wants to waive Chapter 77 of Title 5 relating to employee appeals. Such a waiver would eliminate employee access to the Merit Systems Protection Board. What are the specific problems DoD has encountered with the MSPB?

Mr. CHU. Let me, in fact, if I may, use my props, sir. I think you can see the problem with MSPB by the thickness of the manual that guides—it is the purple volume I am holding in my hand—

that guides MSPB decisionmaking, and that is not a set of histories and individual cases. This is the principles MSPB is supposed to follow.

I think there are two central problems with the current process. One is, it takes far too long to come to resolution. Second, in too many cases where there has been, at least in our judgment, serious employee misconduct, and I don't mean just minor spats and differences, this is sexual discrimination, this is a supervisor who backed a woman into a closet and made what we thought were improper advances. The MSPB decision was, in the words of the Administrative Law Judge, that it was simply romantic expressions by the supervisor and our efforts to have the employee terminated were, in fact, reduced to a suspension.

So I think there is a failure, frankly, to deal with the realities in the same way that we need in a cohesive force to deal with people who misbehave, the same cohesive force to which Admiral Clark spoke. It undercuts discipline in the system as a whole. It leads, in my judgment, to severe morale problems for the other employees of the agency who see the bad apples, see us try to take action on these people and fail. Worse, it leads supervisors to give up, to feel, just as Senator Coleman indicated, that it ain't going to make any difference. Why should I bother to try? And that leads ultimately to what Admiral Clark and General Myers cannot stand, and that is a denigrated level of performance.

Admiral CLARK. May I give an example, Senator?

Senator AKAKA. Absolutely.

Admiral CLARK. January 2003, we had an employee, a GS middle grade employee who had been under performance review and observation for a number of months and the employee was terminated. The removal notice cited the unsatisfactory performance. The Merit Systems Protection Board judge discounted this performance assessment in the judgment, and the judge made the decision that because in a period of time the employee had been injured, that the observations and the documented performance that was required by law and that had been done for months and months discounted it, and then went on to cite the age of the individual and the years of service which are specifically not to be considered in performance cases. Now, this is January. This is what happens.

And so then what happens to, just as Dr. Chu has said, the supervisor has now worked months with an employee who we have been having difficulty with. He has spent months in the process and the judgment is made, and at the end of the day, I commented when I was with Secretary Rumsfeld over here on the Hill talking about this subject, and I made this comment. This is not about us standing up and asking for some system that doesn't hold us accountable. The U.S. military, at the heart of everything that we believe in is accountability. If we don't do something right, hold us accountable. But give us a chance to manage this workforce in a way that then allows us to maintain the morale of the workforce.

The vast majority of this workforce that are heroes, that are helping us produce the military capability that will then give the President of the United States of America options when we have to go on and prosecute this global war on terrorism.

Senator AKAKA. Thank you for that response. Could you get back to us on what MSPB case law or regulations impact DoD the most? Can you provide that?

Admiral CLARK. Absolutely. I would be happy to.[1]

Senator AKAKA. Madam Chairman, my time has expired, but I would like to make a brief statement. There are those who say that the MSPB process takes too long. However, nearly 80 percent of cases at the MSPB are resolved within 90 days. This is better than the EEOC or the NLRB.

According to the Senior Executives Association, there is no known government judicial or administrative operation that issues initial decisions faster than the MSPB. Madam Chairman, I ask unanimous consent to include in the record a letter from the Senior Executives Association in support of MSPB appeal rights.[2]

Chairman COLLINS. Without objection.

Senator Akaka, you brought up a very good point and I want to clarify for our panel once again that the bipartisan bill that we have introduced specifically allows DoD to disregard the Merit Systems Protection Board case law that you have cited today as troubling, and I would encourage you again to take a look at the provisions in our bill because I think they specifically deal with the issue that you have raised.

Senator Fitzgerald.

Senator FITZGERALD. Thank you, Madam Chairman.

Dr. Chu, I was very interested in your testimony about the process you have had to go through to get the right to garnish, or maybe it was Secretary Rumsfeld, who mentioned trying to garnish wages of DoD employees who had actually, in effect, stolen money by using their credit cards perhaps for personal use or some other impermissible use. Dr. Chu, you said you had to negotiate separately with how many different locals, 1,300?

Mr. CHU. We have, if you include the non-appropriated fund locals, we have, I believe, 1,366 locals in the Department of Defense.

Senator FITZGERALD. Thirteen-hundred?

Mr. CHU. Thirteen-hundred-and-sixty-six.

Senator FITZGERALD. Thirteen-hundred-and-sixty-six, and you have been undertaking that for how long?

Mr. CHU. The travel card negotiations which the Secretary was referring to have been going on for the better part of 2 years. It may even have started in the last administration. I would have to check.

Senator FITZGERALD. During that time, I seem to recall several Congressional hearings where DoD was called before and beaten up about the misuse of credit cards. But, in fact, your inability to address that problem perhaps stems from the laws that are on the books. So you are getting beaten up by us on the one hand, and on the other hand, we are hampering your efforts to solve that problem.

You are probably, incidentally, the only employer in the country that wouldn't have the right to offset money that the employee

[1] The information provided by Admiral Clark appears in the Appendix on page 158.

[2] The letter sent to Senator Akaka from the Senior Executives Association appears in the Appendix on page 134.

owed. I think employers have a common law right of offset in a case like that.

Now, Senator Levin was asking questions that indicated that he perhaps doesn't have any objection to DoD having the right to bargain nationally on national issues, and I understand Senator Collins' bill would allow national bargaining except if there is a case with a specific local. And, in fact, if there is more than one local involved, then they could bargain nationally.

But Senator Levin was raising objections to your request to waive Chapter 71 of the Labor Management Relations Act. I had my staff get me a copy of this law, and it looks like it was passed in 1978, does that sound right? That would be during the Carter Administration. I noted that right at the outset, it starts out by exempting the GAO, the FBI, the Central Intelligence Agency, and the National Security Agency. Then, as you pointed out, the TVA and the Federal Labor Relations Authority itself are exempted, and the Federal Service Impasses Panel, and the Central Imagery Office are all exempted. It seems like everybody who has a national security function is exempted from this requirement except the DoD.

Aren't you really just trying to get the flexibility that other agencies that are involved in protecting this country have?

Mr. CHU. Absolutely, sir.

Senator FITZGERALD. To me, it seems appropriate that they have that flexibility. I think the one indisputably legitimate function, the most important function of our Federal Government is to provide for the common defense, and I would like to see them have that authority.

I know this isn't the subject per se of the legislation you are proposing, but I noticed that Secretary Rumsfeld wrote an op-ed in the *Washington Post* a week or so ago that referenced 800 reports that the DoD has to submit annually to Congress. That number caught my attention because I don't recall ever reading one of those. I don't know if those reports are sent to my mail room. I am not even aware if any of my staff members are reading those. I imagine those requirements go back a long way in the law. How many people do you have to put——

Secretary RUMSFELD. Think of how many trees we have to kill just to make the paper.

Senator FITZGERALD. Enormous.

Secretary RUMSFELD. Yes. I mean, it is, and what happens is frequently there will be a—just for the sake of argument, let us assume that the Pentagon does something wrong 20 years ago, wrong meaning people in Congress didn't agree with it. An amendment is proposed and the Pentagon resists the amendment, saying that that is too burdensome, and they say, all right, submit a report every year and tell us, assure us that you are not doing something that we feel you shouldn't have been doing. It is a perfectly legitimate beginning of this process.

And then what happens is it goes on and on and it goes for 10 or 15 years. There is no sunshine—no sunset rule, I should say on it. Our hope is that people will take a look at these things and say, fair enough. Let us discontinue half or three-quarters of these reports.

I notice you read off a list of agencies that do not have a requirement for third-party intervention. I noticed that on the list also were the Botanical Gardens, the Office of Architect of the Capitol—a whole bunch of agencies are exempted from this. It goes on, Administrative Office of the U.S. Courts. It is a list of—I don't know how long it is.

Senator FITZGERALD. Not to mention our own Senate offices.

Mr. CHU. We won't go there. [Laughter.]

Senator FITZGERALD. I would like to help you address the huge number of reports that you have to file. Some of these could go way back. They could go back to the Korean War, the Vietnam War, something that happened at that time that should have been addressed but the circumstances have long since changed, perhaps, to obviate the need for that report. I see no reason not to add it in whatever bill this Committee works out, even though it is on a slightly different issue. We have to start the ball rolling to give you the flexibility to meet your needs.

I congratulate you on undertaking this task, Secretary Rumsfeld. We are lucky to have someone of your caliber who is not willing to put up with the kind of nonsense you have to put up with in Washington to manage a Department of your size. It is a great challenge, and we thank you for doing what you are doing and contributing your services here. Thank you.

Secretary RUMSFELD. Thank you very much.

Chairman COLLINS. I want to thank our panel for being with us this morning. Your presence here is testimony to how important this issue is to the Department and we appreciate your testimony and your insights. We will be working further in the hope of coming up with a bipartisan plan that we will either move as a separate bill or take up in the DoD conference, which Senator Levin, Senator Akaka, and several of us fortunately serve on both committees. So thank you very much for your testimony this morning.

Secretary RUMSFELD. Thank you very much, Madam Chairman.

Chairman COLLINS. I should note Senator Pryor is also a Member of both committees, too. Thank you.

I am pleased to welcome our next witness, who is U.S. Comptroller General David Walker. As Comptroller General, Mr. Walker is the Nation's chief accountability officer and the head of the U.S. General Accounting Office.

I want to note that Mr. Walker made a special effort to be here today. He was previously scheduled to be in California, I believe it was, and I very much appreciate his rearranging his schedule.

I also want to extend my personal apologies to Senator Pryor for letting our panel go before he had a chance to question. I very much apologize and we will call on you first for Mr. Walker. Thank you.

Mr. Walker, you may proceed with your statement.

TESTIMONY OF HON. DAVID M. WALKER,[1] COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE

Mr. WALKER. Thank you, Madam Chairman. It is a pleasure to be here, Senator Voinovich, other Senators. I might note for the record that I came back on the red eye last night, so hopefully I will arrive this morning and I won't fall asleep during my own testimony.

I also would like to note for the record that our son, Andy, who is a Marine Corps company commander, came back from Iraq on Sunday night, so we are pleased to have him back and very proud of what he and his colleagues were able to accomplish in Iraq.

I am pleased to be here today to discuss legislative proposals to help the Department of Defense address its current and emerging human capital challenges. We strongly support the need for government transformation and the concept of modernizing Federal human capital policies, both within DoD and the Federal Government at large. As I have said on many occasions, human capital reform will be a key element of any government transformation effort.

The Federal employee system is clearly broken in a number of critical respects, designed for a time and workforce of an earlier era and not able to meet the needs and challenges of our current, rapidly changing, and knowledge-based environment. The human capital authorities being considered for DoD have far-reaching implications for the way DoD is managed, as well as significant precedent-setting implications for the Federal Government at large and OPM in particular.

We are fast approaching the point in time where standard government-wide human capital policies and procedures are neither standard nor government-wide. In this environment, we believe that the Congress should pursue government-wide reforms and flexibilities that can be used by many government agencies, including DoD, subject to those agencies having appropriate infrastructures in place before such authorities are operationalized.

Considering certain proposed DoD reforms in the context of the need for government-wide reform could serve to accelerate progress across the government while at the same point in time incorporating appropriate safeguards to maximize the chances of ultimate success and minimize the potential abuse and prevent a further fragmentation of the civil service.

More directly, agency-specific human capital reforms should be enacted to the extent that problems being addressed and solutions offered are specific to a particular agency, such as military personnel for DoD. Several of the proposed DoD reforms clearly meet this test. Importantly, relevant sections of the House of Representatives version of the National Defense Authorization Act for fiscal year 2004 and the National Security Personnel System Act cosponsored by Chairman Collins, Senator Levin, Senator Voinovich, and Senator Sununu, in our view, contain a number of important improvements over the initial DoD legislative proposal.

Moving forward, as I mentioned previously, we believe it would be preferable to employ a government-wide approach to address se-

[1] The prepared statement of Mr. Walker appears in the Appendix on page 60.

lected human capital issues and the need for certain flexibilities that have broad-based application throughout the Federal Government. We believe that a number of the reforms that DoD is proposing fall into this category, such as broad banding, pay for performance, reemployment rights, pension offset provisions. In these situations, we believe it would be both prudent and preferable for Congress to provide such authorities government-wide, if possible, and to ensure that appropriate safeguards are in place before they are operationalized by the respective agencies.

We also believe, in summary, Madam Chairman, that since we designated strategic human capital management as a high-risk area on a government-wide basis in January 2001, the Congress, the administration, and the agencies have taken steps to address the Federal human capital shortfall and we have more progress in the last 2 years than the last 20, and I am confident with your dedicated efforts we will have more in the next two years than the past two years.

I have made a number of statements over this past 2 years in order to help facilitate transformation, and Senator Voinovich clearly has been on the point and has dedicated a lot of his time and effort as a U.S. Senator to this, and I know, Madam Chairman, you have been very actively involved, as well, and I appreciate that. But I think it is important to note that we believe that DoD and other Federal agencies clearly need additional flexibility in the area of human capital. At the same time, appropriate safeguards need to be incorporated in order to maximize the chance for success and minimize the possibility for abuse. I am pleased to say that the National Security Personnel System Act incorporates many of these needed safeguards and is a significant improvement over what the DoD initially proposed.

At the same time, we hope that if Congress does act on this legislation this year, and obviously conference is going to be key with regard to this matter, we hope that Congress will seriously consider not only addressing DoD-specific needs, but also potentially providing additional flexibilities to not only DoD but other Federal agencies in an area where there is not only a need, but an application much beyond DoD.

By employing this approach, we believe that you can accelerate needed human capital reform throughout the Federal Government while helping to assure that appropriate protections are in place to prevent abuse of civil servants. You would help to provide a level playing field within the Federal Government in the critical war for talent while helping to avoid the further Balkanization of the Executive Branch civil service system, which was championed by Teddy Roosevelt over 100 years ago.

Thank you, Madam Chairman, and I would be happy to answer any questions you might have.

Chairman COLLINS. Thank you very much for your excellent testimony.

Mr. Walker, you raise a question that I have been thinking about throughout this hearing this morning, and that is should Federal employees have different rights depending on for whom they are working? Are we risking creating personnel systems that impede the transfer of employees from department to department, that

mean that you get paid better if you work for the Department of Homeland Security or the Department of Defense than if you work at the Department of Agriculture or the Department of Education, that give you different appeal rights if you are subject to a personnel action depending on where you work? Are those issues that we need to take a look at, and does that trouble you that where you work would determine what your rights are as a Federal employee?

Mr. WALKER. Well, I think there are certain things that, clearly, it shouldn't matter where you work. You need to have substantive protections. There need to be independent appeal rights beyond the individual agency.

I might note the two examples that were mentioned by the prior panelists, one being the court system and the GAO, the reason that they are separate is because they are involved in separate branches of the government under the Constitution. There are independence issues associated with that and there are good reasons why they have separate systems.

I might also note that the GAO has something called the Personnel Appeals Board, which is an independent body that our employees have the authority to go to in lieu of the Federal courts if they so desire, but they still have the avenue to go to the Federal courts should they choose to do so.

I also would commend your bill because I believe that by incorporating a number of critical safeguards dealing with performance management, dealing with special hiring authority and certain other areas, those concepts should be applied throughout the Federal Government. There are certain things that should have no boundaries, and I think pursuing that type of principle-based approach that includes incorporating certain safeguards is the right way forward.

Chairman COLLINS. Could you share with us more about the GAO's own experience in moving toward a more flexible personnel system, because you have really led the way and I want to commend you for your leadership.

Mr. WALKER. Thank you. As you know, Congress has given us some flexibilities in the past and we also are going to be requesting additional ones in the near future.

As far as the past, in 1980, Congress gave us our own personnel act. It exempted us from portions of Title 5 but not all of Title 5. The biggest thing that we did with that initial authority back in 1980 were two things. First, we implemented broad banding, which is a more flexible classification system that provides for a more flexible pay system. It also allows us to implement pay for performance, additional pay for performance than otherwise might be the case in the typical GS system. We also had the authority to hire a certain number of critical individuals for up to 3 years on a noncompetitive basis on the CG's authority. Those two things have been very helpful.

In the year 2000, Congress gave us the ability to have early-out and buy-out authority to realign the agency rather than to downsize the agency, to create senior level positions equal to the Senior Executive Service, but for technical and scientific individuals, so we could progress those people up compensation-wise and

responsibility-wise without—while recognizing that they are not the type of individuals that the Senior Executive Service was envisioned for. And, you also gave us authority to modify our reduction in force rules whereby we did not reduce veterans' preference and we were able to consider performance more than length of service, but we still had to consider length of service.

We are going to be asking for some new reforms in the near future, by the end of June, that will come before this Committee and I hope can be considered this year.

I will say this. When you are talking about making the type of changes that the Department of Defense is talking about, while they are very much needed, how you do it, when you do it, and on what basis you do it matters. And from a practical standpoint, you have a phased-in implementation approach that is required in your legislation. No matter what the Secretary and others at DoD might want to do, from a practical standpoint, they will not be able to adopt this new system in anything other than a phased approach, and from a practical standpoint, I don't think that the limits that you are proposing would represent any significant constraint on their real ability to effectuate the type of reforms that they are going to need. You have to do it in phases to do it right, and that is what we have done at GAO.

Chairman COLLINS. Thank you. One final question from me, and that is DoD has asked to exclude OPM from much of the review of its new system, other than a small but minor requirement to consult with OPM in the design. Could you tell us whether you think OPM, as with the Department of Homeland Security, should be involved virtually every step of the way?

Mr. WALKER. I do believe that OPM has to play an important role to provide the type of checks and balances that you need to prevent abuse and maximize the chance for success.

I would also note I have tremendous respect for Secretary Rumsfeld. He and I are both Teddy Roosevelt fans, among other things, who, as you know, was the champion of the civil service system. But I will tell you that I was extremely disappointed in the process that DoD employed to come up with this proposal. There was basically no consultation—of unions, of employees, of their executives, and so, therefore, when I see a provision that says that they will consult with somebody, with the track record that they employed in coming up with this proposal, that doesn't give me great comfort.

I think it is important that you either have the provision that you have in your bill, which would require that it be a joint effort with OPM and DoD, and I think it is fine if you so desire to do what the House did, that if there is a stalemate between OPM and DoD on a truly national security issue, to take it up to the President. But you need to have an independent third party involved and you can't know going into that discussion that you have the trump card before you have entered into consultations and negotiations. There is a fundamental conflict of interest. That would not represent adequate checks and balances, in my view.

Chairman COLLINS. Thank you. Senator Voinovich.

Senator VOINOVICH. Thank you, Madam Chairman.

First of all, Mr. Walker, thanks very much for coming back on the red eye. I again want to thank you publicly for coming to Day-

ton for the hearing that the Subcommittee held there on this very important new endeavor by the Department of Defense to have their own personnel system.

I am interested in your comments about looking beyond the Defense and Homeland Security Departments at the broad range of reforms that we ought to be implementing government-wide. The Chairman and I have talked about this issue on several occasions, and I would really be interested in getting your recommendations as you look at what we have done in Homeland Security and what we are considering doing in the Department of Defense. I know the Securities and Exchange Commission is coming in as well with requests. NASA is pining away to have changes in their personnel system which are long overdue and, as a matter of fact, have been on your high-risk list now for several years.

But to look at the general application of some of these things across the board so that we don't have these inconsistencies and give these people some of the same flexibilities that some of these agencies now have and others want to have. You don't have to launch into them right now, but I would really, and I am sure that, Madam Chairman, you would appreciate having those, also.

The pay-for-performance system, I mentioned that when Secretary Rumsfeld was here. You looked at the provisions of our bill. Do you think that the criteria that we have established for performance management in our bill respond to some of the concerns that you have had about the rapid advance toward pay-for-performance in the Department of Defense?

Mr. WALKER. I do. I definitely believe they are a significant improvement.

Senator VOINOVICH. Would you like to share just a minute with us how difficult that is?

Mr. WALKER. Sure. Let me mention a couple of things. First, the hearing in Dayton, by the way, it turned out setting a record. There were more hits on our website for a copy of my testimony in that hearing in Dayton, Ohio, than any other document in GAO's history, which was interesting. I just found that out.

Second, I do think it is important that for certain areas like hiring for critical occupations, broad banding, pay for performance, reemployment rights, pension offset, to consider doing that on a government-wide basis, not to slow things down, but to recognize that DoD is, first, not the only entity involved in national security, and second, not the only entity in the civilian part of the Federal Government that needs these types of flexibilities. We are all in a war for talent and we all want to try to win that war and we don't want to try to create unlevel playing fields.

We are talking about huge cultural transformation here, transformation that is needed, transformation that is long overdue, transformation that if your legislation becomes law will be facilitated, because in the final analysis, you can't transform how government does business unless you transform the government's human capital policies and practices. And while a lot can and should be done within the context of current law, quite frankly, neither DoD or most Federal agencies have nearly done what they should have done under currently law, they do need your help be-

cause there are certain areas where there are practical constraints under current law.

But it will take years for them to effectively design these systems for their entire civilian workforce. They will have to do it on an installment basis and they need to involve the key stakeholders to a much greater extent than they did in connection with this legislation.

Senator VOINOVICH. And you also concur, just to underscore, that it is very important that OPM continue to be involved here?

Mr. WALKER. I think it is. I think they provide a certain degree of consistency. They provide an independent set of eyes to be able to try to help maximize the chance of consistency where there ought to be consistency, minimize the possibility of abuse and of further Balkanization of the system.

I do, however, believe that OPM needs to act expeditiously, that they need to be able to rule on issues within prescribed time frames, and I think that OPM, frankly, has its own cultural transformation challenge, because for many years, OPM was primarily a compliance organization. It needs to become more of a consulting organization, figure out how to get things done rather than necessarily saying no.

Senator VOINOVICH. Thank you.

Chairman COLLINS. Thank you very much.

Again, I want to thank you, Mr. Walker, for your efforts to be here today. I also want to acknowledge that you and your staff have been extremely helpful to us as we drafted our bill. We did consult very closely with you and looked at previous statements, your experience, your recommendations, and that was very valuable. So we look forward to continuing to work with you.

Mr. WALKER. Thank you. We have great people and I am proud to lead them. Thank you.

Chairman COLLINS. Thank you.

I would now like to call forward the third and final panel this morning. I would like to welcome Bobby Harnage, the National President of the American Federation of Government Employees, AFL–CIO. As National President of AFGE, Mr. Harnage leads the Nation's largest union, representing approximately 600,000 Federal and District of Columbia Government employees belonging to over 1,100 local units in the United States and overseas.

It is also a great pleasure to welcome back to the Committee today Paul Light, who is Professor of Public Service at New York University. He also has a distinguished career that includes serving as a senior staff member on this very Committee. So he has a great deal of expertise in the areas of government, bureaucracy, civil service, Congress, entitlement programs, government reform, and we welcome him back to the Committee today.

Mr. Harnage, I am going to ask you to come forward with your testimony first, and thank you both for being with us.

TESTIMONY OF BOBBY L. HARNAGE, SR.,[1] NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO

Mr. HARNAGE. Thank you. At the beginning, on behalf of the 600,000 Federal and D.C. employees that AFGE represents and including the 200,000 at the Department of Defense, let me thank you, Madam Chairman, as well as Senators Levin, Voinovich, and Sununu for the numerous changes you have made to the House-passed version of the Defense Department's systems proposal.

Present at this hearing this morning are a large number of AFGE local leaders, but also present is the entire National Executive Council of AFGE to show their thanks for the work this Committee has done on this legislation and your leadership.

While AFGE remains profoundly concerned about both the fairness and the negative economic impact of a pay-for-performance system, we are grateful for your willingness to consider our concerns closely and for you taking the time to write legislation that substantially restrains the Department's desire for a blank check authority to create a new personnel system. Thank you, Madam Chairman and your Committee, for not abrogating your constitutional responsibilities.

The authorities sought by the Pentagon are very broad and have profound implications for the merit principle-based civil service system, including its replacement with a yet-to-be-seen system, designed, implemented, and adjudicated by a political appointee and every single one of his future replacements. The risk that this system will be politicized and characterized by cronyism in hiring, firing, pay, promotion, and discipline are immense. They are predictable, and the ability to mitigate that risk would be minuscule.

Madam Chairman, I know that my written testimony has been entered for the record and it expresses in detail our opposition to the DoD legislation, so I will summarize on some key points where your bill differs from the House version and hopefully still have some time to respond to some of DoD's comments here this morning.

Due process—the House lets DoD decide whether or not DoD civilian employees will have due process protection and appeal rights. It lets managers suspend, demote, or fire employees, but it doesn't let them go to the MSPB or the EEOC if they have evidence that these decisions were based on prejudice, politics, or distortion of the facts. The Senate effectively retains these rights and we think the Senate is right to keep the third party review. It will go a long way in making sure that hiring and firing in DoD is based on merit rather than cronyism and politics.

On collective bargaining, the House lets DoD decide whether DoD civilian employees will be able to have union representation and collective bargaining. Even if the employees hold an election and decide to have a union, under the House-passed legislation, the Defense Secretary can effectively negate this election by refusing to allow collective bargaining, even when contractor employees performing the same job not only have the right to union representation, but have the right to strike. Contractors who have taken ci-

[1] The prepared statement of Mr. Harnage appears in the Appendix on page 74.

vilian Federal employee jobs and those yet to be privatized, their employees will have more rights, more protections than government employees. This is not about national security and it is not about flexibility.

The Senate maintains these basic democratic rights for DoD employees and we commend the Senate for recognizing that hostility to employees' rights is the most basic evidence of mismanagement. That employees desire to have a meaningful communication and enforceable collective bargaining agreement goes hand-in-hand with our Nation's democratic traditions and the standards of good government.

Pay for performance—although the Senate has proposed some parameters for a pay-for-performance system and the House has proposed virtually none, AFGE strongly opposes the imposition of individualized pay-for-performance plans. Any way you slice it, pay-for-performance plans create more problems than they solve, if it can be said that they solve anything.

Madam Chairman, most of the rationale given by DoD for these radical and sweeping changes is a failure to accept their management responsibilities. The poor performers they like to refer to are nothing more than the results of not providing proper pay under FEPCA and not properly training managers to be managers of people and not letting managers be managers. Their reference to the problem of hiring is nothing more than the failure to let managers manage and bureaucratic systems requiring higher levels of approval. It is not the law and it is not the regulation that is the problem.

The argument that it takes too long to fire someone is sheer rhetoric. It only takes 30 days, at most. The appeals process is long, but that is caused by budget restraints, not by the law and not by the regulation. The employee is off the rolls during this process and certainly would like very much for it to be a shorter period of time.

The flexibilities that they beg for is a failure to recognize the flexibilities they already have. Every example they have given for the need of flexibility is a misrepresentation of the facts. They already have them.

On the comments that I heard this morning, Madam Chairman, sometimes if I hear DoD talking, I am reminded about the story of the individual that killed their parents and then threw themselves on the mercy of the court because they were an orphan. That is very similar to DoD.

This is not a national security personnel system. National security is added to the title to give it more importance than what it deserves. It is nothing but a DoD personnel system.

So why did we attach it to the authorization bill where it was not germane? They attached it to the authorization bill because it couldn't stand on its own merits and they were hoping it would be rushed through Congress before Congress took a good look at it, and I thank you, Madam Chairman, for ensuring that the Senate took its responsibility seriously, where I think the House failed to do so.

On the 300,000 to 320,000 military individuals that should be performing civilian jobs, we don't argue with that point at all and we don't see why there is any problem of identifying those 320,000

people because they were civilian employees first. They changed into military positions not because they couldn't get the job done with civilians, but because they wanted to build up the military. When you put a military person in a civilian position, it is not more efficient, it is less efficient because that military person has more obligations than the job to which they are assigned—mess check, CQ, drill procedures, training that the civilian employee doesn't have. So it is not more efficient, it is less efficient, but they did it because they were building up the military strength at that time, converting civilian jobs to military jobs for that sole purpose of career development of the military people, not because the civilians couldn't or wouldn't do the job.

And I question how they are going to do this since they claim they don't manage by FTEs, but every time we talk about bringing new work in-house instead of automatically privatizing it, they can't bring it back in-house because they don't have the slots. If that is not managing by FTEs, I don't know what it is.

I just recently came from a trip out West where I was at Kirkland Air Force Base in the science and laboratory research for the military. A head of the science department was telling me that he wanted to enlarge his laboratory and he was going to build an annex to it that would basically double the size of his workforce. He had the money, he had the land, but he couldn't get it through because he didn't have the authorization for the positions. He could contract it out tomorrow, but he couldn't hire the civilian workforce that he wanted to match and mirror his current workforce simply because he couldn't get the authorization. It wasn't the delay in the hiring process, it was the delay in the approval to do it that caused the delay, and he is still waiting today. He has been waiting for almost a year now.

Eighty-three percent of contractors deployed in the war in Iraq, I think we need to take a closer look at that. They have a habit of just throwing out numbers to you without giving you the substance of those numbers. Thank goodness Senator Levin asked for some specific numbers, and I think they are going to be surprised that that percentage is going to greatly reduce.

But that wasn't about the civilian workforce not being able to be deployed. That was about money. That was about contractors who have indirect contacts to the DoD, making millions and millions of dollars by going over there instead of civilians going over there. The only complaints that I know of that happened during this war were two complaints of civilians not being allowed to be deployed rather than not wanting to be deployed, and let us look at the number of civilians that were deployed in the Gulf War and the number of contractors versus the number that were deployed in this war on Iraq and see if the number isn't a tremendously expanded number and, therefore, having to be more contractors and, therefore, raising that percentage point. It hasn't anything to do with the war or anything to do with the flexibility of the civilian workforce. It has to do with the circumstances of the war.

And they keep talking about garnishing wages and they are taking 2 years or 10 years about negotiating that. They could have negotiated that at the national level had they wanted to. They chose not to, and now they want to use that as an excuse.

But Madam Chairman, there is something basically wrong with that example, and that is they have access currently to the Federal Service Impasse Panel. Why haven't they used that? They have access to bring this to a head, to a closure at every one of those locations and they fail to do that, and the implications are they know they are wrong, their case is weak, and, therefore, they won't take it forward to a third party to get a ruling on it, but yet they want to blame the system as the purpose of it. Basically to summarize, they say, we are right and we don't want anybody to question that. Let us make the decision.

Even in their complaints about the MSPB, where 85 percent of the cases are sustained, they only lose 15 percent of them, they want to argue about that, and let us look at what that says. Maybe we ought to do away with the appeals court system. Maybe we ought to do away with the Supreme Court system and just try somebody in an initial court and then hang them without any appeals process. That is what DoD wants to do with its civilian workforce. Remember, termination is capital punishment in the administrative field.

So we don't want to give these people that authority. It doesn't take 5 months to hire anybody. It doesn't take 18 months to fire anybody by regulation or law. It is the bureaucracy that has created that.

I appreciate Senator Voinovich referring to TSA, the Transportation Security Agency. The chaos that is there now, they can't blame that on the union. They left us out of that picture. We could have been in there helping them, telling them, warning them, cautioning them about mistakes that they were making, but we weren't given that ability. But you don't want to do that with the civilian events when it is four or five times the size of the workforce of TSA.

I thank you very much for this opportunity to testify before this Committee and I appreciate you and your Committee's willingness to look very carefully at this legislation and do some of the things that are right for the civilian workforce, and I will answer any questions you might have.

Chairman COLLINS. Thank you. Professor Light.

TESTIMONY OF PAUL C. LIGHT,[1] PROFESSOR OF PUBLIC SERVICE, NEW YORK UNIVERSITY

Mr. LIGHT. Thank you for having me before the Committee. It is always a pleasure to be in this room. I sat in the back row for a long time. I think I did OK afterwards. I didn't become the Chairman of the Committee, as some staffers have done—— [Laughter.]

But you never know.

Let me start by saying that I support the Committee's effort here today to develop and perfect this legislation. I think we have before us a good bill. I think it is a very useful contribution to the debate.

I am an Article I person. I happen to believe that we should have a Congress and that we should allow the legislative process to work its will. This one, this particular bill has been moving very rapidly

[1] The prepared statement of Mr. Light with an attachment entitled "In Search of Public Service" appears in the Appendix on page 95.

and I appreciate how difficult it is for you to develop any sort of a consensus under this time frame and to develop a bipartisan consensus. It is very much in the tradition of this Committee.

That is not how the House works. That is not how the House has ever worked under either party because it is the House, with very tight rules and a very large number of members. But this particular Committee has always aimed for bipartisanship. I always believed that when you are working on issues like financial management reform and prompt payment that if we couldn't find bipartisan agreement on these rather unglamorous issues, that we just couldn't get any traction on the floor. Senator Glenn believed that. Senator Roth believed that. I know that you believe that and I know that Senator Lieberman believes it, as do all of your Members.

Let me talk about three reasons why I support this particular bill. First, it provides a template. It provides a set of instructions to other agencies that are now lining up. I mean, the line-up of agencies for these kinds of authorities is going to be equal to that of a summer blockbuster movie. Everyone wants out. Once Defense goes, it is everybody for the gates.

We already know that agencies have been tunneling out of the system in this bill or that bill, and we know that most of them do so when they get into trouble. It is usually when an agency falters that they get the authorities they need or want to do a better job, and here we have an opportunity to say to the Executive Branch, here is a template. Much of this bill was developed through the *Federal Register,* near as I can tell, looking at what DoD wanted specifically.

The second point is that this bill is bipartisan. That is so important for actually implementing the legislation once it moves forward. The notion of bipartisanship, as you are going out to talk to the workforce about these flexibilities, is an added advantage in actually securing implementation. Having another piece of legislation rolling forward that is divided by party, divided by party and sending a message to the workforce that one party supports it and the other doesn't, that is just not good for productivity and the embrace of the legislation at the actual front line where you do and deliver the services.

The third point is that I think there are a number of useful provisions in this bill that should speed its implementation. I noted today that Charles Abel, who is Assistant Secretary for Personnel and Readiness, had said that this bill that the Committee, or that the House version of the bill was 75 percent of what they wanted. I think the better question for the Committee to ask is, what percentage of the bill do they really need? They are getting 75 percent of what they wanted, but perhaps 150 percent of what they need. I think what this Committee is trying to do is establish a template of needed flexibilities while maintaining safeguards so that employees have some rights of appeal beyond just the managerial dictate.

I like the issues of managerial, putting the focus on managerial ability through the phasing. The China Lake experiment has launched a thousand dreams of being out of the current system. That is an experiment, actually, that has been very poorly understood and never deeply evaluated. If you have been to China Lake,

you know it is a little bit of a distance from the sort of normal Federal facility. It is an unusual place filled with very talented and creative people.

GAO is a good example of an agency that has taken advantage of pay banding and other authorities to really bring itself forward in terms of the war for talent quite effectively, but it took a long time. It didn't happen overnight. They actually started without some of the systems that they needed in order to move forward with pay banding and they worked at it year after year after year, and I think right now we would argue that it is a very successful example of pay banding implemented, but it took time.

That is why I like the phasing idea here in the statute. I think it is going to be very difficult to do this quickly. I think doing it one cut at a time will give you an opportunity to see how it works and I support the phasing.

There is also the scaling-up problem that I just talked about. You can't really imagine going from China Lake to 750,000 employees overnight, nor from the 3,500 employees at GAO, who are all knowledge workers of a kind, to going to the full DoD workforce overnight.

