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# PROTECTING OUR EMPLOYEES: PANDEMIC INFLUENZA PREPAREDNESS AND THE FEDERAL WORKFORCE

## HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

JUNE 16, 2009

Available via http://www.gpoaccess.gov/congress/index.html

Printed for the use of the Committee on Homeland Security and Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

51–787 PDF WASHINGTON : 2010

For sale by the Superintendent of Documents, U.S. Government Printing Office
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# PROTECTING OUR EMPLOYEES: PANDEMIC INFLUENZA PREPAREDNESS AND THE FEDERAL WORKFORCE

**TUESDAY, JUNE 16, 2009**

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA,
OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:05 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Subcommittee, presiding.

Present: Senators Akaka and Voinovich.

## OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. The hearing of the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia will come to order.

I want to say good morning, aloha, and welcome to our distinguished panelists and guests and those who have joined us for the hearing this morning. I would like to thank you all for joining us here today for this hearing on Federal agencies' preparedness in the event of a pandemic influenza outbreak.

First, I want to express my disappointment that the Subcommittee did not receive testimony from the agencies until late yesterday, some of it arriving at nearly 7 p.m. last night. This problem underscores my concerns that agencies will not be prepared to respond rapidly and communicate effectively to an emerging pandemic.

As you know, our Subcommittee rules ask that witnesses furnish testimony at least 2 days in advance, or Friday in the case of a Tuesday hearing, to allow Members and staff enough time to prepare for the hearing. We will continue as best we can under the circumstances, but in future hearings I may strike late witness testimony. We may need to send additional follow-up questions on any issues we are not able to address today because of the unfortunate delay.

Pandemic influenza continues to be a grave threat facing the United States and the world. The United Nations' World Health Organization (WHO), which coordinates global pandemic prepared-

ness and response efforts, has said that infectious diseases are spreading faster than at any time in history.

At the end of April, illnesses due to the novel H1N1 influenza virus spread across North America and, over a short period of time, around the globe. H1N1 has resulted in over 28,000 infections and nearly 150 deaths to date. Last week, the WHO raised the pandemic alert level to phase six, a full-blown global pandemic. Fortunately, so far, the virus has been relatively mild, but influenza viruses mutate rapidly, and H1N1 poses a significant threat.

The WHO has estimated that a serious pandemic influenza outbreak could cause more than 7 million deaths worldwide. In the last century, three pandemics killed approximately 43 million people worldwide, including more than 500,000 Americans. Public health officials have said for years that we need to prepare for the inevitable flu pandemic. We must do all we can to protect our communities from this threat.

The Centers for Disease Control and Prevention (CDC) estimates that up to 40 percent of employees may be absent from work during a severe pandemic. In addition to those who are ill, employees may stay home to care for sick family members or due to fear of infection. An influenza pandemic threatens the operation of Federal agencies because essential workers could be absent for weeks, or even months, at a time.

Detailed planning is necessary throughout the Federal Government to ensure continuity of operations while protecting employees. The activities of agencies critical to Americans' safety, health, and well-being cannot be allowed to stop during a pandemic; neither can we endanger the dedicated men and women who carry out those duties.

The Government Accountability Office (GAO) has issued a number of reports addressing pandemic influenza preparedness. After a series of hearings on this topic this Subcommittee held in the fall of 2007, Senator Voinovich and I requested that GAO review pandemic preparedness plans for the Federal workforce, focusing on critical staff that require daily onsite activity. GAO's report, released today, concludes that while many Federal agencies are making progress to protect their workers and to identify essential functions that can be continued during a pandemic, the progress is uneven. Some agencies are only in the early stages of developing their pandemic plans. GAO also found that there is no real mechanism in place to monitor agencies' pandemic workforce plans. We will address GAO's recommendation to improve monitoring and reporting on agencies' progress with their plans at today's hearing.

Strong planning is just the first step. Agencies must ensure that their plans are up to date and operationally sound. Moreover, they must engage employees and communicate those plans clearly.

Senator Voinovich and I have introduced two bills to enhance agencies' ability to translate pandemic planning into smooth operations. The Telework Enhancement Act of 2009, S. 707, would require agencies to develop robust telework policies and address telework in continuity-of-operations planning (COOP). Strong and tested telework programs will be essential to continuing operations when social distancing is in order and many employees are absent.

Additionally, the Federal Executive Board (FEB) Authorization Act, S. 806, would formalize the role of FEBs in an emergency event and authorize needed funding to support their mission. FEBs will play a critical role in coordinating the activities of lead Federal, State, and local government officials outside the Washington, DC area during any pandemic flu response.

Additionally, as I stated, agencies must make sure employees have the information they need about pandemic plans. In particular, there must be clear guidance to Federal employees regarding employees' rights to protect themselves at the workplace. Employees must receive this information before a pandemic occurs. It may be too late to be effective if employees are given the information they need after an outbreak occurs.

I am concerned that Federal agencies have not done enough to protect the Federal workforce from the current outbreak of H1N1. Employees who interact with hundreds or thousands of travelers daily in the Customs and Border Protection (CBP) and Transportation Security Administration (TSA) received conflicting guidance. This is unacceptable. As reports from the field indicate, employees who asked to wear protective masks were told they could not. However, this policy is not part of the official guidance distributed by the Department of Homeland Security (DHS), the Office of Personnel Management (OPM), or the Occupational Safety and Health Administration (OSHA). The men and women on the front lines must be able to trust that their agencies will develop and distribute clear policies in a timely manner during an emergent event. Proper coordination between DHS, OPM, and the Department of Health and Human Services (HHS) is needed to accomplish this.

Public health officials warn that we may see a resurgence of a stronger, more threatening version of the novel H1N1 virus later this fall. Agencies need to make sure now that the workforce is properly informed of policies and guidance so we are ready if that happens.

I know that you all have put a lot of thought and energy into developing plans to protect the workforce from the current pandemic and future threats while ensuring continuity of government operations. In particular, I know DHS, OPM, and HHS are coordinating to develop clear and consistent workforce guidance. I look forward to hearing about this important work today.

Senator Voinovich, your opening statement.

## OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Senator Akaka. I, first of all, have little to add to your opening statement. I think it was an excellent statement, and anything I would say would probably just be redundant. The only thing that I would like to emphasize before we hear from the witnesses is that so many of these things come along, being a problem, and then it kind of eases out and it is not a problem. But I think it is significant—at least it impressed me—that the World Health Organization dubbed swine flu as a "pandemic," the first in 41 years. So obviously they think this is something pretty serious and something that we ought to take to heart, and I am anxious to hear your testimony today about the GAO re-

port and how you think we can remedy the things that were outlined in that report. Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Voinovich.

I would like to at this time introduce our panel: Elaine Duke, Under Secretary for Management, U.S. Department of Homeland Security; Rear Admiral W. Craig Vanderwagen, M.D., Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services; Nancy Kichak, Associate Director of Strategic Human Resources Policy, U.S. Office of Personnel Management; Bernice Steinhardt, Director of Strategic Issues, U.S. Government Accountability Office.

It is the custom of this Subcommittee to swear in all witnesses; therefore, I ask all of you to stand and raise your right hand. Do you solemnly swear that the testimony you are about to give this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. DUKE. I do.

Admiral VANDERWAGEN. I do.

Ms. KICHAK. I do.

Ms. STEINHARDT. I do.

Senator AKAKA. Thank you. Let the record note that our witnesses responded in the affirmative.

Before we begin, I want to remind you that although your oral statement is limited to 5 minutes, your written statements will be included in the record.

Rear Admiral Vanderwagen, would you please proceed with your statement?

**TESTIMONY OF REAR ADMIRAL W. CRAIG VANDERWAGEN, M.D.,[1] ASSISTANT SECRETARY FOR PREPAREDNESS AND RESPONSE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Admiral VANDERWAGEN. Mahalo nui loa, Kupuna.

Senator AKAKA. Mahalo.

Admiral VANDERWAGEN. Good morning, Mr. Chairman and Mr. Ranking Member. I am Craig Vanderwagen, and I am here today representing the Department of Health and Human Services. My role has a significant number of responsibilities related to disaster planning, including being the Continuity Officer for the Department, the individual responsible for development of such things as vaccines and other countermeasures, and leadership for the Emergency Support Function–8 (ESF), that is, the response arm of the Federal Government for health, under the direction of Homeland Security, and other special events. But I am here today to speak more about the science of the issues of workforce protection and how we communicate with our colleagues in the Federal Government about how the science can be understood and translated into policies and procedures for action within the elements of the U.S. Government.

As the U.S. governmental lead for public health and medical response, Health and Human Services is committed to providing current, science-based guidance based on the best available evidence,

[1] The prepared statement of Rear Admiral Vanderwagen appears in the Appendix on page 31.

including checklists, to assist businesses, industries, and other employers—like the U.S. Government—in planning for a pandemic as well as for other comparable catastrophes. During public health emergencies like the current pandemic H1N1 influenza virus outbreak, protecting workers, including Federal workers, must be a top priority. Health and Human Services, in coordination with the Department of Labor's Occupational Safety and Health Administration, provides up-to-date guidance for workplace protection on the comprehensive Federal Web site www.flu.gov as well as at www.cdc.gov.

As part of our response to pandemic H1N1 influenza, HHS has contributed several efforts directed to Federal workers and recognized there were plans for an avian influenza, but this was a novel virus, and we had to change some of our guidance to adapt to that reality, because this was not an avian influenza beginning in South Asia and gradually getting here. In fact, it was here before people could blink. And so there were some changes that had to be taken into account as we provided guidance.

So the publication "General Business and Workplace Guidance for the Prevention of Novel Influenza A (H1N1) Flu in Workers" details one of our best measures for reducing the spread of an outbreak of a novel influenza virus; that is, sick people are encouraged to stay home while they are contagious. This is probably the best and most rational step that one could take, and employers need to account for that as they think about how they will continue through an event like this. HHS employees and contractors who are symptomatic or have had recent contact with someone who has or is likely to have H1N1 are to notify their supervisors, stay home, and seek medical guidance.

In alignment with the Department of Labor's OSHA Pandemic Influenza Risk Pyramid, which arrays the risk of exposure to a potential pandemic virus by type of contact with ill persons, HHS has produced guidance for individuals working in a health care setting with patients who have, or may have, pandemic H1N1 influenza and for workers in the general public in other community settings.

Health and Human Services has provided guidance to the U.S. Navy on how to clean its ships to avoid spread of pandemic H1N1. We have worked with the U.S. Northern Command (NORTHCOM) on how to protect its employees during the outbreak. The U.S. General Services Administration (GSA)—we have worked with them on the odds of transmission of the pandemic H1N1 influenza virus over significant distances by looking at heating, ventilation, and air conditioning systems, and determined that it was extremely remote that these would be transmission sources of disease.

In collaboration with DHS, Health and Human Services has hosted a large number of outreach efforts to employers, including large teleconferences, to provide key information that employers can use to protect their workers and ensure business continuity during a pandemic. Over 3,000 business representatives have participated in a series of five teleconferences held since the end of April. Simple measures, such as covering coughs and sneezes and frequent hand washing, remain effective means of reducing the spread of influenza, and these measures also have implications for safe workplaces and a healthy workforce beyond influenza.

A vital mission of our Department is to serve as the U.S. Government's principal agency for protecting the health of all Americans. We are dedicated to this mission and to the principle that the best policies for health and safety are based on the best available science.

At this time I conclude my remarks, and I will be happy to answer questions or comments that you may have, sir.

Senator AKAKA. Thank you very much, Admiral.

And now we will receive the testimony from Elaine Duke.

**TESTIMONY OF ELAINE C. DUKE,[1] UNDER SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY**

Ms. DUKE. Chairman Akaka, Ranking Member Voinovich, thank you for hosting this hearing and the opportunity to come before you to discuss the Department of Homeland Security's response and preparations for employees with the 2009 H1N1 flu outbreak and pandemic events in general.

I recognize that, as a Department, we must work together to take the proper safety precautions to reduce transmission of any disease while still performing our critical homeland security missions. This may mean that some employees need to wear personal protective equipment. Some employees may need to telecommute. Others may need to stay home if they have an illness in their family or if their child's school is closed. I am committed to working with the component heads from across the Department and across the Federal Government to provide our employees with the safest possible working environment. Our workforce safety and security is always one of my top priorities.

It is important to know that, when making all of our decisions, we base them on the science and the epidemiology as recommended by the Centers for Disease Control and Prevention, the workplace guidance from the Departments of Health and Human Services and Labor, the public health community, and the World Health Organization.

In fiscal year 2006, the Department was able to start building the basis for its pandemic program. We purchased personal protective equipment for use by mission-essential employees, but primarily designated for the operating components that have specific job functions that place them at greater risk during a pandemic event. Currently, personal protection equipment is pre-positioned at 53 DHS locations and field offices nationwide. The Federal Emergency Management Agency (FEMA) is responsible for coordinating the logistics of this pre-positioned equipment.

The Department has also stockpiled two types of antivirals, trademarked as Tamiflu and Relenza, dedicated for DHS workforce protection. Overall, DHS has approximately 540,000 courses of antivirals targeted for its mission-essential workforce.

In fiscal year 2006, we received supplemental funding that allowed us to prepare a number of pandemic plans for the Federal Government. The Department's Office of Health Affairs (OHA) coordinated and led the development of the DHS Pandemic Influenza Contingency Plan, and Screening Protocols for Pandemic Influenza

[1] The prepared statement of Ms. Duke appears in the Appendix on page 39.

in air, land, and maritime environments, and the Draft Federal Interagency Pandemic Influenza Strategic Plan. Office of Health Affairs in DHS manages and tracks the action items assigned to DHS under the National Strategy for Pandemic Influenza Implementation Plan.

I recognize that effective communication in any disaster is critical, and a severe pandemic where there could be nationwide consequences is no exception. The Office of Health Affairs worked with the DHS Office of Public Affairs (OPA) and Federal interagency representatives to create the ESF–15 Pandemic Influenza Communications Go Book, which provides a framework for public communications by Federal agencies as well as State and local communities in the event of a pandemic outbreak.

Training is also critical, and we have developed under the leadership of Health Affairs a pandemic awareness and prevention training DVD available for all DHS employees. Additionally, CBP and Immigration and Customs Enforcement (ICE) have both created training and made available training to its employees beginning in August 2006 and continuing and improving to this day.

In October 2008, DHS conducted an Intradepartmental Pandemic Influenza Tabletop Exercise, which included participants from all DHS components as well as inter-DHS—and inter-Federal employees. The purpose of the workshop was to facilitate in-depth discussions and actually exercise the Federal Government's response to a pandemic exercise. All DHS components were represented as well as 13 other Federal departments and agencies, with total attendance of nearly 100 participants.

The Secretary of Homeland Security, Janet Napolitano, and I have made communication with the DHS workforce a top priority, especially in the 2009 H1N1 outbreak. We have provided employee communications and guidances. Initially, I provided guidance to our employees on April 30 and after, CDC updated its guidance on May 27, 2009, updated the Department of Homeland Security guidance on May 29, issuing it to all the components. Similarly, the components in fact that have employees in these mission-critical positions followed with guidance of their own to ensure that employees were provided the appropriate personal protection equipment related to H1N1.

I wanted to, in response to your opening comments, Chairman Akaka, apologize from the Department and me, personally, for the late submission of my testimony, and I look forward to your questions both in this hearing today and any follow-up questions that the Subcommittee may in writing. Thank you.

Senator AKAKA. Thank you very much for your statement. And now we will receive the testimony of Nancy Kichak.

## TESTIMONY OF NANCY H. KICHAK,[1] ASSOCIATE DIRECTOR, STRATEGIC HUMAN RESOURCES POLICY DIVISION, U.S. OFFICE OF PERSONNEL MANAGEMENT

Ms. KICHAK. Chairman Akaka and Ranking Member Voinovich, thank you for including the Office of Personnel Management in your discussion of this important topic. I am pleased to be here to

[1] The prepared statement of Ms. Kichak appears in the Appendix on page 44.

discuss OPM's efforts to ensure the Federal Government is prepared to meet the human resources management challenges posed by a pandemic health crisis, such as the H1N1 flu outbreak.

One of Director John Berry's first actions when he took over the helm at OPM was to meet with members of the Chief Human Capital Officers Council to assess whether their human resources issues and needs in the event of an influenza emergency were being addressed. This review led to the Director convening a "H1N1 Human Resources Readiness Forum" to help Federal agency human resources leadership identify and answer issues arising from a potential influenza outbreak. The forum was held on May 8 and attracted 142 officials from 37 Federal agencies and Federal employee union representatives. We, at OPM, do not have the expertise to make judgments about the efficacy and appropriateness of providing certain medical and protective devices to front-line workers. Therefore, the forum made available representatives of CDC, OSHA, and the Federal Occupational Health Services (FOH) in the Department of Health and Human Services to answer questions about potential health impacts and protective measures during the flu outbreak.

The forum was a supplement to the memorandum on human resources flexibilities available to assist Federal employees during emergencies, which Director Berry had distributed 3 days earlier. The memorandum reiterated and expanded upon previous guidance on a wide variety of human resources management tools agencies have for continuing operations during the pandemic influenza emergency. Director Berry also announced a major initiative to reinvigorate agency telework programs. This initiative is driven not only by his belief in the value of work-life programs generally, but more specifically in the importance of telework as a tool for emergency planning.

The H1N1 flu outbreak has demonstrated the importance of being able to quickly expand the use of telework to cope with pandemic health crises and other emergencies. Telework can help mitigate the spread of influenza by promoting social distancing. It can also assist employees in balancing their ongoing work responsibilities with the need to care for their families.

OPM has been working on governmentwide preparation for an influenza pandemic for several years, developing comprehensive human resource guidance and conducting briefings for Federal human resources specialists as well as town hall meetings for employees at numerous Federal agencies.

Since the onset of the current flu outbreak, we have updated this pandemic influenza guidance. We also continue to collect questions with the goal of supplementing guidance already on our Web site.

Agency employee assistance programs (EAPs) will also be ready to provide assistance to front-line employees and other Federal workers. The stress and anxiety of the flu outbreak and the dislocations it may cause could have a lasting impact on how our employees function. All our agencies have EAPs. We need to be sure they are part of our pandemic planning and response efforts and that they have the resources necessary to help our employees remain productive during and after a crisis.