This said, I believe that the Committee's version of this legislation represents the kind of bold reform that we need. I believe that the choice today for America's young people is, in terms of public service, is clearly placing government in a distant second, at best, as an employer, and we need to reassure young people that we can, in fact, move quickly, that they will be rewarded for performance, that they will be allowed to advance.

We also need to make sure that the managers who supervise them have the ability and the training and the tact to manage them well. I would like to say that the performance appraisal system, the hyper-inflated performance appraisal system that we see in department after department is a product of manager flexibilities to provide performance appraisals.

All in all, I am going to summarize here in support of your effort. I think that having a bipartisan solution move forward at this particular point in time, in this particular climate, is the way to go. I am not the Secretary of Defense, either, but if I were the Secretary of Defense, I would compromise to get that bipartisanship. I just think it is worth everything when you are moving forward on implementation to be able to say that this was a bipartisan agreement rather than the product of one party, one administration. This is going to last for a long time, and to the extent it can be bipartisan, I think that is everything to successful implementation. Thank you very much.

Chairman COLLINS. Thank you very much, Professor.

I certainly agree with your comments and that has been my goal, to craft a bipartisan package.

My memories of this Committee may even go back further than yours. I first started as a staffer here when Senator Percy and Senator Ribicoff were running the Committee, and they, too, had that bipartisan approach that has been the hallmark of this Committee's history and one that we are striving to continue to this day.

One issue that we haven't discussed this morning that I would like your comments on is the fact that the Department of Defense

is seeking to have for not only this Secretary of Defense, but future Secretaries of Defense as well have the authority to exercise very broad waivers of chapters in Title 5. This may mean that Secretary Rumsfeld may come up with one personnel system, but that a future Secretary of Defense, using the same authority, could come up with one that is entirely different.

To me, that argues for Congress spelling out more specifically in legislation the parameters of the system. It also, to me, argues for a role for OPM, rather than just granting unilateral, broad authority for this and any future Secretary to waive various chapters of Title 5. Could you comment on that issue?

Mr. LIGHT. Two things here. First, this should not be a referendum on Secretary Rumsfeld or Dr. Chu. I think the world of David Chu and I think that there is a great deal of research that he draws upon from his experience at RAND that is quite relevant to these issues at hand.

But, in fact, there will be future Secretaries of Defense. One of the biggest problems among the seniors that we just finished interviewing at the Center for Public Service at Brookings, which I direct, is the confusion of the process. Young Americans would very much like to serve their country. They want to come into government, I believe. But they look at the process and the confusion involved in getting in and they just shy away. They see the Federal hiring process, or hiring process in government more generally, as both slow and confusing, and I am afraid that as we allow agencies to tunnel out without this general template in place, we are just going to add to the confusion.

Young people do not believe they know how to get a job in government even if they want a job in government, and I think that you are sending a message to the agencies that here is the template. Go ahead and come back to Congress with your requests under this template, I think is extremely useful to the agencies and it is also a disciplining kind of force on the Department of Defense.

I think OPM has made a good faith effort to improve and change its culture over the last 5 years, under both the Clinton Administration and under the Bush Administration, and I think that OPM can be trusted with this kind of joint custody, if you want to imagine it that way.

I don't think, and I don't believe in unreviewable authorities for the Executive Branch. That could be just my instinct as a Title 1 person, given that Title 1 addresses the Legislative Branch, but I really don't think that the issue of unreviewable authority should be taken as a referendum on the Secretary. Frankly, I think this is a good piece of legislation in spelling out specifically what that Department has asked for.

Chairman COLLINS. Thank you, Professor.

Mr. Harnage, I know that you have expressed reservations about moving to pay banding and pay-for-performance systems. Are there any Federal pay-for-performance approaches that are now in use as pilot projects across the Federal Government that you believe have been successful and might be good models?

Mr. HARNAGE. First of all, we think that the scheme should be supplement to a fully-funded regular pay system. The example is given by GAO, for example, that pay for performance, everybody

gets the across-the-board pay increase annually. What is pooled for paying for higher performers is the bonus money and the step increases. But everybody gets it across the board. So we think that ought to be an element of any pay for performance, that Congress ought to continue ensuring that employees are paid fairly and then give the managers the provision to reward exceptional performance.

But we also are opposed to pitting individual against individual. We think it should be more a team approach, and an example is Pacer Share, which was at McClellan Air Force Base, where that system rewarded everyone, not just a few individuals at the expense of someone else. But everybody, if they reached a certain level, if their performance was a certain level, everybody gained, everybody profited from that experience.

But I don't see the GS system as a system that does not pay for performance. In fact, I think it is just the opposite and I believe it is given a bad name simply over rhetoric.

Let us look at what the current system is. It is based on a classification system, it is based on a qualification system, and it is based on a performance system. The classification system and the qualification system makes sure that you meet these qualifications in order to get the job. The classification system is if you do this work, you receive this pay. That eliminates discrimination, helped eliminate the equal-pay-for-equal-work problem that we had. So it was a fair system.

And then each step increase, and I think the public and maybe some Members of Congress have been led to believe that these step increases are annually and forever. It takes 18 years to go through the step increase process, and if you get promoted, it takes even longer. But those step increases, every one of them is certified by the manager as that employee has met an acceptable level of competence. That is a performance-based step increase, and they can be denied.

And what we see is now there is a government-wide policy that there has not been quality step increases for at least 10 years that I am aware of where Federal employees who were high performers could be given a quality step increase. That is a step increase outside of the system, outside of the normal process, as a reward. They don't give those anymore. They quit giving them, and that is a bureaucratic policy and that is not a law.

Chairman COLLINS. Thank you.

Professor Light, could you answer that question, also? Are there particular pay-for-performance pilot projects that you think are good models and that have been effective?

Mr. LIGHT. I agree with Bobby Harnage on the issue of Pacer Share. Actually, Pacer Share was arguably the most successful of the experiments over the last 15 to 20 years. It was carefully evaluated. There were gains in productivity due to the gain sharing model that was used there in which employees kept part of the gains from productivity and part of the gain from productivity went back to the taxpayers.

The politics of gain sharing, of course, is quite difficult. The notion is that 100 percent of the money should go to the taxpayers and that civil servants should always be giving up the good ideas

for productivity improvement. But Pacer Share was a real success story and it is a unit-based, or was a unit-based pay-for-performance system.

GAO is generally accorded great respect in this regard as having developed and implemented an effective pay-for-performance system. It has involved an incredible amount of training.

I look to Senator Voinovich on this issue because we look at the training budgets in Federal agencies and we say, is there the money in the training budget to train the managers to use the systems or the flexibilities that we are now giving?

Frankly, a lot of Federal managers cannot use these authorities at this particular moment in time. They need to be trained up on this. It is not the front-line employee who needs the training as much as the manager in order to give fair appraisals and to use the flexibilities that are being considered here thoughtfully and without abuse, and that is a training issue to me.

Chairman COLLINS. Mr. Harnage, before turning to Senator Voinovich, I want to ask you one final question, and that is Secretary Rumsfeld testified today that some 320,000 military personnel are performing civilian jobs because the civilian personnel system is so rigid that managers at DoD turn to military personnel. Would you like to comment on that statement?

Mr. HARNAGE. I think the Secretary has been badly misinformed and just repeated that bad information. First of all, as I said a while ago, I believe if you look in history, you will see that those 300,000 jobs were civilian jobs to begin with, and over the years, they were made military positions and it wasn't because the civilians wouldn't, or couldn't do the job. It was because it was career development of the military. They were building up the size of the military and it was for career development is how that happened. Don't quote me on this, it has been 25 years, but I believe it is 1426.1 was the DoD directive that said you could not convert civilian positions to military, but they converted 300,000 of them.

That is not a problem, but if you listen to all of this, not just today but what was said yesterday and the day before, they are not really saying these 300,000 positions will be Federal civilian positions. They may be contractors. They are just whetting your appetite with their comments. But if you look at some other comments that are made in other places, it could be contractors rather than Federal civilian workforce.

And where they talk about contractors that are currently doing jobs that should be done by civilians, I think that is right. We have been saying that for the last 5 or 10 years, that that has happened. But when they try to do it, how do they get around the FTEs? They claim they don't—I heard Dr. Chu say, "We don't manage by FTEs." I heard him deny that there was OMB control of FTEs.

But how come Kirkland, the example I gave you a while ago, can't hire the scientists and the technicians and the engineers that they need to do that very important research when they already have the money and the land if they aren't controlling it by FTEs? That should have already been built. The employees should already be in place, but it is not.

So you can't do that with maybe 50 to 80 employees, but he is baiting us for the 300,000. If he can't handle 80, how is he going to handle 300,000?

Chairman COLLINS. Thank you. Senator Voinovich.

Senator VOINOVICH. I apologize to you. I had to step out. I had a meeting that I just couldn't get out of and I apologize for not being here for your testimony and want to thank both of you for being here.

Bobby, you and I worked a long time together and had some good days and bad days, but the thing is that we keep talking and I think we have made some progress.

Paul, you and I have known each other for a while and we thank you for all of your input over the last several years on some of these issues that have been before us.

Madam Chairman, I would like our witnesses to comment on some of the systemic things that are just not right. For example, Professor Light mentioned the issue of training. We talk about whole new personnel systems, but if you don't have the money for training, how can you really do the things that need to be done? Professor Light, maybe you might just like to comment on that for a minute or two.

Mr. LIGHT. Absolutely.

Senator VOINOVICH. Let me just go on. Bobby, the issue of outsourcing. DoD can talk all they want about the 320,000 military personnel positions that are going to be civilianized, and I would be interested in more detail on how they all became military people. That is interesting. That is a little different story than we got before. We turned them into military because of the fact that we didn't have the flexibility when they were civilians, so we moved them to military so we could move them around and have some flexibility.

But we had a situation, Madam Chairman, in Cleveland at DFAS where they outsourced work and found out that it was all done incorrectly.

I mentioned the Transportation Security Administration. I visited two of the facilities and spent a couple of hours, and the unhappiness of the employees who are there is tangible. They gave the human resource functions to a private company, which didn't even get employees their cards for hospitalization. The agency then fired the company that did it. The rumor is that there are almost 2,000 of those people that we hired that are on the FBI's "do not hire" list.

This is what happens when you just let agencies do their own thing. So Professor, why don't you comment, and Bobby, I would be interested.

Mr. LIGHT. Let me make three quick comments. One is that I don't care who says that there is an employment ceiling in the Federal Government. I am a short person. That ceiling is very high, but there is a ceiling. Some agencies are operating well below ceiling, but when they get close to ceiling, OMB clamps down.

That leads to a second point, which is that there are really two different administrations operating here and Federal employees are confused a little bit about who is saying what. OMB is saying one thing on outsourcing and competition, and competitive sourcing.

DoD is saying another. Cabinet Secretaries like Secretary Rumsfeld, Secretary Powell, and Secretary Ridge say wonderful things about civil servants, and then sometimes you might not hear that same rhetoric elsewhere.

I think the notion of bipartisanship here is important to send the signal that this is not a one party issue, that both parties recognize that there are needed improvements to be made in the current system.

I talk to Federal Transportation baggage-passenger screeners all the time when I fly. Every time I ask them how happy they are, I get a full body search. [Laughter.]

They stand me aside and—they are not a happy group of campers out there. If you talk to them one-to-one, there is a lot of issue out there about what they are getting, not getting by way of training, by way of hours, by way of the promises made. I mean, you hear that a lot from them one-to-one. The plural of anecdote is not data, but you see and you hear these stories over and over again and it starts to add up.

I would say that the most serious issue in implementing these reforms is going to be training. A lot of Federal managers have been in the system for a good long time and they have learned how to game it. They have learned how to deal with problems of entry-level salary through quick promotion. They have learned how to manipulate the system to help develop and support the workforce in many cases. They are the ones who give the hyper-inflated performance appraisals that we often mock at the end of each year.

They are going to need help implementing this system. Undeniably, this whole thing pivots not on political executives, but on what I would guess are about 90,000 supervisors and managers and executives in the civil service workforce at DoD. Those are the people who are going to make this thing work or they are going to have it fail, and if we don't give them the proper training—if you look at GAO by example, the amount of money GAO invested in training its managers to do this well, and part of it is just training them to have the courage to give fair appraisals to their employees when that might not be the easiest thing to do. If you look at the training configuration here, that is a very serious obstacle and it really concentrates on the manager, not the front-line employee.

Senator VOINOVICH. And that would argue, wouldn't it, that you would cascade this or do it incrementally rather than just rushing off and putting it in place all at once?

Mr. LIGHT. Right. The cascading is a reasonable approach. I also think the joint consultation with OPM is part of it. Let OPM develop—I think that DoD's human resource operation is pretty good and I think the Under Secretary for Personnel and Readiness is the best. But OPM has a lot of capacity at its disposal to deal with some of these issues I am talking about here, especially as other agencies proceed with their requests for these kinds of authorities.

Senator VOINOVICH. Mr. Harnage.

Mr. HARNAGE. Yes. Much of, I think, DoD's problem is the lack of training of its civilian workforce. At our executive committee at Harvard, I pointed out that the military, every one of them, the guy sitting here with the four stars on his shoulders came in at the

entry level and he was trained and given the opportunity to develop over 20, 30 years to get to where he is at.

The civilian workforce very often is hired to do a job and receives very little or no training to stay up with modern times, and that goes with managers. Managers need to be trained to be managers and people need to be trained on how you handle people. That is a part of a management responsibility, but not everybody has it when they are promoted to that level, and therefore we have got to have that training. You are a big advocate of training, and that needs to be more built into any legislation dealing with DoD.

Most of our problems is the lack of training and the lack of funding. It is not people not wanting to do their job and people not dedicated. The resources that are used in outsourcing are tremendous numbers of dollars. If we just stopped that nonsense, the money we spent on studying and providing the outsourcing event, if just that money was used on training, we would be ten times better trained than what we are today.

But there is one element that I do want to comment on that I want to caution the Committee to be careful of. I heard something this morning that seemed to be a contradiction, but it also was giving my fears some legitimacy. They said that they don't intend to get rid of unions, they don't intend to get rid of collective bargaining, they want to work with their unions, although they got this far without even talking to us, and they have no reason to get rid of you.

But Senator Fitzgerald talked about those elements of the government that are excluded from the law that gives union recognition and asked Dr. Chu if that was all he was trying to do, was get what they already had, and his answer was yes. Now, we are talking about entities that are union-free environments, but yet they said they don't intend to do that. They intend to continue collective bargaining. Dr. Chu said they were merely trying to get the same.

I don't ask that you use your valuable time in trying to clarify that. I ask that you use your valuable time to make sure that doesn't happen. Your legislation protects it. Hang in there strong on that. That is very important and it is the right thing to do.

Senator VOINOVICH. Thank you. I just want to better understand that. The various agencies that Senator Fitzgerald mentioned when he read the statute that were excluded, you are saying that the situation in those agencies is what? And you don't——

Mr. HARNAGE. They don't have access to union representation. They are excluded. It is waived in the law. And there are some, although I find it very hard to ever justify not having the right all Americans have except an excluded few to belong to a union if they choose, there are some conflicts of interest.

I think there probably is a conflict of interest in the FLRA because they are making rulings involving both sides, the union and management, and so there would appear to be a conflict of interest. MSPB would be the same case, and some investigative fields. The FBI, I think, would have been a lot better off if they did have a union, but nevertheless, there is that conflict there that some people can see. GAO is an arm of Congress, and so Congress doesn't have a union so it is natural that they excluded GAO.

But I am talking about those areas that the law initially said, we don't think this should apply to these agencies, and Senator Fitzgerald was pointing out those agencies and his question to Dr. Chu was, isn't that all you are asking, is to get the same thing they got, and his answer was yes.

Senator VOINOVICH. I think that we ought to try and look into that. I would be interested in anything you could provide for us, and we can do some research here at the Committee.

Mr. HARNAGE. Don't waste your valuable time doing that. Just make it impossible for it to happen. [Laughter.]

Chairman COLLINS. Our bill does.

I want to thank you very much for your testimony today and for the contributions that you have made to this very important debate.

I again want to recognize Senator Voinovich's longstanding leadership in this area. He has worked harder than any Member of this Senate on human capital issues. He has always been on the forefront of these debates and it has been a great pleasure to work closely with him as we develop this legislation and go forward.

We will be keeping the hearing record open for 15 days for the submission of any additional statements or questions.

I want to thank all of our witnesses for their valuable testimony today and I also want to thank our staffs. Senator Voinovich and my staff and Senator Levin's staff have worked very hard to develop this legislation. On my staff in particular, I want to recognize the efforts of Ann Fisher, who has had countless discussions with AFGE and other people who are interested in this debate. We look forward to getting your future input as the Conference Committee for the Department of Defense bill goes forward.

This hearing is now adjourned.

[Whereupon, at 12:38 p.m., the Committee was adjourned.]

APPENDIX

PREPARED TESTIMONY OF U.S. SECRETARY OF DEFENSE
DONALD H. RUMSFELD
SENATE GOVERNMENT AFFAIRS COMMITTEE
NATIONAL SECURITY PERSONNEL SYSTEM
JUNE 4, 2003

Madam Chairman and Members of the Committee, thank you for this opportunity to discuss the President's proposal to create a National Security Personnel System—to transform the way the Department of Defense recruits, retains and manages its nearly 700,000-strong civilian workforce—so our country will be better prepared to deal with the emerging 21st century threats.

We are engaged in a new and unprecedented war—the global war on terror. But we are fighting that first war of the 21st century with management and personnel systems that were developed decades ago, during or even before the Cold War.

The threats we face today are notably different from that era.

To deal with the new threats we need military capabilities that are flexible, light and agile, so we can respond quickly and deal with surprise.

The same is true of the men and women, and the systems in the Department of Defense that support them. They also need flexibility—so they can move money, shift people, design and buy new weapons more rapidly, and respond skillfully to the continuing changes in our security environment.

Today, we do not have that kind of agility. In an age when terrorists move information at the speed of an email, move money at the speed of a wire transfer, and move people at the speed of a commercial jetliner, DoD is bogged down in the bureaucratic processes of the industrial age—not the information age.

The Department's civilian personnel system is a case in point. Consider just a few examples:

Today we have some 320,000 uniformed people performing non-military jobs. Think about that. More than two and one half times the number of troops that were on the ground in Iraq when Baghdad fell are doing jobs that could and should be done by civilian personnel.

Why is that? It's because managers are rational and they behave rationally. When managers in the Department want to get a job done, they turn to the military—because they know they can manage military people—put them in a job, give them guidance, transfer them from one task to another, and guide how they perform. Or managers turn to civilian contractors, because they know they can manage a contractor—they can put them to work on a task quickly, without a host of bureaucratic obstacles and delays.

But they cannot do that with the civil service employees. They are managed by others, with rules and requirements that, while well-intended, were fashioned for a different era.

The unwillingness to put civilians in the hundreds of thousands of jobs that do not need to be performed by uniformed personnel or contractors puts a serious strain on our uniformed personnel

and added cost to the taxpayers. That's not right—especially at a time when we are calling up the National Guard and Reserves to help fight the global war on terror.

It has to be demoralizing to for talented civilian employees. They are patriotic. They come because they want to make a contribution to our national security. So, naturally, when a challenge arises or a crisis occurs where their skills and talents are needed, they want the phone to ring—they want to participate. But today, more often than not, their phone does not ring, because of the nature of the DoD civilian personnel system.

Consider this fact: in Operation Iraqi Freedom 83% of the civilians deployed into the theater of operations were contractors—only 17% were civilian federal workers. Why? Because in most cases, the complex web of rules and regulations prevents us from moving DoD civilians to new tasks quickly. As a natural result, managers in the Department turn to the military or to private contractors to do jobs that DoD civilians could and should be doing.

The antiquated rules and regulations we cope with mean we are losing talented young people to private sector competitors. When DoD recruiters go to a college job fair, the person at the next table from a corporation can meet a promising young person, interview them, and offer them a job and a bonus right on the spot. When DoD interviews the same people, all we can offer them is a ream of paperwork and a promise to get back to them in three to five months. It should come as no surprise that the most talented young people end up working somewhere other than the Department.

This is a problem that will grow more acute each year as the baby-boom generation employees retire. As members of this committee know, up to 50% of federal employees will be eligible to retire over the next 5 years. According to one institute, "a recent survey of college students found that most would not consider a career in government because they thought the work was dull...and that the hiring process was Byzantine." The future of our national security depends on our ability to make it less Byzantine and less burdensome on the employees.

In addition, the current system also prevents us from dealing effectively with fraud. Take the scandals regarding the abuse of government purchasing cards—where government employees were found using government credit cards to buy televisions, CD players, cameras, and refrigerators. With DoD uniformed personnel, if such abuses occur, we have the ability to garnish their wages to recover the stolen funds.

Not so with civilian personnel. In fact, DoD has been negotiating now for more than two years with more than 1,300 separate union locals for the right to do so—and we still have 30 more unions to go. It is unacceptable that it takes us years to try to deal responsibly with employee theft and waste of the taxpayers' money. If a private company ran its affairs that way it would go broke—and it should.

There are other such examples that the Chief of Naval Operations, Vern Clark, and Under Secretary of Defense David Chu, and may want to cite.

Madam Chairman, the point is this: DoD is working to deal with the security threats of the 21st century, with a personnel system that was fashioned for the mid-20th century. We have an industrial age organization that is struggling to perform in an information age world. We need the help of the Members of Congress to free us so we can better serve the American taxpayers.

- It takes an average of 5 months to hire a new federal worker, and 18 months to fire a federal employee.
- Pay raises are based on longevity rather than performance.

The bottom line is this:

- DoD's managers are not free to manage the civilian workforce;
- DoD's civilian employees are not rewarded for merit;
- civilian workers are losing opportunities to contribute, as critical tasks are assigned to military personnel and to contractors;
- we are wasting the skills of our uniformed personnel on civilian tasks in the midst of a war and we are wasting the taxpayer's hard-earned dollars to pay outside contractors to do tasks that could be handled internally;
- and, we are losing talented potential employees to private sector competitors.

We are misserving the American people. And we are weakening national security.

We need you to help free the Department so we can stop this waste.

Over the past several months, we have worked closely with Congress to fashion legislative language that would give us needed flexibility—language that is included in the Defense Authorization bill approved by the House.

The Administration's proposals did not come out of thin air—they are based on the personnel management system Congress approved last year for the Department of Homeland Security, and many years of experience with a number of successful Congressionally-mandated pilot programs.

Those pilot programs, which now involve over 30,000 DoD employees, tested many of the reforms that we are requesting, including pay-banding systems, simplified job classifications, pay for performance, recruiting and staffing reforms, scholastic achievement appointments, and enhanced training and development opportunities. In each of the demonstration programs employee satisfaction has been high and employers are retaining more of their top performers.

Our objective is to take those successful, Congressionally-approved pilot programs and expand them throughout DoD—so that more civil service employees can benefit from the increased opportunities they have created, and so their greater effectiveness can be applied across the Department.

There has been a good deal of misinformation circulating about our proposals. Let me put some of the myths to rest. Here is what the National Security Personnel System **will not do**, contrary to what you may have read:

- **It will not remove whistle blowing protections**. Those who report mismanagement, fraud and other abuses will retain the same protections they have today.

- **It will not eliminate or alter access of DoD employees to the equal opportunity complaint process.** Nothing in the proposed Personnel System affects the rights of DoD employees under our country's civil rights laws—which I voted for as a member of Congress back in the 1960s.

- **Notwithstanding allegations to the contrary, these proposals will not remove prohibitions on nepotism or political favoritism.** These will continue to be prohibited.

- **It will not eliminate veterans' preference**. That charge is also false.

- **It will not end collective bargaining**. To the contrary, the right of Defense employees to bargain collectively would be continued. What it would do is to bring collective bargaining to the national level, so that the Department could negotiate with national unions instead of dealing with more than 1,300 different union locals—a process that is grossly inefficient.

- **It will not give the Department a "blank check" to change the civil service system unilaterally**. Like the system Congress approved for the Department of Homeland Security, before any changes are made to the civil service system, employee unions must be consulted, the Office of Personnel Management is involved in design, and any disagreements must be reported to Congress. What it does do is give the President a "national security waiver" that would allow him to give DoD flexibility to respond in the event national security requires us to act quickly. Congress has regularly approved such national security waivers in various laws involving defense and foreign policy matters, recognizing the need for the Commander in Chief to be able to deal with unforeseen threats and circumstances.

- **The National Security Personnel System will not result in a loss of jobs or opportunities for civil service employees**. To the contrary, it is the *current* system that limits opportunities for DoD civilians, by creating perverse incentives for managers to give civilian tasks to military personnel and to contractors. We believe that the transforming initiatives we are proposing would most likely generate more opportunities for DoD civilians by creating incentives for managers to turn to them first—not last—when certain vital tasks need doing.

Members of the Committee, we need a performance-based promotion system for our civilian workforce. We need a system that rewards excellence—similar to the one Congress insisted on for the men and women in uniform.

Congress grants us the flexibility to manage the nation's largest workforce —the uniformed military personnel. It works. The results are there for all to see—they are disciplined, well-trained and highly effective, and a model of equal opportunity employment. We simply are asking that Congress extend the same kinds of flexibility it gives us in managing the men and women in uniform to the management of the civilians who support the U.S. military.

In other U.S. government agencies, major portions of the federal workforce have already been freed from many of the archaic rules and regulations.

Now we must do the same for the Department of Defense.

As Paul Volcker put it yesterday, when he strongly supported our approach, "we have an opportunity the likes of which has not existed for many decades to make a real and constructive change in the way the civil service is managed in the United States." The legislation for the Department of Defense, he said, will "provide the degree of flexibility... that is really required in this day and age....[a]chieving a balance between the need for flexibility and the needed accountability and oversight that's important."

Let me close by saying this: if the Department of Defense is to stay prepared for the security challenges of 21st century, we must transform not just our defense strategies, not just our military capabilities, not just the way we deter and defend—but we must also transform the way we conduct our business.

Our enemies are watching us—studying how we were successfully attacked, how we responded and how we might be vulnerable again. In distant caves and bunkers, they are developing new ways to harm our people—methods of attack that could kill not 3,000 people, but 30,000 or more. They are not struggling and burdened with massive bureaucratic red tape fashioned in the last century as they do so.

This does not mean an end to congressional oversight. What it means is that we need to work together to ensure that the Department of Defense has the flexibility to keep up with the new threats emerging as this century unfolds. The lives of the men and women in uniform, and indeed the American people, depend on it. I urge you to act now to help to bring the Department of Defense into the 21st Century.

Thank you for this opportunity to testify on this critical national security issue. And I'd be happy to respond to questions.

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United States General Accounting Office

GAO

Testimony
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HUMAN CAPITAL

Building on DOD's Reform Effort to Foster Governmentwide Improvements

Statement of David M. Walker
Comptroller General of the United States

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Highlights

Highlights of GAO-03-851T, testimony before the Committee on Governmental Affairs, United States Senate

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Why GAO Did This Study

People are at the heart of an organization's ability to perform its mission. Yet a key challenge for the Department of Defense (DOD), as for many federal agencies, is to strategically manage its human capital. DOD's proposed National Security Personnel System would provide for wide-ranging changes in DOD's civilian personnel pay and performance management and other human capital areas. Given the massive size of DOD, the proposal has important precedent-setting implications for federal human capital management.

This testimony provides GAO's observations on DOD human capital reform proposals and the need for governmentwide reform.

www.gao.gov/cgi-bin/getrpt?GAO-03-851T.

To view the full testimony, click on the link above. For more information, contact Derek Stewart at (202) 512-5559 or stewartd@gao.gov.

What GAO Found

GAO strongly supports the need for government transformation and the concept of modernizing federal human capital policies both within DOD and for the federal government at large. The federal personnel system is clearly broken in critical respects—designed for a time and workforce of an earlier era and not able to meet the needs and challenges of today's rapidly changing and knowledge-based environment. The human capital authorities being considered for DOD have far-reaching implications for the way DOD is managed as well as significant precedent-setting implications for the rest of the federal government. GAO is pleased that as the Congress has reviewed DOD's legislative proposal it has added a number of important safeguards, including many along the lines GAO has been suggesting, that will help DOD maximize its chances of success in addressing its human capital challenges and minimize the risk of failure.

More generally, GAO believes that agency-specific human capital reforms should be enacted to the extent that the problems being addressed and the solutions offered are specific to a particular agency (e.g., military personnel reforms for DOD). Several of the proposed DOD reforms meet this test. In GAO's view, the relevant sections of the House's version of the National Defense Authorization Act for Fiscal Year 2004 and the proposal that is being considered as part of this hearing contain a number of important improvements over the initial DOD legislative proposal.

Moving forward, GAO believes it would be preferable to employ a governmentwide approach to address human capital issues and the need for certain flexibilities that have broad-based application and serious potential implications for the civil service system, in general, and the Office of Personnel Management, in particular. GAO believes that several of the reforms that DOD is proposing fall into this category (e.g., broad banding, pay for performance, re-employment and pension offset waivers). In these situations, GAO believes it would be both prudent and preferable for the Congress to provide such authorities governmentwide and ensure that appropriate performance management systems and safeguards are in place before the new authorities are implemented by the respective agency. Importantly, employing this approach is not intended to delay action on DOD's or any other individual agency's efforts, but rather to accelerate needed human capital reform throughout the federal government in a manner that ensures reasonable consistency on key principles within the overall civilian workforce. This approach also would help to maintain a level playing field among federal agencies in competing for talent and would help avoid further fragmentation within the civil service.

Chairman Collins and Members of the Committee:

I am pleased to be here today to discuss legislative proposals to help the Department of Defense (DOD) address its current and emerging human capital challenges. Over the past few weeks, I have been honored to appear as a witness before the Congress on three other occasions to discuss this important issue and related DOD human capital concerns.[1] As the House of Representatives has reviewed DOD's legislative proposal, it has added a number of important safeguards, including many along the lines we were suggesting, that will help DOD maximize its chances of success in addressing its human capital challenges and minimize the risk of failure. Furthermore, the proposed National Security Personnel System Act that is the subject of this hearing also includes a significant number of improvements over DOD's initial proposal. I understand that there are important issues that will need to be resolved in conference that obviously have implications for DOD's reform efforts, and may have major implications for governmentwide reform efforts.

We strongly support the need for government transformation and the concept of modernizing federal human capital policies both within DOD and for the federal government at large. The federal personnel system is clearly broken in critical respects—designed for a time and workforce of an earlier era and not able to meet the needs and challenges of our rapidly changing and knowledge-based environment. Nonetheless, I believe that we have made more progress in addressing the government's long-standing human capital challenges in the last 2 years than in the previous 20, and I am confident that we will make more progress in the next 2 years than we have made in the last 2 years.

The human capital authorities being considered for DOD have far-reaching implications for the way DOD is managed as well as significant precedent-setting implications for the rest of the federal government. DOD has almost 700,000 civilian employees. The Department of Homeland Security, which also has broad human capital flexibilities, has about 140,000 civilian

[1] U.S. General Accounting Office, *Human Capital: DOD's Civilian Personnel Strategic Management and the Proposed National Security Personnel System*, GAO-03-493T (Washington, D.C.: May 12, 2003); *Defense Transformation: DOD's Proposed Civilian Personnel System and Governmentwide Human Capital Reform*, GAO-03-741T (Washington, D.C.: May 1, 2003); and *Defense Transformation: Preliminary Observations on DOD's Proposed Civilian Personnel Reforms*, GAO-03-717T (Washington, D.C.: Apr. 29, 2003).

employees. Other federal agencies that have been granted broad authorities, such as the Federal Aviation Administration and the Internal Revenue Service, have many thousands more federal employees. In essence, we are fast approaching the point where "standard governmentwide" human capital policies and procedures are neither standard nor governmentwide. In this environment, we should pursue governmentwide reforms and flexibilities that can be used by many government agencies, subject to agencies having appropriate infrastructures in place before such authorities are put in operation. Considering certain proposed DOD reforms in the context of the need for governmentwide reform could serve to accelerate progress across the government while at the same time incorporating appropriate safeguards to maximize the ultimate chances of success and minimize the potential for abuse and prevent the further fragmentation of the civil service.

More directly, agency-specific human capital reforms should be enacted to the extent that the problems being addressed and the solutions offered are specific to a particular agency (e.g., military personnel reforms for DOD). Several of the proposed DOD reforms meet this test. Importantly, the relevant sections of the House of Representatives' version of the National Defense Authorization Act for Fiscal Year 2004 and Chairman Collins, Senator Levin, Senator Voinovich, and Senator Sununu's National Security Personnel System Act, in our view, contain a number of important improvements over the initial DOD legislative proposal.

Moving forward, we believe it would be preferable to employ a governmentwide approach to address human capital issues and the need for certain flexibilities that have broad-based application and serious potential implications for the civil service system, in general, and the Office of Personnel Management (OPM), in particular. We believe that several of the reforms that DOD is proposing fall into this category (e.g., broad banding, pay for performance, re-employment, and pension offset waivers). In these situations, we believe it would be both prudent and preferable for the Congress to provide such authorities governmentwide and ensure that appropriate performance management systems and safeguards are in place before the new authorities are implemented by the respective agencies. This approach would help to maintain a level playing field among federal agencies in competing for talent. Importantly, employing this approach is not intended to delay action on DOD's or any other individual agency's efforts.

However, in all cases whether through a governmentwide authority or agency-specific legislation, in our view, such additional authorities should

be put in operation only when an agency has the institutional infrastructure in place to use the new authorities effectively. This institutional infrastructure includes, at a minimum, a human capital planning process that integrates the agency's human capital policies, strategies, and programs with its program goals and mission and desired outcomes; the capabilities to develop and implement a new human capital system effectively; and a modern, effective, and credible performance management system that includes adequate safeguards, including reasonable transparency and appropriate accountability mechanisms, to ensure the fair, effective, and nondiscriminatory implementation of the system.

My recent statements before the Congress have discussed DOD's human capital challenges and have provided comments and suggestions on the initial DOD proposal to create a National Security Personnel System (NSPS). Building on those statements, today I will comment on current DOD human capital reform proposals, including the National Security Personnel System Act, and how those proposals can be used to help leverage governmentwide change.

Observations on Proposed DOD Reforms

As I observed when I first testified on the DOD proposal in April, many of the basic principles underlying DOD's civilian human capital proposals have merit and deserve the serious consideration they are receiving. Secretary Rumsfeld and the rest of DOD's leadership are clearly committed to transforming how DOD does business. Based on our experience, while DOD's leadership has the intent and the ability to transform DOD, the needed institutional infrastructure is not in place within a vast majority of DOD organizations. Our work looking at DOD's strategic human capital planning efforts and looking across the federal government at the use of human capital flexibilities and related human capital efforts underscores the critical steps that DOD needs to take to properly develop and effectively implement any new personnel authorities.[2] In the absence of the right institutional infrastructure,

[2] See, for example, U.S. General Accounting Office, *Human Capital: Effective Use of Flexibilities Can Assist Agencies in Managing Their Workforces*, GAO-03-2 (Washington, D.C.: Dec. 6, 2002); *DOD Personnel: DOD Actions Needed to Strengthen Civilian Human Capital Strategic Planning and Integration with Military Personnel and Sourcing Decisions*, GAO-03-475 (Washington, D.C.: Mar. 28, 2003); and *Defense Logistics: Actions Needed to Overcome Capability Gaps in the Public Depot System*, GAO-02-105 (Washington, D.C.: Oct. 12, 2001).

granting additional human capital authorities will provide little advantage and could actually end up doing damage if the authorities are not implemented properly.

The following provides some observations on key provisions of the proposed National Security Personnel System Act in relation to the House version of the National Defense Authorization Act for Fiscal Year 2004. First, I offer some comments on the overall design for a new personnel system at DOD. Second, I provide comments on selected aspects of the proposed system.

DOD's Overall Human Capital Program

The House version of DOD's authorization bill would allow the Secretary of Defense to develop regulations with the Director of OPM to establish a human resources management system for DOD. The Secretary of Defense could waive the requirement for the joint issuance of regulations if, in the Secretary's judgment and subject to the decision of the President, it is "essential to the national security"—which was not defined in the proposed bill. As an improvement, the proposed National Security Personnel System Act also requires that the new personnel system be jointly developed by the Secretary of Defense and the Director of OPM, but does not allow the joint issuance requirement to be waived. This approach is consistent with the one the Congress took in creating the Department of Homeland Security.

The proposed National Security Personnel System Act requires the Secretary of Defense to phase in the implementation of NSPS beginning in fiscal year 2004. Specifically, the new personnel authorities could be implemented for a maximum of 120,000 of DOD's civilian employees in fiscal year 2004, up to 240,000 employees in fiscal year 2005, and more than 240,000 employees in a fiscal year after fiscal year 2005, if the Secretary of Defense determines that, in accordance with the bill's requirement that the Secretary and the Director of OPM jointly develop regulations for DOD's new human resources management system, the Department has in place a performance management system and pay formula that meets criteria specified in the bill. We strongly support a phased approach to implementing major management reforms, whether with the human capital reforms at DOD or with change management initiatives at other agencies or across the government. We suggest that OPM, in fulfilling its role under this section of the bill, certify that DOD has a modern, effective, credible, and, as appropriate, validated performance management system with adequate safeguards, including reasonable

transparency and appropriate accountability mechanisms, in place to support performance-based pay and related personnel decisions.

Employee Appeals Procedures

The proposed National Security Personnel System Act states that the Secretary of Defense may establish an employee appeals process that is fair and ensures due process protections for employees. The Secretary of Defense is required to consult with the Merit Systems Protection Board (MSPB) before issuing any regulations in this area. The DOD appeals process must be based on legal standards consistent with merit system principles and may override legal standards and precedents previously applied by MSPB and the courts in cases related to employee conduct and performance that fails to meet expectations. The bill would allow appeal of any decision adversely affecting an employee and raising a substantial question of law or fact under this process to the Merit Systems Protection Board under specific standards of review, and the Board's decision could be subject to judicial review, as is the case with other MSPB decisions. This proposal affords the employee review by an independent body and the opportunity for judicial review along the lines that we have been suggesting.

DOD Human Capital Reform Evaluation and Reporting

The proposed National Security Personnel System Act does not include an evaluation or reporting requirement from DOD on the implementation of its human capital reforms, although DOD has stated that it will continue its evaluation of the science and technology reinvention laboratory demonstration projects when they are integrated under a single human capital framework. We believe an evaluation and reporting requirement would facilitate congressional oversight of NSPS, allow for any midcourse corrections in its implementation, and serve as a tool for documenting best practices and sharing lessons learned with employees, stakeholders, other federal agencies, and the public. Specifically, the Congress should consider requiring that DOD fully track and periodically report on the implementation and results of its new human capital program. Such reporting could be on a specified timetable with sunset provisions. These required evaluations could be broadly modeled on the evaluation requirements of OPM's personnel demonstration program. Under the demonstration project authority, agencies must evaluate and periodically report on results, implementation of the demonstration project, cost and benefits, impacts on veterans and other Equal Employment Opportunity groups, adherence to merit principles, and the extent to which the lessons from the project can be applied elsewhere, including governmentwide. The reports could be done in consultation with or subject to review of OPM.

Specific DOD Human Capital Policies and Practices

Performance Management and Pay Reform

There is widespread understanding that the basic approach to federal pay is outdated and that we need to move to a more market- and performance-based approach. Doing so will be essential if we expect to maximize the performance and assure the accountability of the federal government for the benefit of the American people. DOD has said that broad banded performance management and pay for performance systems will be the cornerstone of its new system.

Reasonable people can and will debate and disagree about the merits of individual reform proposals. However, all should be able to agree that a modern, reliable, effective, and validated performance management system with adequate safeguards, including reasonable transparency and appropriate accountability mechanisms, must serve as the fundamental underpinning of any successful results-oriented pay reform. We are pleased that both the House version of DOD's fiscal year 2004 authorization bill and the proposed National Security Personnel System Act contain statutory safeguards and standards along the lines that we have been suggesting to help ensure that DOD's pay for performance efforts are fair to employees and improve both individual and organizational performance.

The statutory standards described in the National Security Personnel System Act proposal are intended to help ensure a fair, credible, and equitable system that results in meaningful distinctions in individual employee performance; employee involvement in the design and implementation of the system; and effective transparency and accountability measures, including appropriate independent reasonableness reviews, internal grievance procedures, internal assessments, and employee surveys. In our reviews of agencies' performance management systems—as in our own experience with designing and implementing performance-based pay reform for ourselves at GAO—we have found that these safeguards are key to maximizing the chances of success and minimizing the risk of failure and abuse.

The proposed National Security Personnel System Act also takes the essential first step in requiring DOD to link the performance management system to the agency's strategic plan. Building on this, we suggest that DOD should also be required to link its performance management system to program and performance goals and desired outcomes. Linking the

performance management system to related goals and desired outcomes helps the organization ensure that its efforts are properly aligned and reinforces the line of sight between individual performance and organizational success so that an individual can see how her/his daily responsibilities contribute to results and outcomes.

The proposed National Security Personnel System Act includes a detailed list of elements that regulations for DOD's broad band pay program must cover. These elements appear to be taken from DOD's experience with its civilian acquisition workforce personnel demonstration project as well as the plan, as described in an April 2, 2003 *Federal Register* notice to integrate all of DOD's current science and technology reinvention laboratory demonstration projects under a single human capital framework.[3] Many of the required elements in the proposed National Security Personnel System Act are entirely appropriate, such as a communication and feedback requirement, a review process, and a process for addressing performance that fails to meet expectations. However, other required elements, such as "performance scores", appear to imply a particular approach to performance management that, going forward, may or may not be appropriate for DOD, and therefore may have the unintended consequence of reducing DOD's flexibility to make adjustments. Congress has an important and continuing role to play in the design and implementation of the federal government's personnel policies and procedures. Congress should consider how best to balance its responsibilities with agencies' needs for the flexibility to respond to changing circumstances.

Finally, under the proposed act, for fiscal years 2004 through 2008, the overall amount allocated for compensation for civilian employees of an organizational or functional unit of DOD that is included in NSPS shall not be less than the amount of civilian pay that would have been allocated to such compensation under the General Schedule. After fiscal year 2008, DOD's regulations are to provide a formula for calculating an overall amount, which is to ensure that employees in NSPS are not disadvantaged in terms of the overall amount of pay available as a result of their conversion into NSPS while providing DOD with flexibility to accommodate changes in the function of the organization, the mix of employees performing those functions, and other changes that might affect pay levels.

[3] 68 *Fed. Reg.* 16,119-16,142 (2003).

Congress has had a longstanding and legitimate interest in federal employee pay and compensation policies and, as a result, there are provisions consistent with that interest in the National Security Personnel System Act. However, as currently constructed, the proposed bill may have the unintended consequence of creating disincentives, until fiscal year 2009, for DOD to ensure that it has the most effective and efficient organizational structure in place. This is because, based on our understanding of the bill's language, if DOD were to reorganize, outsource, or undertake other major change initiatives through 2008 in an organizational or functional unit that is part of NSPS, DOD may still be required to allocate an overall amount for compensation to the reorganized unit based on the number and mix of employees in place prior to conversion into NSPS. In other words, if priorities shift and DOD needs to downsize a unit in NSPS significantly, it may still be required that the downsized unit's overall compensation level remain the same as it would have been in the absence of the downsizing. While pay protections during a transition period are generally appropriate to build employee support for the changes, we believe that, should the Congress decide to require overall organizational compensation protection, it should build in additional flexibilities for DOD to make adjustments in response to changes in the size of organizations, mix of employees, and other relevant factors.

DOD Senior Executive Service Performance and Pay Reforms

The current allowable total annual compensation limit for senior executives would be increased up to the Vice President's total annual compensation (base pay, locality pay, and awards and bonuses) in the proposed National Security Personnel System Act and the House National Defense Authorization Act for Fiscal Year 2004. In addition, the highest rate of (base) pay for senior executives would be increased in the House version of the authorization bill.

The Homeland Security Act provided that OPM, with the concurrence of the Office of Management and Budget, certify that agencies have performance appraisal systems that, as designed and applied, make meaningful distinctions based on relative performance before an agency could increase its total annual compensation limit for senior executives. While the House version of DOD's fiscal year 2004 authorization bill would still require an OPM certification process to increase the highest rate of pay for senior executives, neither the proposed National Security Personnel System Act nor the House bill would require such a certification for increasing the total annual compensation limit for senior executives.

To be generally consistent with the Homeland Security Act, we believe that the Congress should require that OPM certify that the DOD senior executive service (SES) performance management system makes meaningful distinctions in performance and employs the other practices used by leading organizations to develop effective performance management systems, including establishing a clear, direct connection between (1) SES performance ratings and rewards and (2) the degree to which the organization achieved its goals. DOD would be required to receive the OPM certification before it could increase the total annual compensation limit and/or the highest rate of pay for its senior executives.

Attracting Key Talent for DOD

The National Security Personnel System Act contains a number of provisions designed to give DOD flexibility to help obtain key critical talent. It allows DOD greater flexibility to (1) hire experts and pay them special rates for temporary periods up to six years, and (2) define benefits for certain specialized overseas employees. Specifically, the Secretary would have the authority to establish a program to attract highly qualified experts in needed occupations with the flexibility to establish the rate of pay, eligibility for additional payments, and terms of the appointment. These authorities give DOD considerable flexibility to obtain and compensate individuals and exempt them from several provisions of current law. Consistent with our earlier suggestions, the bill would limit the number of experts employed at any one time to 300. The Congress should also consider requiring that these provisions only be used to fill critically needed skills identified in a DOD strategic human capital plan, and that DOD report on the use of the authorities under these sections periodically.

Governmentwide Human Capital Reforms

As I mentioned at the outset of my statement today, the consideration of human capital reforms for DOD naturally suggests opportunities for governmentwide reform as well. The following provides some suggestions in that regard.

Governmentwide Performance-Based Pay and Other Human Capital Authorities

We believe that the Congress should consider providing governmentwide authority to implement broad banding, other pay for performance systems, and other personnel authorities whereby whole agencies are allowed to use additional authorities after OPM has certified that they have the institutional infrastructures in place to make effective and fair use of those authorities. To obtain additional authority, an agency should be required to have an OPM-approved human capital plan that is fully integrated with the agency's strategic plan. These plans need to describe the agency's

critical human capital needs and how the new provisions will be used to address the critical needs. The plan should also identify the safeguards or other measures that will be applied to ensure that the authorities are carried out fairly and in a manner consistent with merit system principles and other national goals.

Furthermore, the Congress should establish statutory principles for the standards that an agency must have in place before OPM can grant additional pay flexibilities. The standards for DOD's performance management system contained in the National Security Personnel System Act are the appropriate place to start. An agency would have to demonstrate, and OPM would have to certify, that a modern, effective, credible, and, as appropriate, validated performance management system with adequate safeguards, including reasonable transparency and appropriate accountability mechanisms, is in place to support more performance-based pay and related personnel decisions before the agency could put the new system in operation. OPM should be required to act on any individual certifications within prescribed time frames (e.g., 30–60 days).

Consistent with our suggestion to have DOD evaluate and report on its efforts, agencies should also be required to evaluate the use of any new pay or other human capital authorities periodically. Such evaluations, in consultation with or subject to review of OPM, could be broadly modeled on the evaluation requirements of OPM's personnel demonstration program.

Governmentwide SES Performance and Pay Reforms

Additional efforts should be undertaken to move the SES to an approach where pay and rewards are more closely tied to performance. This is consistent with the proposed Senior Executive Service Reform Act of 2003. Any effort to link pay to performance presupposes that effective, results-oriented strategic and annual performance planning and reporting systems are in place in an agency. That is, agencies must have a clear understanding of the program results to be achieved and the progress that is being made toward those intended results if they are to link pay to performance. The SES needs to take the lead in matters related to pay for performance.

Performance Management Improvement Funds

We believe it would be highly desirable for the Congress to establish a governmentwide fund where agencies, based on a sound business case, could apply to OPM for funds to be used to modernize their performance

management systems and ensure that those systems have adequate safeguards to prevent abuse. Too often, agencies lack the performance management systems needed to effectively and fairly make pay and other personnel decisions.

The basic idea of a governmentwide fund would be to provide for targeted investments needed to prepare agencies to use their performance management systems as strategic tools to achieve organizational results and drive cultural change. Building such systems and safeguards will likely require making targeted investments in agencies' human capital programs, as our own experience has shown. (If successful, this approach to targeted investments could be expanded to foster and support agencies' related transformation efforts, including other aspects of the High Performing Organization concept recommended by the Commercial Activities Panel.[4])

Additional Targeted Governmentwide Reforms

Finally, we also believe that the Congress should enact additional targeted and governmentwide human capital reforms for which there is a reasonable degree of consensus. Many of the provisions in the proposed Federal Workforce Flexibility Act of 2003 and the governmentwide human capital provisions of the House version of DOD's fiscal year 2004 authorization bill fall into this category.

Summary Observations

Since we designated strategic human capital management as a governmentwide high-risk area in January 2001, the Congress, the administration, and agencies have taken steps to address the federal government's human capital shortfalls. In a number of statements before the Congress over the last 2 years, I have urged the government to seize on the current momentum for change and enact lasting improvements. Significant progress has been—and is being—made in addressing the federal government's pressing human capital challenges. But experience has shown that in making major changes in the cultures of organizations,

[4]The panel was mandated by section 832 of the National Defense Authorization Act for Fiscal Year 2001, which required the Comptroller General to convene a panel of experts to study the process used by the federal government to make sourcing decisions. After a yearlong study, the panel published its report on April 30, 2002. See Commercial Activities Panel, *Improving the Sourcing Decisions of the Government: Final Report* (Washington, D.C.: Apr. 30, 2002). The report can be found on GAO's Web site at www.gao.gov under the Commercial Activities Panel heading.

how it is done, when it is done, and the basis on which it is done can make all the difference in whether we are ultimately successful.

DOD and other agency-specific human capital reforms should be enacted to the extent that the problems being addressed and the solutions offered are specific to particular agencies. A governmentwide approach should be used to address certain flexibilities that have broad-based application and serious potential implications for the civil service system, in general, and OPM, in particular. This approach will help to accelerate needed human capital reform in DOD and throughout the rest of the federal government.

Chairman Collins and Members of the Committee, this concludes my prepared statement. I would be pleased to respond to any questions that you may have.

Contacts and Acknowledgments

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AFGE
Congressional
Testimony

STATEMENT BY

BOBBY L. HARNAGE, SR.
NATIONAL PRESIDENT
AMERICAN FEDERATON OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE

THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE

REGARDING

THE DEPARTMENT OF DEFENSE PERSONNEL SYSTEM

ON

JUNE 4, 2003

American Federation of Government Employees, AFL-CIO
80 F Street, NW, Washington, D.C. 20001 ★ (202) 737-8700 ★ www.afge.org

Madam Chairman and Committee Members:

On behalf of the more than 600,000 federal employees represented by the American Federation of Government Employees, AFL-CIO (AFGE) including 200,000 in the Department of Defense (DoD), I thank you for the opportunity to testify today on several aspects of legislation to give the Secretary of Defense discretion over whether to abide by numerous chapters of Title 5.

At the outset of my testimony, let me thank you, Madam Chairman, as well as Senators Levin and Voinovich, for the numerous changes you have made to the House-passed version of the Department's personnel system proposal. While we remain profoundly concerned about the fairness of and the economic impact on federal employees from the establishment of a pay-for-performance system as well as other issues which we will discuss in greater detail, we are grateful for your willingness to study this matter closely. By taking the time to do so, you have managed to write legislation which substantially restrains the Department's desire for a blank check to create a new personnel system.

The authorities sought by the Pentagon are broad and have profound implications for not only the reality of the merit-principle based civil service system, but also for the very idea of a merit-principle based civil service system. AFGE believes that the passage of the Defense Department's legislative proposal would result in an abandonment of the principles that undermine the merit system precisely because it leaves so many aspects of that system unenforceable. No one will be able to hold the Secretary of Defense accountable for upholding the merit system principles if the legislation is passed; one must only hope and trust.

Support for the Pentagon's request amounts to a willingness to exchange a civil service both based upon and held accountable to the merit system principles for systems to be designed, implemented, and adjudicated by a political appointee – the Secretary of Defense. The risk that this system will be politicized, and characterized by cronyism in hiring, firing, pay, promotion, and discipline are immense. And the ability to mitigate that risk will be miniscule.

AFGE strongly opposes the Pentagon's proposal as passed by the House of Representatives on the grounds that it erases decades of social progress in employment standards, punishes a workforce that has just made a crucial and extraordinary contribution to our victory in Operation Enduring Freedom, and takes away from Congress and affected employees the opportunity they now possess to have a voice in crafting and approving the personnel and other systems of the Department of Defense. Today, no one owns the Department of Defense – it is a public institution, supported by U.S. taxpayers and administered by a Secretary of Defense appointed by an elected President, and overseen and regulated by the U.S. Congress. If the House bill is enacted, each individual Secretary of Defense, in cooperation with each President, will effectively own the

Department of Defense as if it were a private concern. If the House version becomes law, Congress will have relinquished its oversight and legislative role with regard to approximately 700,000 government personnel.

AFGE finds it entirely implausible that Pentagon officials honestly believe that the Defense Department needs sweeping new authorities for every Secretary of Defense in order to be successful in the future. The civilian employees of DoD represented by AFGE have been working around the clock for months supporting and maintaining both troops and weapons, loading materials and combat forces onto ships, aircraft, and tanks; or in many cases serving on active duty as well as caring for the military families who have been waiting at home for their loved ones to return. They are justly proud of their contribution, and are devastated to learn that Pentagon leaders intend to respond to their effort with Operation Erode the Civil Service.

The fact is that there is no serious or true rationale for this legislation. Over the past 12 years, DoD has achieved BRAC, services realignment, the creation of several agencies, including:

- Defense Logistics Agency (DLA),
- Defense Finance and Administration Service (DFAS)
- Defense Commissary Agency (DeCA)
- Defense Printing Agency (DPA)
- Defense Contract Audit Agency (DCAA)
- Defense Contract Management Agency (DCMA)
- National Imagery and Mapping Agency (NIMA)
- Defense Information Systems Agency (DISA),

and the elimination and consolidation of several agencies, widespread privatization, and downsizing of more than 200,000 federal positions. DoD has been granted tremendous flexibility, and it has exercised its authorities to the maximum extent. They have engaged in numerous successful combat missions, including two wars in the Gulf and in Europe. They have done a tremendous job advancing and protecting our nation's security interests. What did they need to do to protect our nation's security that the laws and regulation they seek the authority to waive prevent? What is the problem they are trying to solve?

I am not here to tell you that everything is fine at DoD from the perspective of DoD's rank and file civilian workforce. They have been asked to do more with less throughout the past decades deficit reduction and simultaneous and repeated reorganizations, transformations and policy shifts. Thousands live under the constant threat that DoD will contract out their jobs without giving them an opportunity to compete in a fair public-private competition. Because the downsizing of the 1990's was undertaken without regard to mission or workload, DoD's acquisition workforce was cut in half at the same time that the number and dollar value of service contracts exploded, making the job of oversight and

administration of contracts ever more difficult. The promise that federal salaries would rise gradually in order to become comparable to private sector rates, as provided by the bipartisan Federal Employees Pay Comparability Act of 1990 (FEPCA) has not been realized, and DoD's blue collar employees have likewise been denied the prevailing wage rates that their pay system promises to them.

But nothing in the House bill would begin to solve any of those problems; instead, the House bill would take away from Congress not only the opportunity, but also the responsibility for addressing them, and likely result in making each of those problems worse. This is in stark contrast to the approach taken by you, Madam Chairman, and Senators Levin and Voinovich, in your proposal and AFGE deeply appreciates the difference. In particular, your bill demonstrates not only a willingness, but a determination to reign in some of the most egregious and outrageous of the Pentagon's demands that the House refused to address.

Description of the House-Passed Bill

What does DoD's legislative proposal as passed by the House do to civilian DoD employees? It would amend title 5, United States Code, by adding chapter 99 establishing a new Department of Defense National Security Personnel System. Although many have described these provisions as analogous to the Homeland Security Act, there are notable exceptions.

Secretaries of Defense would be given authority to establish, by regulations prescribed jointly with the Office of Personnel Management (OPM), human resources management systems for some or all of the organizational units of DoD. In addition, they would be authorized to waive the requirement that regulatory changes be issued jointly, "subject to the direction of the President." It is not clear what "subject to the direction of" means, i.e., whether it implies that the authority may be exercised "subject to the approval of" or whether the Secretaries may undertake such unilateral action only when told to do so by the President.

In addition to the above, the legislation gives to Secretaries of Defense powers that go far beyond the unprecedented authorities given to the Secretaries of the Department of Homeland Security. The following is nonwaivable for DHS employees but would be waivable for DoD employees under the proposed legislation:

Subchapter V of Ch. 55: Premium Pay

In addition, the following chapters of title 5 would not technically be waivable:

Ch. 31: Authority for Employment (hiring)

Ch. 33: Examination, Selection, and Placement, and
Ch. 35: Retention Preference, Restoration, and Reemployment

The bill specifically allows the Secretary to exercise authorities that would otherwise be available to him under paragraphs

(1) methods of establishing qualification requirements for, recruitment for, and appointment to positions;
(2) methods of assigning, reassigning, or promoting employees; and
(8) methods of reducing overall agency staff and grade levels.

of section 4703 (a) of title 5. It thus appears that what the Department was unable to get through the front door; i.e. with a broad waiver of Chapters 31, 33, and 35, in order to eliminate current employee and taxpayer protections on hiring, assignment, promotion, and the conduct of reductions-in-force, they have achieved through the back door of demonstration project authority. DoD's House-backed legislation could eliminate the requirement that reductions in force (RIF) be conducted according to procedures set out in chapter 35. These procedures assure that RIFS are conducted on the basis of employment status and length of service as well as efficiency or performance ratings. On what basis would supervisors select individuals for RIFs without the constraints described in chapter 35's procedures? No one knows, and no one will know since each Secretary of Defense would apparently have authority to write and rewrite RIF rules if the House-backed bill is enacted. Indeed, every time DoD conducts a RIF, the rules could change. The bill would allow supervisors to decide who will be the victim of a RIF on the basis of subjective factors, rather than performance, seniority, and employment status.

Allow me to give you one example of how the agency might abuse such authority. It is an example that is very much on the minds of DoD civilian employees: Reductions-in-force could be run so that all of those who are nearing retirement eligibility, but have not yet reached that point would receive a pink slip. In this example, DoD could not only reduce staffing as might be necessary, but also eliminate their obligation for retirement costs. This example is all too common in the private sector. Title 5 was specifically written in such a way as to prevent such abusive managerial practices during federal employee layoffs, and we must be mindful of these possibilities as the Department's greed for unfettered flexibility is debated in the weeks ahead. While the Senate bill is more restrictive, granting demonstration project authority for hiring, AFGE remains concerned about how this authority will be used.

The House bill, like the Homeland Security Act, authorizes Defense Secretaries to waive the following critical chapters of title 5:

Ch. 43: Performance appraisal system
Ch. 51: Position Classification

Ch. 53: Pay rates and systems (GS/WG/grade and pay retention)
Ch. 71: Collective Bargaining rights
Ch. 75: Due process
Ch. 77: Appeal rights/judicial review

Pay and Classification

It is worth elaborating what all this would mean in very practical terms. Allowing each new Secretary of Defense to waive chapters 53 and 51 of Title 5 means that each new Secretary of Defense would be free to create a wholly new pay and position classification system for the Department. It would mean that any Secretary of Defense could eliminate the General Schedule (GS) and the Federal Wage System (FWS) or their successors (whatever they might be) and replace them with new systems of his own design. Annual salary adjustments, nationwide and locality, passed by the Congress to help federal salaries keep pace with private sector wage increases would be gone. Periodic step increases for eligible workers who are performing satisfactorily would be gone. The current Secretary of Defense is said to prefer a pay banding system that allows supervisors to decide whether and by how much an individual employee's pay might be adjusted. Supervisors, not Congress, would decide whether DoD employees get a raise and what the size of that raise would be. No one knows how future Secretaries of Defense might exercise this power.

Chapter 51 describes the current classification system and requires that different pay levels for different jobs be based on the principle of "equal pay for substantially equal work." New systems designed by successive Secretaries of Defense would not have to adhere to that standard. Jobs which are graded similarly today on the basis of that principle might therefore be treated completely differently when various and successive new systems are put into place by each new Secretary of Defense. Granting these authorities to each new Secretary of Defense with regard to classification raises serious concern, as the current standards go a long way toward preventing federal pay discrimination on the basis of race, gender, or ethnicity.

Premium Pay

Another shocking and dangerous waiver authority is sought in the House legislation with regard to subchapter V of chapter 55, which covers Premium Pay. This subchapter addresses numerous issues ranging from overtime and compensatory time calculations, firefighter pay, Sunday and holiday pay, as well as compensatory time off for religious observances. By waiving subchapter V of chapter 55, the current and each new Secretary of Defense would have the power to turn back the clock on the last several decades of progressive legislation on matters crucial to the economic security of federal employees and their families. The Senate bill, by contrast, wisely prevents the waiver of subchapter V of chapter 55.

Performance and Appeal Rights

Allowing waiver of chapter 43 gives over to each Secretary of Defense the power to unilaterally decide a system for taking action against poor performers. In order to make sure that federal employees are not the targets of unwarranted or arbitrary discipline, current law provides employees with an opportunity to undertake a "performance improvement period" before they are disciplined for poor performance. In any new systems created by different administrations, current safeguards and the opportunity to improve **or appeal** may be eliminated.

The House bill allows the Secretary of Defense to waive chapters 75 and 77, which puts in jeopardy DoD employees' due process and appellate rights. While non-union private sector workers have no legal right to appeal suspensions, demotions, or dismissals from their jobs, federal workers have these legal rights for very important reasons. In addition to being the right thing to do, because their employer is the U.S. government, the guarantor and enforcer of American citizens' due process rights, the bar is higher than for private firms whose obligations are different. Thus chapter 75 sets up a system for management to suspend, demote, or dismiss employees, but provides employees with the ability to appeal these actions to the Merit Systems Protection Board (MSPB) if there is evidence that the actions were motivated by factors other than performance, including racial or other prejudice, political views, or union status. Under this chapter, DoD employees are eligible for advance written notice of the disciplinary action, a reasonable time to respond, representation by an attorney, and a written decision by DoD listing the specific reasons for the disciplinary action. Any Secretary of Defense could eliminate these protections under the House bill.

Chapter 77 establishes the procedures for appealing to not only the MSPB, but also describes procedures for appealing decisions that are alleged to involve discrimination either to the MSPB or the Equal Employment Opportunity Commission (EEOC), and for accountability, establishes judicial review of MSPB decisions. Giving each Secretary of Defense the power to do away with the rights and procedures described in chapters 75 and 77 means that DoD workers could lose and regain these rights according to the political preferences of any Administration. In the House-passed bill, one Secretary of Defense may decide that employees of DoD should have little or no right to information about why they are being disciplined, and little or no right to appeal decisions against them. Another Secretary of Defense may reinstate procedures for the period of his tenure, but they may disappear again after the next election.

In contrast, the Senate bill effectively maintains the rights described in chapters 75 and 77, and AFGE greatly appreciates the tremendous effort that has been made to address our concerns in these areas. Regarding the language on Employee Grievances and Appeals, the Senate bill is a substantial improvement over the House bill, which virtually parrots DoD's original proposal. Maintaining

an employee's Merit Systems Protection Board (MSPB) appeal rights and judicial review over adverse actions, discrimination cases, and whistle-blower protection issues is crucial. While we question the constitutionality of the House Bill, which provides for only an internal DoD review of these cases, I must emphasize how unlikely it will be for any whistleblower to ever come forward with documented instances of fraud and abuse if his/her case is to be heard by an internal DoD Board selected by the Secretary with no avenue of a hearing before a neutral third party followed by judicial review. Perhaps, this part of the House Bill should be called "The Maintenance of the $800 Hammer Provision" since employees will be well-advised to remain silent and look the other way when confronting fraud, waste, or abuse in DoD.

DoD should be quite satisfied with the appeals provisions contained in the Senate Bill. Currently, employees may be fired for cause where the Agency meets its burden of proof by a "preponderance" of the evidence (50.1%) if the Agency follows Chapter 75 procedures. If an Agency fires an employee based on poor performance under Chapter 43, only the lower "substantial" evidence standard is necessary (<u>any</u> evidence in the record that a reasonable person might accept as adequate even though reasonable persons (or the Board itself) might disagree with the Agency's conclusion). Agencies currently win about 85% of these cases now, which is a clear indication that the current legal standards are in no way "tilted" towards employees.

<u>Collective Bargaining</u>

Current law, as set forth in chapter 71 of title 5, allows DoD employees to organize into labor unions and pursue union representation through the process of collective bargaining with management over some conditions of employment. Giving each Secretary of Defense the authority to waive some or all of chapter 71 eliminates a very important part of the system of checks and balances that hold managers and political appointees accountable. It eliminates the process by which disputes between employee representatives and management are resolved. Today, labor-management impasses are sent to the Federal Services Impasses Panel (FSIP), a seven-member board appointed by the President, which acts as a binding arbitrator on all disputes. The legislation as passed by the House would prohibit any national bargaining or negotiability impasses, no matter how routine or unrelated to national security, from going to the FSIP, the Federal Labor Relations Authority, or any third party outside DoD. This is unprecedented and any Secretary of Defense who might exercise this authority would render the entire collective bargaining process a sham.

The House-passed version capitulates to the Pentagon's baseless contention that this authority is necessary for military "agility." In effect, waiving chapter 71, as the House bill provides, would allow any Secretary of Defense to create new personnel systems without any formal give- and-take with the affected employees' **elected** representatives.

AFGE strongly supports the Senate bill's retention of chapter 71, which assures DoD employees that when they exercise their basic democratic right to vote to elect union representation, the Secretary of Defense will not have the authority to negate their vote and deprive them of the opportunity to have their concerns and their views considered by management. Further, it affords represented employees an opportunity to resolve conflict through avenues not controlled entirely by management, an irreducible conflict of interest since management will always be a party to the conflict. In addition, we believe that it offers the only mechanism that will ensure that DoD's employees will not become helpless victims of the whims of various Secretaries of Defense as they exercise the broad authorities granted elsewhere in the legislation.

Individual Pay for Performance: A Perpetual War of All Against All

There is no reason to believe that individualized pay for performance is a wise choice for the federal pay system generally, or for a new pay system applicable only in the Department of Defense. The House bill specifically does not ask Congress to approve a new pay system or a new personnel system, but instead asks Congress to relinquish this authority to successive Secretaries of Defense. In contrast, the Senate bill does set forth the broad outlines of a pay for performance system. The Navy's China Lake Plan is often cited as an example of a pay for performance plan that might be a model for a DoD-wide pay system, and it is likely that it would comply with the guidelines described in the Senate bill.

The question of whether the China Lake Plan is a worthy successor to the General Schedule for DoD or any other agency is one useful way to consider how the authorities in the legislation might be used or abused. Indeed, comparing it to the GS system is just one way of gauging whether pay for performance would mean going from the frying pan into the fire, or would constitute some form of progress for either federal employees or federal agencies. To that end, it is worth providing an accurate description of the GS system and its performance elements, since it has been unfairly maligned as a system that makes little or no connection between productivity and pay.

The version of the General Schedule I will discuss is the one that was established as a result of the enactment of the bipartisan Federal Employees Pay Comparability Act (FEPCA) in 1990. Despite the insistence of some who claim that it is an aged and inflexible historical relic, the fact is that the General Schedule has been modified numerous times, in some cases quite fundamentally. FEPCA's distinguishing feature, the locality pay system, has not even had a full decade of experience, since its implementation began only in 1994 after passage in 1992 of technical and conforming amendments to FEPCA

that established both locality pay and Employment Cost Index (ECI)-based annual pay adjustments.

Flexibility in Times of Peace

FEPCA introduced a panoply of pay flexibilities into the allegedly rigid General Schedule of which DoD has made ample use:

- special pay rates for certain occupations
- critical pay authority
- recruitment and retention flexibilities that allow hiring above the minimum step of any grade
- paying recruitment or relocation bonuses
- paying retention bonuses of up to 25% of basic pay
- paying travel and transportation expenses for new job candidates and new hires
- allowing new hires up to two weeks advance pay as a recruitment incentive
- allowing time off incentive awards
- paying cash awards for performance
- paying supervisory differentials to GS supervisors whose salaries were less than certain subordinates covered by non-GS pay systems
- waiver of dual compensation restrictions
- changes to Law Enforcement pay
- special occupational pay systems
- pay flexibilities available to Title 5 health care positions, and more.

In addition, FEPCA retained agencies' authority for quality step increases, which allow managers to reward extraordinary performance with increases in base salary that continue to pay dividends throughout a career.

The basic structure of the General Schedule is a 15-grade matrix with ten steps per grade. Movement within a grade or between grades depends upon the satisfactory performance of job duties and assignments over time. That is, an employee becomes eligible for what is known as a "step" increase each year for the first three years, and then every two or three years thereafter up to the tenth step. *Whether or not an employee is granted a step increase depends upon performance (specifically, they must be found to have achieved "an acceptable level of competence").* If performance is found to be especially good, managers have the authority to award "quality step increases" as an additional incentive. If performance is found to be below expectations, the step increase can be withheld, and proper steps can be taken either to discipline the employee, demote the employee, and give him an opportunity to improve.

The federal position classification system, which is separate and apart from the General Schedule and would have to either continue or be altered separately and in addition to any alteration in the General Schedule, determines the starting

salary and salary potential of any federal job. As such, a job classification determines not only initial placement of an individual and his or her job within the General Schedule matrix, classification determines the standards against which individual worker's performance will be measured when opportunities for movement between steps or grades arise. **And most important, the classification system is based upon the concept of "equal pay for substantially equal work", which has done much to prevent federal pay discrimination on the basis of race, ethnicity, or gender.**

The introduction of numerous pay flexibilities into the General Schedule under FEPCA was only one part of the pay reform the legislation was supposed to effect. It was recognized by President George Bush, our 41st President, the Congress, and federal employee unions that federal salaries in general lagged behind those in the private sector by substantial amounts, although these amounts varied by metropolitan area. FEPCA instructed the BLS to collect data so that the size of the federal-non-federal pay gap could be measured, and closed gradually to within 90% of comparability over 10 years. To close the pay gap, federal salary adjustments would have two components: a nationwide, across-the-board adjustment based upon the Employment Cost Index (ECI) that would prevent the overall gap from growing, and a locality-by-locality component that would address the various gaps that prevailed in specific labor markets.