Last fall, major agencies were asked to recertify their readiness using the Homeland Security Council's "meta-checklist." The Office of Personnel Management worked with agencies to develop the human resources part of this checklist. We are also part of the Homeland Security Council's H1N1 Flu Working Group and Pandemic Influenza Sub-Interagency Policy Committee. The current outbreak reminds us we must always be prepared to take care of our employees while continuing to meet the needs of the Nation. Federal agencies need to ensure their plans are up to date, that they have telework agreements with as many telework-eligible employees as possible, and should test employees' ability to access agency networks from home, as well as their procedures for communicating with employees who are teleworking.

We stand ready to provide guidance and support. Again, thank you for inviting me here today, and I would be happy to answer any questions.

Senator AKAKA. Thank you very much for your testimony, Ms. Kichak. And now we will hear from Bernice Steinhardt.

**TESTIMONY OF BERNICE STEINHARDT,[1] DIRECTOR, STRATEGIC ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE**

Ms. STEINHARDT. Thank you very much, Mr. Chairman and Senator Voinovich. We always appreciate the opportunity to appear before you, and today we would like to talk about the report we did for you on Federal agency efforts to protect their workers in the event of a pandemic influenza.

When you asked us to look into this, we were not in the middle of a H1N1 outbreak, but looking ahead, you were concerned about the extent to which agencies had taken steps to protect their employees, particularly those who have to be able to perform their jobs in order for their agencies to carry out their essential functions.

What we have learned reveals something of a mixed picture. All of the agencies have been planning for how they will provide for the safety and health of their employees in the event of a pandemic, but some of them are still in early stages, as you pointed out earlier, Senator Akaka, and several agencies are still in the process of identifying essential functions that cannot be continued through telework.

As for telework, all of the agencies reported plans to rely on it as a social distancing strategy. Nevertheless, only one agency, the National Science Foundation (NSF), reported that it had extensively tested its IT infrastructure to make sure that it is capable of handling telework arrangements; and five agencies told us that they had done very little testing of their Information Technology (IT) systems.

Agencies also need to inform their employees about their rights and responsibilities in a pandemic, but not all of them have. First, it is not clear that all agencies have notified employees performing essential functions that they will be expected to continue their work in the event of a pandemic. And, second, not all agencies have told their employees about how leave policies, work arrangements,

[1] The prepared statement of Ms. Steinhardt appears in the Appendix on page 48.

and other kinds of human capital policies would change in a pandemic.

Beyond this broad survey, we took an in-depth look at three critical occupations or functions that cannot be performed from remote locations. We looked at Federal correctional workers, workers who process Social Security checks and other Federal payments, and air traffic controllers employed by Federal Aviation Administration (FAA). Protecting these workers in a pandemic flu presents a number of challenges.

Air traffic controllers, for example, work in very close quarters, but they cannot use face mask equipment because it would interfere with their ability to communicate with aircraft. They also have to follow very strict rules on using medications because they might impair their performance. But air traffic control centers still have not developed pandemic plans because they were waiting for FAA and the Air Traffic Organization to come up with their plans and policies first.

So you can see that planning, whether it is across the board as well as in our case study agencies, is still rolling out and that some agencies are not close to having operational pandemic plans, particularly at the facility level. Yet there is no monitoring mechanism to assess the degree of progress in agencies' planning.

Under the National Pandemic Implementation Plan, the Department of Homeland Security was charged with monitoring and reporting to the Executive Office of the President on the readiness of departments and agencies to continue their operations while protecting their workers during a pandemic. But some time later, the Homeland Security Council apparently told DHS that they did not have to prepare this report. Instead, the Homeland Security Council asked agencies simply to certify that they were addressing elements of a checklist that covered areas that included employee health and safety. Just to be clear, they did not have to report that they had finished their planning or that they were making progress, but only that they were addressing elements of this checklist.

So well intentioned though this process may be, it provides little accountability for agencies to make sure that they are adequately protecting their employees. For this reason, we recommended in our report that the Homeland Security Council ask the Department of Homeland Security to assume the role that was originally envisioned for it and to report on agency progress as well as any key challenges and gaps in their plans. We also suggested that Congress might want to require the Department of Homeland Security to report to it as well as to the White House on agency preparedness.

In closing, let me say that when you first asked us to undertake this review, a pandemic flu was still a speculative event. Now it is here, and it could become even more lethal in the future, as you pointed out. With that in mind, Federal agencies have to be, I would even argue are obligated to be, better prepared to protect their workers, those who serve the public, than they are today.

Thank you very much, Mr. Chairman.

Senator AKAKA. Thank you very much, Ms. Steinhardt.

Ms. Duke, as you know, the Federal employee unions are very concerned that DHS guidance on the use of personal protective equipment is not sufficient. In particular, their concern is that the updated policies do not cover protocols for employees processing people who do not appear sick.

What is the policy on employees' voluntary use of personal protective equipment in that kind of situation?

Ms. DUKE. I am aware and have been working with the unions on clarifying our policy. The most recent policy dated May 29 clarifies that DHS does permit its employees whose work requires them to come into close contact, which is defined in the CDC guidance as less than 6 feet, with persons who may have flu or are exhibiting flu-like symptoms to wear N95 respirators and that DHS will provide these. So that is, I think, a clear policy.

Wearing respirators is not a health-neutral situation, and it is important for DHS to provide an environment that is most advantageous to its employees. So I feel very strongly that providing a policy which says we permit our employees to wear masks when their work requires them to be in contact with persons who have or may have flu is the appropriate solution for our employees.

Additionally, each of the components that has employees in the situation—primarily, ICE, CBP, and TSA—has developed protocols to ensure the employees who come in contact with persons in this category do have access to personal protective equipment, including the N95 respirators.

Senator AKAKA. Would you please explain the medical basis for the policy guidance DHS has issued on workforce protection?

Ms. DUKE. The medical guidance is with our Office of Health Affairs working with the Centers for Disease Control, and most recently, the Centers for Disease Control updated their policy, which is posed on their Web site, and it talks about categories of people. It recommends that there are certain protocols which primarily say try to maintain a distance of 6 feet; but where you have to come in close contact with populations who may or do have H1N1 less than 6 feet that persons may consider wearing a mask. And it is clearly a voluntary choice at this point. And so that is the basis, the medical guidance we use in looking at our employees. I think the category that CDC used was a non-health care workers category, but that puts us in a public situation.

Senator AKAKA. I would like to also ask Admiral Vanderwagen to explain the medical basis for the policy guidance DHS has issued.

Admiral VANDERWAGEN. Well, it is extremely difficult, sir, because the science here, the medical science, does not give us a lot of clean answers. There is no particular scientific evidence that says that a N95, let alone a surgical mask, is effective in preventing very small contaminants from being expressed.

Now, we are funding additional research with OSHA, through the National Institutes of Occupational Safety and Health (NIOSH), to see if we can find a much better science answer. But the fact of the matter is right now the science does not give us a real strong conclusion that masks either help or do not help.

And so I think that it is as much about how do we preserve the resiliency of the employee in the face of these things, and OSHA

has provided a guidance that identifies risk populations, and I think DHS has tried to identify their workers that are in a risk setting and employ this as another tool. Remember that engineering, administrative, and workplace worksite practices probably are much stronger in protecting an employee than personal protective equipment. And personal protective equipment is really your last choice in that process. But sometimes you do not have a choice. You only have Personal Protective Equipment (PPE) available. And, unfortunately, the science does not give us a definitive answer that says use it or do not.

So it is a tough nut, but I think we have opted to try and support the notion that where it improves resiliency and the ability of the employee to comfortably do their job, then it is probably a rational process.

Senator AKAKA. The next question is for all of the members on the panel. As we know, DHS is the lead Federal agency in responding to an influenza outbreak, while OPM plays a critical role in any workforce policies, and HHS plays a critical role with respect to medical guidance. Federal employees need clear and consistent guidance to understand how to protect themselves and what their responsibilities are during a pandemic.

Which agency is responsible for providing that uniform guidance to Federal employees? And what are your recommendations for clarifying agencies' respective roles?

Admiral VANDERWAGEN. I think that a single agency is probably not the final solution. We have to operate in a collaborative mode. OSHA provides the kind of guidance and general principles around occupational safety that are supported by the science that we fund over in Health and Human Services, at NIOSH and other places within the Department. So that most of us look to OSHA for the standards around who is high risk, and who is not, and what are the workplace safety features that we would want to employ.

So I suppose that in one sense we, HHS, and OSHA have to own this in that we provide the science, they provide the occupational safety guidelines for people to perform under, whether they are Federal or they are private business.

Ms. DUKE. I believe when it comes to managing the workforce, we have the responsibility in DHS for our workers. We also have the responsibility for equity within the Federal Government, which I think the Office of Personnel Management leads. So in the case of the H1N1, there are certain personnel practices that I think we have to be concerned with, not only with the uniqueness of certain work environments, but also a fairness of employees across the Federal Government.

So, for instance, Director Berry issued guidance about how to handle leave in situations where schools are closed but employees are not sick. I think it is important in that case that OPM take the lead and have some consistency so employees are not treated differently for the same situation. This is similar to the standard situation of OPM issuing guidance on bad weather days, snow days, and whether the government is closed or not. And the purpose of that is equity, I think, and consistency.

So I think it is a balance, and some things should be standardized and some things are very unique to the work situation. And

so OPM, I think, has the challenge of being consistent with the Federal Government but leaving the agencies some flexibilities for uniquenesses.

Senator AKAKA. Ms. Duke, what role do you believe the Homeland Security Council should play in providing guidance to Federal employees?

Ms. DUKE. I believe that the Homeland Security Council in serving the Administration, the White House, will have some role in coordinating and ensuring consistency among the various pieces. So under Homeland Security Presidential Directive 5, the Secretary of Homeland Security has the lead coordination role, but each activity or different functions within any response, including pandemic, different agencies have the lead. And I think the Homeland Security Council (HSC) has a role in ensuring that, where there is an agency having a piece of a response, the pieces fit together and are coordinated. So I think this is the same with the pandemic where HSC has to ensure with the Secretary of Homeland Security that OPM's response to the Federal workforce, HHS's response actually coordinate and work together, and that is what I think the role of the HSC is.

Senator AKAKA. Ms. Steinhardt, do you have any comment?

Ms. STEINHARDT. Yes, thank you very much, Mr. Chairman. I am very interested in hearing the responses of the other panelists on this topic because it is one that we ourselves were looking for an answer to during the course of our work.

As we spoke to different agencies, while looking for a home for accountability for this whole process, each agency claimed responsibility only for one piece. OSHA said that it was responsible just for looking at worker protection standards and guidance. DHS, the Office of Health Affairs, said that its purview was limited as well. And the same with HHS, their role is to issue guidance, and OPM the same.

I think this is the crux of planning. Every agency, and even across government, can have good plans, but if it is not clear where the leadership is going to come from and who is responsible for what, if it is not clear what the relative roles and responsibilities are, then I think the plans are not going to be as useful as they need to be.

Senator AKAKA. Admiral Vanderwagen.

Admiral VANDERWAGEN. Yes, thanks. And I have a tendency to agree with Ms. Steinhardt, but I would note that there are strategic operational and tactical issues at play here. And I think the HSC tries to operate at the strategic level, that is, what are the strategic goals and objectives that we are going to have in dealing with this process?

Then I think the departments are assigned operational responsibilities, and in general, DHS has the lead responsibility for operationalizing the strategy in this arena, and then the rest of us have our tactical missions.

And so I think there is a coherent understanding or process at play that most of us operate from, and, frankly, with the H1N1, we just ran down the playbook. It was less than perfect, and we did not start on page 1, which assumed that it was going to come from Asia. But, in essence, we ran down the playbook starting at page

35 in what were we going to do. But that was sort of an operational and tactical set of activities. HSC had to deal with the strategic elements, including whether we are operating in any kind of coherent fashion. That goes to monitoring as well, though.

Senator AKAKA. Thank you. Let me call on Senator Voinovich for his questions.

Senator VOINOVICH. I think that Senator Akaka, in his last question, has raised a real issue here. I cannot help but think of our mayor, when I was still governor, and I heard these excellent presentations this morning. I would conclude that each group is trying to do the very best that they can within the framework of what they think their responsibilities happen to be. But it seems to me that someone needs to sit down with a group of people and develop a plan, a strategic plan about who is responsible for the overall operation here, and then break down the individual responsibilities.

For example, Ms. Duke, you have Homeland Security. You know which one of your people are absolutely strategic and need to be protected. You also reach out to some of the other agencies where you know that these folks need to be protected. They are in key roles. Others are not in such key roles. They could do the telework—in other words, breaking down the responsibility, who is responsible for what. When you started, Admiral, talking about your role, I thought, well HHS has got it taken care of.

So it seems to me that is what is missing, and I would be interested, Ms. Steinhardt, on what are your thoughts. I mean, is this something that the Office of Personnel Management should be involved with, developing a strategic plan?

Senator Akaka, one of the things that we could do that I think would be very worthwhile would be to insist that we see an overall plan about who is responsible for what, and then some type of metric system to see that the job is getting done. After that it is basically up to these folks to do that.

So I would like you to comment on how would you put this together.

Ms. STEINHARDT. Well, Senator Voinovich——

Senator VOINOVICH. Or is it already put together and I just did not pick it up?

Ms. STEINHARDT. If I can respond to your question, I think, I would also be interested in hearing from my colleagues on the panel. But I think that there are plans in place, there are certainly—we have a national strategy and implementation plan, but there are still lots of gaps in the plan. And I would say one of the biggest gaps that we face in general is that we have not fully tested at an operational level all the important dimensions of the plans, whether it is the national plan or at an agency level as well.

We know from past experience, from September 11, 2001, and Hurricane Katrina more recently, that plans need to be tested and that you cannot start discovering your holes in the middle of an emergency event. And we have not seen that kind of full-scale testing of our plans. So that would be one recommendation that we have made in the past that, I think, is still outstanding.

In this case, as far as individual agency plans, as we recommended in the report to you, there is no accountability for the status of those plans. So far, the agencies only had to certify that

they were planning. But having an operational plan, a plan that can actually work, there is no accountability for that yet, which is why we think there needs to be some kind of monitoring and reporting on this within the Administration.

Senator VOINOVICH. Ms. Kichak.

Ms. KICHAK. Well, I believe that there is a plan in place, and I concur that testing is always critical. And at OPM we have tested our plan several times, and it is always an eye opener. Things never work 100 percent the way you want them to.

Senator VOINOVICH. Pardon me, but do you know what part of what you are doing is in terms of the big picture?

Ms. KICHAK. Yes, I think we do. We are responsible for giving clear, consistent guidance for human resources issues. We do rely on the other agencies—HHS and the Department of Labor (DOL), through OSHA—to give us the guidance from a medical point of view for when there may be a pandemic and what medical procedures or protective equipment is necessary. That is not our area of expertise. Our expertise is to deal with issues such as how do you ensure employees are able to go home, how they are treated when they go home, and things like that. But we rely on other agencies for the science. And that is totally consistent with what has already been said here.

So I think the three of us have all given a consistent message as to what our roles are.

Senator VOINOVICH. The question I have, and forgive me for interrupting you, but let us just take teleworking. You talked about teleworking. It seems to me that it would be the agency's responsibility to determine which functions could be done through teleworking and which functions could not be done through teleworking.

Ms. KICHAK. Right.

Senator VOINOVICH. And they would have to decide that. You could give them guidance, but aren't they the ones that would have to——

Ms. KICHAK. They have to decide that, yes.

Senator VOINOVICH. And then you would probably aid them in terms of how do you go about doing the teleworking program.

Ms. KICHAK. Right.

Senator VOINOVICH. I mean, for example, right now do you know how many agencies in the Federal Government are doing teleworking and what categories are now being considered for teleworking?

Ms. KICHAK. I would like to point out that there are two types of folks teleworking. There are the folks that are doing the COOP, which is the continuity of operations. That is the urgent kind of telework that keeps the core mission of the Federal Government going. That kind of teleworking may not be done by people who normally telework, and we know from our telework report that roughly 60 percent of the agencies report that they have incorporated telework into their guidance.

Now, in our telework for employee welfare, we also know that only 8 percent of the employees are teleworking. But that does not mean they are doing that to keep mission-essential functions going. That means they are teleworking to keep their normal business

going, and the normal course of business might not consist only of essential functions.

Senator VOINOVICH. I was just thinking that with this pandemic in the offing, it would be something that would incent us to really get into this whole teleworking thing. In other words, right now I think agencies probably are in it, and some are not. If you have a director that is real excited, maybe they are doing it; others maybe not so much. But it seems to me that this could help to drive the real consideration about where teleworking is appropriate or not appropriate.

Ms. KICHAK. What we are doing now, as I said in my testimony, is that we are ramping up our interest in or our push for telework, and this is one of the reasons why we have now required every agency to submit their telework plan to OPM. So we are going to review their telework programs. We are going to set standards on how a telework program should be set up or what a telework policy should look like. We have convened meetings of telework advisers, so we are changing the emphasis. We have always cared about telework, but we are trying to get more of our best people involved, so we have more people ready to telework if they need to during a pandemic.

Senator VOINOVICH. Any others want to comment on this whole issue of overall management?

Ms. DUKE. We are always looking at lessons learned and how do we better this, and just in the specific example of telework, one of the issues we are working on in going forward, with OPM taking the telework lead, is do the individual plans work in concert with each other. So we have the step one of does DHS have a telework plan, is it tested and is it clear? And the answer to that is yes, we do have a telework plan.

We do have a concern, if you add up all the telework plans, does the critical infrastructure, the IT infrastructure of the United States, support it? And there is a bandwidth issue.

So I think what Ms. Kichak is talking about is the next step in our planning is do all the plans together all work from both a technical standpoint and an operational standpoint. And that is where we are focused now with the Federal Chief Information Officers (CIOs).

Ms. STEINHARDT. If I might just add to the discussion of telework, just to remind you that in our report we found that there was only one agency that had actually done extensive testing of its IT system to make sure that it could telework. So I think there is an opportunity here for OPM to work with the agencies as they review their telework plans to look behind that, to look at the extent to which they are testing their systems, so that in any emergency event, certainly in a pandemic, they can use that as a way to keep their operations going and their people protected and employed.

Senator VOINOVICH. Thanks, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Voinovich.

Ms. Steinhardt, one of GAO's findings was that several of the agencies surveyed had not completed their pandemic plans. What information did these agencies provide regarding when they will have completed plans in place?

Ms. STEINHARDT. Well, in a couple of instances they had expectations that they were going to complete them—or that they were going to have additional information in their plans later this year. But, otherwise, there was no deadline for them. They had no firm deadlines on when their plans were going to be largely complete.

We recognize that the process of planning is one that evolves in response to new information and circumstances. But, still, there did not seem to be a sense of urgency or deadline for completing the plans.