Unfortunately, neither the Clinton nor the George W. Bush administration has been willing to comply with FEPCA, and although some small progress has been made as a result of Congressional action, on average federal salaries continue to lag private sector salaries by about 22%. The Clinton administration cited, variously, budget difficulties and undisclosed "methodological" objections as its reasons for failing to provide the salary adjustments called for under FEPCA. The current administration ignores the system altogether, and for FY04 has proposed allocation of a fund with 0.5% of salaries to be allocated via managerial discretion. Meanwhile, the coming retirement wave, which was fully anticipated in 1990 and is particularly acute in DoD because of the downsizing of more than 200,000 jobs in that decade, has turned into a full-fledged human capital crisis, as the stubborn refusal to implement the locality pay system which was designed to improve recruitment and retention of the next generation of federal employees continues.

China Lake

The Navy's China Lake plan started out as a demonstration project under title 6 of the Civil Service Reform Act. It was initiated in 1980, modified in 1987, expanded in 1990, extended indefinitely in 1994 (made into a "permanent" alternative personnel system), and expanded again in 1995. The employees covered by the China Lake plan are approximately 10,000 scientists, engineers, technicians, technical specialists, and administrative and clerical staff—a

workforce that is not typical of any government agency, or even a minority of work units in any one agency.

Although the China Lake plan is often referred to as a model for pay for performance, the rationale given to OPM at its inception, and to Congress in its progress reports, was to improve the competitiveness of salaries for scientists and engineers. Nevertheless, the China Lake model is a performance-based pay system that differs from the General Schedule in terms of its classification of jobs into pay bands that are broader than the grades and steps in the GS matrix. Thus it is often called a broadbanding system.

OPM's evaluation of the China Lake plan was positive. They judged it a success in improving overall personnel management at the two demonstration laboratories studied. OPM cited the "simplified delegated job classification based on generic standards" as a key factor in the demo's success, as the time spent on classification actions was reduced, and the official report was that conflict between the affected workers and management declined. In the 10-year period of evaluation, average salaries rose by 3% after taking into account the effects of inflation. The China Lake plan made an explicit attempt to link pay increases within its "broad bands" to individual performance ratings. Starting salaries were also "flexible" within the bands.

It is important to note that the China Lake demo predated the passage of FEPCA by a decade. Indeed, China Lake's experience was invoked throughout the debate over reforming the federal pay system in the years leading up to FEPCA's passage in 1990, and many of FEPCA's flexibilities were based upon positive experiences accumulating in the China Lake demo.

China Lake has extremely elaborate and complex mechanics for calculating performance pay, and has an equally elaborate classification system. The particulars of the system demonstrate that while China Lake's design may be appropriate to some scientists and engineers, it would not be appropriate for the full range of federal positions, since many are in occupations and workplaces that place extreme or even total limitations on creativity, individual initiative, or individualized performance. China Lake also shows that administrative ease is <u>not</u> one of pay for performance's virtues if the pay for performance system attempts to build in safeguards that limit the role of bias, favoritism and prejudice, as has been attempted at China Lake.

Instead of the General Schedule's 15 grades, China Lake has five career paths grouped according to occupational field. The five occupational fields are Scientists/Engineers/Senior Staff, Technicians, Technical Specialists, Administrative Specialists, and General Personnel. Each career path has classification and pay levels under the broadband concept that are directly comparable to groupings of the General Schedule. Within each career path are included many types of jobs under an occupational heading. Each job has its

own career ladder that ends at a specific and different point along the path. Each broad band encompasses at least two GS grades. The China Lake plan describes itself as being "anchored" to the General Schedule as a "reality check." For those keeping count, the China Lake broadband has at least as many salary possibilities as the General Schedule, and at most as many as 107,000, since salaries can really be anywhere between the General Schedule's minimum or maximum.

Movement along an individual career path is the key factor to consider, as the overall plan has been suggested as a pay for performance model. As such, it is important to note that although some individuals may have an opportunity to move up to the top of a career path, not all can. Each job has its predesignated "top out" level. The promotion potential for a particular position is established based on the highest level at which that position could be classified, but individuals' promotions will vary. Promotion potential for a given position doesn't grow just because movement is nominally based upon performance. The only way to change career paths is to win a promotion to another career path altogether, i.e. get a new job. One can move along a pay line, but one may not shift to a higher pay line.

The description of the China Lake system involves pages and pages of individualized personnel actions involving the classification and reclassification of workers, and the setting of salary and salary adjustments. It is certainly neither streamlined nor simple, and asks managers on a continuous basis to evaluate each individual worker on numerous bases. In terms of bureaucratic requirements, and a presumption that managers have the training, competence, available time, commitment, and incentive to be as thorough as this system expects them to be for every single employee under them, the China Lake plan seems unrealistic at best. Further, the plan lacks adequate opportunity for employees to appeal their performance appraisals and the attendant pay consequences.

Unlike some of the radical "at will" pay and classification systems advocated by those who believe that any rules or regulations or standards or systems constitute intolerable restrictions on management flexibility, the China Lake plan retains a requirement to tie salary to job duties and responsibilities, not an individual worker's personal characteristics.

AFGE's Views on the General Schedule vs. "Individualized Pay for Performance"

The rationales offered by proponents of pay for performance in the federal government have generally fallen under one of four headings: improving productivity, improving recruitment prospects, improving retention, and punishing poor performers. Perhaps the most misleading rationale offered by advocates of

pay for performance is that its use has been widespread in the private sector. Those who attempt to provide a more substantive argument say they support pay for performance because it provides both positive and negative incentives that will determine the amount of effort federal workers put forward. Advocates of pay for performance wisely demur on the question of whether pay for performance by itself is a strategy that solves the problem of the relative inferiority of federal salaries compared to large public and private sector employers. That is to say, when pay for performance is referred to as complying with the government's longstanding principle of private sector comparability, what they seem to mean is comparability in *system design*, and not comparability in salary levels.

Does a pay system that sets out to reward individual employees for contributions to productivity improvement and punishes individual employees for making either relatively small or negative contributions to productivity improvement work? The data suggest that they do not, although the measurement of productivity for service-producing jobs is notoriously difficult. Measuring productivity of government services that are not commodities bought and sold on the market is even more difficult. Nevertheless, there are data that attempt to gauge the success of pay for performance in producing productivity improvement. Most recently, DoD's own data from its "Best Practices" pay demos has shown that they have not led to improvements in productivity, accomplishment of mission, or cost control.

Although individualized merit pay gained prominence in the private sector over the course of the 1990's, there is good reason to discount the relevance of this experience for the federal government as an employer. Merit based contingent pay for private sector employees over the decade just past was largely in the form of stock options and profit-sharing, according to BLS data. The corporations that adopted these pay practices may have done so in hope of creating a sense among their employees that their own self interest was identical to the corporation's, at least with regard to movements in the firm's stock price and bottom line. However, we have learned more recently, sometimes painfully, that the contingent, merit-based individual pay that spread through the private sector was also motivated by a desire on the part of the companies to engage in obfuscatory cost accounting practices.

These forms of "pay for performance" that proliferated in the private sector seem now to have been mostly about hiding expenses from the Securities and Exchange Commission (SEC), and exploiting the stock market bubble to lower actual labor costs. When corporations found a way to offer "performance" pay that effectively cost them nothing, it is not surprising that the practice became so popular. However, this popularity should not be used as a reason to impose an individualized "performance" pay system with genuine costs on the federal government.

Jeffrey Pfeffer, a professor in Stanford University's School of Business, has written extensively about the misguided use of individualized pay for performance schemes in the public and private sectors. He cautions against falling prey to "six dangerous myths about pay" that are widely believed by managers and business owners. Professor Pfeffer's research shows that belief in the six myths is what leads managers to impose individualized pay for performance systems that never achieve their desired results, yet "eat up enormous managerial resources and make everyone unhappy."

The six myths identified by Professor Pfeffer are:

(1) labor rates are the same as labor costs;

(2) you can lower your labor costs by lowering your labor rates;

(3) labor costs are a significant factor in total costs;

(4) low labor costs are an important factor in gaining a competitive edge;

(5) individual incentive pay improves performance; and finally,

(6) the belief that people work primarily for money, and other motivating factors are relatively insignificant.

The relevance of these myths in the context of the sudden, urgent desire to impose a pay for performance system on the federal government is telling. Professor Pfeffer's discussion of the first two myths makes one wish that his wisdom would have been considered before the creation of the federal "human capital crisis" through mindless downsizing and mandatory, across-the-board privatization quotas. Pfeffer's distinction argues that cutting salaries or hourly wages is counterproductive since doing so undermines quality, productivity, morale, and often raises the number of workers needed to do the job. Did the federal government save on labor costs when it "downsized" and eliminated 300,000 federal jobs at the same time that the federal workload increased? Does the federal government save on labor costs when it privatizes federal jobs to contractors that pay front-line service providers less and managers and professionals much, much, much more?

Regarding the relevance of low labor costs as a competitive strategy, for the federal government, it is largely the ability to compete in labor markets to recruit and retain employees with the requisite skills and commitment to carry out the missions of federal agencies and programs. Time and again, federal employees report that competitive salaries, pensions and health benefits; job security, and a chance to make a difference are what draw them to federal jobs. They are not drawn to the chance to become rich in response to financial incentives that require them to compete constantly against their co-workers for a raise or a

bonus. DoD employees, in particular, are drawn to the agency's national security mission.

Professor Pfeffer blames the economic theory that is learned in business schools and transmitted to human resources professionals by executives and the media for the persistence of belief in pay myths. These economic theories are based on conceptions that human nature is uni-dimensional and unchanging. In economics, humans are assumed to be rational maximizers of their self-interest, and that means they are driven primarily, if not exclusively by a desire to maximize their incomes. The inference from this theory, according to Pfeffer, is that "people take jobs and decide how much effort to expend in those jobs based on their expected financial return. If pay is not contingent on performance, the theory goes, individuals will not devote sufficient attention and energy to their jobs."

Further elaboration of these economic theories suggest that rational, self-interested individuals have incentives to misrepresent information to their employers, divert resources to their own use, to shirk and "free ride", and to game any system to their advantage *unless* they are effectively thwarted in these strategies by a strict set of sanctions and rewards that give them an incentive to pursue their employer's goals. In addition there is the economic theory of adaptive behavior or self-fulfilling prophesy, which argues that if you treat people as if they are untrustworthy, conniving and lazy, they'll act accordingly.

Pfeffer also cites the compensation consulting industry, which, he argues, has a financial incentive to perpetuate the myths he describes. More important, the consultants' own economic viability depends upon their ability to convince clients and prospective clients that pay reform will improve their organization. Consultants also argue that pursuing pay reform is far easier than changing more fundamental aspects of an organization's structure, culture, and operations in order to try to improve; further, they note that pay reform will prove a highly visible sign of willingness to embark on "progressive reform." Finally, Pfeffer notes that the consultants ensure work for themselves through the inevitable "predicaments" that any new pay system will cause, including solving problems and "tweaking" the system they design.

In the context of media hype, accounting rules that encourage particular forms of individual economic incentives, the seeming truth of economic theories' assumptions on human nature, and the coaxing of compensation consultants, it is not surprising that many succumb to the temptation of individualized pay for performance schemes. But do they work? Pfeffer answers with the following:

> Despite the evident popularity of this practice, the problems with individual merit pay are numerous and well documented. It has been shown to undermine teamwork, encourage employees to focus on the short term,

> and lead people to link compensation to political skills and ingratiating personalities rather than to performance. Indeed, those are among the reasons why W. Edwards Deming and other quality experts have argued strongly against using such schemes.
>
> Consider the results of several studies. One carefully designed study of a performance-contingent pay plan at 20 Social Security Administration (SSA) offices found that merit pay had no effect on office performance. Even though the merit pay plan was contingent on a number of objective indicators, such as the time taken to settle claims and the accuracy of claims processing, employees exhibited no difference in performance after the merit pay plan was introduced as part of a reform of civil service pay practices. Contrast that study with another that examined the elimination of a piece work system and its replacement by a more group-oriented compensation system at a manufacturer of exhaust system components. There, grievances decreased, product quality increased almost tenfold, and perceptions of teamwork and concern for performance all improved.[1]

Compensation consultants like the respected William M. Mercer Group report that just over half of employees working in firms with individual pay for performance schemes consider them "neither fair nor sensible" and believe that they add little value to the company. The Mercer report says that individual pay for performance plans "share two attributes: they absorb vast amounts of management time and resources, and they make everybody unhappy."

One further problem cited by both Pfeffer and other academic and professional observers of pay for performance is that since they are virtually always zero-sum propositions, they inflict exactly as much financial hardship as they do financial benefit. In the federal government as in many private firms, a fixed percentage of the budget is allocated for salaries. Whenever the resources available to fund salaries are fixed, one employee's gain is another's loss. What incentives does this create? One strategy that makes sense in this context is to make others look bad, or at least relatively bad. Competition among workers in a particular work unit or an organization may also, rationally, lead to a refusal on the part of individuals to share best practices or teach a coworker how to do something better. Not only do these likely outcomes of a zero-sum approach obviously work against the stated reasons for imposing pay for performance, they actually lead to outcomes that are worse than before.

What message would the federal government be sending to its employees and prospective employees by imposing a pay for performance system? At a minimum, if performance-based contingent pay is on an individual-by-individual basis, the message is that the work of lone rangers is valued more than cooperation and teamwork. Further, it states at the outset that there will be

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[1] "Six Dangerous Myths about Pay", by Jeffrey Pfeffer, Harvard Business Review, May-June 1998 v. 76, no.3, page 109 (11).

designated losers – everyone cannot be a winner; someone must suffer. In addition, it creates a sense of secrecy and shame regarding pay. In contrast to the current pay system that is entirely public and consistent (pay levels determined by Congress and allocated by objective job design criteria), individual pay adjustments and pay-setting require a certain amount of secrecy, which strikes us as inappropriate for a public institution. An individual-by-individual pay for performance system whose winners and losers are determined behind closed doors sends a message that there is something to hide, that the decisions may be inequitable, and would not bear the scrutiny of the light of day.

Beyond compensation consultants, agency personnelists, and OPM, who wants to replace the General Schedule with a pay for performance system? The survey of federal employees published by OPM on March 25 may be trotted out by some as evidence that such a switch has employee support. But that would be a terrible misreading of the results of the poll. AFGE was given an opportunity to see a draft of some of the poll questions prior to its being implemented. We objected to numerous questions that seemed to be designed to encourage a response supportive of individualized pay for performance. We do not know whether these questions were included in the final poll. The questions we objected to were along the lines of: Would you prefer a pay system that rewarded you for your excellence, even if it meant smaller pay raises for colleagues who don't pull their weight? Do you feel that the federal pay system adequately rewards you for your excellence and hard work? Who wouldn't say yes to both of those questions? Who ever feels adequately appreciated, and who doesn't secretly harbor a wish to see those who *appear* to be relatively lazy punished? Such questions are dangerously misleading.

The only question which needs to be asked of DoD's civilian federal employees is the following: Are you willing to trade the annual pay adjustment passed by Congress, which also includes a locality adjustment, and any step or grade increases for which you are eligible, for a unilateral decision by your supervisor every year on whether and by how much your salary will be adjusted?

It is crucial to remember that the OPM poll was taken during a specific historical period when federal employees are experiencing rather extreme attacks on their jobs, their performance, and their patriotism. The Administration is aggressively seeking to privatize 850,000 federal jobs and in many agencies, is doing so in far too many cases without giving incumbent federal employees the opportunity to compete in defense of their jobs. After September 11, the Administration began a campaign to strip groups of federal employees of their civil service rights and their right to seek union representation through the process of collective bargaining. The insulting rationale was "national security" and the explicit argument was that union membership and patriotism were incompatible. Some policy and lawmakers used the debate over the terms of the establishment of the Department of Homeland Security as an opportunity to defame and destroy the reputation, the work ethic, loyalty, skill and trustworthiness of federal employees.

And out of all of this has come an urgent rush to replace a pay system based upon objective criteria of job duties, prerequisite skills, knowledge, and abilities, and labor market data collected by the BLS with a so-called pay for performance system based on managerial discretion.

Perhaps most important for the subject of pay for performance in the context of the survey is the fact that 80% report that their work unit cooperates to get the job done and 80% report that they are held accountable for achieving results. Only 43% hold "leaders" such as supervisors and higher level management in high regard; only 35% perceive a high level of motivation from their supervisors and managers, and only 45% say that managers let them know what is going on in the organization.

Given these data, it is reasonable to ask if the majority of employees are relatively satisfied with their pay, why the frantic rush to change? If federal supervisors and managers are held in such low regard, how will a system which grants them so much new authority, flexibility, unilateral power, and discretion be in the public interest? How will a pay system that relies on the fairness, competence, unprejudiced judgement, and rectitude of individual managers be viewed as fair when employees clearly do not trust their managers? Given that less than a third of respondents say managers do a good job of motivating them, is pay for performance just a lazy manager's blunt instrument that will mask federal managers' other deficits?

We believe that the advocates of pay for performance in DoD or elsewhere in the federal government have the burden of demonstrating exactly how and why the General Schedule prevents federal managers from managing for excellence and productivity improvement. Before an entire agency is sent down the path of pay for performance, they must develop a better track record to show exactly how and why each of the merit system principles will be upheld in the context of political appointees' supervision of managers who will decide who will and will not receive a salary adjustment, who will receive a higher salary for a particular job and who will receive a lower salary for the same job. The language in the Senate bill that instructs DoD to impose pay for performance gradually is a step in the right direction, but it continues to allow far too much discretion and too little accountability.

No one has shown either how or why individualized pay for performance might be superior to systems that provide financial reward for group and organizational excellence, especially in a public sector context. No one has demonstrated exactly how or why paying some people less so that they can pay others more will contribute to resolving the federal government's human capital crisis and attract the next generation of federal workers to public service.

The Senate bill does instruct DoD to invest in the training, oversight, and staffing necessary to administer elaborate and complex, federal employee by federal

employee pay for performance plans. All we can say in that context is that the investment will need to be very large and ongoing, and must be made available to affected employees as well as managers. Finally, although the Senate bill asks for funding for the pay for performance system that will be equivalent to what continued funding of the GS system would entail, we strongly suggest that that individualized performance incentive payments should be a supplement, not a substitute for a fully funded regular pay system that reflects labor markets and protects purchasing power. Without adequate funding, it is certain that pay for performance will degenerate into a false promise, where discretion is exercised to award higher salaries only to recruit and/or retain particular individuals rather than to reward actual performance.

Conclusion

Pentagon officials have argued their case as a plea for freedom – freedom *to* waive the laws and regulations that comprise the federal civil service – so that the nation's security can be assured. We ask Members of the Committee to consider that our opposition is a plea for freedom as well – freedom *from* political influence, freedom from cronyism, freedom from the exercise of unchecked power. As the Defense Department is not a private corporation, the pressures of the competitive market will not hold it accountable for mismanagement or cronyism. That is why government agencies operate under a set of laws and regulations set by the Congress; that way, taxpayers and government employees are guaranteed freedom from coercion and corruption.

We have no reason to suspect that there is any intention to abuse the power DoD has sought for its Secretaries of Defense. Nevertheless, history has shown that a concentration of power in the hands of one individual does not necessarily translate into success on the battlefield. Our nation's tradition of checks and balances on power has been tremendously successful in allowing our military the freedom *to* pursue our nation's security interests at the same time that the public and the civilian workforce are allowed freedom *from* unfettered military authorities.

Pay for performance is notoriously easy to support in concept; it is in its execution that its flaws are revealed. Indeed, the practical issues of implementation of pay for performance reveal why it can be especially inappropriate for the public sector. The civil service is sworn to uphold the highest standards of objectivity, professionalism, and public spiritedness. Pay systems that vest political appointees and the management staff that works directly under them, with the discretion to award or withhold salary adjustments on the basis of subjective judgements are inherently dangerous. The truth is that even in the private sector, managerial discretion over the awarding of jobs and raises are severely restrained – every effort is made to tie awards to objectively

measurable factors, and every effort is made to encourage group or division awards in order to promote a sense of teamwork and cooperation.

AFGE has always supported our nation's military mission, and we remain ready and willing to sit down with Pentagon leaders to work collaboratively to solve any real problems they have experienced with regard to accomplishing that mission that can be traced to the civil service infrastructure.

Again I would like to commend you, Chairman Collins, as well as Senators Levin and Voinovich, for preserving the collective bargaining and appeals processes for rank and file DoD workers. These are time- proven and constructive ways to promote effective communication between labor and management and accountability to the merit system principles, and the Senate bill is right to insist on their protection. Nevertheless, I urge the Committee in the strongest possible terms to reject the other authorities contained in the legislation, particularly the rush to replace the General Schedule and the Federal Wage System with a management-controlled pay for performance system that is wholly inappropriate to the public sector.

This concludes my testimony, and I would be happy to answer any questions Members of the Committee may have.

NEXT STEPS IN HUMAN CAPITAL REFORM

TESTIMONY BEFORE THE UNITED STATES SENATE GOVERNMENTAL AFFAIRS COMMITTEE

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JUNE 4, 2003

Thank you for inviting me to testify before this Committee at this critical moment in civil service time. I believe the Committee's proposed legislation to establish a Department of Defense national security personnel system mark an important step forward in crafting long-overdue changes to our outmoded human capital system in government.

First, the proposal provides needed clarification and specificity regarding the authorities to be granted to the Department of Defense. I have never believed in unfettered authority for the president, even in times of war. As I testified last year on the administration's proposed legislation creating a Department of Homeland Security, Congress has an important role to play in providing details on the front-end of reform and oversight during implementation. The proposal now before this Committee does both. Indeed, it will almost certainly act as a template for other agencies that are even now lining up to request their own authorities to remodel their personnel systems.

I need not tell this Committee that there is a significant difference between allowing agencies to "tunnel" out of the current system every which way, and giving them specific guidance on the basic minimums that must guide the effort. One will produce a patchwork of chaos, while the other will provide a meaningful test that every agency must meet on its way to tailoring systems for its particular mission. As I note later in this testimony, the federal government already has a formidable reputation for having one of the most confusing personnel systems of any public-service employer. This proposed legislation would move a great distance toward reducing that confusing without compromising agility.

Second, this proposal reflects a time-honored commitment by this Committee to bipartisanship. Once again, I need not tell this Committee that federal employees are nervous these days. As I recently wrote, they have ample cause to worry about the underlying goals of any legislation dealing with employment issues. Although I have no reason to doubt the motivations of the Defense Department in pursuing this legislation, and have the utmost confidence in the public-service motivations of the Defense Under Secretary for Personnel and Readiness, Dr. David Chu, I also believe bipartisanship is the coin of the realm for reassuring federal employees that a given reform is designed in the best interests of the workforce.

I have no doubt that the House Government Reform would have reached a bipartisan consensus had it had enough time to fully consider the Defense Department's proposal—indeed, the Committee made significant progress in refining the bill under intense time pressure. But thanks to the three co-sponsors of this new proposal, and their staff, this Committee has found a way to fashion a bipartisan agreement that should

reassure all federal employees that reform will be given the fullest consideration regardless of the time pressure.

I should note in this regard that the Senate Governmental Affairs Committee has always had a reputation for just this kind of bipartisanship. Having served on the staff under Senator John Glenn in the 100th Congress, I know that achieving such consensus is not always easy. However, it comes as close to an informal requirement for success as any I know, especially on government reform questions. It is already hard enough to win implementation of the kind of reforms government needs with so many obstacles buried in the rules and procedures of our bureaucratic systems.

Third, this proposal fits well with previous Governmental Affairs Committee legislation designed to improve federal human capital management. It is the logical extension of the 1978 Civil Service Reform Act, which began in this committee, and fits well with the more recent reforms to create Chief Human Capital Officers in government. The Defense Department's CHCO will play a significant role in interpreting this statute, as will the Director of the Office of Personnel Management. Indeed, one of the most important changes in the proposed reforms involves a much more robust role for the OPM, which is itself undergoing significant change toward workforce planning. I have no doubt that OPM is already up to the task envisioned here—it has earned a well-deserved reputation for adding value on the Homeland Security personnel system, and has moved with alacrity toward rebuilding its reputation as the place to go for help as agencies struggle with their shared and unique personnel challenges.

Let me be quite clear regarding my general view of the need for further human capital reform: There is no choice but to advance quickly on the kind of bold reforms envisioned here. Having studied the federal civil service system for twenty years, I have watched as one dire prediction after another has come true. The current system simply cannot compete for the kind of talent we need in the future. Although some will rightly argue that we need more time to find the perfect proposal, we have now been experimenting with reform for at least fifteen years. We are at a point where the perfect cannot be allowed to become the enemy of the good.

THE NEED FOR REFORM

The Center for Public Service has spent the last five years examining the data on the federal public service. Along the way, we have conducted random-sample surveys of federal employees, nonprofit employees, private sector employees, the American public, human services workers, college seniors, nonprofit executives, civic leaders, presidential appointees, and college professors. We have also developed databases for tracking the presidential appointments process, the true size of the federal contract and grant workforce, the thickening of the federal hierarchy, the success, or lack thereof, of federal management reform, and an inventory of the federal government's greatest achievements of the past fifty years. All totaled, we have invested more than $10 million on basic research dealing with how the federal government works, with funding from the Dillon

Fund, Ford Foundation, Irvine Foundation, Kaufman Foundation, Kellogg Foundation, Packard Foundation, The Pew Charitable Trusts, Smith Richardson Foundation, and our Brookings board chairman, James Johnson.

Although this research deals with a variety of questions, it sums to a single conclusion regarding the future of federal public service: The federal government has become an employer of last resort for the nation's most talented citizens, be they presidential appointees or Presidential Management Interns, be they air traffic controllers or acquisitions managers. As we argue time after time, the problem facing the federal government is not a lack of interest in serving. Rather, it is in the encrusted systems that make it so difficult to enter the workforce and advance on the basis of performance. In many ways, the federal government has a far better workforce than it deserves.

Reputation

Yesterday, the Center for Public Service released its latest survey of college seniors, which examines attitudes toward public service among 1,002 randomly-selected liberal arts and social work students. The survey has both good news and bad for those who are concerned about the future of the federal workforce.

The good news is that, despite the cold hiring market, these college seniors have not changed their standards about what constitutes a good job. They still put the emphasis on finding jobs that provide the opportunity to help people, learn new skills, and do challenging work. The nature of the job, not the size of the paycheck, is still the most important consideration in making a decision about where to work.

College debt does make a difference in what the class of '03 wants in a job. Two-thirds of students with more than $20,000 in debt said the opportunity to repay college loans was a very important consideration as they look for work, compared to just 17 percent of students with $10,000 or less. But even for students with high levels of debt, the opportunity to help people was still the number one consideration in any job.

More broadly, the survey provides strong support for the those who believe that government must take bold action to address its reputation as an employer. Just as the bipartisan National Commission on the Public Service chaired by former Federal Reserve Board Paul A. Volcker warned earlier this year, too many seniors see government as the most difficult sector to enter, and its hiring process as by far the slowest and most confusing. Even seniors who would prefer a government job do not know how to get one.

More troubling, seniors do not see government as the best place to go for helping people. When they hear the words "public service," they think of the kind of work they see in the nonprofit sector. Nonprofits, not government or its contractors, are also seen as the best at spending money wisely, being fair in their decisions, and delivering services on the public's behalf. Contrary to those who say that government must become more businesslike to compete, these seniors almost surely would recommend that government

become more nonprofit-like, especially in reassuring potential recruits that they will be given a chance to help people and be rewarded for doing so.

This emphatic interest in helping people suggests an extraordinary opportunity for public-service organizations to make their case to a particularly motivated workforce: 26 percent of the seniors said they had given very serious consideration to any kind of public-service job, be it working for government, a nonprofit, or a contractor, while another 36 had given it somewhat serious consideration.

Although the Center does not have the data to establish a trend line to the past—meaning that this year's number could be up or down from past years—it seems reasonable to suggest that this group of young Americans are as interested as they could ever be. The question is whether public-service organizations have the agility, let alone the funding, to take advantage of the opportunity. After all, the job market is cold in large part because organizations in all three sectors do not have the money for hiring.

For those who are particularly concerned about increasing government's success in the war for talent, this report supports the need for quick action to streamline the hiring process, bolster its reputation as a place where young Americans can make a difference in serving the country. The faster it moves to send a dramatic signal that it is ready to provide the kind of work young Americans clearly want, the faster it can begin strengthening its workforce for the future.

Consider the following findings on this case:

Preferences for Public Service

- Twenty percent of all seniors said they had given very serious consideration to a job in a nonprofit organization, 18 percent said the same about working for the federal government, 19 percent about state and local government, and 13 percent about a business that works for government under a contract or grant.
- Among the 615 seniors who said they had given very or somewhat serious consideration to any kind of public-service job, 42 percent said they would prefer to work for the nonprofit sector, 37 percent for government (federal, state, or local), and 19 percent for a contractor.

Views of the Sectors

- The nonprofit sector was seen as the best place to go for someone who wanted a chance to help people, make a difference, and gain the respect of family and friends; government was seen as most attractive for someone who wanted good benefits and the chance to serve the country, and contractors for someone who the best salaries.
- The nonprofit sector was seen as by far the best of the three sectors at spending money wisely, helping people, and being fair in its decisions: 60 percent said the nonprofit sector was the best at spending money wisely,

compared to just 6 percent who said government; 61 percent said the nonprofit sector was the best at being fair in its decisions, compared to just 22 percent who said government; and 76 percent said the nonprofit sector was the best at helping people, compared to just 16 who said government. Contractors were viewed as the worst at being fair in their decisions (10 percent) and helping people (4 percent), but ranked above government on spending money wisely (29 percent).

Finding a Job in Public Service

- These seniors were generally confused about how to find work for government, nonprofits, or contractors. Just 44 percent said they knew a great deal or fair amount about finding a job in either government or a nonprofit, and even fewer, 30 percent, said they knew a great deal or fair amount about finding work for a contractor.
- Nevertheless, 62 percent said finding a job in a nonprofit organization would not be difficult or difficult at all, compared to 34 percent who said the same about finding a job with a contractor, and just 28 percent who said the same about a job in government.
- Seniors described the government hiring process as confusing (63 percent), slow (78 percent), and fair (77 percent), the nonprofit hiring process as both simple (69 percent), fast (56 percent), and fair (89 percent), and the contractor hiring process in between the two on simplicity and speed.

Definitions of Service

- Seniors defined public service almost entirely in terms of helping people. Asked what the words "public service" meant to them, 36 percent said helping people, 30 percent said helping the community, nation, or society, and 15 percent said doing something selfless. Only 5 percent defined public service as working for government or the military, and just 2 percent said working for a nonprofit.
- Asked about jobs as a form of public service, 58 percent said working for a nonprofit organization was completely public service, 28 percent said the same about working for government, and 23 percent about working for a contractor.

The Impact of Volunteering, Interning, and Working on Job Preferences

- Only 8 percent of these seniors said they had volunteered, interned, or worked for the federal government in the past, compared to 10 percent for contractors, 11 percent for state or local government, and 54 percent for nonprofits.
- Seniors who had volunteered, interned, or worked in any of the three sectors in the past were much more interested in taking a public service job than those who had not.

- 85 percent of seniors who had volunteered, interned, or worked in government said they had very or somewhat seriously considered a public service job, compared to 68 percent of seniors who had past contact with the nonprofit sector, and 66 percent who had past contact with contractors. The more contact students have with any of the sectors, the better they feel about following through on a public service careers.

Turnover

Contrary to many, I do not believe the problem facing government is either a lack of applicants or the impending retirement wave. As my colleagues at *Government Executive* rightly point out in a story released last Friday, the retirement crisis may turn out to be far less of a crisis than most reformers believed—indeed, the turnover rate in government may actually be too low, especially at the middle- and upper-levels.

There can be little question, however, that the turnover rates on the front-lines are both high and, in all likelihood, accelerating. Although we do not know what has happened in the last three quarters, the most recently available data suggest that new employees are leaving faster than ever.

We know that quit rates vary greatly by level in the organization. Turnover is extremely low among middle- and upper-level managers, for example, but extraordinarily high among front-line workers. The federal government has between 150,000 and 250,000 separations a year, mostly at the front-line, which averages out to a quit rate of well over 10 percent. Indeed, one of the reasons hiring freezes have such a damaging effect on government is that they hit agencies where service matters most—among toll-free telephone operators, Veterans benefit officers, Social Security claims representatives, IRS auditors, and other critically important front-line staffs.

As the following table suggests, federal employees who quit government are pulling the trigger faster with each passing year, even during the 2001 recession. The quit rates are particularly troublesome at the General Schedule (GS) 7, 9, and 11 levels, where the federal government recruits many of its future leaders. In 1997, for example, 35 percent of the GS professional and technical (P&A) employees who quit had less than five years of service. By the first quarter of the 2002 fiscal year, the number had jumped to almost half.

TABLE 1

PERCENT OF FEDERAL EMPLOYEES WHO QUIT
WITH UNDER FIVE YEARS OF SERVICE

Fiscal Year	Technical 5	Technical 7	GS P&A 7	GS P&A 9	GS P&A 11	GS P&A 13	GS P&A 15
1997	37%	15%	57%	35%	27%	7%	34%
1998	39	15	59	38	28	15	32
1999	46	18	62	39	29	15	34
2000	54	22	67	46	36	20	31
2001	65	28	71	47	33	24	34
2002[a]	63	30	70	47	42	27	41

[a] First quarter only
Source: Author's analysis of data from FEDSCOPE Dynamics Cube, Office of Personnel Management

Because the federal government relies on inside talent to fill so many of its entry- and middle-level jobs, it must have a steady stream of new talent entering the pipeline at the start of career. Unfortunately, even if the federal government becomes more effective at the entry-level pitch, it must recognize that today's labor force simply does not expect to stay in any one sector or job for very long.

Consider the following findings from our college seniors survey on this point:

- Asked how much time a person should work in government during such a career, 25 percent of the seniors either said "no time at all" or simply did not know. Another 26 percent said less than five years, 31 percent said five to ten years, and only 17 percent said more than ten years. Even among the seniors who said they would prefer a public service job in government, more than half (53 percent) said a person should spend ten years or less in government as part of their careers.
- Asked how long a person should stay with any given employer before moving on, 39 percent of the seniors said less than five years, 32 percent said five to ten years, just 9 percent said more than ten years, and the rest did not know. Students who preferred public service jobs with contractors were the most impatient—46 percent said a person should stay less than five years—while those who preferred government were the least impatient—34 percent of these seniors said less than five years.

These findings suggest that all three sectors are dealing with a highly mobile workforce, and need to prepare themselves for turnover. This may have less to do with the sectors and much more to do with the job market itself. All three sectors have proven themselves very effective at downsizing and cutbacks, creating a basic expectation among potential employees that it is best not to stay on very long with any one employer.

Thus, it appears reasonable to encourage all public service employers to offer more opportunity for lateral movement in and out of the workforce at various points in

careers. The thirty-year career is largely an illusion to these seniors—although some may well go to government and stay through retirement, almost none believe they will do so. To the extent that employers such as government advertise themselves as the best place to go for long-term service, they may well create more resistance than enthusiasm.

The Promise of Performance

College seniors consider many things as they make their decisions about taking a job, not the least of which is the amount of debt they carry out of college. These perceptions of government suggest serious problems in making the case for future service. It is one thing to emphasize the chance to serve the country in moment of intense international concern and patriotic sentiment, and quite another to maintain that call during periods of calm. It is also one thing to recruit employees through such a call, and quite another to honor that desire to serve in government organizations that are perceived by their own employees as over-layered, under-resourced, and beset by administrative red-tape.

These concerns become particularly clear when the seniors were asked what they most value in a job. As the list below shows, benefits ranked high on the list, salary, public respect, and the opportunity to repay college loans ranked far below. The following list shows the percentages of students who said a particular job characteristic was a very important consideration:

1. Opportunity to help people: 67 percent
2. Benefits: 63 percent
3. Opportunity to do challenging work: 63 percent
4. Opportunity to learn new skills: 63 percent
5. Job security: 60 percent
6. Opportunity for advancement: 56 percent
7. Opportunity to repay college loans: 43 percent
8. Salary: 30 percent

Interestingly, students with high levels of debt were no more interested in salary than students without any debt at all. Rather, they were interested in jobs that provided the opportunity to repay college loans: 67 percent of students with more than $20,000 in debt said repaying college loans was a very important consideration in their decision about where to work after graduation, compared to just 11 percent who had no debt at all. (One can only wonder why a senior with no debt would worry at all—they may have simply associated loan repayment as part of a generally good compensation package, for example.)

These expectations vary by preferred job in only three cases. Seniors who preferred a public service job in the nonprofit sector were significantly less likely than their peers who preferred jobs in government or contractors to emphasis the opportunity for advancement and job security, while students who preferred jobs with contractors were significantly more likely to emphasize salary. In these three areas, seniors appear to

recognize the realities of just what life is like in the nonprofit sector—lower salaries and less security—and understand that going to work for a contractor provides significant material reward.

THE FOREIGN AFFAIRS WORKFORCE

Although I believe that there is no level of the current human resources system that does not need immediate reform, I am particularly concerned about problems on the front lines of government where non-supervisory personnel bear so much of the burden for the inefficiency. They are the ones who have to wait months for replacements to work their way through the process, and the ones who must deal with the layer-upon-layer of needless managerial oversight.

The problems are particularly apparent in the foreign affairs workforce, government, where dozens of task forces, commissions, and study groups over the last two decades on the need for fundamental public service reform, be it in the Departments of Defense or State, the intelligence agencies, or government as a whole. None have been more blunt in describing the problems than the U.S. Commission on National Security/21st Century, co-chaired by former Senators Gary Hart and Warren Rudman.

> As it enters the 21st century, the United States finds itself on the brink of an unprecedented crisis of competence in government....This problem stems from multiple sources--ample private sector opportunities with good pay and fewer bureaucratic frustrations, rigid governmental personnel procedures, the absence of a single overarching threat like the Cold War to entice service, cynicism about the worthiness of government service and perceptions of government as a plodding bureaucracy falling behind in a technological age of speed and accuracy.[1]

The events of September 11 certainly changed the Commission's assessment regarding the lack of an overarching threat and cynicism about government service, but many of the problems identified in its in-depth analysis of government service remain. Many young Americans have been called to service by the war on terrorism, but they still confront a government hiring process that is frustrating at best. And once in government, they often complain of antiquated systems, needless hierarchy, and broken promises.

Presidential Management Interns as a Case in Point

The Presidential Management Internship program provides ample evidence of the point. As part of arguably the most prestigious recruiting system in the federal government, graduates of the nation's leading public policy and international affairs

[1] U.S. Commission on National Security/21st Century, *Roadmap for National Security: Imperative for Change*, Phase III Report (U.S. Commission on National Security/21st Century, February 15, 2001), p. xiv.

programs receive just the kind of high-level policy learning they seem to want. Unfortunately, many PMIs soon conclude that government cannot or will not provide the work they want.

The disappointment is unmistakable in a 2001 Brookings Institution survey of 1,051 federal government employees. The random sample survey included 107 then-current Presidential Management Interns (PMIs), or more than enough to test the excitement of early careers in government. There was less excitement, however, than disappointment.[2]

The PMIs entered government for the right reasons. The vast majority of PMIs said they took their post to help the public, do something worthwhile, make a difference, and because of pride in their organization, not the paycheck, benefits, or job security. They also strongly rejected the notion that they were in dead-end jobs with no future.

If only the rest of the federal workforce was as committed. Unlike the PMIs, most federal employees joined government for the paycheck, benefits, and security, nearly a third said they came to work every day for the compensation, and almost a third saw themselves in dead-end jobs.

The PMIs saw problems with more than just poor performance among their security-conscious co-workers, however. Compared to the senior executives, middle-level employees, and lower-level employees who were also interview, the PMIs were the least likely to agree they have the chance to the things they do best, the least satisfied with the public respect they received, and among the least satisfied with the chance to accomplish something worthwhile. They were also the most critical of all levels of employees, from top to bottom, and the harshest toward the hiring and disciplinary process.

The PMIs saw all the familiar problems in the personnel system. They were the most likely of federal employees to say the hiring process was confusing, slow, and unfair, and the most likely to say their organization did not do well at disciplining poor performers. And asked how whether their organizations do at retaining talented employees, only 7 percent said very good, while 51 percent said not too good or not good at all. Finally, they were the most likely to highlight organizational shortages in access to information, technology, training, and enough employees to get the work done. More than half said their organization only sometimes or rarely provides enough access to training.

September 11 did little to change these PMI attitudes. When many of the same respondents were re-interviewed in the spring of 2002, they were even more unhappy with their situation. Not only were they less satisfied with their jobs overall, they were less satisfied with the chance to accomplish something worthwhile, less able to describe how their job contributes to the mission of their organization, and less trusting regarding

[2] See Paul C. Light, "To Restore and Renew," *Government Executive*, November, 2001, for more information on the survey and the results.

their organization's ability to run programs and deliver services, spend money wisely, be fair in its decisions, and help people. As for the impact of September 11 on their agencies, 35 percent reported more of a sense of mission since the attacks, while 63 percent reported no change at all.[3]

Views from the Foreign-Affairs Workforce as a Whole

Not all the post-September 11 news is negative, however. There are federal employees who felt a greater sense of mission in their organizations, who earned a greater chance to do the things they did best, and who saw less poor performance in their midst. They can be found in the Departments of Defense and State, where the war on terrorism is being fought.

TABLE 2
SENSE OF M ISSION, PRE-POST SEPTEMBER 11

	Government	Defense and State	All Other Agencies
Sense of Mission since September 11			
More of a sense of mission	42%	63%	35%
Less	1	0	1
Same	57	37	63
How has job changed since September 11?			
More Difficult	27%	31%	25%
More Stressful	37%	46%	34%
More Rewarding	19%	30%	15%
More Challenging	31%	45%	26%

N=673 for government-wide; Defense and State=175, all other agencies=498

Alongside the heightened sense of mission, Defense and State employees also perceived an increase in performance. Asked how many co-workers were not doing their jobs well, 30 percent of Defense and State employees said five percent or less, compared to 20 percent of their peers. These employees also reported significant gains in their sense of engagement in the actual job. In 2001, for example, 45 percent of Defense and State employees said they were given the chance to do the things that they do best; in 2002, the number had increased to 59 percent. Among all other agencies, the percentages went the opposite direction. In 2001, 44 percent of employees said they were given the chance to do the things they do best; in 2002, the number was down to 38 percent.

The war on terrorism may have created a renewed sense of purpose at Defense and State, but it did not change the underlying structure and operation of these critical

[3] These results can be found in Paul C. Light, "The Troubled State of the Federal Public Service," Brookings Institution report, June 27, 2002.

agencies. To the contrary, even as they sensed greater pressure to act, employees at Defense and State reported significant frustration getting the resources to do their jobs well. Pre- and post-September 11, Defense and State employees reported declines in organizational morale, the opportunity to accomplish something worthwhile and contribute to the mission of the agencies, and access to enough training to do the job. At the same time, they reported an increase in the perceived number of layers between employees and management. Before September 11, 34 percent had said there were too many layers of supervisors; by the following spring, the number had risen 10 percentage points.

These changes illustrate the problems relying on patriotism alone for a renewal of the antiquated systems and structures of government. Young Americans may be more likely to take a first job in government today, and they may be willing to accept heavier workloads and bureaucratic impediments for a time. But they will not do so for a career, nor will they long accept the barriers to accomplishing something worthwhile.

These findings confirm both the supply and demand problems in recruiting the next generation of foreign policy leaders. How could employees say they have a greater chance to do the things they do best, for example, yet also conclude they have less of a chance to accomplish something worthwhile? It entirely possible that the things today's employees do best are not necessarily the things that produce results in a post-September 11 world. It is also possible that bureaucratic encrustation has created organizations in which the best efforts of individual employees sum to a whole less than the parts.

Certainly, these employees recognize the need for greater access to training, and the problems associated with bureaucratic layering and politicization at the top of their agencies. All they need do is read the stories about information flows at the Central Intelligence Agency and Federal Bureau of Investigation to confirm their worst fears about contributing to the whole. Hence, there was no pre-post September 11 change in the ability to describe how one's own job contributes to the mission of the Defense and State Departments. The decline came in the sense of being able to personally contribute to that mission—55 percent said they contributed a great deal to the mission in 2001, compared to 46 percent in 2002.

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IN SEARCH OF PUBLIC SERVICE

Paul C. Light

CENTER FOR PUBLIC SERVICE
THE BROOKINGS INSTITUTION

WAGNER SCHOOL OF PUBLIC SERVICE
NEW YORK UNIVERSITY

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INTRODUCTION

America's college graduates could not have entered the job market at a more difficult moment in economic time. Unemployment is up, hiring is down, the economy is sluggish, and pink slips are back in fashion.

The market is particularly bleak for the college seniors who might be most likely to want a career in public service, those with majors in the humanities, social sciences, social work, and education. Charitable contributions are flat, foundation assets are down, many nonprofit agencies are cutting back, state and local governments are cutting back, and the federal government remains a mystery for eager applicants.

Despite this cold market, college seniors have not changed their standards. They still put an emphasis on finding jobs that provide the opportunity to help people, learn new skills, and do challenging work. According to a random sample of 1,002 about-to-graduate liberal arts and social work students interviewed this April by Princeton Survey Research Associates on behalf of the Center for Public Service, the nature of the job, not the size of the paycheck, is still the most important consideration in making a decision about where to work.

More broadly, the survey provides strong support for those who believe that government must take bold action to address its reputation as an employer. Just as the bipartisan National Commission on the Public Service chaired by former Federal Reserve Board Chairman, Paul A. Volcker warned earlier this year, too many seniors see

[1] The survey was conducted from March 24, 2003 to April 30, 2003. For results based on the full sample, the margin of error is + or – three percent. This means that one can have 95% confidence that the results in the survey would only vary by three percent on either side of the stated figure.

government as the most difficult sector to enter, and its hiring process as by far the slowest and most confusing. Even seniors who would prefer a government job do not know how to get one.

More troubling, seniors do not see government as the best place to go for helping people. When they hear the words "public service," they think of the kind of work they see in the nonprofit sector. Nonprofits, not government or its contractors, are also seen as the best at spending money wisely, being fair in their decisions, and delivering services on the public's behalf. Contrary to those who say that government must become more businesslike to compete, these seniors almost surely would recommend that government become more nonprofit-like, especially in reassuring potential recruits that they will be given a chance to help people.

OVERVIEW

This emphatic interest in helping people suggests an extraordinary opportunity for public-service organizations to make their case to a motivated workforce: 26 percent of the seniors said they had given very serious consideration to any kind of public-service job, be it working for government, a nonprofit, or a contractor, while another 36 percent had given it somewhat serious consideration.

Although the Center does not have the data to establish a trend line to the past—meaning that this year's number could be up or down from past years—it is hard to imagine how the numbers could be much higher. The question is whether public-service organizations have the agility, let alone the funding, to take advantage of the opportunity. After all, the job market is cold in large part because organizations in all three sectors do not have the money for hiring.

For those who are particularly concerned about increasing government's success in the war for talent, this report supports the need for quick action to streamline the hiring process and bolster its reputation as a place where young Americans can make a difference in serving the country. The faster it moves to send a dramatic signal that it is ready to provide the kind of work young Americans clearly want, the faster it can begin strengthening its workforce for the future.

This is only one of several significant findings bearing on the future of the public service in the Center's survey of 1,002 college seniors pursuing the humanities, social sciences, social work, and education.

Destinations

- Two-thirds of the seniors said they intended to go directly to work after graduation, while a third expected to go onto graduate school. Of those who intended to go to work, only a quarter actually had a job lined up.

Public Service Preferences

- Twenty percent of all seniors said they had given very serious consideration to a job in a nonprofit organization, 18 percent said the same about working for the federal government, 19 percent about state and local government, and 13 percent about a business that works for government under a contract or grant.
- Among the 615 seniors who said they had given very or somewhat serious consideration to any kind of public-service job, 42 percent said they would prefer to work for the nonprofit sector, 37 percent for government (federal, state, or local), and 19 percent for a contractor.

Views of the Sectors

- The nonprofit sector was seen as the best place to go for someone who wanted a chance to help people, make a difference, and gain the respect of family and friends; government was seen as most attractive for someone who wanted good benefits and the chance to serve the country, and contractors for someone who wanted the best salary.

- The nonprofit sector was seen as the best of the three sectors at spending money wisely, helping people, and being fair in its decisions: 60 percent said the nonprofit sector was the best at spending money wisely, compared to just 6 percent who said government; 61 percent said the nonprofit sector was the best at being fair in its decisions, compared to just 22 percent who said government; and 76 percent said the nonprofit sector was the best at helping people, compared to just 16 who said government. Contractors were viewed as the worst at being fair in their decisions (10 percent) and helping people (4 percent), but ranked above government on spending money wisely (29 percent).

Finding a Job in Public Service

- These seniors were generally confused about how to find work with government, nonprofits, or contractors. Just 44 percent said they knew a great deal or fair amount about finding a job in either government or a nonprofit, and even fewer, 30 percent, said they knew a great deal or fair amount about finding work for a contractor.
- Nevertheless, 62 percent said finding a job in a nonprofit organization would not be difficult or not difficult at all, compared to 34 percent who said the same about finding a job with a contractor, and just 28 percent who said the same about a job in government.
- Seniors described the government hiring process as confusing (63 percent), slow (78 percent), and fair (77 percent); the nonprofit hiring process as simple

(69 percent), fast (56 percent), and fair (89 percent); and the contractor hiring process in between the two on simplicity and speed.

Definitions of Service

- Seniors defined public service almost entirely in terms of helping people. Asked what the words "public service" meant to them, 36 percent said helping people, 30 percent said helping the community, nation, or society, and 15 percent said doing something selfless. Only five percent defined public service as working for government or the military, and just two percent said working for a nonprofit.
- Asked to rate a series of specific activities as a form of public service, 82 percent said volunteering was completely public service, 58 percent said the same about voting, 48 percent said the same about giving money to charity, while just five percent said contributing money to a political campaign was completely public service.
- Asked about jobs as a form of public service, 58 percent said working for a nonprofit organization was completely public service, 28 percent said the same about working for government, and 23 percent about working for a contractor.

- Only 8 percent of these seniors said they had volunteered, interned, or worked for the federal government in the past, compared to 10 percent for contractors, 11 percent for state or local government, and 54 percent for nonprofits.
- Seniors who had volunteered, interned, or worked in any of the three sectors in the past were much more interested in taking a public service job than those who had not.
- 85 percent of seniors who had volunteered, interned, or worked in government said they had very or somewhat seriously considered a public service job, compared to 68 percent of seniors who had these experiences with the nonprofit sector, and 66 percent who had these experiences with contractors. The more contact students have with any of the sectors, the better they feel about a public service career.

The rest of this report will explore these patterns in more detail, starting with a discussion of how these students define public service. As we shall see, when students hear the words "public service," they are most likely to think about the kind of work they see in the nonprofit sector, not in government or with contractors. Somewhere along the line, government lost its meaning as a destination for those who want to help people and make a difference. Bluntly put, when students think "public service," they think nonprofit.

Seniors who want to make a difference see the nonprofit sector as the place to be, albeit at a cost in salary, benefits, and job security. Only two percent of the seniors said that the nonprofit sector was the best of the three sectors for salaries, and just five percent said it was the best for benefits. Even more troubling for the nonprofit sector, only 22 percent of the seniors said nonprofits were the place to go for serving the country. Just as government has lost its meaning as a destination for helping people, the nonprofit sector has little identity as a place to serve the country. Even among students who say they would prefer a nonprofit job, government gets the nod as the destination for national service.

DEFINITIONS OF PUBLIC SERVICE

The Class of '03 does not have a "one-size-fits-all" vision of *where* public service occurs, but shares a very similar definition of what the term means. When asked what the term means to them, the college seniors gave three broad definitions:

- 36 percent focused on *who* gets served such "doing things for the public," "helping everyone in the community," "helping the less fortunate," "the betterment of mankind," or "helping people."
- 30 percent focused on *what* gets served such as "giving back to your community," "working for the citizens of the U.S.A.," "working for the good of society," "doing things that help the community," or "being a contributing member of society."

- 15 percent focused on *how* service is rewarded such as "doing things for the community and not expecting to get anything back except that warm feeling," and "doing your part."
- Five percent defined the term as working for government
- Two percent, equated the term with working for a nonprofit agency
- None mentioned running for office or other forms of political work.

When seniors hear the words "public service," they think about the kind of one-to-one work that is traditionally viewed as part of civil society, not government and politics.

When asked to rate a set of specific activities on the degree to which they could be defined as public service, it is hardly surprising that the seniors would see a difference between two very different levels of public service:

- On the least intensive end of the definition, 58 percent of the seniors said voting was completely a form of public service, and 48 percent said the same of contributing money to a charity.
- On the more intensive end, 82 percent said volunteering was completely a form of public service, 58 percent said the same about working for a nonprofit, 28 percent about working for government, and 23 percent about working for a business that provides goods or services to government under a contract.

The only places where public service cannot be found are in contributing money to a political candidate or party (only 5 percent said this was completely public service), and working for a business in general (only 7 percent said this was completely public service).

Liberals and Democrats were more likely to rate the more intensive activities as completely public service than conservatives and Republicans. In turn, conservatives and Republicans were more likely to rate the low-impact activities as completely public service than liberals and Democrats. For one example, 54 percent of conservative seniors said contributing money to a charity was completely public service, compared to 46 percent of liberals. For another, 60 percent of liberal seniors said working for a nonprofit was completely public service, compared to 50 percent of conservatives.

The lower rating for government work does not reside in demographics—men and women, younger students and older, those with large amounts of debt and none at all, agree that working for a nonprofit is more a form of public service than is government. Nor does it reside in politics—27 percent of Democrats and 32 percent of Republicans say working for government is completely a form of public service, compared to 25 percent of liberals and 31 percent of conservatives. Rather, it appears to reside in a persistent view of government as unable to provide the kind of mission-driven jobs that allow employees to feel that they are helping people every day.

RATING THE SECTORS

This conclusion is clearly echoed in head-to-head ratings of the sectors on three aspects of performance: (1) helping people, (2) spending money wisely, and (3) being fair in decisions. Asked which sector does a better job on each, the nonprofit sector came out ahead on all three measures, even among seniors who said that they would prefer a job with government or a contractor. As Table 1 shows, for example, 55 percent of seniors

who preferred a public service job in government said the nonprofit sector was the best at spending money wisely.

TABLE 1

% Who said **nonprofit sector** was best at each role

Role	Preferred public service job		
	Government	Nonprofit	Contractor
Spending money wisely	55%	71%	58%
Being fair in its decisions	48	74	63
Helping people	66	85	77

N=1,002

Government fares better when seniors are asked which sector is best at delivering services on the public's behalf: 44 percent said nonprofits, 36 percent said government, and just 16 percent said contractors. Even here, however, government and nonprofits run close among students who said they would prefer a public service job in government: 44 percent said they had the most confidence in government, and 39 percent said nonprofit.

If government and contractors are not seen as the best places to go on these key measures of performance, why do so many seniors still prefer jobs with them? (Recall from the earlier overview, given a choice among public service jobs, 37 percent of the seniors said they would prefer to work for government, while 19 percent said contractors.)

Here, basic realities do make a difference.

For example, most seniors were convinced that contractors would pay better salaries than either government or nonprofits. Asked which sector would offer better salaries, only 2 percent answered the nonprofit sector, compared to 37 percent who said

government, and 59 percent who said contractors. Even students who preferred a public service job in the other two sectors recognized the cost of doing so: 59 percent of students who preferred government and 56 percent of those who preferred the nonprofit sector said contractors would offer a better salary.

There were statistically significant demographic differences in these findings. Although all races agreed that nonprofits were not the place for big money, 57 percent of African-Americans said the higher salaries could be found in government, while 61 percent of whites said the higher salaries could be found with contractors. The explanation likely has to do with a mix of real-world experience and perceptions—African-Americans have, in fact, found government a more welcoming employer over the years, while whites are obviously less likely to worry about discrimination in the private sector.

Seniors were also convinced that benefits would be better in government than in either nonprofits or contractors. Even seniors who preferred a job with a nonprofit or contractor saw the advantage of benefits in government: 64 percent of seniors who preferred a nonprofit job thought government provided the best benefits, as did 61 percent of seniors who preferred a contractor job. Although there are no differences on these ratings by race, 71 percent of women seniors said government was the place to go for benefits, compared to 63 percent of men.

In contrast, the nonprofit sector was seen as the best place to go for respect of family and friends, the ability to make a difference, and the chance to help people. And, at least on the latter two dimensions (making a difference and helping people), nonprofits were seen as the place to go even by students who preferred jobs in either government or working for contractors.

As table 2 shows, government had only two clear advantages in this particular competition: (1) it was seen as by far the best place to go to serve the country, in large part because serving the country is perceived as an expression of patriotic duty, and (2) benefits.

In the head-to-head competition about making a difference and helping people, however, it runs a distant second to nonprofits. For example, only 27 percent of students who preferred a government public-service job said government was the best at helping people.

TABLE 2

% Who said government was better in providing each value

Value	Preferred public service job		
	Government	Nonprofit	Contractor
Benefits	78%	64%	61%
Respect of family and friends	52	25	36
Serving country	81	54	75
Helping people	27	5	12
Ability to make a difference	41	14	24

N=1,002

MOTIVATIONS FOR WORK

These perceptions of government suggest serious problems in making the case for future service. It is one thing to emphasize the chance to serve the country in a moment of intense international concern and patriotic sentiment, and quite another to maintain that call during periods of calm. It is also one thing to recruit employees through such a call,

and quite another to honor that desire to serve in government organizations that are perceived by their own employees as over-layered, under-resourced, and beset by administrative red-tape.

These concerns became particularly clear when the seniors were asked what they most value in a job. As the list below shows, benefits ranked high on the list along with salary, public respect, and the opportunity to repay college loans ranked far below. The following list shows the percentages of students who said a particular job characteristic was a very important consideration:

1. Opportunity to help people: 67 percent
2. Benefits: 63 percent
3. Opportunity to do challenging work: 63 percent
4. Opportunity to learn new skills: 63 percent
5. Job security: 60 percent
6. Opportunity for advancement: 56 percent
7. Opportunity to repay college loans: 43 percent
8. Salary: 30 percent

Interestingly, students with high levels of debt were no more interested in salary than students without any debt at all. Rather, they were interested in jobs that provided the opportunity to repay college loans: 67 percent of students with more than $20,000 in debt said repaying college loans was a very important consideration in their decision about where to work after graduation, compared to just 11 percent who had no debt at all. (One can only wonder why a senior with no debt would worry at all—they may have simply associated loan repayment as part of a generally good compensation package, for example.)

However, two-thirds of students with more than $20,000 in debt said the opportunity to repay college loans was a very important consideration as they look for work, compared to just 17 percent of students with $10,000 or less. But even for students

with high levels of debt, the opportunity to help people was still the number one consideration in any job.

These expectations vary by preferred job in only three cases. Seniors who preferred a public service job in the nonprofit sector were significantly less likely than their peers who preferred jobs in government or contractors to emphasize the opportunity for advancement and job security, while students who preferred jobs with contractors were significantly more likely to emphasize salary. These findings are summarized in table 3. In these three areas, seniors appear to recognize the realities of just what life is like in the nonprofit sector—lower salaries and less security—and understand that going to work for a contractor provides significant material reward.

TABLE 3

% Job preference by very important considerations

Consideration	Preferred public service job		
	Government	Nonprofit	Contractor
Salary	27%	23%	42%
Security	67	49	71
Advancement	64	47	66

N=1,002

One final point about government as a destination for public service: Asked how much time a person should work in government during such a career, four percent of the seniors either said "no time at all" or simply did not know, 26 percent said less than five years, 31 percent said five to ten years, and only 17 percent said more than ten years. The rest did not know. Even among the seniors who said they would prefer a public service job in government, more than half (53 percent) said a person should spend ten years or less in government as part of their careers.

Government is not the only sector to confront an impatient workforce, however. Asked how long a person should stay with any given employer before moving on, 39 percent of the seniors said less than five years, 32 percent said five to ten years, just 9 percent said more than ten years, and the rest did not know. Students who preferred public service jobs with contractors were the most impatient—46 percent said a person should stay less than five years—while those who preferred government were the least impatient—34 percent of these seniors said less than five years.

These findings suggest that all three sectors are dealing with a highly mobile workforce, and need to prepare themselves for turnover. This may have less to do with the sectors and much more to do with the job market itself. All three sectors have proven themselves very effective at downsizing and cutbacks, creating a basic expectation among potential employees that it is best not to stay on very long with any one employer.

Thus, it appears reasonable to encourage all public service employers to offer more opportunity for lateral movement in and out of the workforce at various points in careers. The thirty-year career is largely an illusion to these seniors—although some may well go to government and stay through retirement, almost none believe they will do so. To the extent that employers such as government advertise themselves as the best place to go for long-term service, they may well create more resistance than enthusiasm.

BEING PREPARED

Asked about the sources of career advice, 42 percent of the seniors said their parents were the most important source of advice, followed by professors (22 percent), friends (10 percent), past or current contacts where they volunteered or interned (8

percent), past or current work associates (also 8 percent), staff at their college or university's office of career services (6 percent), and staff at their college or university's office of volunteer/service learning office (5 percent). Almost a quarter of the seniors had never visited their career services office, almost a third had only been there once or twice, but roughly a third had been there four or more times.

Seniors who said they preferred a public-service job with a contractor were more likely to say their parents were the most important source of career advice (52 percent) than those who preferred either government (42 percent) or a nonprofit (32 percent). To the extent government and nonprofits want to increase their attractiveness to future recruits, they might look to the parents.

Asked about graduate education, 68 percent of the seniors said a masters degree in public policy or administration would be very useful for a career in public service, followed by a masters degree in the social sciences more generally (56 percent), a law degree (50 percent), and a masters degree in business administration (48 percent).

GETTING IN

As a whole, seniors are generally uninformed about actually finding a public service job in any of the sectors: only 44 percent said they knew a great deal or fair amount about finding a job either in government or a nonprofit, and just 30 percent said the same about their knowledge about contractors.

But what they do know, or at least believe, is that government is the most difficult sector to enter of all: 70 percent said getting a job in government would be very or

somewhat difficult, compared to 62 percent who said the same about contractors, and just 37 percent who said the same about nonprofits.

At least part of the answer resides in views of the hiring process itself. The seniors were absolutely convinced that the government hiring process was grossly inefficient and difficult to understand. As table 4 shows,

TABLE 4

Views of the Hiring Process

Attribute	Government	Nonprofit	Contractor
Simple	30%	69%	52%
Fast	14	56	52
Fair	77	89	74

N=1,002

It is particularly interesting to note that students are much more willing to give contractors the benefit of the doubt on the hiring process, while reserving their greatest scorn for government. Perhaps they simply assume that businesses that work for government will have at least some of the attributes commonly associated with making profits, meaning speed and simplicity. Or perhaps they simply assume that all government hiring will be bad. Even seniors who said they preferred a job in government were hardly enthusiastic about the hiring process: only 40 percent described it as simple, only 16 percent described it as fast, and 83 percent described it as fair.

THE VALUE OF PAST CONTACT

All respondents were asked whether they had ever volunteered, interned, or worked for government, nonprofits, and/or contractors. As noted above, more than half of the seniors had at least some past contact with the nonprofit sector, compared to just 8 percent with the federal government, 10 percent with contractors, and 11 percent with either state or local government.

Regardless of the sector, seniors said this contact had increased the likelihood that they would consider working in a given sector after graduation. Asked about the kinds of jobs they saw people doing in the sector where they volunteered, interned, or worked, the seniors generally agreed that there was no difference across the sectors in job stress (roughly a quarter said the word "stressful" described the jobs they saw very well) or dead-ends (roughly a tenth said the word "dead-end" described the jobs very well). However, there were significant differences in three areas:

- 61 percent of the seniors said the word "valued" described the jobs they saw in the nonprofit sector very well, compared to 43 percent in both government and with contractors.
- 48 percent and 50 percent said the word "challenging" described the jobs they saw in the nonprofit sector and contractors very well, compared to 38 percent in government.
- 13 percent said the word "frustrating" described the jobs they saw with contractors, compared to 24 percent each in nonprofits and government.

In other words, students who spent time in the nonprofit sector came away feeling the jobs were more valued, challenging, but frustrating than students in the other sectors. Students who spent time with contractors came away feeling that the jobs were challenging and less frustrating, but not as valued. And students who spent time in government came away feeling that the jobs were only more frustrating.

CONCLUSION

There is both hope and despair in these findings for government. It has a persistent reputation as a place that does not do well in meeting student expectations on most of the things they value in a job. It is also seen less than stellar in helping people, spending money wisely, and being fair. Most importantly for recruiting, it is seen as a very difficult place to get a job, and does not show as well as it should among the students it attracts for volunteer opportunities, internships, or paid work.

The good news is that it is seen as by far the best place to go to serve one's country, which is no small recruiting advantage indeed. Unfortunately, there is plenty of evidence in this and other Center for Public Service work to suggest that government's young recruits, especially those on the front-lines, are frustrated with the lack of resources to do their jobs.

The undisputed winner in this study is the nonprofit sector. It is viewed as by far the best place to go in all aspects of performance, most importantly for helping people. For students who define public service in such a tactile way, the words "nonprofit" and "public service" are almost synonymous. The bad news is that the sector lags behind on two of the most important things that the seniors said were very important considerations

in a job: benefits and job security. These are probably not something to write home about either.

Contractors emerge as destination with very little identity beyond a sense, arguably quite close to reality, that they provide the highest salaries. For students interested in public service careers, that may not be much of an advertising slogan.

Viewed as a whole, the survey does confirm one wonderful finding: America's young people are extraordinarily interested in public service careers. The challenge is not making the case for service at all. It is in closing the deal.

The sector that figures out how best to match its advantages with student motivations will be the one best configured to win the war for talent in the coming years.

- For government, this may mean the kind of radical reform that will send a message to young Americans and their parents to take a second look.
- For nonprofits, this may mean confronting the realities of low pay, uncertain futures, and meager benefits.
- For contractors, this may mean a campaign to inform young Americans about how their work helps the country meet its obligations.

At this point in time, however, the future workforce is still up for grabs. The sector that moves fastest toward addressing its problems and emphasizing its strengths may well be the sector that wins the war for public service talent for a long time to come.

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Senate Committee on Governmental Affairs
Hearing - "Transforming the Department of Defense Personnel System: Finding the Right Approach."

Comments of International Federation of Professional & Technical Engineers (IFPTE) President Greg Junemann

June 4, 2003- 342 Dirksen Office Building, Washington, DC

As President of the International Federation of Professional & Technical Engineers (IFPTE), I would like to thank the members of the Senate Governmental Affairs Committee, particularly Chairwoman Collins, for holding today's hearing. I would also like to extend a special note of appreciation to Senator John Sununu for kindly offering to submit my comments to be included as a part of the hearing's official transcript.

First, I would like to give the committee a description of IFPTE's federal sector membership. IFPTE members are among the most technically skilled of all organized federal workers. Army Corps & Naval Engineers, NASA Scientist, CRS Researchers and Administrative Law Judges are among the occupations included in our federal membership.

Our issues are varied and wide in scope; competitive pay scales, affordable health coverage, and decent retirement plans are obvious concerns to all federal employees nationwide, and are priority areas for IFPTE policy objectives as well. However, the most important issue facing the 40,000 plus IFPTE Civil Service members is the focus of today's hearing – the aggressive reorganization agenda being undertaken within the federal government.

Today's hearing focuses on the Pentagon's proposed *Defense Transformation for the 21st Century Act*, legislation that was delivered to Congress on April 10th of this year, and is now a part of the House's recently passed Fiscal Year 2004 Defense Authorization measure. In part, the title of today's hearing reads, 'finding the right approach'. I believe that phrase is, in large part, reflective of the larger issue at hand today.

Having said that I want to focus on the alarming speed by which this issue is being moved through the legislative process. This proposal was just delivered to Congress not more than two months ago. It stands to impact more than 700,000 workers and was

constructed with no input from DoD civilian employee groups. Despite these facts though, the Pentagon has been successful in encouraging the House leadership to include this bill, with a few minor revisions, to an Authorization vehicle, with little Congressional scrutiny. While the content of the bill itself leaves a lot to be desired, the speedy process by which this legislation is moving through Congress raises serious concerns as well. How is it that legislation of this magnitude, affecting more than 700,000 people, can be cavalierly pushed through Congress?

To the Senate's credit however, and with the help of Senators Warner and Collins, the Senate has opted to take a more reasoned approach to this critical issue.

In the name of 'flexibility' the Pentagon plan intends to drastically undercut the collective bargaining and Civil Service protections afforded to our nation's federal employees. Last Congress a similar effort was successfully undertaken with respect the Department of Homeland Security (DHS). Citing the need for 'flexibility' in determining federal employee union membership criteria, Congress approved the creation of a new department that would allow the Secretary to easily strip collective bargaining protections from all DHS employees. As you can imagine, federal employee union members, including those represented by IFPTE, were alarmed with regard to the potential impact this could have throughout the federal workforce.

At the time, the Administration assured employee groups and lawmakers alike that DHS was unique and such broad authorities would not be needed elsewhere. Unfortunately however, those assurances have not come to fruition. Federal employee collective bargaining rights, Civil Service protections and pay raises, just to name a few, through this legislation will be negatively impacted by the Pentagon proposal. In fact, this legislation being trumpeted by the Pentagon is even more damaging than the DHS bill that was passed last year.

Under the Pentagon proposal, civilian DoD employees would be placed under a completely new personnel system. If included as a part of the final Defense Authorization Conference Report, the Pentagon would be given the ability to completely revamp Title 5. Twelve sections of Title 5 would be scrapped in favor of a broad new personnel system that among other things would, do away with more than 30 years of historical gains within the federal labor movement.

Looking back at a historical perspective of federal labor relations, January 1, 1970 stands as landmark date in federal management/labor relations. President Nixon, to his credit, had the forethought to sign Executive Order 11491, relative to the conduct of federal labor relations. Prior to Executive Order 11491, federal labor relations was controlled by Agency managers, Human Resources Office (HRO) managers, and Executive Branch Offices of Office of Personnel Management (OPM) and Office of Management and Budget (OMB). Management merely informed and consulted with Unions regarding personnel actions and changes in working conditions.

Unions could not oppose nor arbitrate management actions. Unions could not negotiate contracts, represent grievances, or have access to third-party review through binding arbitration, or the Federal Labor Relations Authority (FLRA). Management and HR managers made final decisions, with no appeal process. In other words, there was not a level playing field for the conduct of labor relations, as there was no requirement for two-sided discussions, or debate, or bargaining.