Senator AKAKA. Admiral, HHS's guidance to employees who may be sick is to stay home and away from the workplace. However, many Federal employees' jobs must be done on site. For example, GAO reviewed the preparedness of air traffic controllers, and you mentioned that a large number of absences could make it difficult to continue critical government operations.

What recommendations and guidance would you have in those circumstances?

Admiral VANDERWAGEN. Thank you, Senator. Well, we encounter that within Health and Human Services as well because Indian Health Service hospitals, for instance, must continue to operate and provide care to people in those indigenous communities around the country. The Clinical Center in Bethesda at the National Institutes of Health (NIH) needs to continue to function to provide care to patients, and so, acutely, we recognize this as a problem internally as well. But I think that the business managers have to look at what is absolutely required in order to maintain a level of care, and if they need to back away from elective surgeries, for instance, because they have absenteeism, etc. It is an analysis of what is it we could forego for a period of time in order to continue to function.

Now, in institutional settings like prisons or in the context of FAA and air traffic controllers, you have extreme difficulty because unless you reduce air traffic and slow down the economy, there is no way for you to back off the service you provide. The same thing for the Bureau of Prisons (BOP). There will continue to be prisoners in prisons that need monitoring and oversight.

Those are going to be extremely dicey situations in terms of how we can augment where they have staff losses and making some determinations about where priority critical infrastructure support in terms of personnel will be needed to make up for any absentee loss. Very challenging issues.

I was going to comment to Senator Voinovich's notion, and he is a seasoned executive, so he has been through this kind of process. But the question of the disaster government versus the organic assets of the existing agencies and how you exploit those in disaster response is the challenge here, because a free-standing total disaster government is unlikely to be something we can do. But how do you bring the organic assets of the existing departments into a more orchestrated approach? This is the challenge that Ms. Steinhardt has described where we have not solved that problem completely.

There is not a free-standing disaster government. You have got to use the OPMs, the HHSs, the Department of Labors, where they have organic assets, and it is a very difficult balancing act to bring that all into play.

Senator AKAKA. Ms. Steinhardt, would you like to comment on that question?

Ms. STEINHARDT. Well, I think it only underscores the need to bring all those assets together in a coordinated and focused way. It was very disappointing, I must say, in our discussions with FAA officials that planning for the air traffic controllers was not further along than it has been. We recognize the challenges. They are very daunting. But that is where you would hope that FAA and the Department of Transportation (DOT) would be able to draw on the expertise that resides elsewhere across the Federal Government and brings some focus, attention, and coordination to solving the problem rather than just passing it along.

Senator AKAKA. Ms. Kichak, GAO reported that three agencies surveyed—the Department of Commerce (DOC), the Social Security Administration (SSA), and the General Services Administration—had not yet informed their employees about policy changes in an event of a pandemic. What is OPM doing to encourage agencies to provide this information to employees?

Ms. KICHAK. We had a recent forum where we had extensive representation from the agencies. We gave a lot of information during that forum. We have questions and answers from that forum available on our Web site. We have updated our pandemic guidance. The forum was very recent. It was a refresher course. But in the last 2 years, we have visited many agencies and have done question-and-answer sessions for employees.

If you look at our pandemic guidance, it is very user friendly in that it says what managers should do, what employees should do, what agencies should do. So employees can go to the section that says what they should do in case of pandemic. It is available in our guidance. I know looking at a Web site is not the same as a face-to-face presentation.

We also prepared a brochure, and some agencies, including OPM, gave that brochure to their employees so they could keep it on their desks and refer to it for information on what they should do in case of a pandemic. And it talked about being able to work from home, and, of course, it had the health guidance about washing your hands and covering your mouth. But it also talked about your rights as an employee.

So we continue to work on that area. If any agency was to contact us, we would be over there talking to them about those rules. And, of course, we work with the Chief Human Capital Officers (CHCO), and we have done many sessions with them on preparing for a pandemic.

Senator AKAKA. I was disappointed to learn that, according to a GAO report, only one agency—the Department of Housing and Urban Development (HUD)—responded that they had shared their pandemic planning with the unions that represent their employees. I was, however, pleased that Mr. Bonner's written statement notes that OPM had taken the lead in reaching out to Federal employee unions.

Would you please discuss why you thought it was important to work with unions and provide any thoughts you might have on how unions could help other agencies with employee outreach?

Ms. KICHAK. It is very important to talk to the unions because they represent the employees. The unions are a good source of knowledge for OPM on what employees are concerned about. Sometimes employees will talk to their union representatives before they will talk to their manager. So it is another way for us to hear about what the employees are thinking.

Also, the unions have programs for their employees. The unions have some suggestions. We did work in our pandemic preparation before with certain groups of unions that represented certain populations; for example, representatives of some of the nursing associations who were very concerned about the pandemic and how they would function because they were front-line workers, definitely talked to us when we prepared our guidance back in 2006.

So it is just good for us—because we care about the employees getting the best information available—to hear from all sources about what those employees need.

Senator AKAKA. Thank you very much. Senator Voinovich, any questions?

Senator VOINOVICH. I would just like to make a comment. I really think that it is important, as we move along, again, that some decision be made about who is the communicator to the public. I know that during my experience either as a mayor or governor, when we have had something that it looks like it is going to be controversial, we try to decide who is going to be the communicator so you do not have five different people out there talking to the public. And I do not mean to be disrespectful of the Vice President, but his comments on NBC one morning really did not help matters. And I have found from my experience that people who work for agencies are so much better off than we are, the elected politicians.

So I would suggest that some thought be given to who is going to be the spokesman about this issue. I think that the new Secretary of Homeland Security did not expect to have the responsibility, but it was thrusted upon her, and I thought she did a pretty good job. So that is another area of general overall management.

The last one—and I am sure, Senator Akaka, you have thought of this, too—is that we are just talking about the Federal Government, but there are a lot of other private sector people who are also essential to our performing our responsibilities in the government in the national security area or just deliverance of basic services. And I suspect, and even though we are not really up to where we would like to be, I will bet a lot of them have not really started to give consideration to what they are going to do in the event that this happens. So there ought to be some thought also in terms of this overall who is responsible for who to reach out and say, "Gee, there is one that we would need to talk to and get them involved in this whole process, also, assuming that we are going to have something that is pretty serious."

I have to apologize to the next two witnesses, Senator Akaka. I have another meeting I have to be at, but I am really pleased, Ms. Kichak, that you are working with our unions. I think the most important thing is that they know that you care about them. I know from my experience that when something like this happens, they are very fearful about their health and welfare, and their families. And the more information that you can get out, the better off you

are going to be. Also, I hope that in the CHCO Council—and Mr. Berry said that he is going to really upgrade that. But I think the CHCO Council could play a tremendous role in getting information out to our people throughout the Federal Government to make sure that the best information is available to them.

Also, following up, I think, on your suggestion, Ms. Steinhardt—that is, best practices—I know that there are some places that are just shining in terms of what they are doing, and those best practices also ought to be, I think, shared with other agencies. Thank you very much for your testimony today.

Thank you, Mr. Chairman.

Senator AKAKA. Well, thank you very much, Senator Voinovich. I really appreciate your participation in these hearings, and we have worked so well together all these years on these issues.

I have a question for the entire panel. It is important that we respect a Federal employee's right to privacy as we work to protect them from disease threats. This Subcommittee has heard reports of front-line supervisors asking employees directly about personal information related to their health as the H1N1 influenza virus emerged.

What recommendations do you have to ensure that employees' privacy is respected while providing appropriate health protections?

Ms. KICHAK. That is indeed a very tough question, and that was one of the questions that was very much under consideration in the forum that we held. If you look at an employee and you think they are sick, as a manager, you wonder how you ask them to go home, because normally our supervisors are not making judgments on the health of the employee. And our advice has been that the managers need to be very aware of what the guidance is from the medical community on what the appearance of the illness is. In other words, if coughing and sneezing matter, then you need to know that. You cannot send somebody home because they look tired. Managers need to know the visible symptoms of the illness for which there is a concern.

The second thing is that you ask the employee for their cooperation. You treat them with respect, and you say you are concerned for them, and ask if they will volunteer to go home, because, finally, the employees have certain rights, and they cannot be treated inappropriately. They have rights to appeal to certain boards if they are treated inappropriately.

So it is delicate because the supervisors are not medical officials, and yet they are responsible for the well-being of all employees in their work unit.

So, again, we ask supervisors to treat all employees with respect, to be mindful about what the symptoms may be, and to request the employee's assistance. Then the final thing you can do is—instead of creating an adverse situation where you say, "I am going to require you to use your sick leave,"—you could say, "Could you go home, with no charge to leave for this afternoon, and just see how you are feeling, out of respect for the workplace?"

So it just has to be handled in a respectful, case-by-case manner, and it is one of the many challenges that our supervisors face in the Federal Government. And there is guidance and advice on the Web site for employees to read when they are dealing with one of

these situations. Nonetheless, it ultimately comes down to judgment.

Senator AKAKA. Admiral, I know many people are anxious to hear about the progress being made with the development of a vaccine to combat the novel H1N1 virus. What is the current status of vaccine production for this strain? And what will be the protocol for distribution?

Admiral VANDERWAGEN. Well, that is indeed a question that most people are quite concerned with. As you may know, HHS announced about 2 weeks ago that we had entered into agreements to acquire a vaccine antigen from five manufacturers. These manufacturers, by the way, the investments that Congress made in supporting warm basing, the development of cell-based technologies and other things over the last 4 or 5 years are now coming into play very nicely.

These five manufacturers include ones that would target a pediatric dose with no thimerosal in it, which is of concern to many people. We are also looking at adjuvants—that is, chemicals that would enhance the immune response of the body to the stimulus of the vaccine. These are used very aggressively and in Europe. We still want to study their safety and efficacy before we call them "good." We have acquired enough antigen, and they have begun production of clinical testing lots for the clinical trials for safety and efficacy; and we believe that by September this acquisition would provide us enough to protect the critical infrastructure working, something approaching 20 million people, and it would allow us to reach to other portions of the population, again, depending upon how much antigen is needed for each dose to be effective in creating an immune response. It could be as little as 4 or 5 micrograms, but it could be as high as 90 micrograms.

So while we think we have made an acquisition that will cover our critical infrastructure and begin to approach children and other high-risk populations, we will have to see whether the clinical trials support us in that assumption about the antigen. But we should have a vaccine available in the fall.

Then the question becomes: Should we immunize, and who should we immunize? And what we are looking at is throughout the summer this disease will continue to progress in the Southern Hemisphere, and based on what we see the virus doing in the Southern hemisphere—whether it mutates, becomes resistant to the antivirals, whether it becomes more severe—are all questions that we are extremely interested in and planning for, including whether or not we will use the vaccine and who should be the targeted populations for use?

We want to avoid the situation we got into in the mid-1970s when we made the decision to make a vaccine and use the vaccine, and we went ahead and started immunizing and discovered there were a whole lot of problems with that swine flu vaccine. We are taking a much more incremental approach, and we will make decisions later in the summer and early fall based on what we learn both from the clinical trials that we are doing with this new vaccine and from the epidemiology of the severity and the changing nature of that virus in the Southern Hemisphere.

We feel like we are on track pretty well for a second wave. Hard to say when that might occur, so there are lots of unknowns here. But we are moving forward very rationally, trying to gather the right level of science, the right level of epidemiology to assure the American public that any choices that we recommend to them are going to be based on a real situation and not just our anxiety.

Thanks for asking.

Senator AKAKA. Thank you.

This question is for the Executive Branch agencies. In the coming months, more preparation will be needed. We must use the lessons learned from the past 2 months to address the future challenges. What are your highest priorities in the coming months to prepare for a more severe pandemic outbreak? Ms. Duke.

Ms. DUKE. Senator Akaka, some of our major priorities include both our role as the lead coordinator under Homeland Security Presidential Directives–5 (HSPD) and then our response as a Department. Secretary Napolitano is working with the Administration on the Federal lessons learned and how the Federal Government can respond. Within DHS, which is more my piece of it, a couple principal areas:

One is to continue working on our mission-essential functions, what we need to provide, what functions we have to provide, making sure we have the employees identified going down to the next tactical level of our planning, as was mentioned by previous witnesses; making sure we test both the people, the response, the IT systems, our ability to actually deliver those mission-essential functions, whether it is a pandemic or another disaster, the uniqueness of pandemic being the potential absenteeism. So that is one of our principal areas.

The second is preparing for some of the protocols we think would come with the second wave, and that includes making sure we have the right amount of pre-positioned antivirals and personal protection equipment, purchased or available for purchase for our employees.

Those are the two principal areas we are working on.

Senator AKAKA. Thank you. Admiral Vanderwagen.

Admiral VANDERWAGEN. Sir, I would say we have four pillars in place.

One is surveillance, which I mentioned in the last answer. We need to know more about whether and how this virus will be affecting the population.

Second, mitigation—that is, what are the mitigation lessons that we learned from this event, and we are studying New York and Texas very closely, for instance, in what the impact of mitigation was there. And that includes medical surge as well, because if we had a very severe pandemic, the pressure on hospitals, which is already overwhelming in many locations, will be a challenge.

The third pillar is vaccination. I have already discussed that a little bit.

And the last pillar is communication, and I think Senator Voinovich spoke to that as well. That is, how do we communicate not only across the Federal family but down with our State and local colleagues? And how do we communicate to the general public?

So surveillance, mitigation, vaccination, and communication are our highest priorities at HHS.

Senator AKAKA. Thank you.

Ms. KICHAK. We are working with the Secretary of HHS on identifying some of the things we have learned from what we have just gone through, and some of the places where we still need to provide guidance. We are taking questions from agencies and continuing to answer those as far as human resource flexibilities are concerned. And we, as an agency, are continuing to try to maintain readiness for events.

When I leave here today, I will be going to a COOP exercise in which we are going to review our mission-critical functions. We have done that before, but we have new leadership, and we are going to be integrating them into our plan. So we are going to test our readiness for these kinds of events.

Senator AKAKA. Thank you. Well, I will let GAO have the final word. [Laughter.]

What do you think agencies' top priorities should be doing in the coming months to prepare for a pandemic?

Ms. STEINHARDT. Excellent question. Thank you for posing it. I would say, in general, what I would propose is to absorb the lessons that have been learned from this current pandemic that we are in. It is mild enough so that we actually have an opportunity—before it could possibly become much more severe, to learn from the mistakes we have made as well as the successes we have had. And that is one of the vital dimensions of tests and exercises. Here we have a real-life event that caused us to go to the playbook, see where our gaps were, and learning from that, as well as, I would say, from some of the other gaps that we have identified in our work, so start to fill all those gaps in our planning, revising our plans accordingly, would be, I think, the top priority for the Administration. And bringing in, also, all of the new people, the new leadership that were not involved in the earlier planning and exercising, and bringing their perspectives and bringing them up to speed on it. A very high priority.

Senator AKAKA. Yes. Well, thank you very much. I want to thank this first panel very much for your testimony and your responses. It will be helpful in pulling all of this together, and I appreciate your time. So thank you very much.

I would like to call up the second panel. On our second panel this morning, we welcome T.J. Bonner, President of the National Border Patrol Council, American Federation of Government Employees; and also Maureen Gilman, Director of Legislation, of the National Treasury Employees Union.

It is the custom, as you know, to swear in all witnesses, so will you please stand and raise your right hand? Do you solemnly swear that the testimony you are about to give this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BONNER. I do.

Ms. GILMAN. I do.

Senator AKAKA. As a reminder to you, the oral statements are limited to 5 minutes, but your full written statements will be included in the record.

Mr. Bonner, please proceed with your testimony.

**TESTIMONY OF T.J. BONNER,[1] PRESIDENT, NATIONAL BORDER PATROL COUNCIL, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO**

Mr. BONNER. Thank you, Chairman Akaka.

I have a sense of being in the Twilight Zone listening to the previous panel speaking about the current pandemic as if it is a thing of the past.

The World Health Organization reports that as of yesterday there were 35,928 laboratory-confirmed cases of H1N1 and 163 fatalities. Of that number, nearly half—17,855—were in the United States, with 45 fatalities. In the past 3 days alone, there were 5,834 new confirmed cases, with 18 fatalities, all of those fatalities in the United States, and 4,638 of those in the United States.

So this is a real-time event that is ongoing, and it is clearly not as severe as it could be in the fall, but it is something that we need to be paying attention to.

Within the Federal Government, many of our agencies come into contact with millions of people on a daily basis. Within the Customs and Border Protection (CBP), there are over a million passengers. They estimate that on an average day, 1.1 million passengers are encountered by CBP employees. Then when you factor in the TSA employees, there is an equal if not greater number of people who are encountered. And yet we have all of these conflicting policies about providing personal protective equipment to the employees. And I recognize that the Admiral says we are not sure how effective a N95 respirator is. But one thing is certain: It is not going to hurt an employee to use it, and it appears that was the element that was most responsible for containing the spread of the SARS outbreak in Asia a few years ago. And yet we have Federal agencies with conflicting guidance given as to when employees can, and many employees have been precluded from wearing that.

I would also like to note there is no reliable data for Federal employees and for Federal worksites. What we have been able to discover on our own is that, within four of the immigration detention facilities, we have current outbreaks, the most severe being at the Chrome Detention Facility down in Miami, Florida, where we have three confirmed cases with detainees, 16 detainees who are exhibiting symptoms, one contractor who has a confirmed case of the virus, six symptomatic contractors, one contractor pending test results, 12 symptomatic medical staff who are all off on sick leave, which is appropriate. At York, Pennsylvania, one confirmed detainee; Denver, Colorado, two confirmed detainees; in Florence, Arizona, seven suspected cases of detainees.

So it troubles me when I hear Ms. Duke say that we only have 53 worksites within CBP that are pre-poisitioned with personal protective equipment. In the Chrome Detention Facility, for example, only a third of those people have been fit tested, which is a procedure that certain parts of DHS are still requiring employees to undergo the medical evaluation and the fit testing before they are allowing them to wear the respirator, even though the OSHA

[1] The prepared statement of Mr. Bonner appears in the Appendix on page 64.

regulations say that, when it is a voluntary usage, you do not have to be fit tested. Millions of Americans go out every year and buy N95 respirators, which you can buy at a corner drug store—hardware store, rather, and they do home repair projects or whatever, with no adverse effects. There is no reason to be requiring these people—yes, it would be nice, but since we do not have the wherewithal to make that happen, they need to come out with policies that clearly allow employees to wear personal protective equipment.

Even the guidance that DHS has now is ambiguous. It says "when you encounter people who you know or suspect to be infected." Well, at that point it could well be too late. When someone sneezes in your face when you are inspecting them as they come into the country or as they are going through an airport, it is simply too late because you have been exposed.

In the United States of America, we seem to have this phobia about people with masks. It is a protective measure that people should be glad to see other people out there. I would suspect that when people come into the United States from other countries, they are wondering about the intelligence of some of the folks here in this country, when they know that we have the biggest outbreak going on in the world right now, and they look around and they do not see any of the government officials wearing masks.

I see that my time has expired, so hopefully I can get to more of these issues in my responses to your questions. Thank you very much.

Senator AKAKA. Thank you very much, Mr. Bonner. Ms. Gilman.

## TESTIMONY OF MAUREEN GILMAN,[1] LEGISLATIVE DIRECTOR, NATIONAL TREASURY EMPLOYEES UNION

Ms. GILMAN. Thank you, Chairman Akaka, and thank you for holding this important hearing and inviting the National Treasury Employees Union (NTEU) to testify.

The NTEU-represented employees most affected by the H1N1 influenza outbreak work for the Department of Homeland Security. Customs and Border Protection officers and agriculture specialists work at land, sea, and air ports of entry. Transportation Security officers work at airports. Both groups of employees can interact with thousands of travelers in a single shift. Their work—including reviewing immigration documents, wanding passengers, questioning them, and sometimes patting them down or detaining them—requires them to be within 6 feet of the travelers they process. The general CDC guidelines that recommend avoiding crowds and maintaining a distance of 6 feet from those exhibiting illness is not possible for these workers.

Many of these employees work on the U.S.-Mexico land border. Many also process international flights from Mexico. Once the origin of the swine flu became clear in April, these employees in particular were concerned about protecting their health and that of their families. Those concerns were certainly reasonable. The U.S. Government had advised against unnecessary travel to Mexico, and

[1] The prepared statement of Colleen M. Kelley, National President with attachments submitted by Ms. Gilman appears in the Appendix on page 82.

all of the first cases of H1N1 flu in the U.S. involved people who had recently traveled from Mexico. And unless they came into the U.S. illegally, they must have passed through a port of entry staffed by these employees.

Those who work on the land border saw their Mexican counterparts, often just steps away, wearing masks as they performed their duties. Some of these employees wanted the option of wearing a protective mask or respirator, but CBP and TSA prohibited the wearing of masks unless an employee is in close contact with an obviously ill traveler. Under that circumstance, a mask was initially required to be worn and is now discretionary.

As soon as questions began coming to NTEU from our members around the country as to whether they could wear respirators or masks, NTEU began trying to find out what the current policy was and urged that these employees be allowed to wear the masks if they felt it was important for their health. We contacted CBP, TSA, and DHS but got no answers.

During this time a DHS spokesperson was quoted in the press as saying, "The Department of Homeland Security has not issued an order saying our employees cannot wear masks." And the CBP spokesperson was quoted saying, "CBP officers and Border Patrol agents are provided personal protection gear which they may utilize at their discretion." But CBP and TSA were clearly enforcing a prohibition.

Some statements from DHS that appeared in the press indicated that managers who were preventing the wearing of masks were misinformed about the actual policy. The idea that a few managers were misinformed is clearly not accurate. In a letter to NTEU dated May 13, the Acting CBP Commissioner stated, "The decision was made to authorize the use of respirators only in the high-risk situations." The higher-risk situations referred to are those in which there is close contact with an infected person.

In addition, NTEU heard from many employees from around the country, and attached to my written testimony are affidavits from some of them relating instances of supervisors' demanding that they remove respirator masks. Some of them are disturbingly threatening, and some include comments indicating the reason for the prohibition was fear of alarming the public. The affidavits also confirmed that the policy has not been disseminated in writing and that employees' requests for written guidance on the issue have been denied. I trust this Subcommittee will ensure that the employees providing these affidavits will be free from any negative impact.

As NTEU tried to address the concerns of our members at CBP and TSA, we learned that other divisions within DHS, such as the Border Patrol, and other agencies, such as the Internal Revenue Service (IRS), were allowing employees to wear masks at their discretion. After researching possible scientific or medical reasons for prohibiting the optional wearing of masks at CBP and TSA, NTEU is convinced that the reasons are not based on science or medicine, but on public relations.

In our view, avoiding unnecessarily alarming the public is not without merit. However, it is one factor that must be weighed against the potential health risks to employees, their families, and

others. It is difficult to weigh the competing factors when there is a refusal to even acknowledge them.

On May 14, the House counterpart to the Subcommittee held a hearing on this topic, and on June 4, the House included a bipartisan amendment authored by Chairman Stephen Lynch in a TSA authorization bill that ensures that TSA employees may wear masks at their discretion. NTEU strongly supported that amendment, but the TSA bill is not yet law, and it does not cover other affected employees at CBP.

DHS and its components need to have a rational policy on this issue now before this fall when many predict a more virulent form of the H1N1 virus will return. I hope this hearing, together with actions taken by the House, will help achieve that very modest goal.

Thank you again for holding this important hearing. I would be happy to answer any questions.

Senator AKAKA. Thank you very much, Ms. Gilman.

This question is for the panel. As you heard from the first panel, GAO recommends that the White House Homeland Security Council direct DHS to report on the readiness of agencies to continue government operations and protect the Federal workforce. What are your views on the recommendations?

Ms. GILMAN. Well, Mr. Chairman, I certainly think they should be required to report. As I understand it now, there is very little reporting that is required on the status of the plans in the different agencies, and I would think that would certainly be an important step, and I would think that Congress might want them to report to them as well.

Senator AKAKA. Mr. Bonner.

Mr. BONNER. Reports are good. Actions are better. We would like to see the agencies not only be required to report on what they are doing but required to do the right thing for their employees. Sometimes we study things to death. We really do not have the luxury of time with this pandemic. It is active right now, and it will undoubtedly get worse, especially when the fall hits, and we need to take prudent actions. We are not asking for miracles here. We are just asking to allow employees to use common-sense measures to protect themselves against very real dangers.

Senator AKAKA. Ms. Gilman, you testified that the May 29, 2009, guidance issued by DHS is not comprehensive. In particular, you stated that DHS needs to clarify the policy on voluntary use of personal protective equipment.

What would you like to see DHS issue in terms of guidance?

Ms. GILMAN. Thank you very much for asking that question, Mr. Chairman. For 2 months, we have been trying to get a clear answer to the question of whether employees who are working in passenger processing, working on the land border in Mexico, clearing flights from Mexico, or other activities where they are processing thousands of people but are not processing someone that appears to have the flu, what is the policy with regard to those employees and their use of personal protective equipment? Even the guidance that has been issued in the last few days does not answer that question, and I do not believe that it was answered by the panel earlier today.

Senator AKAKA. Mr. Bonner, both you and Ms. Gilman raised concerns with agencies' communication with employees during the H1N1 outbreak. What recommendations would you make to ensure that Federal employees are better informed about pandemic influenza policies?

Mr. BONNER. It takes leadership at the top to issue consistent guidance, but more than that, that guidance has to be followed. There has to be some oversight so that you do not have all of these local policies that are in conflict with the guidance that is given at the top. And in this case, the guidance at the top was so vague that it left it open to interpretation.

As Ms. Gilman said, we need some very clear guidance, and in our view, that guidance should say that employees are free to use whatever personal protective equipment that they deem necessary at any time. There should be no restrictions on that.

Senator AKAKA. Ms. Gilman, we know that DHS has allowed employees to voluntarily use personal protective equipment in high-risk settings. What have you heard from your members about whether they are receiving adequate guidance to know if they are working in high-risk settings?

Ms. GILMAN. Well, Mr. Chairman, as I understand it, a setting becomes high risk when you realize that the person standing right in front of you is exhibiting symptoms of the flu. One second before you realize that, you are not in a high-risk situation. But that is the situation that most employees are in for their full shifts, and that is the area that there has been no clear guidance on what the situation is.

My view and that of our bureaus where we represent employees—CBP and TSA—is that they have been told that they are prohibited from wearing masks in that situation. And, initially, they were required to wear masks as soon as they made a judgment that the person in front of them was showing symptoms. It was then that it went from prohibition to mandate as soon as they made that determination. The mandate has now been changed to the voluntary use, but when you are in or out of a high-risk situation seems to be a split-second thing, and we think it would make much more sense if the guidance were clear for the person who is interacting with the public. Where people may have the flu, they may not have any symptoms, and you may not know that they have the flu, it would seem to me that is the area that needs some guidance, and we have been unable to figure out what the guidance is in that area, except to the extent that our employees have been told they were prohibited from wearing personal protective equipment until they saw that a traveler was likely infected.

Senator AKAKA. On the first panel, we discussed the various roles of Federal agencies in developing pandemic flu plans and issuing agency-specific and governmentwide guidance. What role do you believe unions could play in assisting Federal agencies to develop pandemic influenza plans and guidance? Mr. Bonner.

Mr. BONNER. I think that the unions play a key role in that process because they are the ones who are elected to represent the interests of the Federal workforce. And we are the ones who get the unvarnished truth from the folks who are actually out there doing the job. And I know that managers like to go around to town hall

meetings, but employees are very hesitant to tell them what they really think because their career advancement hinges on how they are perceived by those managers, so they tend to tell the managers what they think the managers want to hear.

Unions, on the other hand, if people are unhappy about something, we hear about it loud and clear. And so I think that we bring that perspective to the table and are able to articulate those concerns of the rank-and-file and make sure that those concerns are factored into the decisions that are made.

Senator AKAKA. Thank you. Ms. Gilman.

Ms. GILMAN. I would say they also have a very good understanding of what the front-line workers do, and I think that can contribute a lot to a discussion of how policies can actually be implemented.

I think in some of the planning that OPM did previously for pandemic flu situations, the unions were involved, were invited to meetings and briefings and asked to provide our comments. I also think that the unions can be very helpful in communication.

We have received very little communication during this swine flu outbreak. I would echo Mr. Bonner's comments on OPM. I think they tried their best to include the unions to at least pass on information. We were aware that there were daily phone calls going on between all of the agencies in the government that were involved in the policy and the response to the swine flu. Yet none of that information was passed on to us until we went to OPM and OPM did agree to then work with us and try to pass on what information they could. But until we made that request, we were not getting any information.

Senator AKAKA. This is my last question for the witnesses. There is an expectation that the H1N1 flu virus will get worse during the 2009–2010 flu season. What are your top three recommendations to help prepare the Federal workforce for a future outbreak?

Mr. BONNER. That is a tough question. Our first recommendation would be that the employees receive enough information to make informed choices, information about, the science, where the highest risks are coming from; and, second, empowering them to act upon that information in order to protect themselves; and, third, taking care of those employees who succumb either themselves or their families succumb to the illness.

The last thing that we want to do is to have the Federal workforce become a carrier for the disease. If we force our employees to remain on the job when they are exhibiting symptoms, then they are going to infect their co-workers, the traveling public, and their families, thereby increasing the spread of the disease.

Senator AKAKA. Thank you. Ms. Gilman.

Ms. GILMAN. I would cite similar things to Mr. Bonner. I think that we would like to see the policies that are made take into consideration the health of the employees, that the policies are made only on good science and good medicine, and that those policies are clearly communicated to the employees with the reasons that they are being made. That has clearly not been done.

My No. 1 thing would be that in the fall, if this is more serious, that our employees do not get a message that says go to the CDC Web site to see what policy is for you when you go to work tomor-

row, and where the CDC Web site does not have any specific information on employees trying to do passenger processing jobs that we have been discussing here today.

Senator AKAKA. I want to thank you and all our witnesses today for your thoughtful testimony and answers to our questions. There clearly is a lot more planning that needs to be done throughout the Federal Government. Mechanisms to increase accountability, such as additional reporting requirements and monitoring of agencies' progress, would help move us in the right direction.

I hope that agencies are learning from the ongoing H1N1 outbreak and taking corrective action for future planning. One lesson we have learned is that there must be clear and consistent guidance to Federal employees on agency policies. I would like to see closer collaboration between the agencies and employees on these issues in the future. And I also look forward to continuing to work with all the witnesses.

Thank you again for being here. This hearing is adjourned.

[Whereupon, at 11:56 a.m., the Subcommittee was adjourned.]

# APPENDIX

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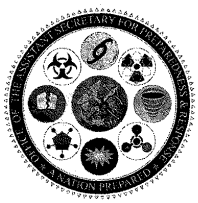
**Testimony**
**Committee on Homeland Security and Governmental Affairs**
**Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia**
**United States Senate**

## HHS' Efforts to Provide Science-based Pandemic Influenza Guidance for the U.S. Workforce

***Statement of***
**RADM. W. Craig Vanderwagen, M.D.**
***Assistant Secretary for Preparedness and Response***
***U.S. Department of Health and Human Services***



**For Release on Delivery**
**Expected at 10:00am**
**Thursday June 16, 2009**

Good morning Chairman Akaka, Ranking Member Voinovich, and Members of the Subcommittee. I am RADM. W. Craig Vanderwagen, the Assistant Secretary for Preparedness and Response (ASPR) at the U.S. Department of Health and Human Services (HHS). Thank you for this opportunity to discuss the vital role of science-based guidance for the protection of workers, including the Federal work force, during an influenza pandemic.

As the United States Governmental lead for public health and medical response, HHS is committed to providing current, science-based guidance based on the best available evidence including checklists, to assist businesses, industries, and other employers in planning for a pandemic as well as for other comparable catastrophes. During public health emergencies like the current pandemic H1N1 influenza virus outbreak, protecting workers, including federal workers, is a top priority. HHS, through the Centers for Disease Control and Prevention (CDC) and in coordination with the Department of Labor's Occupational Safety and Health Administration (OSHA), provides up-to-date guidance for workplace protection on the comprehensive Federal website, www.pandemicflu.gov as well as www.cdc.gov.

As early as 2005, HHS began issuing checklists, posted on our website, intended to aid preparation for a pandemic in a coordinated and consistent manner across all segments of society. As of 2009, checklists are available to guide planning for state and local governments, workplaces (including US businesses with overseas

operations and large business), individuals and families, schools, healthcare, and community organizations.

The HHS guidance for business continuity and workplace protection has been directed to the entire business and employer community, including government and non-government employers. As the private sector owns and operates over 85 percent of the critical infrastructure in the United States, they have an important role to play in preparing for, responding to, and recovering from a pandemic. The HHS checklist for large businesses helps guide their efforts to plan for an influenza pandemic. In this checklist, we identified important, specific activities large businesses can do to prepare-- things that will also apply to other emergencies. These include strategies for ensuring business continuity if there are high rates of absenteeism during a pandemic, steps to take to reduce the impact of a pandemic on employees and customers; policies to be implemented during a pandemic; allocation of resources to protect employees and customers during a pandemic; communicating and educating employees; and coordination with external organizations and the communities in which they operate.

In 2007, HHS released *Interim Pre-pandemic Planning Guidance: Community Strategy for Pandemic Influenza Mitigation in the United States*, which includes specific planning recommendations for aligning business practices with public health protection interventions. The document provides guidance for state, territorial, tribal, local communities, individuals and families, employers, schools,

and other organizations. The information focuses on several measures other than vaccination and drug treatment that might be useful to reduce harm during an influenza pandemic.

Pre-pandemic influenza guidance developed before the pandemic H1N1 influenza outbreak has been adapted, updated, revised, and retained, based on epidemiologic and laboratory knowledge gained during the spring 2009 response. As our understanding of the characteristics of this novel virus evolved, we tailored our guidance – and expect that we will continue to refine guidance as we monitor the H1N1 situation and virus in the United States and around the world.

We tailor our response to an outbreak based on the scientific information we have at hand through investigation. Earlier this spring, when the CDC laboratory confirmed illness and death in humans from a novel H1N1 influenza virus in Mexico and the United States, HHS/CDC sent teams of public health and medical investigators to work with health authorities in Mexico, California, and Texas, New York, and several other states to better understand the epidemiology of this novel virus, including aspects such as severity and transmissibility/infectiousness. Some of these investigations are ongoing. Information from these investigations is helping to inform CDC guidance on antiviral use, diagnostic testing, duration of exclusion from work or school for ill persons, and other community mitigation measures.

For example, our guidance on testing of clinical samples was altered based on information about the spectrum of illness, the initially limited availability of diagnostic testing that could specifically detect novel influenza A(H1N1), and the finding that most influenza-like illness was influenza A (H1N1) in some areas. These findings led to recommendations to limit testing to severely ill or higher risk patients, thus conserving testing reagents, reducing the burden on public health labs, and reducing opportunities for ill persons at low risk for complications to infect others while seeking medical care and testing. CDC released guidance related to dismissal of students from school (school closure) and later updated this guidance based on information about illness severity, disease transmission and secondary attack rates. On April 27, a CDC Travel Health Warning for Novel H1N1 Influenza in Mexico was issued recommending against non-essential travel to Mexico and on May 15 that recommendation was downgraded to a Travel Health Precaution for Mexico as it was recognized the virus was now also being transmitted in the United States, and that illness severity for most persons infected was similar to seasonal influenza.

HHS, working closely with our Federal partners and other stakeholders, has developed guidelines, including the previously-mentioned checklists, to assist employers in planning for an influenza pandemic; this information is easily located on the "Workforce Planning" tab of the www.pandemicflu.gov website.

As part of the HHS response to pandemic H1N1 influenza, HHS/CDC has contributed efforts directed to Federal workers.

- In line with the guidance document posted on the website, *General Business and Workplace Guidance for the Prevention of Novel Influenza A (H1N1) Flu in Workers*, one of our best measures for reducing the spread of an outbreak of a novel influenza virus is to encourage sick people to stay home while they are contagious. HHS employees and contractors have been notified to daily self-monitor for symptoms of influenza (fever and cough or sore throat). If symptomatic or have had recent contact with someone who has or likely to have H1N1, they are to notify their supervisor, stay home and seek medical guidance.
- Guidance targeting health care workers, laboratorians, public health workers, correctional/detention facilities workers, border workers and first responders, for whom job-related questions about exposure or infection may be an occupational concern includes: *Interim Recommendations for Facemask and Respirator Use to Reduce Novel Influenza A (H1N1) Virus Transmission, H1N1 Influenza Virus Biosafety Guidelines for Laboratory Workers, Interim Guidance on Antiviral Recommendations for Patients with Novel Influenza A (H1N1) Virus Infection and Their Close Contacts,* and *Interim Guidance for Correctional and Detention Facilities on Novel Influenza A (H1N1) Virus*

- HHS has provided consultation to Federal agencies that have employees who have close contact with persons ill with pandemic H1N1 influenza,

avian H5N1, and other influenza viruses with pandemic potential, as part of their occupations. In alignment with the Department of Labor's OSHA Pandemic Influenza Risk Pyramid, which arrays the risk of exposure to a potential pandemic virus by type of contact with ill persons, HHS has produced guidance for those working with patients in a healthcare setting who have, or may have, pandemic H1N1 influenza (*CDC Interim Guidance for Infection Control for Care of Patients with Confirmed or Suspected Novel Influenza A (H1N1) Virus Infection in a Healthcare Setting*) and for workers and the general public in other community settings (*CDC Interim Recommendations for Facemask and Respirator Use to Reduce Novel Influenza A (H1N1) Virus Transmission*).