If the Pentagon has its way, passage of *The Defense Transformation for the 21st Century Act,* would, as a consequence, rescind 34 years of successful federal labor relations by scrapping Executive Order 11491. In short, this proposed legislation would create a reversion to the conduct of federal labor relations to the problematic conditions evident prior to January 1, 1970.

I have asked myself, 'why are the jobs of federal employees being targeted so aggressively?' As evidenced by the debate surrounding DHS, Pentagon officials are similarly claiming the need for 'flexibility' in performing day to day operations. The Pentagon has even gone so far as to suggest that since DHS has these flexibilities, then they, the DoD, are somehow entitled to them as well. The problem with that logic is that DHS is only a year old, with no proven record of success. Why base a proposed personnel plan that, among other things guts union and Title 5 protections, on a system that is barely a year old? I hardly see where belonging to a union has ever precluded a federal employee from performing their job.

The fact of the matter is that if one to were to objectively study this proposal and compare it to the more recent policies which have been detrimental to Civil Servants, they may come to the logical conclusion that the actual intention of this plan is to erode Civil Service protections and collective bargaining as a part of a larger effort to easily outsource federal work to the private sector. This legislation is simply the latest in what has become a consistent effort to achieve that goal. One need's to look no further than Sections 401 & 402 of the Pentagon proposal to see evidence of this.

Sections 401 & 402 of the proposed bill would give the Secretary of Defense full authority to create civilian positions for functions now being carried out by military personnel, without review, oversight or authorization from Congress. Estimates indicate that the military-to-civilian transferred positions would affect approximately 300,000 military support jobs, jobs that are typically the first targets for outsourcing competitions. In other words, these sections would enable the Secretary of Defense to subject the military-to-civilian transferred positions to increased outsourcing competitions under the OMB Circular A-76, as additional civilian employee functions/positions for outsourcing.

And, to make matters worse, the pro-contractor bias of the revised OMB Circular A-76, including the assumption of the Pentagon plan to allow the use of best value versus technical tradeoff for source selections, allows the DoD to easily send government work to contractors. These types of practices are of course not exclusive to this particular legislative effort, but are reflective of a larger effort to reward private sector contractors

at the expense of federal workers. These practices have been well documented by unions like IFPTE as well as Congressional investigations.

The President and Congress have justly recognized the military personnel for the stellar effort they put forth during the Iraq war. Yet, at the very same time, the Pentagon is proposing these damaging reforms to the careers of the DoD Civil Servants who have also performed admirably. These are the very same Civil Servants who are responsible for the success of the military equipment being used by our fine military personnel. Unfortunately however, their contributions to the nation seem to be lost on the Pentagon leadership. It is clear that the outcome of the war was the ultimate test of the DoD and by all accounts everyone involved, both military and civilian personnel alike performed wonderfully.

In closing, I would like to commend Chairwoman Collins for her willingness to hold today's hearing, as well as introduce a bill of her own aimed at providing a more reasoned approach to this issue. It is my hope, as well as the hope of IFPTE DoD workers, that the original Pentagon proposal will not be included in the final Fiscal Year 2004 DoD Authorization bill. Instead, I encourage the Senators of this Committee, as well as all Congressional lawmakers, to allow this issue to receive due scrutiny through the legislative process, with input from all parties involved. Pentagon interests and employee concerns alike need to be taken into account.

Thank you again for allowing me to submit this statement for the record. I welcome the opportunity to testify personally when this issue re-appears before the Committee.

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June 3, 2003

The Honorable Daniel K. Akaka
Ranking Member
Subcommittee on Financial Management, the Budget, and International Security
United States Senate
Washington, DC 20510

RE: Retention of MSPB Appeal Rights

Dear Senator Akaka:

The Senior Executives Association (SEA) represents the interests of career federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions.

We write to express our opposition to eliminating the right of Department of Defense career civil service employees to appeal to the U.S. Merit Systems Protection Board (MSPB or Board) and replace that right with an internal appeals process to be developed by DoD within the next three years. We oppose this proposal because: (1) we think the current process works well and is necessary to prevent politicization of the career civil service, (2) we believe a government-wide disciplinary system makes more sense and is easier to manage than a fragmented system, and (3) we anticipate numerous unintended consequences (some of which we discuss below) that we expect will result in larger problems than any which currently exist under a centralized appeals process.

SEA believes that, in the 25 years since its creation, MSPB has been a model of speed and efficiency. We know of no government judicial or administrative operation that issues initial decisions faster than the MSPB. It has been responsive to management needs and has provided uniform and understandable rules of the workplace for managers to apply in disciplining employees. These workplace rules are established and implemented by the MSPB's case process which is carried out by three presidential appointees. The MSPB's typical 75 to 80% rate of affirming agency disciplinary actions that are appealed is evidence of the Board's general support of agency adverse action decisions. The percent of agency adverse action decisions appealed to the Board is much less than the number imposed by agencies and the reversal rate of the total disciplinary actions is very low. In performance cases, the MSPB is even more supportive of agency management.

Career executives are the agency managers who must allow subordinates the right to an MSPB appeal when they discipline problem employees. Over the years, our members have

expressed a high comfort level in the MSPB process. When we hear from executives about the MSPB, they usually are telling us that the Board has supported their efforts to discipline a subordinate. On the rare occasion when we hear about the Board reversing an agency decision, we invariably also hear a comment such as, "We should have lost that case."

One complaint we hear often is the lack of understanding by agency managers about how to use the disciplinary process that currently exists. When training occurs, this complaint goes away. SEA believes that providing this training will be easier and more understandable if one system exists for the entire government, rather than having each agency utilize a separate appeals process. Creating new appeals boards, (without some substantial reason for treating DoD employees differently from other federal employees), will only create an arcane and confusing disciplinary system that will be hard to explain and will contribute to an environment in which abuses will occur.

A similar proposal was tried with the Federal Aviation Administration in 1995. After several years of experimentation and reports of abuse, Congress decided that the absence of MSPB appeals in that agency did not work and restored them to FAA employees. We know of no complaint or difficulty because of this action.

It is important to remember that MSPB appeals exist only for serious adverse actions such as removal, demotion or suspensions of 15 days or more. Also, the personnel action is implemented before the employee is allowed to appeal. In other words, an employee who is removed is off the agency rolls while the appeal is pending. And an initial decision usually comes within 120 days of the appeal being filed, with an average initial decision time of some 90 days. We think this process is quite manageable, and we fail to understand why DoD now apparently seeks to eliminate MSPB appeals. When SEA met with Principal Deputy Under Secretary of Defense (Personnel and Readiness) Charles Abell and Deputy Under Secretary of Defense (Civilian Personnel Policy) Ginger Groeber on April 25, 2003, SEA was assured that DoD had no current intent or plan to eliminate MSPB appeal rights, but wanted the flexibility to do so because a chance to reform like this only comes along every 15 to 20 years and DoD may decide at some future point that it wants to change the appeals process. Thus, we are at a complete loss to understand the draft proposals we have seen that propose to eliminate MSPB appeals entirely for all DoD employees.

One concern stated to us by congressional staff is that when initial decisions by Administrative Judges are appealed to the three-member board of Presidential appointees, it takes too long to issue a decision. One way to cure this is to place a time limit on Board review of an Administrative Judge's initial decision, which would become final at some future date, absent Board action.

If DoD employees are denied MSPB appeal rights, numerous unintended consequences will occur. Discrimination complaints for serious adverse actions and whistleblower complaints are now heard at the MSPB as part of the whole case, but, under the Senate draft we have seen, only whistleblower appeals will still go to the Board. Based on patterns we have seen for less serious actions not appealable to the MSPB, we think this will result in substantially increased EEO complaints and more employees who attempt to engage in whistleblower activity as a

purely defensive measure to avoid discipline. The apparent hope is that managers will have an easier time disciplining subordinates if they only have to worry about an internal appeal. The reality is that increased EEO and whistleblower activity may drag out that aspect of a case for years at EEOC and in the courts. Now these appeals are usually over in months and are most often only heard at the Board.

The current appeals process has credibility, and Federal District Courts usually give substantial weight to the MSPB when it hears EEO or whistleblower cases that have already been appealed to the MSPB. Federal courts usually refuse to hear other federal personnel cases, deferring totally to the MSPB. A new system will be more suspect merely because it is internal and not subject to judicial review, and our opinion is that many courts will give EEO and whistleblower cases far more scrutiny than is currently the case. Precedent that requires federal courts to defer to the MSPB on other cases will not apply, raising the likelihood that some federal courts will review federal personnel decisions, much as they did before 1978 when the MSPB was created.

A major concern of SEA is that the abolishment of MSPB appeal rights could well result in the increased likelihood of vulnerability of supervisors to personal lawsuits from subordinates under constitutional tort theories. In 1983, the Supreme Court in Bush v. Lucas, 462 U.S. 367 (1983), firmly established that supervisors currently enjoy immunity from such suits. But the basis of this immunity is the existence of an acceptable alternative, i.e., a comprehensive appeals system that includes the MSPB system as developed by Congress, that the courts have determined is adequate to address the concerns of an aggrieved employee whose constitutional rights may have been violated. SEA believes that the wholesale elimination of MSPB appeals in an agency as large as DoD and the replacement of the current system with a system designed and controlled totally by the DoD increases the likelihood that a well meaning manager will be sued, perhaps successfully, under legal theories and remedies not now available to federal employees. If this happens, it will make managers even more reluctant to take action to deal with problem employees.

Perhaps the most serious unintended consequence will be the loss of integrity in our governmental processes by the politicization that will undoubtedly occur if an internal system replaces MSPB appeals. Under current MSPB law, an agency prevails if it offers a nonpolitical reason supported by evidence for an adverse job action against a federal employee. Eliminating the outside check on this important part of the merit principles that are the very foundation of the career civil service will undoubtedly result in future abuses based on partisan politics. The result will be a loss of credibility by citizens that is currently enjoyed by the Executive Branch. Citizens are confident now that the dedication, impartiality and protections enjoyed by career civil servants provide them with assurances that they receive "equal protection" and impartial application of the law by the government. The threat of politics in the process will destroy the people's trust.

We urge the retention of the MSPB appeal as a right still available to employees of the DoD and other agencies. We have no objection to reforms that streamline the process, so long as the basic right of appeal and right to later judicial review at the Federal Circuit are preserved.

We believe it is a process that enjoys the support and confidence of agency career management. We see no reason to eliminate it.

Sincerely,

CAROL A. BONOSARO
President

G. JERRY SHAW
General Counsel

STATEMENT OF
SUSANNE T. MARSHALL, CHAIRMAN
MERIT SYSTEMS PROTECTION BOARD

As Chairman of the Merit Systems Protection Board, I appreciate the opportunity to submit this statement for the record of your hearing on "Transforming the Department of Defense Personnel System: Finding the Right Approach." We have moved very rapidly from the Defense Department's submission of its legislative proposal for a National Security Personnel System less than two months ago, to approval of a modified version of that proposal by the House Committee on Government Reform in H.R. 1836, to House passage of that modified version as a part of H.R. 1588, the National Defense Authorization Act for FY 2004. Coming so soon after enactment of the Homeland Security Act, which authorized the establishment of a new personnel system for the Department of Homeland Security, the action Congress takes with regard to DOD personnel legislation will undoubtedly mark a major turning point in the history of the Federal civil service. Therefore, the Committee is to be commended for scheduling this hearing to examine the approaches to a new civilian personnel system for DOD that have been proposed thus far in an effort to "find the right approach."

Given the role of the Merit Systems Protection Board in the appeals process for civil service employees, our primary interest is in the legislative language concerning the appellate procedures for DOD employees to contest decisions relating to their employment. In the proposal that DOD sent to Congress on April 10, the language regarding appellate procedures was virtually identical to the comparable provision in the Homeland Security Act. The Secretary of Defense would be authorized to establish an appeals process for DOD employees through regulation and could waive many provisions of Title 5 of the U.S. Code, including Chapter 77, which governs appeals to the Merit Systems Protection Board. The Secretary would be required to consult with the Board prior to issuing such regulations, however, and would be directed to modify Chapter 77 procedures "only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department of Defense."

As introduced by House Government Reform Committee Chairman Davis on April 29, H.R. 1836 contained the same language regarding appellate procedures as in the DOD proposal. This language can be characterized as the most flexible approach to a DOD appeals process, because the Secretary could establish an appeals process solely

within DOD, continue to allow appeals to the MSPB under modified rules, or establish some combination of an internal process and MSPB review.

The version of H.R. 1836 ordered reported by the House Government Reform Committee on May 8 incorporated several significant amendments to the language on appellate procedures. One amendment would require the Secretary, in issuing regulations for an appeals process in DOD, to "provide for an independent review panel, appointed by the President." The independent review panel could not include the Secretary or Deputy Secretary of Defense or any of their subordinates. Other amendments would require "notification to the appropriate committees of Congress" and consultation with the Equal Employment Opportunity Commission before regulations for the appeals process could be issued. This language was subsequently incorporated into H.R. 1588, the National Defense Authorization Act for FY 2004, and was passed by the House on May 22 without change.

Neither the House Government Reform Committee report on H.R. 1836 (H.Rept. 108-116, Part 1) nor the House Armed Services Committee report on H.R. 1588 (H.Rept. 108-106) explains the reasoning behind the amendment requiring establishment of an independent review panel. The provision appears intended to ensure that decisions made by DOD in any internal appeals process will be subject to independent review. There is no explanation, however, as to why a new independent review panel for DOD, composed of Presidential appointees, was deemed preferable to the Merit Systems Protection Board, which is also independent and composed of Presidential appointees. Nevertheless, it is clear that the approach embodied in the House-passed bill provides DOD with somewhat less flexibility with respect to appellate procedures than the Department requested in its original proposal.

The Senate bill introduced on June 2 by Senator Collins, co-sponsored by Senators Levin, Voinovich and Sununu, embodies a different approach to appellate procedures in the DOD personnel system. This bill, like the House-passed bill, would allow the Secretary to establish an appeals process for DOD employees by regulation and would require that the regulations ensure that employees are afforded the protections of due process. The Senate bill would also require that the Secretary consult with the Merit Systems Protection Board before issuing regulations for the appeals process. The

remainder of the language in the House-passed bill, however, would be omitted. Instead, the appellate procedures language in the Senate bill would allow a DOD employee who is adversely affected by a final decision under a DOD appeals process to petition the Merit Systems Protection Board for review of that decision. The Board would be authorized to dismiss any petition that, in the view of the Board, does not raise substantial questions of fact or law. When the Board reviews a petition, it would be authorized to order such corrective action as it considers appropriate, but the scope of its review would be considerably more limited than it is under Chapter 77 procedures. The Senate bill would also provide for judicial review of the Board's decision in accordance with section 7703 of Title 5 and would allow the Secretary to obtain judicial review of a final Board decision under the same terms and conditions as provided for the OPM Director under section 7703. Like the House-passed bill, the Senate bill would provide DOD with somewhat less flexibility with respect to appellate procedures than the Department requested in its original proposal. Unlike the House-passed bill, however, it would not create a new entity for independent review of decisions issued in a DOD appeals process. Instead, it would specifically allow a form of appellate review of such decisions by the Board while limiting the scope of such review.

The determination of the "right approach" to appellate procedures in the DOD personnel system is, of course, a policy matter for Congress to decide. Each of the approaches proposed thus far requires that a DOD appeals process ensure that DOD employees "are afforded the protections of due process." Therefore, each would allow for satisfaction of the basic requirements of due process, that is, notice of the specific charges on which a proposed employment action is based and a meaningful opportunity to respond to those charges. Clearly, national security—like homeland security—is such a vital national interest that variations from the rules that generally apply to the civil service may be warranted. With respect to the "right approach" to appellate procedures in the DOD personnel system, then, the challenge for Congress is to strike the appropriate balance between the desire of agency management to take personnel actions quickly and with finality and the right of DOD employees to due process in matters relating to their employment.

Historically, the Board has declined to take positions on whether certain personnel actions and other matters should or should not be appealable to the MSPB, or whether certain employees should or should not have MSPB appeal rights. The Board does this to maintain its neutrality as an independent, third-party adjudicator. Therefore, we take no position as to which of the approaches to appellate procedures in the DOD personnel system Congress should enact into law.

I cannot let this opportunity pass, however, without saying that I am proud of the Board's record of fair and expeditious processing of Federal employee appeals. Approximately 80 percent of all appeals processed by the MSPB are completed at our field office level, when an initial decision issued by an administrative judge becomes final. Over the years, our field offices have consistently maintained an average processing time of about three months. Furthermore, the initial decisions of our administrative judges fare well on review by the Board, consistently exceeding our Performance Plan goal of no more than 10 percent of initial decisions being reversed or remanded on review. The successful settlement program that we have operated in our field offices for many years also contributes to the efficiency of our case processing at this level. Of the appeals that are not dismissed for lack of jurisdiction, untimely filing, or other reasons, about half are settled. The average processing time for settled appeals in the most recent fiscal year was 83 days. Furthermore, our administrative judges frequently achieve global settlements that dispose of not only the MSPB appeal but also a related EEO complaint or court case.

Of the 20 percent of appeals that reach the Board at headquarters on petition for review of the initial decision, approximately 25 percent are closed under the Expedited Petition for Review Program. Decisions on petitions for review under this program are issued in approximately 60 days. While the Board's average processing time for all petitions for review exceeds the average processing time in the field offices, that result is attributable primarily to the fact that all cases at headquarters must be reviewed individually by each Board member. In FY 2002, the total average processing time for the small percentage of cases that are processed at both the field office and Board headquarters levels was about 10 months, a record that compares very favorably to the processing times at other agencies dealing with various types of disputes between

employees and their employers. (The attached table comparing MSPB processing times with those of the EEOC, Federal Labor Relations Authority, and National Labor Relations Board is submitted for inclusion in the record with this statement.) More importantly, final Board decisions—both initial decisions of administrative judges that become final and decisions issued by the Board itself—fare well before our principal reviewing court, the United States Court of Appeals for the Federal Circuit. Generally, the rate at which the court leaves final Board decisions unchanged has ranged from 93 percent to 96 percent.

As the Committee considers the various approaches to an appeals process in a new DOD personnel system, you should be aware that the Board already has experience applying different personnel rules in different agencies in its adjudication of appeals. For example, in addition to adjudicating appeals from DOD employees under the normal Title 5 rules, we have adjudicated appeals from DOD employees covered by the Department's various personnel demonstration projects. We also adjudicate appeals from employees of the Internal Revenue Service and the Federal Aviation Administration, where significant variations from Title 5 are in effect. In short, the MSPB can apply whatever rules relating to personnel actions and appeals are operative in a particular agency.

We appreciate the fact that each approach to authorizing DOD to establish a new personnel system has included a consultation role for the Merit Systems Protection Board. I believe that the Board's extensive experience in dealing with Federal employee appeals for almost twenty-five years can provide a valuable perspective as DOD and OPM officials develop the regulations for a personnel system, including procedures for appeals, that address the unique requirements of the Department of Defense. As you know, the Homeland Security Act requires similar consultation by the Secretary of Homeland Security and OPM Director prior to the issuance of regulations establishing a personnel system for the Department of Homeland Security. In conjunction with our consultation on the DHS personnel system, we are undertaking a complete review to determine what variations from Chapter 77 procedures might hold promise for streamlining the appeals process. In addition to considering statutory appellate procedures, we are reviewing our regulations in an effort to identify regulatory changes

we could make to facilitate more expeditious processing. In particular, we are looking at the time limits in our regulations for various types of pleadings at various stages in the process, most of which were established when pleadings were all on paper and filed by postal mail, to determine whether some time limits could be shortened. We expect that the reviews we are conducting will enable us to outline options for appellate procedures for consideration by DHS, and we are prepared to do the same for DOD should Congress enact legislation authorizing establishment of the National Security Personnel System. Our consultation will be most effective, of course, if DOD officials will engage in substantive discussions with MSPB prior to the issuance of proposed regulations for public comment.

While the Board takes no position as to which approach to a DOD civilian personnel system should be enacted, I would like to make one suggestion for a technical amendment to the provisions on appellate procedures. None of the legislative language proposed thus far includes a savings provision that would govern how appeals to MSPB that are pending at the time a new DOD appeals process takes effect would be affected. To avoid litigation over that issue, I recommend that a savings provision be added. Such provisions have been included in previous legislation that altered the rules governing appeals, such as the Civil Service Reform Act of 1978 and the Whistleblower Protection Act of 1989. Aside from this recommended amendment, we have a few concerns of a technical nature regarding certain language in the Senate bill that may require clarification. We will submit this information separately to the Committee for your consideration as you proceed to markup of the bill.

While the needs of the Department of Defense and protection of the rights of DOD employees are paramount in your consideration of legislation to authorize a new DOD personnel system, I ask that you also consider the impact that enactment of such legislation will have on MSPB employees. Appeals from personnel actions taken by the Department of Defense, including the Departments of the Army, Navy and Air Force, accounted for almost 25 percent of the appeals decided in our field offices in the most recent fiscal year (1,174 appeals out of a total of 4,850). Petitions for review of initial decisions issued by the field offices in DOD appeals accounted for about 29 percent of

the petitions for review processed at the Board's headquarters (224 petitions out of a total of 784).

Under H.R. 1588 as passed by the House, it appears that there would be no role for the Board in a DOD appeals process, other than the consultative role required prior to the issuance of regulations. Therefore, MSPB would experience a significant reduction in caseload in both the field offices and at headquarters. There will be an even greater impact on the MSPB caseload, of course, if we lose jurisdiction over appeals from employees of the Department of Homeland Security in addition to the loss of jurisdiction over DOD employee appeals.

Under the Senate bill, there would be a significant reduction in caseload at the field office level. However, if the only opportunity for DOD employees to obtain outside review of decisions issued in an internal appeals process is to petition the Board for review, the headquarters caseload could increase dramatically. This would require a substantial shift of our resources from the field offices to headquarters.

Under either legislative proposal for a DOD personnel system, the impact on the MSPB could require significant changes to the duties and responsibilities of our workforce, including staff reductions and reassignments of personnel. Facing the prospect of such reorganization, we find ourselves in need of the same kinds of personnel flexibilities that have been granted to DHS and certain other agencies, and that are now being sought by DOD. Therefore, I ask that the Committee consider, in conjunction with any legislation authorizing DOD to establish a new appeals process for its employees, granting the Chairman of the Merit Systems Protection Board the following specific authorities with respect to MSPB employees:

- Authority to offer voluntary early retirement;
- Authority to offer voluntary separation incentive payments;
- Authority to establish a pay banding and classification system;
- Authority to include a pay-for-performance component in the pay banding system; and
- Authority to pay a percentage of basic pay as a supervisory or managerial differential.

The authorities to offer voluntary early retirement and voluntary separation incentive payments, of course, would assist us in dealing humanely with employees affected by changes in our caseload and any necessary restructuring resulting from such changes. Our hope, naturally, is that these authorities would help us avoid extreme measures such as a reduction in force. We recognize, of course, that the Homeland Security Act provides government-wide authorities for voluntary early retirement and voluntary separation incentive payments. Use of those authorities, however, requires waiting for OPM to issue implementing regulations and then applying for OPM approval to use them.

The authority to establish a pay banding and classification system would allow the MSPB to create broad occupational groups and to reassign individual employees to new duties within their group. This authority would be particularly helpful if we find that we need to move staff from the field offices to headquarters. Coupled with authority for a pay-for-performance component, a pay banding and classification system should allow us to provide meaningful rewards for outstanding performance and help us with retention of the employees we need most. The authority to offer a supervisory or managerial pay differential should also help us retain exceptional employees. It would also allow us to pay more to an employee who serves in a supervisory or managerial position temporarily.

I appreciate the opportunity to offer these comments to the Committee as you consider the "right approach" to transforming the DOD personnel system. I will be happy to provide you with any additional information you may require and work with you on any suggested technical changes to the language of the legislation.

CASE PROCESSING TIMES FOR SELECTED AGENCIES - May 15, 2002			
	FY 2000	FY 2001	FY 2002
Equal Employment Opportunity Commission (From FY 2003 Annual Performance Plan)	N/A	19.4% of Hearings Cases resolved within 180 days 39.5% of appeals cases resolved within 180 days	Average processing time for completion of hearings: 420 days Average processing time for closure of appeals: 465 days Established goal of resolving 20% of hearings cases within 180 days Established goal of resolving 20% of appeals cases within 180 days
Federal Labor Relations Authority (From FY 2000 Performance Report)	Processing from receipt by OGC to initial dispositive action: 90 days Processing in OALJ from filing of complaint to hearing: 120 days OALJ hearing to OALJ decision: 90 days Processing by Authority for decision: 273 days Total: 573 days.	N/A	N/A
Merit Systems Protection Board (From Board Performance Reports for Fiscal Years 2000-2002)	Average case processing time for the regional and field offices: 89 days Average case processing time for HQ: 176 days. Total: 265 days	Average case processing time for the regional and field offices: 92 days Average case processing time for HQ: 214 days. Total: 306 days	Average case processing time for the regional and field offices: 96 days Average case processing time for HQ: 205 days. Total: 301 days
National Labor Relations Board (From FY 2003 Annual Program Performance Plan and FY 2001 Annual Performance Report)	Open hearings upon issuance of a ULP complaint: 132 median days Average length of hearing: 3 days Issuance of ALJ decision: 56 median days Total: 191 median days Board Decisions: Achieved reduction of average age of cases to 30 months for 78% of cases	Open hearings upon issuance of a ULP complaint: 140 median days Average length of hearing: 3 days Issuance of ALJ decision: 42 median days Total: 185 median days Board Decisions: Achieved reduction of average age of cases to 24 months for 100% of cases	Goal: Open hearings upon issuance of a ULP complaint within 160 median days Average length of hearing: 3 days Goal: Issue ALJ decision within 62 median days Projected total: 225 median days Board Decisions: Goal: Reduce average age of cases to 20 months for 100% of cases

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June 10, 2003

Hon. Susan M. Collins, Chair
Senate Committee on Governmental Affairs
172 Russell Senate Office Building
Washington, D.C. 20510

Re: S.1166

Dear Senator Collins:

I enclose for inclusion in the hearing record the Statement of the Association of Civilian Technicians, Inc. on S.1166. The Association very much appreciates your efforts on this bill. S.1166 significantly improved SA 762.

ACT's statement suggests changes to S.1166 that would (1) preserve the current right to bargain over personnel system regulatory changes before they are implemented; (2) provide for enforcement of the bill's collaboration obligations through current unfair labor practice procedures; (3) afford labor as well as management the option to initiate bargaining above the level of recognition and provide national level bargaining of the same scope that currently exists where a national unit has been recognized; (4) allow national level bargaining in the National Guard commensurate with current federal control over working conditions and labor relations; and (5) make a technical correction where the bill incorrectly refers to a "charge" rather than, as would be appropriate, a "petition or exception."

Thank you for holding the hearing record open to enable us to submit our statement.

Sincerely,

Daniel M. Schember
Counsel for ACT

Statement of the Association of Civilian Technicians, Inc. on S. 1166

The Association of Civilian Technicians, Inc. represents approximately 24,000 civilian employees of the Department of Defense. Nearly all of these employees are National Guard Technicians employed under 32 U.S.C. § 709. ACT represents more Guard technicians than any other union. ACT's bargaining units include a nationwide majority of these employees.

This statement addresses the collective bargaining provisions of S.1166. These provisions are found primarily in the part of Section 2(a)(1) that adds to title 5 a new § 9902. Subsections (a)-(c), and (e) of § 9902 authorize the Secretary of Defense to adopt personnel system regulations after collaboration with unions. Section 9902(h) grants the Secretary discretion to bargain collectively above the level of bargaining unit recognition, except in the National Guard. Under this provision, management would have the prerogative to negotiate at the national or regional level even where bargaining units are organized at the state or local level. Section 2(c) of the S.1166 amends current provisions of title 5, chapter 71 to establish, with exceptions, time limits for issuance of decisions by the Federal Labor Relations Authority (FLRA) and the Federal Service Impasses Panel (FSIP).

We understand the intent of S. 1166 to be the preservation, with one exception, of all collective bargaining rights established by chapter 71 of title 5. The sole exception is the provision for bargaining above the level of unit recognition.

We support the preservation of chapter 71 rights. To ensure these rights are protected, however, S.1166 should be amended to clarify that the Secretary's authority to implement personnel system regulations, after the collaboration required by § 9902(e), is subject to the 5 U.S.C. § 7114 duty to bargain.[1] The bill also should be amended to state

[1] Although we believe a clarifying amendment would be best, we believe that, at minimum, the legislative history of S.1166 expressly should state that collaboration required by § 9902(e), like consultation currently required by 5 U.S.C. § 7113, supplements, and does not replace or diminish, the duty to bargain under § 7114.

that violation of the bill's collaboration provisions is an unfair labor practice that may be redressed by the FLRA.

We support the creation of a new option to negotiate above the level of bargaining unit recognition. We believe, however, that labor as well as management should be allowed to exercise this option, that the scope of appropriate national level negotiation should be the same as that which currently exists where a national unit has been recognized, and that the National Guard should be included in national level bargaining.

We also support the bill's establishment of time limits, with exceptions, for dispute resolution by the FLRA and the FSIP. A technical correction should be made to proposed new § 7105(a)(3)(A). In that provision, "charge" should be changed to "petition or exception".

S. 1166 Should be Amended to Clarify that Implementation of Personnel System Regulations After Collaboration under § 9902(e) is Subject to Pre-Implementation Collective Bargaining Rights, to the Extent they Exist under Current Law

S. 1166 states that the Secretary may implement personnel system regulations after complying with collaboration and congressional notification procedures provided by § 9902(e). The bill should be amended to clarify that pre-implementation collaboration, like pre-implementation consultation under 5 U.S.C. § 7113, is not a substitute for, and does not preclude, pre-implementation collective bargaining to the extent current law requires it. Under current law, proposed changes in employee working conditions are subject both to pre-implementation consultation under § 7113 and to appropriate pre-implementation bargaining, including pre-implementation impasse resolution by the FISIP. Pending completion of negotiations, an agency must not implement changes except "to the extent consistent with its necessary functioning." *Department of Army Defense Language Inst., Presidio of Monterey and NFFE Local 1263*, 43 FLRA 974, 980 (1992).

Some of the personnel system regulations adopted by the Secretary might warrant, under the "necessary functioning" standard, implementation prior to completion of

bargaining. As to these regulations, bargaining over proposed contractual exceptions to the regulations would continue after initial implementation. As to regulations that do not meet the "necessary functioning" standard, however, pre-implementation bargaining to either agreement or FSIP impasse resolution is required by current law.

To ensure that current chapter 71 collective bargaining rights are preserved, S.1166 should be amended to state that the Secretary's implementation of personnel system regulations is subject to employees' collective bargaining rights. This could be accomplished by substituting for "Any" in § 9902(e)(1)(C)(i) the phrase "Subject to the duty to negotiate under section 7114 of this title, any"; by inserting a comma after "Secretary" where it appears for the third time in § 9902(e)(1)(C)(ii); and by inserting after that new comma the phrase "subject to the duty to negotiate under section 7114 of this title,".

S.1166 Should be Amended to State that Violation of the Bill's Collaboration Provisions is an Unfair Labor Practice

S.1166 creates, in § 9902(e), several specific Department of Defense obligations to collaborate with unions in the development of personnel system regulations. These obligations include providing unions advance written notice of and opportunity to make recommendations concerning proposed changes, considering union recommendations, notifying Congress of recommendations not accepted, conferring with unions, using the services of the Federal Mediation and Conciliation Service, notifying Congress of the decision to implement changes, explaining changes to Congress, allowing union participation in any further planning and development, and affording unions access to information. S.1166, however, provides no procedure for seeking redress if any of these requirements is violated.

The collaboration process created by § 9902(e) is similar to the consultation process found in 5 U.S.C. § 7113. Under § 7116(a)(8), denial of § 7113 rights is an unfair labor practice that may be redressed by the FLRA. S.1166 should be amended to provide

that violation of collaboration rights also is an unfair labor practice that may be redressed by the Authority. This could be accomplished by adding to Section 2(c) of the bill a new paragraph (6) stating "(6) in section 7116(a)(8), by inserting after "chapter" the phrase "or section 9902(e) of this title."[2]

S.1166 Should be Amended to Afford both Labor and Management the Option to Bargain Above the Level of Recognition, and to Provide National Level Bargaining of the Same Scope that Currently Exists where a National Unit has been Recognized

Current law provides that, where a national-level bargaining unit has not been certified, bargaining of a proposal appropriate for nationwide application must occur separately with each local bargaining unit, absent the agency's and each unit's agreement to consolidated bargaining. This is the case even if the same union represents some or all of the units that would be affected if the proposal were adopted.

Where a proposal concerns an issue appropriate for uniform nationwide resolution, multiple instances of local-level bargaining, between the same agency and the same union, on that same issue, is inefficient. Even where local bargaining units, rather than a national unit, should be certified--perhaps because differences in local circumstances indicate that most issues should be resolved differently in different locales--issues that are appropriate for uniform national resolution, however many or few there are, should be bargained at the national level.

An amendment to allow this should embrace three concepts: (1) either the agency or a union should be authorized to initiate bargaining above the level of exclusive-

[2] Under established principles of administrative law, the unexplained silence of the bill as to enforcement of collaboration rights supports the conclusion that enforcement may be secured by lawsuit filed in federal district court. *Block v. Community Nutrition Institute*, 467 U.S. 340, 351 (1984) (absent basis for inferring congressional intent to preclude review, presumption that judicial review is available applies); *Abbott Laboratories v. Gardner*, 387 U.S. 136, 141 (1967) (absent clear and convincing evidence of contrary congressional intent, administrative action is subject to judicial review); 5 U.S.C. § 703 ("form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action . . . in a court of competent jurisdiction"); § 704 ("action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review"). Deeming violation of collaboration rights to be an unfair labor practice within the jurisdiction of the FLRA would be superior to leaving enforcement of collaboration rights to district court litigation.

recognition, simply by proposing a contract term that would apply to some or all of the bargaining units represented by the union; (2) whether the proposal would be appropriate for application to more than one unit should, itself, be subject to bargaining, with any impasse on this issue subject to FISIP resolution, as with any other impasse; (3) if the proposal concerned the subject of an agency rule or regulation (or a proposed rule or regulation), the union represented a nationwide majority of the employees affected by the rule or regulation (or proposed rule or regulation), and the union or management presented a proposal that would apply to a nationwide majority of those employees, then the concept embraced in 5 U.S.C. § 7117(a)(3) should be applicable and negotiation of the proposal should not be limited by an agency allegation of "compelling need" for the rule or regulation.[3]

To maximize efficiency and maintain equality in bargaining obligations, national level bargaining should not be solely the prerogative of one party. Either the Secretary or a union should be allowed to seek bargaining above the level of unit recognition by presenting a proposal that would apply uniformly to all (or a subgroup) of a union's units. The opposing side should remain free to assert that a uniform rule for the group of units is inappropriate, and to bargain to impasse over that issue, with ultimate resolution by the FISIP. If the Panel were to find uniformity across units inappropriate on the subject in question, bargaining on the subject could occur at the level of unit recognition.

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[3] Section 7117(a)(2) and (3) state:

> (2) The duty to bargain in good faith shall . . . extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined . . . that no compelling need . . . exists for the rule or regulation.
>
> (3) *Paragraph (2) of the subsection applies* to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, *unless an exclusive representative represents an appropriate unit including not less than a majority of the employees* in the issuing agency or primary national subdivision, as the case may be, *to whom the rule or regulation is applicable*. [Emphasis added.]

Where national level bargaining is appropriate, negotiation should be governed by the same rules that apply now where a national unit has been certified. Where bargaining occurs on behalf of a nationwide majority of the employees affected by agency regulations, bargaining over the subjects of those regulations should not be restricted by the "compelling need" exception.[4]

S.1166 Should be Amended to Allow Appropriate National Level Bargaining in the National Guard

The working conditions of National Guard technicians employed under 32 U.S.C. § 709 are subject to regulatory control by federal officials. For this reason, appropriate national level bargaining should be available in the National Guard. Throughout § 709, the administrative authority of state Adjutants General in employing technicians is subordinate to the federal Secretaries' plenary authority to prescribe by regulation uniform nationwide procedures and standards with which Adjutants General's decisions must comply. 32 U.S.C. §§ 709(a) and (e). Federal Technician Personnel Regulations (TPR) prescribe procedures and standards governing many Guard technicians' working conditions, including appointment, transfer, promotion, performance evaluation, adverse action, and reduction in force.

The authority of the federal National Guard Bureau to regulate Adjutants General's employment of technicians is expressly stated in 10 U.S.C. § 10503(8) and (10). These provisions state that NGB's duties include "[e]stablishing policies and programs for the employment and use of National Guard technicians under section 709 of title 32" and "[i]ssuing directives, regulations, and publications consistent with approved policies." A National Guard Bureau regulation, TPR 250.1 states, at ¶ 1-4e:

> The National Guard Bureau is headed by a Chief who is . . . responsible for exercising the authority that is delegated by the Secretaries concerned. This authority includes acting for the Secretary concerned with respect to

[4] A proposed change to § 9902(h) of S.1166 that would implement these recommendations appears at the end of the next section of this statement.

> administration of the technician program. . . . *This authority includes directing corrective action on any matter not found to be in accordance with applicable laws, rules, regulations, or NGB policy.* [Emphasis added.]

Under this same regulation, ¶ 1-4f, personnel decisions by state Adjutants General must "be in accordance with applicable Federal statutes, regulations, and public policy":

> The adjutants general . . . have full authority and responsibility to employ and manage all technicians . . . according to the objectives, policies and procedures in applicable regulations. *All personnel actions will be in accordance with applicable Federal statutes, regulations, and public policy.* [Emphasis added.]

Federal authority over employment of Guard technicians extends to labor relations. *Illinois National Guard v. Federal Labor Relations Authority*, 854 F.2d 1396, 1402 (D.C. Cir. 1988) (authority to bargain with unions representing National Guard technicians is a prerogative of "the Secretary or those to whom he [may] delegate[] his authority under the Act"). Collective bargaining contracts are subject to Defense Department review. Federal officials represent the Guard in FLRA proceedings. Because of its representation of Guard technicians, ACT has national consultation rights with the Defense Department, the National Guard Bureau, the Department of the Army, and the Department of the Air Force. The FLRA expressly has confirmed that rulings governing federal officials' conduct of labor relations with respect to technicians employed under § 709 are binding on state National Guards, even when the state Guards are not parties to the proceedings in which the rulings are issued. *National Guard Bureau and Association of Civilian Technicians*, 57 FLRA 240 (2001).

Because employment of technicians under § 709 is subject to federal regulations establishing uniform nationwide standards and procedures, and federal officials' conduct of labor relations with respect to Guard technicians is binding on state Guards, proposals concerning issues addressed in federal regulations, and other subjects appropriate for nationally-uniform rules, should be bargained at the national level.

Our recommendations concerning national level bargaining could be accomplished by amending § 9902(h) in S.1166 to read as follows:

> (h) NATIONAL LEVEL BARGAINING.--(1) The Secretary or the exclusive representative of more than one bargaining unit of employees of the Department of Defense (including those employed under section 709 of title 32) may bargain at an organizational level above the level of exclusive recognition over a proposal that would apply to more than one bargaining unit represented by the exclusive representative.
>
> (2) In bargaining under paragraph (1) over a proposal that would apply to bargaining units including not less than a majority of the employees to whom a rule or regulation issued by the Department of Defense, or any primary national subdivision of the Department of Defense, is applicable, the duty to bargain in good faith shall extend to matters which are the subject of the rule or regulation.
>
> (3) An agreement reached in bargaining under paragraph (1) shall supersede any conflicting portion of an agreement reached in bargaining at a lower level.

S.1166 Should be Amended to Substitute "Petition or Exception" for "Charge" in § 7105(a)(3)(A)

Section 2(c)(1) of S.1166 amends 5 U.S.C. § 7105(a) by adding a new paragraph (3)(A) that sets deadlines for completion of FLRA proceedings concerning grant of national consultation rights, negotiability of proposals, and propriety of arbitration awards. This new paragraph requires, with exceptions, "final action within 180 days after the filing of a charge." The proceedings in question, however, are commenced by petition or exception, not by charge. This error should be corrected by substituting "petition or exception" for "charge".

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Committee
Witness: Dr. Chu

Senator Levin. **My question, though, is does the inventory you referred to total 320,000?**

Response: The 320,000 military jobs that could be converted to DoD civilian or private sector were first identified in a 1997 study for Deputy Secretary Hamre that was conducted under the auspices of the Honorable Frederick F.Y. Pang, the Assistant Secretary of Defense for Force Management Policy. The study was a review of "Headquarters and Cross-Service Occupational Specialties." It concluded that there were approximately 320,900 military in occupational specialties that were "commercial" in nature. Those occupations are attached. They ranged from General Administration to Recruiting/Counseling, Weather and Information Technology. While these data accurately depicted what military personnel were doing, there was no supporting "requirements" information that illustrated why they were doing it. Subsequent to that 1997 study, the Department began compiling the annual Inventory of Commercial and Inherently Governmental Activities (commonly referred to as the IGCA Inventory). This inventory is based on a set of criteria that categorize military authorizations into: 1) inherently governmental, 2) commercial but exempt from private sector performance, and 3) subject to review for divestiture or private sector performance. The criteria used for this inventory is very explicit, and gives greater visibility into the reasons military manpower is being used in fields other than combat operations.

The latest IGCA inventory (Fiscal Year 2002) is currently being analyzed for accuracy, but initial indications are that there are over 330,000 Active military in commercial activities that DoD Components have identified as exempt from DoD civilian or private sector performance. This group is now under scrutiny by the Office of the Secretary of Defense for possible conversion to either DoD civilian or private sector performance. This evaluation is part of a larger review of the entire workforce that was initiated last year in support of the President's Management Agenda for competitive sourcing. The larger review will eventually cover the entire range of functions performed in support activities in the Department's infrastructure, and will eventually be expanded to address manpower in the operating forces. In addition to the 330,000, three of the Services have identified nearly 50,000 Active military in activities that could be converted to DoD civilian, private sector performance or to the Ready Reserve. However, while we explore, encourage and debate conversion of additional military manpower, we also must consider the changing worldwide military stationing strategies and potential transformation of our force structure, which will affect the outcome. That outcome may also be constrained by federal law, treaty, International Agreement, or other similar requirement.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Committee
Witness: Mr. Rumsfeld

Senator Levin. Well, you might give us an estimate and disaggregate it, because when you use that testimony, that 83 percent of the civilians deployed in the theater are contractors, you are **suggesting that a significant percentage of the civilians should be Department of Defense civilian employees instead and it would be interesting if you could have somebody just give us an estimate as to what part of the 83 percent you believe, if the rules were different.**

Response: The list below provides a sampling of the types of jobs that contractors were and are performing in support of operation Iraqi Freedom. DoD or other Federal civilian employees could perform the vast majority of the jobs listed below. This is evidenced by the fact that as things stabilize in the region, the number of contractors is going down and the number of DoD civilian employees has increased. The mix is now 72% contractor and 28% civilian. The optimal mix of contractors and civilians is dependent upon the type of work to be performed, but we would clearly look for a more balanced workforce rather than the dominance of contactors that has occurred.

Contractor Function	GS/Wage Grade Equivalent
Avionics	GS 0861- Aerospace Engineer WG 8852- Aircraft Mechanic
Aeronautics	GS 0861- Aerospace Engineer
Aerospace/Aerospace Info Technology	GS 0861- Aerospace Engineer
Chemical/matter analysis	GS 0858- Biomedical Engineer
General contingency support services	GS 0346- Logistics Management WG 3500- General Services Support (laborer) WG 4700- General Maintenance and Operation (infrastructure) WG 4800-General Equipment and Maintenance
Construction	GS 0810- Civil Engineer GS 0809- Construction Control WG 3600-Structural Worker
Defense radar systems support	WG 2604- Electronics Mechanic
Command, Control, Communications, Computers and Intelligence (C4I) hardware support	GS 0861-Aerospace Engineer WG 2604- Electronics Mechanic
Information systems & infrastructure	GS 2210- Information Technology
Intelligence, Surveillance and Reconnaissance (ISR) secure communications support	GS 0856- Electronics Technician WG 2604- Electronics Mechanic
Translation and interpretation services	GS 1040- Language Specialist
Vehicle and generator maintenance	WG 5803- Heavy Mobile Equipment Mechanic

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Committee
Witness: Admiral Clark

Senator Akaka. Thank you for that response. **Could you get back to me on what MSPB case law or regulations impact DoD the most? Can you provide that?**

Response: The following bullets identify areas where the Department has concern regarding MSPB regulations. Details of specific problems and examples to support the problems are provided below.

MSPB Regulations that Cause Concern

- Appellate jurisdiction 5 C.F.R. § 1201.3 (in particular (a)(1)). MSPB interprets the scope of its jurisdiction broadly.

- Enforcement of interim relief. 5 C.F.R. § 1201.116. See example in MSPB Issue 3 below. One concern with interim relief is that if the agency prevails on appeal, it cannot recoup the payment in those circumstances where it decides it was untenable to return the appellant to his former position and made a decision to pay him instead. Further, there is no time limit for the MSPB to decide an appeal, so the agency may have to deal with an employee that it has fired or pay that person for an indeterminate amount of time.
- Interlocutory appeals. 5 C.F.R. §§ 1201.91-1201.93. Agency attempts to obtain interlocutory appeals on questions relating to the Board's jurisdiction are often denied, forcing the agency to go through burden of a hearing and pleadings for an administrative judge.
- Judges. 5 C.F.R. § 1201.41. Judges frequently decline to rule on dispositive motions (such as whether the Board has authority to hear a case) until a hearing has been convened.
- Right to a hearing. 5 C.F.R. § 1201.24.
    - Only the appellant can require a hearing - if the appellant does not want a hearing, there is no hearing, even if the agency wanted one.
    - The Board has declined to permit summary judgment.
    - MSPB Administrative Judges have the discretion to permit an appellant to withdraw his appeal without prejudice and set a new date by which the appellant must re-file his appeal. Thus, the regulatory 30-day time frame in which an appellant must appeal and the 120-day time frame that the Board sets as its goal in which to decide cases can be understated. In cases where

the appellant is permitted to withdraw his appeal without prejudice and re-file, the 120-day count begins anew with the re-filed appeal.

- Discovery. 5 C.F.R. §§1201.71-1201.75. The Board's regulations provide for extensive discovery. This is inconsistent with the requirement to process cases in 120 days. The combination of discovery and hearing requirements with the 120 day processing time can cause judges to stress settlement, even in cases where the agency believes that it has a strong case and should proceed to hearing and decision.

MSPB Issues

1. MSPB's interpretation of the scope of its authority under 5 USC Chapter 77.

a. MSPB has determined that it has the authority to conduct a separate review of the penalty imposed by an agency in an adverse action case under 5 USC Chapter 75, even when the agency has met its burden of proof as to the charges, and the penalty imposed is within the range established in the agency's published table of penalties.

- MSPB will determine whether, in its view, the penalty is "excessive, disproportionate to the sustained charges," or "arbitrary, capricious or unreasonable." This can result in MSPB reducing the penalty, even after sustaining the charges.
- EXAMPLE: A senior management official took a subordinate employee into a closed office, locked the door and expressed emotional and sexual feelings toward the employee making unwanted physical contact with her.
    - The management official also threatened the employee's job security if she ever revealed what occurred.
    - The MSPB found that the agency proved that the misconduct occurred, but ruled that the removal action was unreasonable.
    - It was ruled that the management official's unwanted sexual advances were "not overtly sexual in nature, but rather were primarily romantic." The management official's long Federal service was a significant mitigating factor.
    - MSPB mitigated the removal to a demotion to the "highest non-supervisory position available." See *Woodford v. Army*, 75 MSPR 350 (1997).

b. MSPB has determined, based upon Office of Personnel Management (OPM) regulations (5 CFR 330 Subpart B, Reemployment Priority List (RPL)) granting employees the right to appeal if they believe their reemployment priority rights were violated, that it has jurisdiction over placements made under the Department of Defense's Priority Placement Program (PPP).

- The DoD PPP is comprised of several internal process used to place employees affected by reduction in force and other circumstances. It was established in 1965 based on Secretary of Defense, not OPM, authority.
- Despite specific statutory authority (10 USC § 1586) and case precedent to the contrary, MSPB has asserted that it has jurisdiction over PPP placements, based on these OPM RPL regulations.
- Since 1965, PPP has placed over 167,000 DoD employees who might otherwise have faced separation because of reorganization, realignment and downsizing. Defending even a fraction of these placement actions before MSPB would make the program too costly and administratively burdensome. The threat of such actions places this program at risk.
- As a result, DoD has been forced to seek specific legislative relief to clarify its authority to continue to administer this important program (section 103 of the proposed Defense Transformation for the 21st Century Act of 2003).

c. MSPB has determined that it has authority to determine the validity of agency performance standards in performance-based action cases under 5 USC Chapter 43, regardless of whether the validity of the performance standards has even been raised as an issue by the parties. See *Mendez v. Air Force*, 62 MSPR 579 (1994).

- If the MSPB determines a standard is not valid, it will not uphold the agency's action. In fact, it will not consider the performance deficiency charges that necessitated action against the employee. Once the standards are questioned or invalidated, the agency has lost its case.
- EXAMPLE: An employee was removed for various instances of unacceptable performance. On appeal, the MSPB concluded that the performance standard failed by the employee (stating that one substantiated instance of discourtesy would constitute unacceptable performance) was an "absolute" standard making the standard invalid as a basis for measuring performance. As a result, the MSPB would not even consider the actual performance deficiencies of the employee. The MSPB reversed the removal and ordered the appellant reinstated with back pay and benefits. See *Callaway v. Army*, 23 MSPR 592 (1984).

d. Employees who opt to participate in the Voluntary Separation Incentive Program (VSIP) sign an agreement that indicates it is an irrevocable decision. The Board has found that an employee can appeal an Agency's decision to refuse a request to withdraw from a VSIP. The MSPB has also held that the Separation Agreement that the appellant signs is not a "valid reason" by itself to justify the agency's denial of the withdrawal request. See, Piechota v. GSA, 1999 MSPB Lexis 423 (April 29, 1999).

2. MSPB requires overly precise charges and specifications by the agency that go well beyond the requirements of due process, when taking adverse actions under 5 USC Chapter 75.

- EXAMPLE: An employee has taken government property. If the agency uses the term "theft" in its charges, the agency must demonstrate to the MSPB that there was intent by the employee to permanently deprive the government of its property. To avoid this issue, agencies must use other words such as "unauthorized possession of government property," which do not require proof of intent.
- When an employee assaults someone, he/she can only be charged with making a threat, assault, and/or battery when a showing of willfulness or specific intent can be demonstrated.
- EXAMPLE: An employee caused bodily injury to her supervisor by throwing objects, punching him with her fists, hitting him with a "bat" and brandishing a knife. The MSPB found that the agency did not establish a willfulness or intent and mitigated the removal to a 180-day suspension. See *Colon v. Navy*, 58 MSPR 190 (1993).
- Even where an agency establishes intent with a charge of theft, the MSPB will consider as a mitigating factor the *de minimis* value of the item taken if the employee did not occupy a position entailing custody and control over the item.
- EXAMPLE: The MSPB mitigated a penalty from removal to a 90-day suspension because the item stolen had little value and the employee merely had access to the item, but not custody and control. See *Kirk vs. DoD*, 59 MSPR 523 (1993).

3. MSPB has authority under 5 USC Chapter 77 to provide appellants who prevail at the regional office level interim relief (e.g., returning the employee to the workplace or placing the employee on administrative leave) between the date of the initial decision and the date that the Board issues a final decision.

- Interim relief is awarded in most cases where the appellant prevails at the regional office. This can be both administratively burdensome and costly to the agency.
- EXAMPLE: An employee was removed for conduct unbecoming a Federal employee and falsification – deliberate misrepresentation of material fact. On appeal, the Administrative Judge (AJ) mitigated the removal to a demotion and ordered interim relief of returning the employee to the workplace pending any agency appeal to the full Board. The agency appealed the AJ's decision to the full Board, which affirmed the agency's removal action. See *Cross v. Army*, PH0752000091-I-1 (2001).
- EXAMPLE: The MSPB dismissed an agency's petition for review of an AJ's decision because the agency had not granted the interim relief ordered. *Tammie M. Heath v. Department of Navy*, Docket No. SF0752920805-I-1 (1993). In doing so, the Board stated: "In *DeLaughter v. U.S. Postal Service*, 3 F.3d 1522

(Fed.Cir.1993), the agency filed a petition for review of an initial decision that ordered it to cancel its action removing an employee 'for possessing and using marijuana on agency property and being absent from his assigned work area without authorization,' and that further ordered interim relief if the agency sought Board review. The agency submitted evidence with its petition showing that it had placed the employee on paid administrative leave, but it did not expressly state that the appellant's return or presence in the workplace would be unduly disruptive. The Board adjudicated the agency's petition on the merits. On appeal, the court held that the agency had failed to meet its interim relief obligations under 5 USC § 7701(b)(2)(A). 3 F.3d at 1524."

4. The agency is not permitted to seek direct judicial review of a Merit Systems Protection Board (MSPB) decision. Only the employee/former employee has the right to appeal directly to the Federal Circuit Court of Appeals. See, 5 USC 7703.

5. Summary Judgment not permitted. 5 USC 7701 provides that employees filing an appeal with the MSPB have a right to a decision and a hearing. This has been interpreted by the Board to prohibit summary judgment. See, Naekel v. DOT, 21 MSPR 11 (1984).

6. An employee can choose to retire (resign) when faced with proposed discipline and can still get a hearing on his claim of coerced retirement (resignation). See, Heining v. GSA and OPM, 68 MSPR 513 (1995).

7. If the agency places an employee on enforced leave and it extends beyond 14 days, the action may be appealed to the MSPB - even if it involves communicable disease or perhaps mental instability, i.e., employee making threats and co-workers are afraid. See, Justice v. Navy, 89 M.S.P.R. 379 (2001)

Labor Issues

8. Related issues involving disciplinary cases (5 USC Chapter 75).

- Bargaining unit members, whose collective bargaining agreements provide for it, may grieve adverse actions (under 5 USC Chapter 75) or actions based on unacceptable performance (under 5 USC Chapter 43), or seek relief if the union charges that the adverse or performance-based action constitutes an unfair labor practice.
- In one recent case, it took the Court of Appeals for the D.C. Circuit to overturn a decision by the Federal Labor Relations Authority (FLRA) that supported an unfair labor practice charge against management. The case concerned the suspension of a union official for assaulting a management official.
    - The union filed an unfair labor practice charge against the suspension. While not condoning the conduct of the union official, the FLRA agreed

> that the law protected this conduct. It found Air Force guilty of an unfair labor practice and ordered the suspension rescinded, payment of back pay and interest, and a posting for 60 days by the installation commander admitting that the law was broken when Air Force suspended the union official.

The court stated, "In sum, we agree with Chairman Cabaniss that if the 'Authority really intends to follow a test that could condone an assault and battery situation by not declaring it to be outside the boundaries of protected activity,' then it is time for the FLRA to find a new test. *Charleston Air Force Base*, 57 F.L.R.A. at 83 (dissent of Chairman Cabaniss)." *Department of the Air Force v. Federal Labor Relations Authority*, 294 F.3d 192, 201-202 (D.C. Cir. 2002), 170 L.R.R.M.(BNA) 2548.

Post-Hearing Questions for the Record
From Senator Arlen Spector

June 4, 2003

1. *Having recommended and overseen the creation of the new Under Secretary of Defense for Intelligence, what is your assessment as to the government's overall ability to collect, analyze and disseminate actionable intelligence - particularly against the terrorist target – and how has this ability been enhanced by the creation of the new Under Secretary for Intelligence position?*

   Answer: The overall all ability of the government to collect, analyze and disseminate actionable intelligence is fair. There are a number of examples of intelligence achievements and important results contributing significantly to our war with global terrorism and recent military actions. The dedication and devotion of the men and women of our national intelligence program is unquestioned. There are however a number of unacceptable gaps in our knowledge of those who threaten our freedom and security. Over the years the most dedicated and more clever of our enemies have "gone to school" on our intelligence gathering process and have adapted to stay a step ahead of us. Every day that Bin Laden and others remain on the loose is a reminder of how far we have to go to take away the sanctuary they have found in our world. We will not rest until this mission is accomplished and we are able to prevent this nation from being strategically surprised. The Under Secretary has just been established, staffing is not complete and the huge intelligence system is still adapting to the new leadership. It will take additional months before we see tangible results from the process that the Congress began with the passage of the "Stump Defense Authorization Act" of 2003.

2. *Is Dr. Cambone receiving the cooperation of the other Intelligence Community entities?*

   Answer: Dr. Cambone is enjoying full support from the other community agencies and organizations. A series of new processes have been created to pull the Defense components into one unified structure. The important next step is to dismantle old, redundant and multiple layers of Defense management to realize the efficiency and decisive action taking organization that we sought when the Department approached the Congress to establish the new Under Secretary.

3. *How do the responsibilities of the new Under Secretary for Intelligence compare with those of the Director of Central Intelligence (in both his role as head of CIA and of the Intelligence Community), and how does the creation of this new Under Secretary for Intelligence position add value to the overall intelligence assessment that you now receive?*

   Answer: The DCI is responsible to the President for the provision of national intelligence. He has the authority to task those DoD intelligence agencies that are part of the Intelligence Community.

   The USD/I serves as my principal adviser on matters related to intelligence in the conduct of my responsibilities under Title 10 and Title 50 U.S.C. The USD/I, at my direction, exercises authority, direction, and control over intelligence and intelligence related activities of the Department and, at my direction, coordinates with the DCI those policies, plans, programs, requirements and resource decisions relative to these activities to ensure the DCI has the support required to discharge his responsibilities.

   Also at my direction, the USD/I coordinates with the DCI concerning support from the intelligence community required by the DoD and support required by the DCI from the DoD. The USD/I ensures the DCI has insight into and benefits from DoD activities that can contribute to intelligence.

Hearing Date: June 4, 2003
Committee: SGAC
Member: Senator Spector
Witness: Secretary Rumsfeld
Question # 4

Office of Special Plans

Question: What role is played by the Defense Department's Office of Special Plans in this overall intelligence assessment?

Answer: None. Special Plans was created in October 2002 by expanding the Near East and South Asia Bureau's Northern Gulf section from four to fourteen people, in order to provide enough manpower to handle policy issues with respect to Iran, Iraq, and the Global War on Terrorism. It is a policy planning group and is a consumer, rather than producer, of intelligence. It does not produce intelligence reports.

Hearing Date: June 4, 2003
Committee: SGAC
Member: Senator Spector
Witness: Secretary Rumsfeld
Question # 5

Office of Special Plans and the Undersecretary of Defense for Intelligence

Question: How will the Department of Defense, including the Office of the Under Secretary for Intelligence and the Office of Special Plans, interact with the new Terrorism Threat Integration Center (TTIC)?

Answer: There would be no formal interaction between NESA-SP and the TTIC. NESA-SP would only interact with the TTIC as a consumer of the TTIC's intelligence assessments. Appropriate DOD intelligence elements, including USD(I), the National Security Agency, the Defense Intelligence Agency, and the National Imagery and Mapping Agency, will participate in the TTIC by providing information, receiving information, and contributing to analytic efforts under their own current authorities.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Voinovich
Witness: Dr. Chu
Question #1

Question: Dr. Chu, you also noted in your May 12 testimony to my subcommittee that there are an estimated 320,000 military personnel performing jobs that should be handled by civilians. Is it your intent to shift these jobs to government employees or contractors?

Answer: The 320,000 military jobs that could be converted to DoD civilians or the private sector were first surfaced in a 1997 study that showed what military occupational specialties were "commercial" in nature. They ranged from General Administration to Recruiting/Counseling, weather, and information technology. Subsequent to that study, the Department began compiling the annual Inventory of Commercial and Inherently Governmental Activities (commonly referred to as the IGCA Inventory). The IGCA differs from the 1997 inventory by using "reason" codes for why military are in commercial jobs. This inventory is provided by the DoD Components and is based on a set of criteria that categorize military authorizations into: 1) inherently governmental, 2) commercial but exempt from private sector performance, and 3) subject to review for divestiture or private sector performance. It is the over 300,000 military in the "commercial but exempt" category that is the focus of discussions with the Services. At this point, the mix of DoD civilian and private sector choices has not been decided.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Voinovich
Witness: Dr. Chu
Question #2

Question: Do you have a strategic plan that you can share with the Committee outlining how you intend to shift these 320,000 positions?

Answer: The inventory is currently being analyzed by the Office of the Secretary of Defense, and discussed with the components at the staff level. Senior review will begin mid-July, and will be the basis for our strategic plan.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Shelby
Witness: Secretary Rumsfeld
Question #1

Question: Mr. Secretary, I have been gravely concerned for some time about one specific segment of the civilian workforce that I believe is indispensable to the Department's mission. You well know the civilian depot workforce who perform the core function of maintaining our military equipment and who help to ensure the readiness of our fighting forces is in real peril. The Department's past hiring activities have played a role in causing our industrial workforce to age to a dangerous level. Recently the depot in my state has been able to hire new workers, but most on a temporary basis. More than half of the employees in many core maintenance job categories are eligible for retirement. Tens of thousands could walk out the door today, but many don't because there is no one else to do their job. I think it is fair to say that VERA/VSIP would exacerbate an already dangerous situation. If large numbers of these core employees and their invaluable experience retire without putting in place a very aggressive and attractive system to replenish and train young workers, our depots are likely to lose the capability to sustain the readiness of the force.

Mr. Secretary, are you committed to supporting our organic depot workforce and how would the proposed NSPS impact the health of our depots?

Answer: We believe that the National Security Personnel System (NSPS) as proposed by the Administration and largely recommended in the House version (H.R. 1588) will provide the "aggressive and attractive system to replenish and train young workers" that is critical to sustaining the readiness of our depots. NSPS provides the authority to implement and adjust a fair system of expedited hiring, flexible assignment, true pay for performance, streamlined separation, and improved employee and labor relations that will benefit the depots. In addition, H.R. 1588, unlike S. 1166, retains the Administration's proposal for an expedited and temporary hiring authority for Americans 55 years of age or older as an additional method of ensuring access to the experience of workers who retire. With respect to the comment that "VERA/VSIP would exacerbate an already dangerous situation," we believe that the Defense Components and installations are using this authority judiciously in order to ensure that we retain a capable workforce.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Akaka
Witness: Secretary Rumsfeld
Question #1

Question: In 1996, the Federal Aviation Administration (FAA) was given authority to develop its own personnel and compensation systems. The Secretary of Transportation at that time argued that the agency needed flexibility to pay employees commensurate with job requirements and to move them where their services were needed, without the restrictions of standard government personnel procedures. In the Fall of 2001, the House Appropriations Committee called the personnel reform efforts at FAA a failure. According to the Committee report, fewer than one in five employees felt the agency rewarded creativity and innovation – even though personnel reform allowed the agency great flexibility in this area. Moreover, a review of staffing found that the FAA reform had not been used to put employees where they are needed. As the Department of Defense is requesting similar flexibilities to those granted to the FAA, what measures will be taken to ensure that the Department's personnel reform, affecting over 700,000 employees, will be effective?

Answer: Thanks to Congress, the Department of Defense has been a longtime leader in innovative and successful personnel management practices through its civilian personnel demonstration projects. The innovations tested in the demonstration projects include expedited hiring, categorical rating and ranking, pay for performance/pay banding, separation incentives, training flexibilities, and payment for degrees. Many years of experience of over 30,000 defense civilians, across a diversity of occupations and grade levels, with progressive personnel management practices and the years-long development of best practices which were derived in large measure from those demonstration projects, will help greatly to ensure a successful implementation of NSPS.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Akaka
Witness: Secretary Rumsfeld
Question #2

Question: Regarding the Department's request to have flexibility to waive or modify chapter 77 of title 5, relating to employee appeals, please answer the following questions:

A. Under the Department's legislative proposal, please explain the internal appeals system that would be created, including specific details on the hearing process, discovery rights, appeal rights, and changes to Merit Systems Protection Board (MSPB) rules, regulations, and case law.

Answer: Due process for employees remains a commitment of this Department. Following is a conceptual overview of an alternative internal appeals process:

- The internal DoD process would preserve and ensure due process for affected employees.
- The DoD internal appeals process would replace the current Merit Systems Protection Board (MSPB) appeals process and establish an internal DoD review board that would operate with final administrative decision and internal regulatory authority.
- The Armed Services Board of Contract Appeals, which operates as an independent body within the Department, provides an excellent model. The Courts of Criminal Appeals of the Army, Navy, and Air Force are also examples of bodies with independent decision-making authority.
- The establishment of this appeals process would look at existing processes to assist the review board in building a coherent and consistent body of precedents on which to rely when rendering decisions that respect the basic principles of law.
- The internal review board would have full authority to enforce its decisions and direct corrective actions (i.e. back pay, interest, reinstatement, etc).
- The appeals process would streamline the current multi-level approach to a single layer approach that would ensure due process for employees.
- Appeals process guidelines would clearly outline appealable actions, including those established in the *Best Practices* initiative, and the individuals who may appeal these actions.
- Appeals process guidelines would specify all information that must be provided to individuals concerning their right to appeal.

B. How would this plan [as detailed in the answer to question 2(A)] change under H.R. 1588, as passed by the House of Representatives? How would it change under S.1166?

Answer: Since S. 1166 would not allow the Department to waive or modify chapter 77, the Department would be unable to implement effectively an alternative internal process for appeals. S. 1166 would, in effect, add the full Merit Systems Protection Board appeals process on top of any internal process developed by DoD, with some authority to adapt legal standards for adverse actions taken against employees (under chapter 75 of title 5). On the other hand, H.R.1588 does permit the Department to modify chapter 77. However, it requires establishment of an independent review panel, appointed by the President, that would be outside of the Department of Defense. While we view the independent panel as problematic, it would not be burdened with the precedents and processes of the current system.

C. As the experience at the FAA demonstrates, an internal appeals system will not work if it is not considered fair and credible by employees, which is why Congress reinstated MSPB appeal rights for FAA employees in 2000. What steps will the Department take to ensure that any internal appeals system created is not only fair, but also perceived as fair by employees?

Answer: We agree strongly that any new system of appeals must not only be fair but be perceived as fair by employees. Implementation of the National Security Personnel System, should it be enacted, will include a thorough plan for communicating, collaborating, training, and evaluating that addresses all aspects of the system, including an alternative appeals process. It will also include establishing an independent review board, with full authority to overturn agency personnel actions and restore back pay, in appropriate cases.

D. Legislation granting flexibility in the appeals process requires consultation with the MSPB before issuing regulations. Please provide specific information detailing how the Department would consult with the MSPB. Would the Department consult with the Board on an ongoing basis prior to, during, and subsequent to issuing regulations relating to appeals?

Answer: The Department would consult with the MSPB in developing regulations for an alternative system. We would appreciate the continued availability of the MSPB for further consultation, should that be necessary.

E. Under Secretary David Chu testified at the June 4 hearing that one of the reasons the Department is seeking a waiver of chapter 77 is that the MSPB process takes too long. However, nearly 80 percent of cases at the MSPB are resolved within 90 days. According to the Senior Executives Association, there is no known government judicial or administrative operation that issues initial decisions faster than the MSPB. Please explain why 90 days is considered to be too long. If 90 days is too long, what would be the targeted time frame for cases determined under the

internal process at the Department? How much time would be allowed for notice and discovery?

Answer: We appreciate the more expedited timeframes for MSPB decisionmaking in the legislation. However, the 90-day time frame is an average that is something of a red herring for several reasons. First, many cases are resolved through settlement at the administrative judge level. Those cases that are fully contested, with full discovery, are very seldom resolved within the 120 day standard the Board sets for its Administrative Law Judges. In addition, the 90-day average does not clearly reflect cases that are appealed by either party to the full MSPB.

More important than the time frames is the body of case law that the Board has developed interpreting the expanding scope of its jurisdiction over agency actions, requiring agencies to draft detailed charges and specifications and the lack of authority to issue summary judgment. These issues are dealt with in greater detail in response to a previous question by the Senator asking about MSPB case law or regulations that impact DoD the most.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Akaka
Witness: Secretary Rumsfeld
Question #3

Question: According to a 1995 issue paper by MSPB, supervisors do not understand either of the two major processes established by law for removing poor performers (chapter 43 and chapter 75 provisions); they receive inadequate or confusing advice and assistance when seeking help from experts in this area; believe upper level management will not support them; believe that their cases may be overturned on appeal; and believe that they will be falsely accused of having acted for discriminatory reasons. These comments suggest that supervisors are not receiving adequate training for dealing with poor performers. Please provide information on the training programs and opportunities, including funding, for supervisors to learn about the MSPB process and the rules and procedures related to taking formal actions against employees. If given flexibility with chapters 43, 75, and 77 of title 5, United States Code, what will the Department do to train managers in the new personnel system and the rules and procedures for taking actions against employees? What amount of money will be set aside for these training programs?

Answer: We believe that the fundamental reason for supervisory dissatisfaction with the current system of appeals lies not with poor training but with the reputation of the current system as one that requires excessive preparation and defense of supervisory decisions and the real risk of having those decisions reduced or overturned. A contributing cause is that the current system of appeals is indeed confusing, which argues for a fundamental simplification of that process that still ensures due process for employees. With respect to training, the Department of Defense will incorporate NSPS policies and procedures into the current human resource curriculum, present train the trainer sessions for field implementation, and projects to expand courseware through e-training for HR professionals, supervisors, managers and employees. There are no resources set aside for these training programs as they are expected to replace current curricula.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Akaka
Witness: Secretary Rumsfeld
Question #4

Question: The Department proposes to waive chapter 53, which includes the Federal Wage System that governs the pay of federal blue collar employees. Earlier this year, I successfully offered an amendment to the Fiscal Year 2003 Omnibus Appropriations bill which expressed the sense of Congress that all employees, whether military or civilian, including those paid under the Federal Wage System, should receive the same increase in their pay. This language was included to help blue collar workers, including a large number of veterans working at the Department of Defense, who have seen little increase in pay during the past 12 years.

As the Department seeks flexibility in this area, I have the following questions:

A. What are the specific plans regarding pay for federal blue collar workers? Does the Department intend to waive the sections relating to the Federal Wage System in chapter 53? Will the Federal Wage System be retained?

Answer: Should legislation be enacted, the Department plans to incorporate the blue collar workforce into the National Security Personnel System of expedited hiring, enhanced opportunity under a system of pay banding and pay for performance, and streamlined separation.