- HHS has shared the practices it uses to protect its workforce with other Federal entities. For example, HHS has provided guidance to: the U.S. Navy on how to clean its ships to avoid spread of the pandemic H1N1 influenza virus; the U.S. Northern Command on how to protect its employees during this outbreak; the U.S. General Services Administration that the odds of transmission of the pandemic H1N1 influenza virus over significant distances through heating, ventilation, and air conditioning (HVAC) systems was extremely remote and that special cleaning of air ducts is not required.
- In collaboration with DHS, HHS has hosted a number of outreach efforts to employers, including large teleconferences, to provide key information that employers can use to protect their workforce and ensure business

continuity during the pandemic H1N1 influenza virus outbreak. Over 3,000 business representatives have participated in a series of five teleconferences held since April 30, 2009.

- We believe that the HHS and CDC influenza websites previously mentioned are an important resource to employers in order to maintain a safe workplace for a healthy workforce. During the pandemic H1N1 influenza outbreak, it is critical that employers encourage sick workers to stay home and away from the workplace. HHS has encouraged employers to re-examine their human resources policies to allow sick workers to stay home. Simple measures, such as covering coughs and sneezes and frequent hand washing remain effective means of reducing the spread of influenza in workplaces and in the community and have implications for safe workplaces and a healthy workforce beyond this new influenza virus.

It is in our mission that the Department of Health and Human Services is the United States government's principal agency for protecting the health of all Americans. We are dedicated to this mission and to the principle that the best policies for health and safety are based on the best available science.

At this time I conclude my brief remarks. I welcome your comments or questions.

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**TESTIMONY OF ELAINE C. DUKE,**
**UNDER SECRETARY FOR MANAGEMENT,**
**U.S. DEPARTMENT OF HOMELAND SECURITY**

**Testimony before the Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia**
**June 16, 2009**

Chairman Akaka and Ranking Member Voinovich, Members of the Subcommittee, thank you for the opportunity to come before you today to discuss how the Department of Homeland Security is protecting and preparing its employees in response to the 2009 H1N1 flu outbreak.

I recognize that, as a department, we must work together to take proper safety precautions to reduce transmission of any disease while still performing our critical mission. This may mean that some employees need to wear personal protective equipment. Some employees may need to telecommute. Others may need to stay home if they have an illness in their family or if their child's school is closed. I am committed to working with component heads from across the department and across the federal government to provide our employees with the safest possible working environment. Our workforce safety and security is always one of my top priorities.

It is important to know that we are making all of our decisions based on the science and the epidemiology as recommended to us by the Centers for Disease Control and Prevention (CDC), the workplace guidance from the Departments of Health and Human

Services and Labor, the public health community, and the World Health Organization (WHO).

*DHS Pandemic Influenza Preparedness Activities*

Congress appropriated $7.1 billion in supplemental funding in fiscal year 2006 for avian and pandemic influenza preparedness activities. A majority of the funding went to the Department of Health and Human Services (HHS). DHS received $47.3 million, which was distributed to DHS components by the Chief Medical Officer. Congress directed that the funding be used for, among other things, workforce protection.

The Department was able to build the basis for its pandemic program with this appropriation. We purchased personal protective equipment (PPE) for use by mission essential employees including those in the National Capital Region, but primarily designated for use by the operational components whose job functions place them at greater risk during a pandemic event, specifically the U.S. Coast Guard (USCG), U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and the Transportation Security Administration (TSA). Currently, PPE is pre-positioned at 53 DHS locations and field offices nationwide. The Federal Emergency Management Agency (FEMA) is responsible for coordinating the actual distribution logistics of moving PPE from the DHS stockpile to any delivery location defined by need.

The Department has also stockpiled two types of antivirals, oseltamivir (Tamiflu®) and zanamivir (Relenza®), dedicated for DHS workforce protection. These medications are stored in a pharmaceutical warehouse. In addition, the USCG purchased courses of antivirals through Department of Defense stockpile channels. Overall, DHS has on hand approximately 540,000 courses of antivirals targeted for its mission essential workforce.

The FY06 supplemental also enabled DHS to prepare a number of pandemic plans in concert with other Federal agencies. The Department's Office of Health Affairs (OHA) coordinated the development of several pandemic plans and products including a DHS

Pandemic Influenza Contingency Plan, and Screening Protocols for Pandemic Influenza – Air, Land, Maritime, and the Draft Federal Interagency Pandemic Influenza Strategic Plan. OHA manages and tracks the action items assigned to DHS under the National Strategy for Pandemic Influenza Implementation Plan.

Effective communication in any disaster is critical, and a severe pandemic where there would be nationwide consequences is no exception. The Office of Health Affairs worked with the DHS Office of Public Affairs and Federal interagency representatives to create the ESF-15 Pandemic Influenza Communications Go Book, which provides a framework for consistent public communications on non-medical issues by Federal agencies as well as state and local communities in the event of a pandemic outbreak.

Training is also crucial for preparing the DHS workforce in the event of a pandemic. OHA developed a pandemic awareness and prevention training DVD for DHS components to use to educate its workforce. The module is accessible on DHScovery, the Department's learning management system, and allows for tracking of trained employees. CBP created its own mandatory training courses for its employees as well. ICE also offers pandemic flu training courses to its employees through its ICE Virtual University web site. These courses have been made available to the ICE workforce since August 2006.

*Workforce Pandemic Exercises*

In October 2008, DHS conducted an Intradepartmental Pandemic Influenza Tabletop Exercise, which included participants from all DHS components, the Deputy Secretary of Homeland Security, and the National Pandemic Principal Federal Official team. Last month, the Department conducted an intra-DHS workshop focused on workforce protection in the event of a pandemic. The purpose of the workshop was to facilitate in-depth discussions and highlight potential actions addressing Departmental workforce protection issues during a pandemic influenza event. The objectives of the exercise were to clearly identify Departmental-level, versus component-level, responsibilities and to outline internal communications strategies. All DHS components were represented and

13 other Federal departments and agencies sent representatives to the workshop with total attendance estimated at nearly 100 participants.

*Messages to DHS employees*

Secretary of Homeland Security Janet Napolitano has made communication with the DHS workforce a top priority, especially in light of the inception of the 2009 H1N1 flu outbreak. Guidance we issued advised our employees to follow procedures and recommendations of the CDC and we have consulted with DOL's Occupational Safety and Health Administration regarding workforce protections. Although each DHS component has specific policies and procedures regarding interaction with the public, the Department is committed to ensuring that they are implemented in a manner that complies with federal law, including non-discrimination restrictions.

Specifically, on Saturday, April 25, 2009, Secretary Napolitano sent a message to all DHS employees recognizing ongoing Federal activities to monitor the 2009 H1N1 flu outbreak and stressing flu prevention methods. The Secretary followed the next day with a message to DHS employees working on or near the Southwest border, outlining interim actions recommended by CDC should employees encounter travelers who appear unwell.

The Department's Office of Health Affairs physicians drafted guidance for DHS personnel concerning the use of proposed medications, and are drafting guidance for administration of antivirals for components under the medical control of OHA. In addition, on April 30, 2009, I provided all DHS employees with interim PPE guidance concerning response to the 2009 H1N1 flu outbreak, developed in consultation with OSHA and CDC.

CDC updated and revised its guidance pertaining to the H1N1 flu outbreak on May 27, 2009. On May 29, 2009, I issued a revised management policy to Component leadership, which was consistent with current CDC recommendations.

*Incident Coordination*

The Department established an Incident Management Cell (IMC) early in the 2009 H1N1 event to track requests for information and respond to component inquiries. We ensure that OHA Offices of Medical Readiness and Component Services staff the IMC full-time. This cell responds to requests and inquiries by DHS offices and components 24 hours a day, seven days a week.

*Strengthening Workforce Protection for the Future*

The Department is taking a number of steps to ensure continued responsiveness to Component requests and to ensure the health and safety of the DHS workforce. Moving forward, one of our goals is to provide uniform occupational health services across the Department, in order to ensure operational components can deliver post-exposure prophylaxis and treatment of employees in the future. In addition, we hope to strengthen our internal medical oversight capacity, ensuring DHS fully utilizes the capabilities of our medical personnel as well as our emergency services medical personnel. Finally, OHA has been developing a more formal mechanism for providing medical advice to DHS components.

In conclusion, DHS remains dedicated to protecting the health and safety of our workforce in the event of a pandemic. I will continue to work close with Secretary Napolitano and our component leadership to respond to the needs of DHS employees throughout the response to the 2009 H1N1 flu outbreak. As I said, our workforce safety and security is always one of my top priorities.

STATEMENT OF
NANCY H. KICHAK
ASSOCIATE DIRECTOR FOR
STRATEGIC HUMAN RESOURCES POLICY
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA
UNITED STATES SENATE

on

"PROTECTING OUR EMPLOYEES: PANDEMIC INFLUENZA PREPAREDNESS AND THE FEDERAL WORKFORCE"

JUNE 16, 2009

Chairman Akaka, Ranking Member Voinovich, and Members of the Subcommittee:

Thank you for including the Office of Personnel Management (OPM) in your discussion of this important topic. I am pleased to be here to discuss OPM's efforts to ensure the Federal Government is prepared to meet the human resources management challenges posed by a pandemic health crisis, such as the H1N1 flu outbreak.

OPM has a significant role in preparing the Government for emergencies, including a pandemic health crisis. One of Director John Berry's first actions when he took over the helm at OPM was to meet with members of the Chief Human Capital Officers Council to assess what their human resource issues and needs were in addressing a potential influenza emergency. This review led to the Director convening an "H1N1 Human Resources Readiness Forum" to help Federal agency human resources leadership identify and answer planning issues arising from a potential influenza outbreak. The Forum was held on May 8 and attracted 142 officials from 37 Federal agencies where a panel of OPM, Department of Labor, and Department of Health and Human Services experts gave advice and guidance and answered questions on a variety of health and HR issues. The Forum was a supplement to the memorandum on "Human Resources Flexibilities Available to Assist Federal Employees During Emergencies" which Director Berry had distributed three days earlier to Heads of Executive Departments and Agencies. The memorandum reiterated and expanded upon previous guidance on the wide variety of human resource management tools agencies have for continuing operations in a pandemic influenza emergency. Director Berry also announced a major initiative to reinvigorate agency telework programs, noting their importance as a central feature in continuing agency operations during an emergency.

OPM's essential function in this regard is to provide critical human resources services to ensure the Federal Government has the civilian workforce it needs to continue essential missions in an emergency. OPM is the central agent for the President and the executive branch with responsibility for providing guidance to agencies regarding Governmentwide human resources policies and flexibilities. These include emergency staffing authorities, leave flexibilities, evacuation payments, telework and flexible working arrangements. We also track the effect of a pandemic influenza on the Federal workforce through information on attendance and leave.

OPM is directly responsible for providing essential information relating to Federal Investigative Services during an emergency, including conducting background investigations for civilian, military and contract employees. Finally, in a worst-case scenario, OPM would coordinate with the White House to manage an orderly evacuation and resumption of normal operations for Federal employees in the Washington, DC, metropolitan area, and advise Federal Executive Boards and other Federal entities nationwide. These determinations are formed in consultation with the Department of Health and Human Services, the Department of Homeland Security, and other appropriate authorities.

OPM's primary objective is to ensure Federal agencies have the workforce they need to continue their critical missions, while preparing employees to protect their health and assuring that their pay is protected. OPM has been working on Governmentwide preparation for an influenza pandemic for several years, developing comprehensive human resources guidance and conducting briefings for Federal human resources specialists, as well as "town-hall" meetings for employees at numerous Federal agencies.

Director Berry believes it is imperative that we do everything necessary to protect the well-being of all Federal employees. OPM relies on public health and occupational safety and health officials, including experts at the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the Agency for Healthcare Research and Quality, all parts of HHS, and at the Occupational Safety and Health Administration (OSHA) in Labor, for advice about the safety, efficacy and appropriateness of administrative controls, as well as medications, respirators, surgical face masks and other personal protective equipment for first responders, medical staff and other front-line employees. We at OPM do not have the expertise to make those kinds of judgments. That is why OPM staff work to keep Federal agencies who have employees at the front line of the response informed about the latest expert advice on protective measures. For example, at the H1N1 Human Resources Readiness Forum we hosted a few weeks ago, representatives of the CDC, OSHA, and HHS's Federal Occupational Health Service were available to answer questions about personal protective measures.

More recently, since the onset of the current H1N1 flu outbreak, OPM has updated our pandemic influenza guidance. In addition, we have been collecting and are providing answers to additional questions, to supplement the guidance already on our web site. Feedback from the H1N1 Readiness forum indicated that the forum was extremely

helpful in answering the questions that weigh most heavily on the minds of managers and employees when they think about how a pandemic health crisis will affect them.

After the outbreak of the H1N1 flu began, we also posted on the OPM home page a memorandum reminding agencies of the wide range of human resources policies and flexibilities available to meet their needs and the needs of their employees during emergencies. These authorities, which include leave flexibilities, alternative work schedules, telework, and emergency hiring authorities, are all aimed at getting the job done during an emergency, while assisting employees in taking care of their personal and family needs.

The H1N1 flu outbreak has demonstrated the importance of being able to quickly expand the use of telework to cope with pandemic health crises and other emergencies. Having this ability depends on telework being an integral part of normal operations. Telework can help mitigate the spread of influenza by promoting social distancing. It can also assist employees in balancing their ongoing work responsibilities with the need to care for their families. The recent H1N1 flu outbreak has provided a reminder of the need for social distancing to prevent the spread of infectious disease. It has also demonstrated the effects of social distancing on workplaces, communities, and families.

Although progress is being made, telework has not been implemented widely enough in the Federal Government. Our most recent data on telework in Executive agencies show that, from 2007 to 2008, the numbers of employees who are teleworking did increase, but only incrementally. This is indicative of a longer-term pattern of very slow progress. That is why OPM Director John Berry recently announced a new initiative that we hope will help agencies ramp up their telework readiness. This initiative is driven not only by Director Berry's belief in the value of work/life programs generally, but more specifically in the importance of telework as a tool for emergency planning. With implementation of this new initiative, OPM believes we will see not only an improvement in the consistency and quality of telework policies and programs in Executive agencies, but a resulting increase in telework participation Governmentwide, as well.

Beyond telework and other flexible work arrangements, agency Employee Assistance Programs (EAPs) can be very helpful to front-line employees and other Federal workers. The stress and anxiety of the flu outbreak, with massive media coverage, school closings, and other associated dislocations, have a lasting impact on how our employees function. All our agencies have EAPs; we need to be sure they are part of our pandemic planning and response efforts and that they have the resources necessary to help our employees remain productive during and after a crisis.

Governmentwide, agencies are making progress to improve their pandemic readiness. For example, last fall, major agencies were tasked to re-certify their readiness using the Homeland Security Council's "meta-check list," part of which dealt with human resources elements that OPM developed in coordination with other agencies. In addition, OPM will continue to work Governmentwide to improve readiness as a member of the

Homeland Security Council's H1N1 Flu Working Group and Pandemic Influenza Sub-Interagency Policy Committee.

In concluding, I would note that, in the recent outbreak of the H1N1 virus, we have been given a wake-up call. Public health experts have warned that the virus could mutate and return in a new, more virulent form during the fall flu season. We must be prepared. Federal agencies need to ensure their pandemic plans are up to date and their workforce is tele-ready. OPM stands ready to provide guidance and support.

Thank you again for inviting me here today. I would be happy to respond to any questions you may have.

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Senate Committee on Homeland Security and Governmental Affairs

For Release on Delivery
Expected at 10:00 a.m. EDT
Tuesday, June 16, 2009

# INFLUENZA PANDEMIC

# Greater Agency Accountability Needed to Protect Federal Workers in the Event of a Pandemic

Statement of Bernice Steinhardt
Director, Strategic Issues

GAO
Accountability * Integrity * Reliability

GAO-09-783T

June 16, 2009

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Accountability·Integrity·Reliability

# Highlights

Highlights of GAO-09-783T, a testimony before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Senate Committee on Homeland Security and Governmental Affairs

# INFLUENZA PANDEMIC

## Greater Agency Accountability Needed to Protect Federal Workers in the Event of a Pandemic

### Why GAO Did This Study

As evidenced by the spring 2009 outbreak of the H1N1 virus, an influenza pandemic remains a real threat to the nation and the world and has the potential to shut down work critical to the smooth functioning of society. This testimony addresses (1) the extent to which federal agencies have made pandemic plans to protect workers who cannot work remotely and are not first responders; (2) the pandemic plans selected agencies have for certain occupations performing essential functions other than first response; and (3) the opportunities to improve agencies' workforce pandemic plans.

The issues discussed in the testimony are based on the GAO report, *Influenza Pandemic: Increased Agency Accountability Could Help Protect Federal Employees Serving the Public in the Event of a Pandemic* (GAO-09-404, June 12, 2009). In this report, GAO recommended that the Homeland Security Council (HSC) request that the Department of Homeland Security (DHS) monitor and report to the Executive Office of the President on the readiness of agencies to continue operations while protecting their employees in the event of a pandemic. To help carry out its oversight role, the Congress may want to consider requiring a similar report from DHS. The HSC noted that it will give serious consideration to the findings and recommendations in the report, and DHS said the report will contribute to its efforts to ensure government entities are well prepared for what may come next.

View GAO-09-783T or key components. For more information, contact Bernice Steinhardt, (202) 512-6543 or steinhardtb@gao.gov.

### What GAO Found

GAO surveyed the 24 agencies employing nearly all federal workers to gain an overview of governmentwide pandemic influenza preparedness efforts and found that a wide range of pandemic planning activities are under way. However, as of early 2009, several agencies reported that they were still developing their pandemic plans and their measures to protect their workforce. For example, several agencies had yet to identify essential functions during a pandemic that cannot be performed remotely. In addition, although many of the agencies' pandemic plans rely on telework to carry out their functions, five agencies reported testing their information technology capability to little or no extent.

To get a more in-depth picture of agency planning, GAO selected three case study agencies that represent essential occupations other than first response that cannot be performed remotely. The three case study occupations—correctional workers, production staff disbursing federal checks, and air traffic controllers—showed differences in the degree to which their individual facilities had operational pandemic plans. For example, the Bureau of Prisons' correctional workers had only recently been required to develop pandemic plans for their correctional facilities. Nevertheless, the Bureau of Prisons has considerable experience limiting the spread of infectious disease within its correctional facilities and had also made arrangements for antiviral medications for a portion of its workers and inmates. The Department of the Treasury's Financial Management Service, which has production staff involved in disbursing federal payments such as Social Security checks, had pandemic plans for its four regional centers and had stockpiled personal protective equipment such as respirators, gloves, and hand sanitizers at the centers. Air traffic control management facilities, where air traffic controllers work, had not yet developed facility pandemic plans or incorporated pandemic plans into their all-hazards contingency plans. The Federal Aviation Administration had recently completed a study to determine the feasibility of the use of respirators by air traffic controllers and concluded that their long-term use during a pandemic appears to be impractical.

There is no mechanism in place to monitor and report on agencies' progress in developing workforce pandemic plans. Under the *National Strategy for Pandemic Influenza Implementation Plan*, DHS was required to monitor and report on the readiness of departments and agencies to continue operations while protecting their employees during an influenza pandemic. The HSC, however, informed DHS in late 2006 or early 2007 that no specific reports on this were required to be submitted. Rather, the HSC requested that agencies certify to the council that they were addressing in their plans the applicable elements of a pandemic checklist in 2006 and again in 2008. This process did not include any assessment or reporting on the status of agency plans. Given agencies' uneven progress in developing their pandemic plans, monitoring and reporting would enhance agencies' accountability for protecting their employees in the event of a pandemic.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our recent study of federal agencies' plans to protect their workers in the event of an influenza pandemic.[1] Our report focused on the protection of federal employees, not classified as emergency first responders, yet necessary for ensuring the continuity of the country's critical operations. Although some of these employees will be able to perform their agencies' essential functions remotely through arrangements such as telework, others, such as federal correctional workers, production staff involved in disbursing federal payments such as Social Security checks, and air traffic controllers, will have to work at assigned locations where there will be an increased chance of infection due to proximity to others. As we were recently reminded by the spring 2009 outbreak of the H1N1 virus, an influenza pandemic remains a real threat to our nation and the world and has the potential to shut down work critical to the smooth functioning of our society. Given the important role that the federal government will play in the national response to a pandemic, planning to ensure the safety and well-being of federal employees is vital to the success of government operations.

This statement is based on our June 12, 2009 report and focuses on (1) the extent to which agencies have made pandemic plans to protect workers who cannot work remotely and are not first responders; (2) the pandemic plans selected agencies have for certain occupations performing essential functions other than first response; and (3) the opportunities to improve agencies' workforce pandemic plans.

To address our objectives, we surveyed the pandemic coordinators from the 24 agencies covered by the Chief Financial Officers Act of 1990,[2] which we supplemented with a case study approach. We used the survey to get an overview of governmentwide pandemic influenza preparedness efforts. The survey questions asked about pandemic plans; essential functions other than first response that employees cannot perform remotely; protective measures, such as procuring pharmaceutical interventions;

[1]GAO, *Influenza Pandemic: Increased Agency Accountability Could Help Protect Federal Employees Serving the Public in the Event of a Pandemic*, GAO-09-404 (Washington, D.C.: June 12, 2009).

[2]31 U.S.C. § 901. A list of the 24 CFO Act agencies appears in app. I. The CFO Act agencies employ nearly all federal employees.

social distancing strategies;[3] information technology (IT) testing; and communication of human capital pandemic policies. The survey was conducted from May through July 2008, and the results were confirmed or updated in early 2009. To get a more in-depth picture of agency planning, we selected for case studies three occupations that represent essential functions (other than first responders): correctional workers employed by the Department of Justice's (DOJ) Bureau of Prisons (BOP); production staff responsible for disbursing federal payments in the Department of the Treasury's (Treasury) Financial Management Service (FMS); and air traffic controllers employed by the Department of Transportation's (DOT) Federal Aviation Administration (FAA). We undertook this performance audit in accordance with generally accepted government auditing standards. The standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In summary, our report found the following:

- Agency progress in pandemic planning is uneven. Although all of the 24 CFO Act agencies reported being engaged in planning for pandemic influenza to some degree, several agencies reported that they were still developing their pandemic plans and their measures to protect their workforce.
- The three case study agencies also showed differences in the degree to which their individual facilities had operational pandemic plans. BOP's correctional workers had only recently been required to develop pandemic plans for their correctional facilities. Treasury's FMS had pandemic plans for its four regional centers and had stockpiled personal protective equipment. By contrast, air traffic control management facilities, where air traffic controllers work, had not yet developed facility pandemic plans or incorporated pandemic plans into their all-hazards contingency plans.
- There is no mechanism in place to monitor and report on agencies' progress in developing workforce pandemic plans. Instead of having the Department of Homeland Security (DHS) monitor agency readiness to continue operations while protecting their employees during an influenza

[3]Social distancing is a technique used to minimize close contact among persons in public places, such as work sites and public areas.

pandemic, as originally envisioned under the *National Strategy for Pandemic Influenza Implementation Plan (Implementation Plan)*, the Homeland Security Council (HSC)[4] requested that agencies certify to the council that they were addressing in their plans the applicable elements of a pandemic checklist without including any provisions to assess the progress agencies were making.

## Background

Approximately 2.6 million federal employees throughout the United States and abroad execute the responsibilities of the federal government. Federal employees work in every state, with about 90 percent outside the Washington, D.C., metropolitan area. They perform functions across a multitude of sectors, from those vital to the long-term well-being of the country—such as environmental protection, intelligence, social work, and financial services—to those directly charged with aspects of public safety—including corrections, airport and aviation safety, medical services, border protection, and agricultural safety.

Worker protection strategies are crucial to sustain an adequate workforce during a pandemic. During the peak of an outbreak of a severe influenza pandemic in the United States, an estimated 40 percent of the workforce could be unable to work because of illness, the need to care for ill family members, or fear of infection. Under the *Implementation Plan*, all federal agencies are expected to develop their own pandemic plans that along with other requirements, describe how each agency will provide for the safety and health of its employees and support the federal government's efforts to prepare for, respond to, and recover from a pandemic. Because the dynamic nature of pandemic influenza requires that the scope of federal government continuity of operations (COOP) planning[5] includes

[4]The HSC was established pursuant to Executive Order 13228, on October 8, 2001, for purposes of advising and assisting the President with respect to all aspects of homeland security and to serve as a mechanism for ensuring (1) coordination of homeland security-related activities of executive departments and agencies and (2) effective development and implementation of homeland security policies. The Congress subsequently established the HSC for the purpose of more effectively coordinating the policies and functions of the federal government relating to homeland security. See Homeland Security Act of 2002, Pub. L. No. 107-296 (Nov. 25, 2002), 6 U.S.C. § 491 and § 494. On May 26, 2009, President Obama issued a statement outlining his decision to integrate White House staff supporting national security and homeland security. The HSC will be maintained as the principal venue for interagency deliberations on issues that affect the security of the homeland, such as terrorism, weapons of mass destruction, natural disasters, and pandemic influenza.

[5]COOP planning is an effort conducted by agencies to ensure that the capability exists to continue essential agency functions across a wide range of potential emergencies.

preparing for a catastrophic event that is not geographically or temporally bounded, the Federal Emergency Management Agency concluded that planning for a pandemic requires a state of preparedness that is beyond traditional federal government COOP planning. For example, for pandemic planning purposes, essential functions may be more inclusive and extend longer than the 30-day traditional COOP-essential functions.

## Agencies Report Being in Various Stages of Planning for the Protection of Their Employees in the Event of a Pandemic

Our survey questions for the 24 agencies were drawn from pandemic planning checklists and federal guidance[6] to help agencies plan for protecting their employees during a pandemic. The 24 agencies we surveyed reported being in various stages of formulating their pandemic plans. While most of the agencies had developed plans, several reported that they were still formulating their plans. For example, in February 2009, the Small Business Administration (SBA) reported that it had begun to draft a more complete pandemic influenza annex to its COOP plan with an estimated completion date of spring 2009. The Department of Defense (DOD) had completed its overarching departmentwide plan, and DOD reported that its installations were tailoring their Force Health Protection Plans to include pandemic influenza considerations.

Identifying essential functions and enumerating the employees who would perform them is the first step in training those employees, communicating the risks and expectations of working during a pandemic, and planning and budgeting for measures that would mitigate those risks. Nineteen agencies reported that they had identified essential functions at both the department and component levels that cannot be continued through telework in the event of pandemic influenza or, in the case of the Office of Personnel Management (OPM), the U.S. Agency for International Development (USAID), and the National Science Foundation (NSF), determined that all of their essential or important government functions could be performed remotely. Of the remaining 5 agencies, DOJ reported identifying essential functions at the component level but noted that it was revising its department-level plan. At the time of our survey, the General Services Administration (GSA) reported not identifying its essential functions in the event of a pandemic while three agencies—DOD, SBA, and the Department of Housing and Urban Development (HUD)—were in the process of either identifying essential functions or determining which

[6]The Web site, www.pandemicflu.gov, provides access to U.S. government avian and pandemic influenza information and guidance.

functions could be continued through telework. The pandemic coordinators in three agencies did not know whether the employees who performed essential functions in their agencies had been notified that they might be expected to continue operations during a pandemic.

We also asked the pandemic coordinators from the 24 agencies whether they had planned or budgeted for any of seven potential measures to protect workers whose duties require their on-site presence during a pandemic. The measures included in our survey included procurement of personal protective equipment such as masks and gloves; supplemental cleaning programs for common areas; distribution of hygiene supplies (hand sanitizers, trash receptacles with hands-free lids, etc.); obtaining antiviral medications; arrangements to obtain pandemic vaccines to the extent available; prioritization of employees for vaccinations; and prioritization of employees for antiviral medications. Federal pandemic guidance recommends the measures according to risk assessments for employees, and therefore, based on the agencies' mission and activities, not all measures are equally appropriate for all agencies. The most frequently reported measure was procurement of personal protective equipment with 19 agencies reporting that they had planned or budgeted for this measure. For example, DHS reported that it had done fit testing of employees for N95 respirators[7] and training on the proper use of other personal protective equipment and had pre-positioned stockpiles of the equipment for employees in 52 locations. Prioritization of employees for vaccinations was the measure least frequently reported with 11 agencies reporting that they had taken this measure.

The survey showed that agencies' most frequently cited social distancing strategies involved using telework and flexible schedules for their workforces. Restrictions on meetings and gatherings and avoiding unnecessary travel were also part of 18 agencies' plans. Although many of the agencies' pandemic influenza plans rely on social distancing strategies, primarily telework, to carry out the functions of the federal government in the event of a pandemic outbreak, only one agency, NSF stated that it tested its IT infrastructure to a great extent. The agency reported assessing its telework system formally several times each year and each day through

[7]An N95 respirator is designed to protect an individual from breathing in very small particles, which might contain viruses. This type of respirator fits tightly to the face so that most air is inhaled through the filter material. To work most effectively, N95 respirators must be specially fitted for each person who wears one.

various means. On the other hand, five agencies reported testing their IT systems to little or not extent. Table 1 shows the survey responses.

**Table 1: Agencies' Responses on the Extent to Which They Have Tested IT Infrastructure to Ensure That It Is Capable of Handling Telework or Work-at-Home Arrangements during a Pandemic Influenza Outbreak**

| Extent | Agencies |
|---|---|
| To a great extent | NSF |
| To a moderate extent | DOC, DOE, DOI, DOL, DOS, DOT, Education, EPA, OPM, NRC, SSA |
| To some extent | DOJ, HHS, HUD, DOD, Treasury, USAID, VA |
| To little or no extent | DHS, GSA, NASA, SBA, USDA |

Legend: DOC = Department of Commerce, DOE = Department of Energy, DOI = Department of the Interior, DOL= Department of Labor, DOS = Department of State, EPA = Environmental Protection Agency, HHS = Department of Health and Human Services, NASA = National Aeronautics and Space Administration, SSA = Social Security Administration, USDA = Department of Agriculture, VA = Department of Veterans Affairs.

Source: GAO analysis of agency responses.

Given the potential severity of a pandemic, it is important that employees understand the policies and requirements of their agencies and the alternatives, such as telework, that may be available to them. Many employees and their supervisors will have questions about their rights, entitlements, alternative work arrangements, benefits, leave and pay flexibilities, and hiring flexibilities available during the turmoil created by a pandemic. Therefore, it is important that each agency implement a process to communicate its human capital guidance for emergencies to managers and make staff aware of that guidance. Twenty-one of the 24 pandemic coordinators surveyed reported making information available to their employees on how human capital policies and flexibilities will change in the event of a pandemic outbreak. Three agencies—DOC, GSA, and SSA—reported that they have not. Of the agencies that reported making information available, two had done so indirectly. HUD stated that it shared information with unions, and Treasury reported that it briefed its human capital officers on the human capital policies and flexibilities available to address pandemic issues.

## Pandemic Preparations for Correctional Workers, Production Staff Responsible for Disbursing Federal Payments, and Air Traffic Controllers Are in Various Stages of Development

### BOP Has Taken Steps to Protect Correctional Workers in the Event of a Pandemic

BOP, a component of DOJ, has the mission of protecting society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. Approximately 35,000 federal employees ensure the security of federal prisons and provide inmates with programs and services.

BOP's pandemic influenza plan was developed through its Office of Emergency Preparedness and was disseminated to its central office and six regional offices in May 2008. BOP's pandemic plan addresses the need for infection control measures to mitigate influenza transmission and calls for education of correctional workers and the inmate population. Accordingly, all facilities are instructed that they should have readily available and ample supplies of bar soap and liquid soap in the restrooms, alcohol-based wipes throughout the facility, and hand sanitizers if approved by the warden. Based on a historical review of the 1918 pandemic influenza and HHS' pandemic planning assumptions, BOP intends to supply antiviral medication to 15 percent of correctional workers and inmates in each facility if the influenza outbreak is geographically spread throughout the United States.

BOP has some challenges in preparing for pandemic influenza. For example, social distancing measures to protect correctional workers are difficult to implement at the facility level. BOP officials said that there are many situations in which close contact is inevitable between correctional

workers and inmates and where personal protective equipment, such as gloves and masks, would not be feasible. A unique pandemic planning challenge facing federal correctional workers is the maintenance of an effective custodial relationship between them and the inmates in federal prisons. According to BOP officials, this relationship depends on communication and mutual trust, as correctional workers in federal prisons do not carry weapons or batons inside the cellblocks. Rather, they use verbal methods of communication to keep order. BOP officials at United States Penitentiary Leavenworth said that they would not allow a situation where correctional workers wear N95 respirators or surgical masks but the inmates do not.

Despite the challenges BOP faces with pandemic influenza planning, the bureau has advantages, which are unique to its facilities. Every correctional facility is a closed and self-contained system, and each facility is somewhat self-sufficient, maintaining a 30-day supply of food, water, and other necessities for any type of contingency. Correctional facilities also have well-tested experience in emergency and health hazard planning and management and infection control, which provides them with a solid foundation to build on for pandemic influenza preparedness. Additionally, correctional facilities generally have strong ties with their local communities, important because pandemic influenza will be largely addressed by the resources available to each community it affects.

## FMS Has Operational Pandemic Plans for Production Staff Responsible for Disbursing Federal Payments

FMS, a component of Treasury, provides central payment services to federal agencies, operates the federal government's collections and deposit systems, provides governmentwide accounting and reporting services, and manages the collection of delinquent debt owed to the government. FMS has four regional financial centers that are production facilities that rely heavily on integrated computer and telecommunications systems to perform their mission. However, they also rely on light manufacturing operations to print and enclose checks for releasing at specific times of the month. Nearly 206 million of FMS's payments were disbursed by check in fiscal year 2008.

A regional center Deputy Director said that the organization is aware that the basis of part of the U.S. economy rests on the regional financial centers and that they will need to issue payments even during a pandemic. For the most part, the regional financial centers are planning that in the event of a pandemic, the nature of their business will be unchanged, but there will be issues with sickness, absenteeism, communication, and hygiene that they must address. Employees whose positions require, on a

daily basis, direct handling of materials or on-site activity that cannot be handled remotely or at an alternative worksite are not eligible for telework. According to an FMS official, even with a minimum crew on-site to produce paper checks, there will be instances when employees will need to be within 3 feet of other employees.

As part of the regional center pandemic plans, officials researched the types of supplies they would need based on the risks faced in their facilities. For example, in the Kansas City regional financial center the janitorial staff now routinely wipes off door handles, tabletops, and other high-traffic areas. As another part of the Kansas City regional plan, the center stocks such items as N95 respirators, gloves, hand sanitizers, disinfectants, and fanny packs that include items such as ready to eat meals, hand-cranked flashlights, small first-aid kits, and emergency blankets.

The FMS regional financial centers face some unique pandemic planning challenges. Since the centers are production facilities with large open spaces as well as enclosed office areas, pandemic planning requires different responses for different areas. An FMS official noted that employees' response and diligence in following disease containment measures in the different areas would be what determines the success of those measures. Scheduling of production personnel is also a challenge. Since the production of the checks must be done according to a deadline and internal controls must be maintained, schedules are not flexible. FMS officials had not made any arrangements for pandemic pharmaceutical interventions for the regional financial centers in part because the relatively small number of essential employees required to be on-site, as well as the large open spaces in the regional facilities, make social distancing measures more feasible.

## FAA Pandemic Plans to Protect Air Traffic Controllers Are Not Ready for Implementation

FAA, a component of DOT, expects the National Airspace System to function throughout an influenza pandemic, in accordance with the preparedness and response goal of sustaining infrastructure and mitigating impact to the economy and the functioning of society. Maintaining the functioning of the National Airspace System will require that FAA's air traffic controllers, who ensure that aircraft remain safely separated from other aircraft, vehicles, and terrain, continue to work on-site. While FAA expects the demand for air traffic control, which manages cargo as well as passenger travel, to be reduced in the event of a severe pandemic outbreak, its contingency plans assume full air traffic levels as a starting

baseline. According to an FAA official, although passenger travel may be diminished, the shipping of cargo may increase.