B. If the Federal Wage System for Department blue collar workers is retained, will the Monroney Amendment be waived as it is permitted under both H.R. 1588 and S.1166? If so, how many federal wage-grade employees will be affected in each state, and what is the expected loss in increased wages for these employees?

Answer: No decision on application of the Monroney Amendment has been made at this time.

C. Will the Department continue to conduct the wage area salary surveys? If not, has there been any discussion relating to ensuring that federal wage system. Employees in other departments (e.g., the Department of Veterans' Affairs) will have wage area surveys upon which to set their pay?

Answer: The Department will continue to conduct wage surveys.

D. If you intend to revise the pay system for federal wage system employees to ensure that it is more comparable with pay in the private sector how will the new system do so given the current annual appropriations limit on pay raises for federal wage system employees?

Answer: A system of pay banding, along with wage surveys, would provide a better opportunity to ensure that wages can be set, based on performance, with greater comparability to the private sector.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Akaka
Witness: Secretary Rumsfeld
Question #5

Question: In 1993, the National Performance Review published a report on "Reinventing Human Resource Management" as part of its evaluation of government operations and management. The report found that internal – not external – agency systems of redress tend to be inflexible, costly, and lengthy. To address these problems, the report encouraged the use of alternative dispute resolution (ADR).

Please provide specific information on the Department's current internal redress system, including its use of ADR, and the changes for that system under the requested flexibilities.

Answer: The Department's current internal redress system is the administrative grievance system (AGS). While this redress system is available to the entire workforce, many matters are not grievable under this system because they fall under the jurisdiction of external statutory redress systems. In some cases, jurisdiction is "mixed," more than one system may be used.

- For example, any matters subject to review by the Merit Systems Protection Board (MSPB), Office of Personnel Management (OPM), Federal Labor Relations Authority (FLRA), or the Equal Employment Opportunity Commission (EEOC) are not grievable under the AGS.
- For our bargaining unit employees, who comprise approximately one-half of the DoD workforce, statutory-based, negotiated grievance procedures are the exclusive procedures for resolving employee complaints, except where other statutory procedures are available as alternatives, such as MSPB or EEOC.
- As a result, the vast majority of employee grievances or complaints are resolved through these external statutory processes, e.g., MSPB, FLRA. These processes account for the varied, inflexible, costly and lengthy appeal results experienced by the Department.
- While the report noted that internal processes tend to be inflexible, costly and lengthy, this report was making conclusions on internal processes across the entire Federal government, not for DoD specifically. This general assessment and broad conclusion misrepresents our experience with internal redress system methods.
- The Department AGS policy offers a streamlined approach to resolving grievances in a timely manner while offering alternative dispute resolution (ADR) techniques to assist in seeking solutions satisfactory to all parties.
- The ADR techniques include, but are not limited to, problem solving, mediation, facilitation, conciliation, early-neutral evaluation, fact-finding, settlement conferences, ombudsman, peer review, and arbitration.

- Any appeals process established by the Department would likely consolidate some, but not all, of the statutory processes currently available as well as the AGS. This will ensure a streamlined approach to resolving employee complaints and disputes. More importantly, it will ensure standard decisions and resolution methodologies.
- The use of ADR techniques will continue to be a prominent feature of any appeals system established by the Department. The following information depicts examples of current departmental use of these techniques as noted below:

  - The Air Force has an extensive Component-wide Alternative Dispute Resolution (ADR) program, for workplace disputes. In Fiscal Year 2002, 44% of cases, which includes EEO, Grievances, and Unfair Labor Practice Charges, used ADR. Of those cases, 66% achieved resolution. Air Force has three Installation Level Model programs; Tinker Air Force Base (Air Force Materiel Command) which focuses on mediation; Los Angeles Air Force Base (Air Force Space Command) also focuses on mediation; and, Charleston Air Force Base (Air Mobility Command) whose primary ADR methods are Facilitation/Peer Review. Tinker Air Force Base and Charleston Air Force Base were the recipients of the Office of Personnel Management ADR Award in 2001.

  - The Army's ADR program is decentralized and installations use a variety of means to resolve complaints and grievances. An example of this is the Army Materiel Command which uses several methods of ADR, such as mediation, peer review panel, or factual discovery to resolve workplace problems such as EEO complaints, employee-management and labor-management relations issues. Other Army installations that have ADR programs are Ft. Knox, Kentucky, and Ft. Monmouth, New Jersey.

  - The Department of Navy also has an aggressive ADR program. It offers a variety of means to its employees for resolving workplace disputes such as mediation, facilitation, conciliation and others. Commander Navy Region Southwest, San Diego; Human Resource Service Center, Pacific; Human Resources Service Center, East; Human Resources Service Center, Southeast; Human Resources Center, Northwest; and Naval Air Depot, Jacksonville all have established ADR programs. The Department of Navy was the recipient of the 2002 Office of Personnel Management Director's Award for Outstanding ADR Programs.

  - The Department of Defense is a champion of ADR programs in its own right. The DoD ADR Coordinating Committee is headed by the Department of Defense General Counsel's Office. DoD Directive 5145.5 establishes the Department's ADR policy. Additionally, the Civilian Personnel Management Service (CPMS) offers use of mediation in its investigation of formal EEO complaints. CPMS as well as various Components provide onsite Basic Mediation Skills and Interest Based Problem Solving training.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Akaka
Witness: Secretary Rumsfeld
Question #6

Question: According to the General Accounting Office, the proposal submitted by the Department provides significantly fewer statutory protections for veterans under reductions-in-force (RIF) law. This appears contrary to the Department's testimony and efforts throughout the draft to protect veterans' preference. Please provide information as to why veterans are provided fewer protections for RIF.

Answer: We disagree with this statement. The Department's commitment to veterans' preference remains unchanged. In fact, the legislation submitted by the Department specifically enumerated those provisions related to veterans preference that could not be waved under NSPS.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Akaka
Witness: Secretary Rumsfeld
Question #7

Question: Section 7103 of title 5, United States Code, grants the president authority to remove certain agencies or divisions from coverage of chapter 71 for national security reasons. Under this authority, several entities within the Department have been removed. Nonetheless, the Department is seeking a waiver of chapter 71 and, according to Under Secretary Chu, wants to be treated like other agencies excluded from the chapter. What additional entities within the Department do you feel should be removed from chapter 71? If granted the authority to waive chapter 71, what particular provisions would be waived or modified?

Answer: With respect to the first question, we are requesting that the entire Department be removed from the coverage of chapter 71 under the authority of 5 U.S.C. 7103. With respect to the last question, should legislation be enacted, we would collaborate with employee representatives and work with the Office of Personnel Management to develop an alternative system of labor-management relations for establishing and implementing the National Security Personnel System. The objective of a new system would be to foster a more constructive relationship between labor and management by developing a more continuous system of communication and collaboration and a more streamlined process for resolving differences and grievances.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Carper
Witness: Secretary Rumsfeld
Question #1

Question: In advocating for the Defense Department's legislative proposal, Under Secretary Chu has been quoted as saying that the changes contained in it were needed to "move money, shift people, and design and buy weapons quickly, and respond to sudden changes in our security environment." What specific problems has the Defense Department had in the past in moving workers around, buying equipment or responding to national security threats that would merit the kinds of changes you seek? Did any of these problems arise during the successful military campaigns in Afghanistan and Iraq? If so, how did they hinder U.S. military efforts?

Answer: Our defense civilians have performed in spite of the constraints of an inflexible system of personnel management. The dedication of defense civilians to accomplishing the mission despite the limitations and disincentives of the current system of personnel management is testimony to the quality of our workforce. However, more than 30,000 defense employees, including employees in bargaining units, have voted with their feet by joining personnel demonstration projects, authorized by the Congress, that overcome the inflexibility of the current system of civilian personnel management from hiring to removal. All of these changes, and the proposal for a National Security Personnel System, are aimed at what the bi-partisan National Commission on the Public Service recommends: "a personnel system that best supports (an agency's) own mission." The Commission states, "we envision the development of modern personnel management approaches that afford agencies far more flexibility and responsiveness in attracting job offers at the entry level, while fitting talent to task across the full spectrum of federal activity, permitting lateral movement within the government and between government and the private sector recognizing and rewarding performance." Our experience, illustrated by the following examples, supports the urgent need for a more flexible system of personnel management and labor-management relations.

- At Walter Reed Army Medical Center in Washington, D.C. recruitment and retention of licensed practical nurses is extremely difficult. Without a better system of recruitment and pay banding they will not be able to hire and keep a quality force. This is the medical staff that was seen recently taking care of our wounded soldiers from Operation Iraqi Freedom.

- Managers at the Defense Logistics Agency's distribution center in Pennsylvania were forced to disapprove virtually all leave requests for a six-month period due to turmoil created by reduction in force actions.

- Supervisors at Fort Riley, Kansas, which has a medical mission, had to send mammography cases to local hospitals, while the installation advertised for a radiologist and assisted the person throughout the recruitment process. The recruitment started in January and ended in August.

- It took the American Federation of Government Employees and the Air Force ten years to bargain over day care centers. Bargaining disputes led to an arbitration hearing, two appeals to the Federal Labor Relations Authority (FLRA), two court challenges, a petition to the Supreme Court, a Court of Claims case, and a decision by the Comptroller General.

- An Army facility in St. Louis once cancelled the annual employee picnic. It took six years and federal appeals court to decide whether or not the agency should have negotiated with the union before canceling the picnic.

- In 1981, a dispute over an agency's decision to close its facility over a holiday weekend and require employees to use one day of leave took eight years to resolve and involved the FLRA, the federal court of appeals and the United States Supreme Court.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator George Voinovich
Witness: Secretary Rumsfeld
Question #1

Question: Mr. Secretary, we both recognize that employees are our most important asset. However, in talking with federal employees I get the sense that they do not feel they are valued by the federal government. When we take into consideration this sweeping reform to personnel policy, add to that the President's Management Agenda of increased competitive sourcing initiative where errors, including the A-76 competition at DFAS-Cleveland, I can understand why employees feel they are not important. What are you doing today and what will you be doing in the future to mend this broken relationship between management and employees?

Answer: I do not subscribe to the view that the relationship between management and employees is broken in this Department. What is broken is the process by which federal employees are compensated, promoted, evaluated, disciplined, make appeals, and the way in which labor and management communicate and resolve differences. Numerous observers of the civil service system, including Paul Volcker's National Commission on the Public Service, have documented the shortcomings of the current federal personnel system. We believe that our proposal for a National Security Personnel System will bring a much greater measure of opportunity, accountability, fairness, and flexibility to workplace relationships. In particular, our proposal for revamping the current system of labor relations is an effort to move away from the adversarial system of labor relations to one of more constructive dialogue and collaboration.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator George Voinovich
Witness: Secretary Rumsfeld
Question #2

Question: Mr. Secretary, attention has been brought to the fact that in recent conflict in Iraq, the Department relied upon approximately 8,000 contactors and only 1,500 civilians to support our war fighters. Would you please comment on why there is such a disparity?

Answer: Work that needs to be performed in the theater of operations is a mixture of jobs that may require skills that are not available in the DoD workforce or involve people not immediately transferable because it leaves work in the U.S. uncovered. But even more important is the complex web of personnel rules and regulations that prevents us from moving DoD civilians to new tasks quickly.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Frank Lautenberg
Witness: Secretary Rumsfeld
Question #1

Question: Mr. Rumsfeld, my question relates to the pay for performance system that you would like to institute for civil servants in the Department of Defense. These same employees just recently helped support the quick victory we saw in Operation Iraqi Freedom. For the past two years, they have been instrumental to both Operation Enduring Freedom and the global war on terrorism. I am unclear about why, after such tremendous military success, you feel that we should now experiment with new systems of pay to enhance these public servants' performance?

Answer: Our civilian employees work despite the limitations and frustrations of the current civil service system, which have been well documented by such observers as Paul Volcker of the National Commission on the Public Service. In our proposal for a National Security Personnel System, we do not ask for authority to experiment with new systems of pay, but to base a new system on the flexibilities granted to this Department by the Congress and tested by some 30,000 DoD employees for years, some as long as twenty years.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Frank Lautenberg
Witness: Secretary Rumsfeld
Question #2

Question: We all know that the pay in the public sector is often not commensurate with salaries in the private sector. You know, Mr. Secretary, that if you want high wages, you don't necessarily come straight to the Department of Defense. But there are other benefits that make up for lower pay – good health care, for example, and relative job security. A pay for performance system threatens the job security system that attracts some of our best and brightest to government work. Mr. Secretary, are you not worried that the new National Security Personnel System threatens to tinker with one major benefit of public sector employment?

Answer: We believe strongly that a pay for performance system does not threaten the best and brightest but makes our Department more attractive to them. Nearly 30,000 defense employees have tested the fairness and effectiveness of a pay for performance system. In its evaluation of pay for performance in defense laboratories, the Office of Personnel Management (OPM) stated "the labs were most successful in implementing an integrated approach to job classification, compensation and performance management....The labs have successfully addressed a serious problem identified in OPM's recently published White Paper, "A Fresh Start for Federal Pay: The Case for Modernization." (OPM, 2002). The report highlights the inability of the current pay system to reward individual achievement and results." (page vii, "2002 Summative Evaluation, DoD S & T Reinvention Laboratory Demonstration Program")

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Frank Lautenberg
Witness: Secretary Rumsfeld
Question #3

Question: My question relates to the pay for performance proposed innovation. Some of my constituents have personal experience on this subject. IFPTE Local 3 represents approximately 1,500 civil service Navy employees, many of whom are based out of Philadelphia Naval Business Center. In 1998, some of the Local 3 employees were asked to participate in a demonstration project that used a "pay-banding" and "performance-based-pay" system instead of the GS system. During these same years, other division employees remained under the existing Civil Service System.

This survey was a good case study comparing the two pay systems, since each was instituted within one organization among a relatively equal number of people, simultaneously. My constituents involved in the Demo said that over the five years that they observed the two pay systems at work, they did not see any evidence that the Demo systems were a success.

They did not hear any positive feedback from their fellow employees involved in the Demo test, and in fact they heard some negative assessments. I would assume, Secretary Rumsfeld, that prior to advocating the initiation of such a monumental change through the entire ranks of 700,000 civil servants, you would have thoroughly tested the benefits of the pay for performance system.

I was wondering if you could describe some of these pilot studies, where they were performed, and their outcomes.

Answer: The Office of Personnel Management performed a comprehensive evaluation of the flexibilities demonstrated by defense laboratories in its study "2002 Summative Evaluation, DoD S & T Reinvention Laboratory Demonstration Program." We would be glad to provide a copy of that study to the committee. The executive summary indicates that there has been a limited but positive impact of the demonstration on laboratory effectiveness; a moderate, positive impact on recruitment and retention; and strong success in implementing an integrated approach to job classification, compensation and performance management. The study also reported that managers were more satisfied with the quality of applicants, that organizational turmoil was reduced by modifications to reduction in force regulations, and that employee perceptions of the fairness of adverse actions or adequacy of procedures for reconsidering performance ratings did not change significantly.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Frank Lautenberg
Witness: Secretary Rumsfeld
Question #4

Question: I am concerned quite frankly with the impact of the proposed management and personnel changes on civil servants conducting research and developing important technologies within military installations. Many of these jobs could be done by the private sector, but we all acknowledge the importance of retaining public servants of the highest quality. In a "pay for performance" process, how can you ensure that highly skilled engineering, computer programming and other technical positions are kept within DoD and not contracted out?

Answer: The question addresses two distinct processes – pay for performance and the identification of functions that are appropriate for private sector performance. A pay for performance system measures individual performance and organizational effectiveness. It does not determine whether a position or activity should be performed by the private sector. The Department has a separate process which considers whether activities should be performed within the Department because they are inherently governmental, as defined by the Federal Activities Inventory Reform (FAIR) Act, or should be exempted from private sector performance because they are required for wartime assignments, career progression, rotation, or other similar reasons.

Hearing Date: June 4, 2003
Committee: Senate Government Affairs Subcommittee
Member: Senator Frank Lautenberg
Witness: Secretary Rumsfeld
Question #5

Question: Could you explain why your proposal eliminated employees' access to the Equal Employment Opportunity Commission (EEOC) and the Office of Special Counsel (OSC). I am confused by what exactly the intent is behind repealing appellate rights of your employees?

Answer: The Administration's proposal did neither, nor does H.R. 1588, as passed by the House, or S. 1166, as reported by the Senate Government Affairs Committee. Each expressly retains the rights of employees who believe that they have been the subject of a prohibited personnel practice or the violation of a merit system principle to file a complaint with the Office of Special Counsel, whose jurisdiction would not be affected by the National Security Personnel System (NSPS). Employees will also continue to have the right to file complaints of prohibited discrimination under regulations established by the Equal Employment Opportunity Commission. These processes remains unchanged with the implementation of NSPS.

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

July 3, 2003

The Honorable Susan M. Collins
Chairman
Committee on Governmental Affairs
United States Senate

Subject: *Posthearing Questions Related to Proposed Department of Defense (DOD) Human Capital Reform*

On June 4, 2003, I testified before your committee at a hearing entitled "Transforming the Department of Defense Personnel System: Finding the Right Approach."[1] This letter responds to your request that I provide answers to posthearing questions from Senator George V. Voinovich and Senator Thomas R. Carper. The questions and responses follow.

Questions from Senator Voinovich

1. Mr. Walker, in your written testimony, you support the phased in approach for DOD reforms. While this will give the Department additional time to establish a better personnel system, do you believe it may contribute to a fractured atmosphere, potentially creating a culture of "haves," employees benefiting from the new system and "have-nots?"

As I have testified, we believe that it is critical that agencies or components have in place the human capital infrastructure and safeguards before implementing new human capital reforms. This institutional infrastructure includes, at a minimum (1) a human capital planning process that integrates the agency's human capital policies, strategies, and programs with its program mission, goals, and desired outcomes, (2) the capabilities to develop and implement a new human capital system effectively, and (3) a modern, effective, credible and, as appropriate, validated performance appraisal and management system that includes adequate safeguards, such as reasonable transparency and appropriate accountability mechanisms, to ensure the fair, effective, and nondiscriminatory implementation of the system.

Clearly, some components of DOD may have such an infrastructure and safeguards in place before others. However, as we have noted, in the human capital area, how you do something and when you do it, can be as important as what you do. In our view,

[1] U.S. General Accounting Office, *Human Capital: Building on DOD's Reform Effort to Foster Governmentwide Improvements*, GAO-03-851T (Washington, D.C.: June 4, 2003).

the positive benefits of implementing the new human capital authorities properly and effectively will far outweigh any potential issues of some DOD components benefiting from the new personnel authorities before others.

2. In the Homeland Security legislation, Congress gave the new Department broad flexibility to amend six areas of Title 5 (performance appraisals, classification, pay rates and systems, labor management relations, adverse actions, and appeals). It has been said that the Department of Homeland Security's personnel system may become the future human resource model for the federal government. Today the Secretary of Defense explained his vision for the personnel system for the civilian workforce, which in some instances goes well beyond the Homeland Security proposal. I know that the Department of Defense has had a great deal of success with their demonstration projects, but do you think we should wait until the Homeland Security system is fully established before we give broad authority to the Defense Department?

As we noted in our high-risk series, modern, effective, and credible human capital strategies will be essential in order to maximize performance and assure accountability of the government for the benefit of the American people.[2] As the employer of almost 700,000 civilians, in no place is a modernized human capital system more critical than DOD. However, as I have often noted, such a system should not be implemented without an adequate human capital infrastructure and safeguards.

Although we do not believe that DOD should wait for the full implementation of the new human capital system at the Department of Homeland Security (DHS), which could take several years, we do think that there are important lessons that can be learned from how DHS is developing its new personnel system. For example, DHS has implemented an approach that includes a design team of employees from DHS, the Office of Personnel Management (OPM), and major labor unions. To further involve employees, DHS has conducted a series of town hall meetings around the country and held focus groups to further learn of employees' views and comments. According to DHS, draft regulations for the new personnel system will be issued this fall, final regulations by early 2004, and implementation to begin at that point. DOD, as any organization seeking to transform, needs to ensure that employees are involved in order to obtain their ideas and gain adequate "buy-in" for any related transformational efforts.

3. Mr. Walker, in your testimony before the House Government Reform Committee and my Subcommittee, you expressed reservations with DOD's preparedness to implement a pay for performance system. You have observed that the Department does not have a credible and verifiable performance management system. S. 1166 seeks to address that concern by establishing criteria for a performance management system. Please comment on that portion of the bill.

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[2] U.S. General Accounting Office, *High-Risk Series: Strategic Human Capital Management*, GAO-03-120 (Washington D.C.: January 2003).

We are pleased that both the House of Representatives' version of the proposed National Defense Authorization Act for Fiscal Year 2004 and the proposed National Security Personnel System Act contain statutory safeguards and standards along the lines that we have been suggesting to help ensure that DOD's pay for performance efforts are fair to employees and improve both individual and organizational performance.

The statutory standards described in the National Security Personnel System Act proposal are intended to help ensure a fair, credible, and equitable system that results in meaningful distinctions in individual employee performance; employee involvement in the design and implementation of the system; and effective transparency and accountability measures, including appropriate independent reasonableness reviews, internal grievance procedures, internal assessments, and employee surveys. In our reviews of agencies' performance management systems—as in our own experience with designing and implementing performance-based pay reform for ourselves at GAO—we have found that these safeguards are key to maximizing the chances of success and minimizing the risk of failure and abuse.

The proposed National Security Personnel System Act also takes the essential first step in requiring DOD to link the performance management system to the agency's strategic plan. Building on this, we suggest that DOD also be required to link its performance management system to program and performance goals and desired outcomes. Linking the performance management system to related goals and desired outcomes helps the organization ensure that its efforts are properly aligned and reinforces the line of sight between individual performance and organizational success so that an individual can see how her/his daily responsibilities contribute to results and outcomes.

Questions from Senator Carper

1. In your written testimony, you say it would be preferable to employ a governmentwide approach to address human capital issues in the future. Of the issues addressed in S. 1166 and the Defense Department proposal, which do you believe would be best handled using a governmentwide approach?

As you point out, I have testified that Congress should consider both governmentwide and selected agency changes to address the pressing human capital issues confronting the federal government. Agency-specific human capital reforms should be enacted to the extent that the problems being addressed and the solutions offered are specific to a particular agency (e.g., military personnel reforms for DOD). In addition, targeted reforms should be considered in situations where additional testing or piloting is needed for fundamental governmentwide reform.

In our view, it would be preferable to employ a governmentwide approach to address certain flexibilities that have broad-based application and serious potential implications for the civil service system, in general, and OPM, in particular. We believe that several of the reforms that DOD is proposing fall into this category. Some examples include broad-banding, pay for performance, reemployment, and pension offset waivers. In these situations, it may be prudent and preferable for

Congress to provide such authorities on a governmentwide basis and in a manner that assures that a sufficient personnel infrastructure and appropriate safeguards are in place before an agency implements the new authorities. Importantly, employing this approach is not intended to delay action on DOD's or any other individual agency's efforts but rather to accelerate needed human capital reform throughout the federal government in a manner that ensures reasonable consistency on key principles within the overall civilian workforce. This approach also would help to maintain a level playing field among federal agencies in competing for talent.

2. Many of the proposals made by the Defense Department have been made in the past by other departments and agencies to address longstanding, governmentwide human capital problems. Every department and agency, I'm sure, can claim to have difficulty, for example in recruiting and retaining qualified personnel to replace retirees, in hiring individuals quickly or in finding ways to reward employees for excellent performance. In your view, is what the Defense Department is seeking narrowly tailored to meet department-specific needs? Has the Defense Department provided sufficient justification for the kind of personnel authority they are seeking?

The authority DOD is seeking is not directly tailored to meet department-specific needs. In addition, DOD has not provided a written justification for much of its proposal. Nevertheless, DOD does need certain additional human capital flexibilities in order to facilitate its overall transformation effort.

Secretary Rumsfeld and the rest of DOD's leadership are clearly committed to transforming how DOD does business. Based on our experience, while DOD's leadership has the intent and the ability to transform the department, the needed institutional infrastructure is not in place in a vast majority of DOD organizations. Our work looking at DOD's strategic human capital planning efforts and looking across the federal government at the use of human capital flexibilities and related human capital efforts underscores the critical steps that DOD needs to take to properly develop and effectively implement any new personnel authorities.[3] In the absence of the right institutional infrastructure, granting additional human capital authorities will provide little advantage and could actually end up doing damage if the authorities are not implemented properly by the respective department or agency.

DOD has noted that its new personnel system will be based on the work done by DOD's Human Resources Best Practices Task Force. The Task Force reviewed both federal personnel demonstration projects and selected alternative personnel systems to identify practices that it considered promising for a DOD civilian human resources strategy. These practices were outlined in an April 2, 2003, *Federal Register* notice asking for comment on DOD's plan to integrate all of its current science and

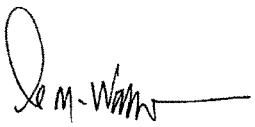
[3] See, for example, U.S. General Accounting Office, *DOD Personnel: DOD Actions Needed to Strengthen Civilian Human Capital Strategic Planning and Integration with Military Personnel and Sourcing Decisions*, GAO-03-475 (Washington, D.C.: Mar. 28, 2003); *Human Capital: Effective Use of Flexibilities Can Assist Agencies in Managing Their Workforces*, GAO-03-2 (Washington, D.C.: Dec. 6, 2002); and *Defense Logistics: Actions Needed to Overcome Capability Gaps in the Public Depot System*, GAO-02-105 (Washington, D.C.: Oct. 12, 2001).

technology reinvention laboratory demonstration projects under a single human capital framework consistent with the best practices DOD identified.

Finally, as I noted in my statement before the Committee, the relevant sections of the House of Representatives' version of the proposed National Defense Authorization Act for Fiscal Year 2004 and Chairman Collins, Senator Levin, Senator Voinovich, and Senator Sununu's National Security Personnel System Act, in our view, contain a number of important improvements over the initial DOD legislative proposal.

We are providing copies of this letter to the Ranking Minority Member, Senate Committee on Governmental Affairs; the Chairman and Ranking Minority Member, Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia; the Chairman and Ranking Minority Member, Senate Committee on Governmental Affairs, Subcommittee on Financial Management, the Budget, and International Security; and the Honorable Thomas R. Carper. For additional information on our work on federal agency transformation efforts and strategic human capital management, please contact me on (202) 512-5500 or J. Christopher Mihm, Director, Strategic Issues, on (202) 512-6806 or at mihmj@gao.gov.

Sincerely,



David M. Walker
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Response to Questions for the Record Submitted to Mr. Bobby Harnage from Senator George Voinovich from June 4, 2003 Hearing on "Transforming the Department of Defense Personnel System: Finding the Right Approach"

Question 1:
Mr. Harnage, would you like to offer your thoughts on the statistical findings of Mr. Light's report?

Answer:
This survey provides a glimpse into the opinions of college seniors. It does not provide any insight into the needs, desires, or concerns of the federal workforce. Furthermore, the opinions expressed in the report are likely to change when the respondents enter the workforce and shoulder adult financial obligations like mortgages and children. It would be better to focus on the concerns of those who already know the government sector: federal employees.

To understand the views of federal workers, simply ask the organization that 600,000 actual federal employees elected to represent them: the American Federation of Government Employees. The voices of current workers are the voices of experience. Their opinions are based on firsthand knowledge of the federal sector. That knowledge was earned during economic upturns and downturns. For those employees, stability, career advancement, equal opportunity protections, and open competition for federal jobs are hard won features of the civil service. Those principles were established to defend against cronyism, bias, and discrimination. Why listen to the voice of innocence when we can call on the wisdom of experience? Why remake the federal sector to cater to the whims of college seniors whose opinions are likely to change when they actually encounter the working world?

AFGE believes that federal policy should be based on reasonable principles and quality information. Mr. Light's report describes the fluid opinions of an unrepresentative sample of respondents. Given the problems with Mr. Light's report, it cannot form the basis for any rational policy decisions.

The poll does not provide a representative pool of potential government employees. Mr. Light targeted an assortment of liberal arts graduates, but did not justify the selection of this subgroup. The survey group does not reflect the educational diversity of the current federal workforce. Instead of focusing on liberal arts graduates, he should have polled students earning degrees the government needs and is likely to hire in the future. Why were students of criminology excluded, for example? Why did the survey exclude bachelors of computer science? No justification is offered for choosing to poll this subsection of the population.

Mr. Light's report provides a snapshot of the opinions of students who lack work experience and admit they have little or no knowledge about finding a job in any industry. Mr. Light writes, "These seniors were generally confused about how to find work with government, nonprofits, or contractors. Just 44 percent said they knew a great deal or fair amount about finding a job in either government or a nonprofit, and even fewer, 30 percent, said they knew a great deal or fair amount about finding work for a contractor." Any conclusions drawn from this study would be based on the flimsiest of evidence. If anything, it indicates that the federal human resources departments could improve outreach to career services offices at colleges and universities.

This poll focuses only on college seniors while excluding recent college graduates with at least some work experience. A survey that included this population would elicit opinions from people with some real life perspective on the workplace, rather than simply perceptions of it. The view of college students may be far different than that from their slightly older peers with work experience. For example, 19% of the students had interned, volunteered, or worked for government (page 8). Of that group, 85% would somewhat or seriously consider a public service job. This figure is significantly higher than their peers with experience at a nonprofit or contractor. It shows that real experience with government service changes perceptions. Therefore, targeting those with some tangible professional experience could offer more informed responses.

Mr. Light asserts that the views of twenty-two year old college seniors should shape the federal sector. He is wrong. We should base our decisions on the bedrock American principles of the merit system: fairness, equality, and integrity.

Question 2:
Mr. Harnage, I've reviewed your written testimony in which you talk extensively about the House version of the NSPS. Since the House passed its version I have worked with Senators Collins and Levin to address the concerns that you and other employee groups have raised. Please comment on our revised version of NSPS.

Answer:
While we have some concerns about the Senate version of the NSPS which passed the Senate Governmental Affairs Committee last week, overall we believe that the bipartisan approach taken by Senators Susan Collins (R-ME), Chairman of the Governmental Affairs Committee, and Senators Carl Levin (D-MI), George Voinovich (R-OH),John Sununu (R-NH), and Ted Stevens (R-AK) (S. 1166) is a thoughtful, balanced, and ultimately more responsible bill than the provisions included in the House version of the Defense bill.

S. 1166 includes numerous improvements to the House-passed version of the Defense Department's proposal. While AFGE remains profoundly concerned about both the fairness and the potential reduction in employee compensation of a so-called pay-for-performance system, S. 1166 substantially restrains the Department's desire for "blank

check" authority to create a new personnel system completely outside of title 5, United States Code.

Moreover, S. 1166 amply addresses the three major "problems" DoD wanted the Congress to address. Time and again the Department asked for:

1) a pay-for-performance system similar to those created under demonstration projects in DoD,

2) on-the-spot hiring authority at college job fairs, and

3) the ability to elevate some issues above the local collective bargaining level to the national level.

In each of these areas, S. 1166 has given the Department the flexibility it requested.

In addition, S. 1166 gives the Department numerous other flexibilities.

- ***Pay System*** – Both the House and Senate bills allow DoD to completely change the pay and classification system for all civilian employees by allowing the Department to waive chapters 51 and 53 of title 5, United States Code. However, the Senate bill contains more details about what the new pay and classification system must contain. Specifically, S. 1166 requires the establishment of pay bands, a performance rating system, and upper and lower salary levels. For the first four years, the total amount allocated for employee salaries cannot be less than what would have been allocated under the General Schedule system. After the initial four years, DoD will establish a formula for the amount that will be allocated for salaries. Finally, money allocated for salaries cannot be used for any other purpose, unless the Secretary determines that reallocation is necessary in the national interest.

  Pay parity language – The Senate bill contains no military-civilian pay parity language. However, the House bill only requires military-civilian pay parity "to the maximum extent practicable."

  Premium Pay -- The Senate bill does not allow waiver of subchapter V of Chapter 55 of title 5, U.S. Code, which relates to overtime, weekend, holiday, hazardous duty, and firefighter pay. These provisions have been in the law for decades, and are designed to provide compensation for employees working under irregular, non-family-friendly schedules, as well as in dangerous situations.

- ***Hiring, Promotion, and Reduction-in-Force*** – The House bill allows DoD to exercise broad authorities under 5 U.S.C. 4703(a) relating to hiring, assignment, reassignment, promotion, and reduction of agency staff. The Senate bill only grants these authorities with regard to hiring and ensures that veterans will be given hiring preference.

- ***Collective Bargaining*** – Unlike the House bill, S. 1166 does not allow the Department to waive Chapter 71 of title 5 which establishes federal labor-management relations and collective bargaining. The House bill, by waiving chapter 71 and including additional language on national level bargaining, would allow DoD to engage only in national level bargaining if it so chooses, and then refuse to allow the Federal Labor Relations Authority to adjudicate disputes between labor and management. Thus, under the House bill, local unions which have engaged in collective bargaining with the Department since President Kennedy was in office, would no longer have any statutory right to bargain or be recognized by management. In addition, if employees hold an election which results in a majority vote to be represented by a union, under the House bill the Secretary of Defense can effectively negate this election by refusing to allow collective bargaining.

  The Senate maintains these basic democratic rights for DoD's employees, and we commend the Senate for recognizing that hostility to employees' rights is the most basic evidence of mismanagement and that employees' desire to have a meaningful communication and an enforceable collective bargaining agreement goes hand in hand with our nation's democratic traditions and the standards of good government.

  National-level collective bargaining – The Senate bill allows collective bargaining to be elevated to the national level when the issue impacts more than one local bargaining unit.

  Third-party resolution of labor-management disputes – The Senate bill removes the prohibition in the House bill that impasses cannot be subject to third-party dispute resolution. The Senate bill requires that the Federal Labor Relations Authority (FLRA) resolve certain issues (*e.g.,* national consultation rights, exceptions to arbitrator awards) within 180 days. The Senate bill also requires that the Federal Service Impasses Panel resolve negotiation impasses within 180 days.

- ***Appellate Procedures*** – The Senate bill allows DoD to set up an alternative appeals process. But unlike the House bill, S.1166 retains the right of employees to appeal to the Merit Systems Protection Board as an appellate body and allows the employees the option of judicial review. Ultimately, the provisions of S. 1166 will go a long way toward making sure that disciplinary actions in DoD are based on merit rather than cronyism and politics.

In conclusion, AFGE strongly prefers the National Security Personnel System provisions of S. 1166 to those included in the House bill.

Post-Hearing Question for the Record
Submitted to Paul C. Light, Ph.D.
From Senator George Voinovich,
and Response

"Transforming the Department of Defense Personnel System:
Finding the Right Approach"

June 4, 2003

Question: Mr. Light, I am troubled by the report you released yesterday demonstrating that the majority of our recent college graduates do not view the federal government as an employer of choice. I am even more troubled at the high turnover rate among new government employees– our future leaders. You also comment in your written testimony that "there is no choice but to advance quickly on the kind of bold reforms envisioned here." We know reforms are needed. How does this proposal for the Department of Defense impact government-wide Title 5 reform efforts?

Answer: I believe the Department of Defense reforms will set important precedents for other departments and agencies. There is tremendous interest in the kinds of personnel flexibilities envisioned in the Defense proposal, but significant confusion about the broad template that might guide preparation of other initiatives. Since many of those initiatives will move through the authorization committees, I believe it is essential that the Senate and House give agencies a clear template for those reforms. In this regard, the Senate Governmental Affairs Committee proposal would provide appropriate guidance for those efforts.

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