The Air Traffic Organization, FAA's line of business responsible for the air traffic management services that air traffic controllers provide, had not directed facilities, such as its air route traffic control centers, to develop pandemic-specific plans or incorporate these pandemic plans into their all-hazards contingency plans. FAA officials said that all-hazards contingency and continuity plans are adapted to the facility level and are regularly implemented during natural disasters such as hurricanes. Although these plans are not specific to a pandemic, FAA officials reported that the all-hazards plans allow the Air Traffic Organization to mitigate the impact of adverse events, including reduced staffing levels on National Airspace Systems operations. The Air Traffic Organization plans to direct its facilities to develop pandemic-specific plans or enhance their preexisting all-hazards contingency plans at the local field facility level after a number of actions, such as the development of an FAA workforce protection policy, are completed.

Protecting air traffic controllers in the event of a pandemic outbreak is particularly challenging for several reasons. Air traffic controllers work in proximity to one another; the 6 feet of separation recommended for social distancing during a pandemic by the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration is not possible for them. In addition, air traffic controllers cannot use personal protective equipment such as N95 respirators or surgical masks, as these impede the clear verbal communication necessary to maintain aviation safety. FAA recently completed a study examining the feasibility of air traffic controllers using powered air purifying respirators.[8] Because of a number of concerns with using the respirators, such as noise, visibility, and comfort, FAA officials concluded that their long-term use during a pandemic appears to be impractical. Moreover, cross-certification of air traffic controllers is problematic. Attaining full performance levels for the controllers takes up to 3 years, and air traffic controllers proficient in one area of airspace cannot replace controllers proficient in another airspace without training and certification. Finally, FAA regulations on medication for air traffic controllers are strict because certain medications may impair

[8]Powered air purifying respirators use a powered blower to force air through a filter. They typically have a hood connected by a flexible hose to a blower unit that is equipped with a filter and powered by a battery.

an air traffic controller's performance. The Office of Aviation Medicine's policy on the use of antiviral medication for prophylactic use by on-duty controllers was still in draft as of early 2009.

## Monitoring and Reporting on Agencies' Pandemic Workforce Protection Plans Could Improve Efforts to Protect Employees in the Event of a Pandemic

The survey results from the 24 CFO Act agency pandemic coordinators, as well as information from the case study agencies, indicate that a wide range of pandemic planning activities are under way and that all of the agencies are taking steps to some degree to protect their workers in the event of a pandemic. However, agencies' progress is uneven, and while we recognize that the pandemic planning process is evolving and is characterized by uncertainty and constrained resources, some agencies are clearly in the earlier stages of developing their pandemic plans and being able to provide the health protection related to the risk of exposure their essential employees may experience.

Under the HSC's *Implementation Plan*, DHS was charged with, among other things, monitoring and reporting to the Executive Office of the President on the readiness of departments and agencies to continue their operations while protecting their workers during an influenza pandemic. DHS officials reported that in late 2006 or early 2007 they asked HSC representatives with direct responsibility for the *Implementation Plan* for clarification on the issue of reporting agencies' ability to continue their operations while protecting their workers during a pandemic. DHS officials said they were informed that they did not have to prepare a report. Instead, according to White House counsel representatives, the HSC planned to take on the monitoring role through its agency pandemic plan certification process.

In November 2006, the HSC issued *Key Elements of Departmental Pandemic Influenza Operational Plan (Key Elements)*, which covered areas such as dealing with the safety and health of department employees and essential functions and services and how agencies will maintain them in the event of significant and sustained absenteeism during a pandemic. The *Key Elements* document stated that to ensure uniform preparedness across the U.S. government, the HSC was including a request that by December 2006 the agencies certify in writing to the HSC that they were addressing applicable elements of the checklist. Subsequently, in August 2008, the HSC revised the *Key Elements* to reflect current federal government guidance on pandemic planning and included a request for recertification.

However, the HSC's certification process, as implemented, did not provide for monitoring and reporting as envisioned in the *Implementation Plan*

regarding agencies' abilities to continue operations in the event of a pandemic while protecting their employees. In addition, as originally envisioned in the Implementation Plan, the report was to be directed to the Executive Office of the President, with no provision in the plan for the report to be made available to the Congress.

## Concluding Observations and Prior Recommendations

The spring 2009 outbreak of H1N1 influenza accentuates the responsibility of agencies to have pandemic plans that ensure their ability to continue operations while protecting their workers who serve the American public. As evidenced by our survey results and case studies, some agencies are not close to having operational pandemic plans, particularly at the facility level. In addition, there is no real monitoring mechanism in place to ensure that agencies' workforce pandemic plans are complete. A monitoring process should be in place that would ensure that federal agencies are making progress in developing their plans to protect their workforce in the event of a pandemic and that agencies have the information and guidance they need to develop operational pandemic plans.

To address this issue, our report recommended that the HSC request that the Secretary of Homeland Security monitor and report to the Executive Office of the President on the readiness of agencies to continue their operations while protecting their workers during an influenza pandemic. The reporting should include an assessment of the agencies' progress in developing their plans including any key challenges and gaps in the plans. The request should also establish a specific time frame for reporting on these efforts. We also suggested that to help support its oversight responsibilities, the Congress may want to consider requiring DHS to report to it on agencies' progress in developing and implementing their pandemic plans, including any key challenges and gaps in the plans. The HSC commented that the report makes useful points regarding opportunities for enhanced monitoring and reporting within the executive branch concerning agencies' progress in developing plans to protect their workforce. DHS commented that our recommendations would contribute to its future efforts to ensure that government entities are well prepared for what may come next.

Mr. Chairman and Members of the Subcommittee, this completes my statement. I would be pleased to respond to any questions that you might have.

## Contacts and Acknowledgments

For further information on this testimony, please contact Bernice Steinhardt, Director, Strategic Issues, at (202) 512-6543 or steinhardtb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Individuals making key contributions to this testimony include William J. Doherty, Assistant Director, Judith C. Kordahl, Senior Analyst, and Karin Fangman, Deputy Assistant General Counsel.

# Appendix I: Chief Financial Officers Act Agencies

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs
U.S. Agency for International Development
Environmental Protection Agency
General Services Administration
National Aeronautics and Space Administration
National Science Foundation
Nuclear Regulatory Commission
Office of Personnel Management
Small Business Administration
Social Security Administration

# AFGE

STATEMENT OF

T. J. BONNER, PRESIDENT
NATIONAL BORDER PATROL COUNCIL
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

ON

PROTECTING OUR EMPLOYEES: PANDEMIC INFLUENZA PREPAREDNESS AND THE FEDERAL WORKFORCE

June 16, 2009

The American Federation of Government Employees appreciates the opportunity to present the views and concerns of the more than 600,000 Federal and District of Columbia workers that it represents regarding the response of various agencies to protect them and the public they serve from infectious diseases. Like most other workers in America, government employees report to an office or other worksite to perform their tasks, and interact with co-workers and/or the public during the course of a normal workday. On June 11, 2009, the World Health Organization declared the H1N1 virus to be a Phase 6 global pandemic—the first in 41 years. At this time of pandemic, many federal workers are at an elevated risk of exposure, affecting our government's ability to provide the vital services that our citizens have come to expect.

Although there is clearly a shared interest between management and labor to safeguard the health of our government's workforce, the adversarial relationship that has poisoned the overall atmosphere for the past eight years has unfortunately spilled over to the health and safety programs as well. The recent H1N1 flu outbreak is no exception. The response of most employing agencies was typical of their responses to other health and safety issues: Slow and inadequate.

The lack of communication is a big part of the problem. There has been little or no communication from agencies' headquarters to the individual workplaces, and the same is true with respect to the communication from those headquarters to the unions. While some information has been available through the media, Federal employees should not have to rely on that limited source. AFGE's members have had a difficult time obtaining useful information about worker protection from their agencies. The information they do get is inconsistent and contradictory, and it is often different from

one part of the country to another. At least one of AFGE's agency bargaining councils felt compelled to issue its own guidance to fill this void.

Many agencies have been dismissive of employees' concerns, showing callous disregard for employees' legitimate worries. Agencies at all different levels in the chain of command need to be attuned to employees' concerns and respond to them quickly and appropriately.

Workers are being deployed to border areas with no protection and with little or no regard for their fears and concerns or whether their failure to act might actually contribute to the spread of the virus. AFGE has been advised that there have been discussions between the public health agencies and the worker health and safety agencies about what respiratory protection is needed, but in the absence of agreement, some workers have gone unprotected, putting both them and the public with whom they interact at increased risk.

At the national level, AFGE has also experienced difficulties getting information. Unions need to be at the table during discussions assessing these situations and dealing with them. Plans to address the H1N1 flu are being developed without the involvement of, or even consultation with, employee representatives. AFGE raised the same issues when agencies were directed to develop pandemic influenza plans and policies after the Severe Acute Respiratory Syndrome (SARS) outbreak more than six years ago.

Only one agency head reached out to AFGE and other Federal employee unions: John Berry, the Director of OPM. Director Berry also ensured that unions were invited to attend a forum OPM hosted on Human Resources Readiness. One agency, the

Department of Transportation, has sent AFGE its guidance to managers and supervisors for review. However, that guidance deals mostly with how managers should handle leave issues.

AFGE's National Office has written letters to the Secretary of the Department of Homeland Security, the Acting Administrator for the Transportation Security Administration, and several other agencies to find out how they plan to deal with the outbreak and pandemic and how they plan to protect their workers. To date, AFGE has received only a few responses. Only one—the Defense Logistics Agency—sent a copy of the Pandemic Influenza Plan. Two others—the Department of the Army and the Department of the Air Force—suggested AFGE locals work with their local commanding officers. The response from TSA did little more than refer to the DHS guidance requiring employees within 6 feet of someone known or suspected to be infected with the H1N1 virus to wear an N95 respirator.

AFGE's agency bargaining councils have also made efforts to learn how their agencies plan to protect workers from on-the-job exposure to the H1N1 flu virus. The AFGE Council of Equal Employment Opportunity Commission Locals has proposed that offices with public contact go to a telephone system until the flu situation abates. Predictably, the agency declined. That Council also proposed testing the agency's Continuation of Operations Plan (COOP). The COOP also includes telework, which OPM is encouraging. Again, the agency declined. This is contrary to OPM guidance on telework and to the recommendation that agencies use this situation as an opportunity to strengthen their telework programs.

AFGE would like to take this opportunity to suggest that the Committee ask agencies about the status of their pandemic flu plans. Federal agencies should be held accountable for their responsibility to safeguard both the health and safety of their employees and to ensure that the government services they provide continue in the event of a flu pandemic—which was declared by the World Health Organization on Thursday, June 11, 2009.

Agencies should also be reminded that working with the union that represents the vast majority of Federal employees on health and safety in general and the flu outbreak in particular has a direct benefit for the Federal Government. AFGE can help reassure Federal employees that their employer, the Federal Government, is in fact doing whatever is necessary to help protect them while they carry out the important functions of our government, and in so doing, help protect the public from misinformation and infection.

Until recently, there was no coordination with worker safety and health protection agencies such as OSHA and NIOSH. OSHA and NIOSH should play an active role in the development and enforcement of worker protection policies. At the same time, the implementation of such policies should facilitate, not complicate, efforts to protect workers.

At this point, the CDC is unable to determine whether any of the confirmed cases of H1N1 flu were contracted from a workplace exposure, even in the healthcare and homeland security sectors, where workplace exposures are highly probable. There needs to be better tracking of work-related H1N1 flu cases.

In addition, OSHA should be directed to work on a standard to protect employees from airborne pathogens, such as H1N1 flu and tuberculosis. The Blood Borne Pathogens Standard does not address the hazards of aerosolized pathogens. Although the spread of H1N1 seems to be slowing down in the United States, we don't know whether it will come back later, nor how virulent it will be. What we do know is that it has not gone away. We need to have a standard that will address the issues that we have faced during the last several months and are likely to face in the near future.

In AFGE's experience, agencies have a history of not taking action unless forced to do so, either by an arbitrator's decision after the union seeks redress through the negotiated grievance procedure or by an OSHA investigation. One example is asbestos exposure. Thirty-seven years after the AFL-CIO filed a petition for an OSHA asbestos standard, our members are still fighting to get their agencies to abate the hazard. Asbestos exposure continues to be a major concern for employees who must work in and around contaminated areas. It seems that most agencies would rather ignore or even cover up these problems than fix them. Even when agencies are forced to act on the abatement, some don't ensure that it is done according to the OSHA asbestos standard. Employees often continue to work in the areas undergoing asbestos removal.

Congress needs to send the message to individual agencies and facilities that the Federal Government is serious about correcting, and not just identifying, problems. This kind of support from the highest levels of agency management will set the tone for health and safety compliance and accountability in individual offices throughout the country. Injuries and illnesses among Federal employees have been far too high for far

too long. It is imperative that everyone works together to bring the numbers of workplace injuries and illnesses down.

Achieving this goal is not a far-fetched proposition. There are already several ways to do it, including national and establishment-level health and safety committees, OSHA partnerships with agencies and unions, and other DOL programs. Ultimately, there also needs to be more enforcement of OSHA standards and regulations in Federal workplaces. Too many agencies are quick to ignore OSHA notices of unsafe and unhealthful conditions because they don't carry a fine. For various reasons, including its own limited resources, OSHA has not done the follow-up to ensure that the hazards are mitigated. AFGE is encouraged by the comments the Secretary of Labor made recently that OSHA is back in the enforcement business. It is also encouraging to see that President Obama's budget proposal includes major increases for OSHA, MSHA, and NIOSH. This demonstrates a major commitment to strengthening health and safety programs and worker protections.

The existing health and safety regulations for Federal agencies contained in 29 C.F.R. 1960 are largely satisfactory, but need to be enforced in order to be effective. Some agencies also have good health and safety programs, and if they were followed at the local level, the Federal Government would actually be the model employer that it should be. When policies and guidance are issued by the headquarters of an agency, they are not always followed at the local level. That needs to change if we are to effectively address health and safety problems.

We should aim for preventive health and safety programs in which employees and employers are actively involved and engaged in identifying workplace hazards and in fixing problems before people become ill or get hurt. Workers and their unions are key in this process. Front-line workers often know best how to abate the hazards.

The importance of encouraging Federal agencies to involve their unions in all aspects of such programs, both at the national and the local level, cannot be overstated. AFGE has a number of very knowledgeable safety representatives and activists who are eager to work with their employing agencies to reduce injuries and illnesses among our members.

The Federal Government has made some good-faith attempts at improving health and safety. Programs such as the Federal Worker 2000 and its successor, Safety, Health, and Return to Employment (SHARE) are good starting points. AFGE remains willing to work on these types of programs and hopes that the new Administration will not only continue, but also expand them soon.

There is also the issue of workers' compensation. Some Federal employees will undoubtedly get sick from H1N1 due to a workplace exposure. These employees need to be taken care of and advised about their right to file for workers' compensation without interference from their employing agency.

For workers with predictable workplace exposure, such as health care workers, Homeland Security employees, and others with direct public contact, a diagnosis of H1N1 flu should be presumptive for workers' compensation purposes. AFGE has already received reports that some TSA managers are telling employees that if they

contract H1N1 flu they would have no way to prove that it was a result of their employment. This type of attitude is unacceptable, and AFGE urges the Committee to ensure that it doesn't permeate throughout the Government. At such a difficult time, employees need help from their agencies, not resistance to the filing of a claim. They should not be denied their right to file or to receive medical attention under workers' compensation.

**Department of Homeland Security (DHS)**

While no Federal agency was fully prepared to respond to the H1N1 flu outbreak, some responded better than others. One of the agencies whose employees were most directly affected by the outbreak had one of the least satisfactory responses. The Department of Homeland Security (DHS) failed to ensure that its various components issued sufficient quantities of personal protective equipment, and failed to promulgate or follow sensible or useful guidance to employees.

As news of the H1N1 flu epidemic spread across the United States, DHS workers began asking their supervisors for information and, more important, direction in responding to this potentially deadly threat. Unfortunately, by and large, the answers to these questions from DHS supervisors were confused, conflicting, or non-existent.

When it finally issued Department-wide guidance, DHS placed itself in violation of the OSHA regulations. Had it continued to allow employees to voluntarily use respirators, they would not have been required to complete medical questionnaires and undergoing fit testing. By mandating the use of respirators in certain situations, however, DHS triggered the aforementioned requirements. This would not have been a

problem if DHS had ensured that those requirements had been completed before the outbreak, but it did not even have the resources in place to complete those requirements for several weeks. Although DHS later rescinded that mandate, it did so after the initial wave of the pandemic in the United States had subsided. This response is completely unacceptable. Employees should never be placed in harm's way without being provided with the necessary personal protective equipment.

**Transportation Security Administration (TSA)**

The situation at one of DHS' components, the Transportation Security Administration, is illustrative of this unsatisfactory response. Beginning the weekend of April 25, 2009, AFGE began to receive phone calls, e-mails, and blog comments from its Transportation Security Officer (TSO) members who expressed grave concerns about the conflicting information and indifferent attitude they were receiving from TSA management to their questions regarding precautions against the H1N1 virus. On any given day, a TSO will come in close contact with hundreds or even thousands of passengers at screening checkpoints, examining their travel documents, photo identification, and belongings. They are in constant contact with surfaces touched by the traveling public, and breathe the same air as infected individuals. Yet, despite this constant exposure to potential health hazards, TSA offered no official guidance to TSOs for more than a week after the H1N1 virus outbreak, and when that guidance was finally issued, TSOs found it to be confusing, illogical, and in conflict with the guidance of both the CDC and DHS Secretary Napolitano.

For example, in Atlanta, Baltimore-Washington, Cleveland, Denver, Detroit, Las

Vegas, Los Angeles, Minneapolis/St. Paul, Oakland/Richmond, and Sacramento, TSOs were denied respirators when requested. At Baltimore-Washington Airport, managers were given respirators, but TSOs were not. TSOs in Denver and Dayton were denied respirators because, according to TSA management, doing so would cause a "public panic." TSOs in Detroit were told masks were only to be given to passengers who exhibited flu-like symptoms. TSA management at Houston Hobby and Dallas/Ft. Worth were told they could only wear a respirator with a doctor's note. Although most airports had gloves available for TSOs, many airports had no sanitizer or other disinfectant for TSO usage. Behavioral Detection Officers at the Omaha airport were told they could only use TSA-approved hand-sanitizers. TSOs at airports providing hand-sanitizer and other disinfectants were not allowed recurrent breaks to either wash their hands or apply the hand sanitizer. Clearly, TSA management at individual airports—and sometimes by shift at airports—was making up the rules as they went along. By this time, the news was widespread that the H1N1 virus had infected thousands of people in Mexico and was spreading throughout the United States. TSOs were left to worry about their health and the health of their families for a week without direction from DHS and TSA management.

As early as April 27, 2009, OPM Director John Berry issued a memorandum entitled "Advice to Federal Employees and Agencies on Preventing the Spread of the Current Flu and maintaining Readiness to Use HR Flexibilities if Necessary," directing "employees who work in locations in which they may come in contact with people carrying the swine flu virus," such as TSOs, to follow precautions such as separating a

traveler who appears unwell to an area away from workers and the public and providing the ill traveler with a surgical mask. The memo specifically required that federal workers keep "a distance of six feet" between themselves and someone who appears ill and to use "N95 respirators" if the "employee must maintain closer contact than the six feet of distance." This information was not officially communicated to TSOs until May 1, a full week after the H1N1 virus was first recognized as a major public health threat.

It took weeks for TSA Acting Administrator Gale Rossides to acknowledge AFGE's letter. Even though AFGE represents more than 10,000 TSOs and has done so for more than eight years, TSA barely informed AFGE of H1N1 developments and never sought its input to protect the 40,000 men and women who serve as America's first line of defense against terrorism in our skies. If TSA had engaged in dialogue with AFGE, it would have heard the following: In keeping with OSHA guidelines, N-95 respirators, gloves, and hand sanitizers should have been made available to any TSO requesting them; shifts should have been rotated to allow TSOs to wash or otherwise sanitize their hands and wipe down their work stations on a recurrent basis; TSA should have provided testing for TSOs who either suspected they were ill or had been exposed to the H1N1 virus; TSOs infected with the H1N1 virus should have been provided with a CA-2 form and granted administrative leave; and TSOs who either had to care for a sick family member or children out of school due to closings should have been afforded the same "human resources policies and flexibilities" as other federal workers as stated in OPM Director Berry's April 27, 2009 memorandum. These are simply common-sense steps that serve to protect the public and workers and their families. Instead of

addressing AFGE's concerns directly, Acting Administrator Rossides' letter merely restated previous OPM guidance. This dismissive attitude toward worker concerns must stop immediately and be replaced with open, timely communication and effective responses to the exposure of TSOs to a virus that has reached pandemic levels.

Out of the many airports where AFGE has members, only TSOs at Covington/Cincinnati, Washington National, Pittsburgh, St. Louis, and San Diego airports reported that the universal precautions of respirators, gloves, and hand sanitizers were put in place immediately following the notice of a public health emergency. It is by sheer luck that this flu outbreak did not evolve into a mass public health hazard, and far too many TSOs and their families were needlessly placed at risk because their employer failed to take simple steps to recognize the situation and protect all involved. TSA has chosen to deny TSOs the rights of other federal workers to have a voice at work through a union that is their exclusive representative. TSO concerns could have been addressed through communications with AFGE as their exclusive bargaining agent, or even addressed beforehand in a collective bargaining agreement. To this end, AFGE calls for TSOs to be granted the same collective bargaining rights and workplace protections as other federal workers and strongly urges DHS Secretary Napolitano to order Acting TSA Administrator Rossides to grant TSOs all rights under title 5, including the right to collective bargaining.

AFGE worked with Federal Workforce, Postal Service and the District of Columbia Subcommittee Chairman Stephen Lynch (D-MA) on an amendment included in the TSA Authorization bill recently passed by the House requiring TSA to establish

policies and permit any TSA employee who wants to wear personal protective equipment during any emergency to do so. Chairman Lynch offered the amendment following the inability of DHS to explain its policies regarding the use of respirators and other protective equipment by DHS personnel during a recent hearing before the subcommittee. Although the bill's passage is a good step forward for TSA workers--including TSOs--until this provision is signed into law TSOs will be forced to deal with unclear and inconsistent personal protection policies. TSOs and other DHS workers must be protected by policy, law, or collective bargaining negotiations requiring DHS to issue policies to ensure that workers are properly trained and fitted with appropriate equipment that is made readily available to them.

**Immigration and Customs Enforcement (ICE)**

In the judgment of AFGE's Immigration and Customs Enforcement Council, the ICE response to the H1N1 virus has been confused, ineffective and generally mismanaged by Assistant Secretary Torres. In fact, the situation is so bad that were it not for the fact that a new Assistant Secretary has been sworn in, the Council was considering the taking of a vote of no-confidence in Mr. Torres. AFGE believes it would have passed unanimously.

Employees of ICE, along with all DHS employees, were justifiably anxious about the potential harm the H1N1 virus might do to them and their families. This was especially true for those employees being asked to work in and near the nation considered "ground zero" for the outbreak—Mexico. Yet no information from ICE was forthcoming until April 29, 2009, the day that the World Health Organization elevated the

Pandemic Influenza phase to Level 5, which amounts to a declaration that a pandemic is imminent and that time for communications and mitigation strategies is short.

Moreover, Assistant Secretary Torres' communication simply repeated the suggestions made in a message from DHS Secretary Napolitano. Employees being deployed to the southern border were not properly briefed on the H1N1 risks or precautions and the Union was not consulted prior to distribution of the Torres memo. Had we been consulted, we would have raised a number of questions that employees were asking and that required answers. To this day, questions about ICE policies on a range of issues, such as the use of protective equipment, medical care for employees and prisoners, remain unanswered.

To illustrate the problem, we offer the Committee this e-mail exchange between an ICE Deportation Officer and his supervisors: (We have deleted the names of the individuals as they are not necessary to make the point.)

**From:**
**To:**
**Sent:** Wed Apr 29 14:12:20 2009
**Subject:** Swine Flu

I have had questions from Union Members about the Swine / H1n1 flu.

Regarding the message from Secretary Torres about the H1n1 flu.

How are we supposed avoid close contact with people when we are processing them and speaking to them in the pods?

The message says stay home if you are sick. So if our officers are exposed to this virus and become sick are they going to be covered by OWCP/ Admin leave and not need to burn their own sick leave? What are the reporting procedures if an officer feels he or she is exposed?

Is the service going to provide employees with additional protective equipment? Gloves and hand sanitizer are available but no one has any masks.

Will this be done as a preemptive measure or is the service going to wait until this is a full blown pandemic?

Deportation Officer

**From:**
**To:**
**Sent:** Wed Apr 29 14:24:22 2009
**Subject:** Re: Swine Flu

The officers can wear masks, which of course will freak out the detainees. If you research the swine flu you will learn that it is the flu. You should use universal precautions, i.e. Wash your hands and cover your sneeze. The chances of dying are not any greater with the swine flu than they are with any other flu.
If you still have questions give me a call in the office tomorrow.

, AFOD

**From:** FOD
**Sent:** Wednesday, April 29, 2009 3:02 PM
**To:**
**Cc:**
**Subject:** FW: Swine Flu

Directions out of HQ are that until there is a confirmed case protective equipment will not be utilized. The other issues will be addressed if and when the situation arises. Thanks.

(Supervisor's name)

The email exchange reveals two important things: 1) The supervisor makes it clear that DHS policy as of April 29, 2009 was not to allow the use of respirators; and 2) that confusion reigned among ICE supervisors on this basic question.

Mr. Chairman, in our view the ICE response to the H1N1 pandemic has been a travesty. When employees needed information and guidance they were simply sent to the CDC website. This is not enough and the AFGE ICE Council has submitted a demand to bargain on the ICE Pandemic Influenza H1N1 Virus Preparedness/Contingency Plan and its impact on ICE employees. The demand to bargain is intended to force the agency to consider a wide range of issues raised by employees over the course of the epidemic's spread around the world. These issues

include: the need for medical screening for employees returning from nations where the risk of exposure is high, the use and distribution of anti-viral drugs where appropriate, employee education efforts on the appropriate use of sick leave and continuation of pay, the proper and appropriate use of personal protective equipment, etc.

We believe that thorough consideration of these issues will greatly enhance ICE's ability to respond to the current outbreak as well as future health care threats. Employees should never again be placed in a situation where they are being required to risk their health and perhaps their lives without being fully apprised of the risks and the efforts to reduce them.

In conclusion, the problems with agencies' responses to occupational illnesses such as H1N1 flu are not new. Agencies are generally slow to respond to health and safety concerns, often citing lack of funding for health and safety improvements. Federal agencies have fostered a culture in which employees are discouraged from reporting safety hazards. Employees are reluctant to report injuries and/or illnesses for fear of being targeted with retaliatory actions.

AFGE urges the Subcommittee to hold Federal agencies accountable for providing a safe and healthy working environment and to protect their employees. Having in place effective workplace health and safety programs with active worker and union participation will help us better prepare for the next wave of this flu or the next disease. AFGE also urges the Subcommittee to ensure that workers who become ill as a result of their exposures on the job receive compensation consistent with existing statutes.

AFGE is prepared to work with the Subcommittee, employing agencies and OSHA to make the Federal Government a safer and more healthful workplace. This will not only improve morale, but will also allow governmental agencies to continue to carry out their vital missions during this and future pandemic events.

This concludes my statement. I will be happy to respond to any questions.

STATEMENT OF COLLEEN M. KELLEY
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

ON

PROTECTING OUR EMPLOYEES: PANDEMIC INFLUENZA PREPAREDNESS AND THE FEDERAL WORKFORCE

BEFORE

THE SENATE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA OF THE U.S. SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

JUNE 16, 2009

Chairman Akaka, Ranking Member Voinovich, distinguished members of the Subcommittee; I would like to thank the Subcommittee for the opportunity to provide this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents thousands of Transportation Security Officers (TSOs) at the Department of Homeland Security's (DHS) Transportation Security Administration (TSA) and 22,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists (CBP AS) and trade enforcement specialists who are stationed at 327 land, sea and air ports of entry (POEs) across the United States. TSOs, CBP Officers and CBP AS make up our nation's first line of defense in the wars on terrorism, drugs, contraband smuggling, human trafficking, agricultural pests, and animal disease while at the same time facilitating legitimate trade and travel.

Employees on the frontlines of our nation's borders and airports are exposed to many threats, the newest being exposure to the H1N1 influenza. On Wednesday, April 22, 2009, the first reports of swine flu exposure in the U.S. became public and the press began reporting on a swine flu outbreak originating in Mexico. This outbreak has raised serious concerns about how the federal government creates and communicates policies to protect the health of frontline personnel. I applaud the Subcommittee for holding this timely hearing.

Policies to mitigate health risks for federal employees should vary according to the type of work being done and the potential for exposure, in this case, to the H1N1 influenza. The general guidelines, which include staying out of crowds, do not adequately address situations where an employee's entire work shift requires him or her to be in close contact (within six feet) of literally thousands of travelers, which is the case for Transportation Security Officers, Customs and Border Protection Officers and Agriculture Specialists.

Specific guidance must be developed and communicated clearly and in writing to these employees who are at increased risk of exposure. It is unacceptable and shocking that more than seven weeks after the onset of the so called swine flu and despite repeated urging from NTEU and others, there is still no comprehensive guidance in place to protect the health of these frontline employees.

Shortly after the swine flu outbreak became public, NTEU started receiving questions from our members at ports of entry around the country. In numerous locations, personal protection equipment (PPE), including gloves and N-95 respirators, was distributed to employees. At JFK Airport in New York, for example, distribution to CBP employees began on April 25th and continued through April 26th with little guidance. In the afternoon of the 26th employees were initially told they were only to wear the respirators if in contact with an ill individual. Later they were told they were not to wear the respirators at all, so as not to alarm the public or offend passengers.

On April 26th Homeland Security Secretary Napolitano sent a message to DHS employees working near the Southwest border. That message stated: "CDC recommends that a distance of six feet should be maintained between all employees and someone who appears ill. The use of N95 masks are suggested if an employee must maintain closer contact than the six feet of distance."

On April 28th, a CBP spokesperson was quoted in CNSNews.com saying, "CBP officers and Border Patrol agents are provided personal protection gear which they may utilize at their discretion".

On April 30th a DHS spokesperson was quoted in a media report saying, "the Department of Homeland Security has not issued an order saying our employees cannot wear masks."

Transportation Security Officers at Dallas/Fort Worth Airport were issued masks on April 26th and on the 28th told they could not wear them unless they were dealing with a traveler exhibiting swine flu symptoms. NTEU wrote to TSA Acting Administrator Gale Rossides asking that TSOs be allowed to wear masks since they were constantly within six feet of travelers and were not expert in determining whether a traveler was ill. To date, we have not received a reply.

According to a press report in the Washington Times on May 2nd, a TSA PowerPoint presentation was distributed to TSA employees on April 29th that stated: ". . . the routine wearing of protective masks by TSA personnel in the workplace is not authorized . . . In addition to not being medically necessary, the masks interfere with normal [transportation security operation] duties and hold the potential for unnecessarily alarming the public ..."

NTEU requested a copy of the PowerPoint presentation, but was told it was not available for public distribution.

As soon as questions began coming in to NTEU from our members around the country as to whether they could wear respirators or masks, NTEU began trying to find out what the current policy was and urged that these employees be allowed to wear the masks if they felt their health was at risk. We contacted CBP, TSA and DHS. DHS was saying it had not issued a department wide order prohibiting the voluntary wearing of masks, but CBP and TSA were clearly enforcing such a prohibition.

Some statements from DHS that appeared in the press indicated that managers who were preventing the wearing of masks were misinformed about the actual policy. The idea that a few managers were misinformed is clearly not accurate. NTEU heard from many, many employees from around the country and attached to this testimony are affidavits from some of them relating instances of supervisors demanding that they remove respirator masks. Many of them are disturbingly threatening and many include comments indicating the reason was fear of alarming the public. I trust this Committee will ensure that the employees providing these affidavits will be free from any negative impact.

On April 30th, DHS issued Interim Guidance stating that: "Employees who work closely with (either in contact with or within 6 feet of) people specifically known or suspected to be infected with the H1N1 virus **must** wear respiratory protection." (Emphasis Added.) The guidance did not address the question of the voluntary donning of masks. In addition, the Interim Guidance noted it was being released "as an interim measure until the Office of Personnel Management provides comprehensive guidance for all federal employees." OPM has since indicated it does not intend to provide such government wide guidance, stating that on

questions such as this, affecting narrow segments of the workforce, decisions are up to the individual agency.

On May 1st, I wrote to DHS Secretary Napolitano and OPM Director Berry urging that written guidance be issued immediately clarifying that these frontline employees would be allowed to wear masks at their discretion. On May 5th CBP Acting Commissioner Ahern sent out an employee message reiterating the mandatory use of respirators when employees were in close contact with people known or suspected to be infected with the H1N1 virus. The message included no reference to the voluntary wearing of respirators despite NTEU's repeated requests to CBP for such guidance.

On May 8th, I sent a second letter to Acting TSA Administrator Rossides and a letter to Acting CBP Commissioner Jayson Ahern asking again for written guidance that these employees be allowed to wear respirators/masks at their discretion.

On May 14, 2009, I testified before the House Committee on Oversight and Government Reform Subcommittee on the Federal Workforce, Postal Service and District of Columbia about the Department of Homeland Security's (DHS) refusal to allow Customs and Border Protection (CBP) and Transportation Security Administration (TSA) employees to wear a respiratory mask, if they so choose, to help protect them from infection from the swine flu virus.

At the hearing, Subcommittee Chairman Stephen Lynch (D-MA) offered to work with NTEU on legislation if this situation was not quickly corrected by the Department. On Friday, May 29th, the Department of Homeland Security Under Secretary for Management, Elaine Duke, issued an updated guidance regarding the use of Personal Protective Equipment (PPE), as it applies to working in close proximity to persons exhibiting symptoms of the H1N1 virus. But again, the guidance failed to provide a clear and reasonable policy allowing for the donning of a mask at your discretion in situations not involving close contact with an apparently infected person. On June 1st, I sent a letter to DHS Under Secretary Duke seeking clarification of the May 29th guidance.

On June 4th, the House of Representatives passed H.R. 2200, the TSA Authorization Act. On the House floor, Representative Lynch offered an amendment to provide that any TSA personnel may voluntarily wear personal protective equipment (including surgical and N95 masks, gloves, and hand sanitizer) during any emergency. NTEU worked closely with Representative Lynch and strongly supported this amendment. The Lynch amendment was passed by voice vote and became part of the bill. The bill now goes to the Senate for consideration.

Unfortunately, H.R. 2200 was limited to TSA related provisions; therefore, the amendment does not address the discretionary use of PPE by CBP Officers and CBP Agriculture Specialists at the ports of entry who also daily come into close contact with thousands of travelers transiting into the U.S. NTEU will work with Congress to include similar language to the Lynch amendment in any upcoming legislation that includes CBP jurisdiction.

NTEU appreciates the Subcommittee holding this hearing as the first step to address this issue in the Senate. We continue to hope that DHS will issue clear guidance on this issue so that legislation, which can take a long time, is not necessary.

As NTEU tried to address the concerns of its members at CBP and TSA, we learned that other components within DHS and other federal agencies had conflicting policies. The president of the Border Patrol union testified at the House hearing that Border Patrol employees, a division within CBP that operates on land borders between ports of entry, were voluntarily donning masks without objection from supervisors. And NTEU was advised by the Internal Revenue Service that our members there were free to wear masks at their discretion.

For the last seven weeks NTEU has tried to answer several simple questions.

1) Who is responsible for the policy prohibiting the voluntary wearing of masks at CBP and TSA?

OPM says it is up to each agency. DHS says it has no Department wide policy. CBP and TSA say verbally that voluntary wearing of masks is prohibited, but will not put it in writing. OSHA says there is no policy to prohibit the voluntary wearing of masks and CDC says it is not recommended at this time in low risk situations, which in our view, does not cover the situations our frontline employees are in.

2) Why has the policy not been issued in writing?

To this day, neither DHS, nor CBP, nor TSA have issued written guidance addressing the wearing of masks when any employee is not in proximity to an apparently affected individual. NTEU members who requested the policy in writing were told they would not be getting it.

3) What is the rationale for prohibiting the voluntary wearing of masks?

No one has been willing to address this question. In the course of attempting to answer this question, we have heard several possibilities, such as the respirators/masks aren't effective. That makes no sense, since when working in close contact with an ill traveler, it is recommended that the traveler and required that the employee don masks.

We have heard that the masks aren't appropriate unless the wearer has undergone a medical evaluation ensuring he or she is fit to wear the mask and the mask is properly fitted. Clearly, the masks would be worn in an emergency situation even if those criteria were not met, but, regardless, most NTEU members have done the medical evaluation and been fitted.

That leaves us with no other possible reasons than a desire to not alarm the public as was apparently stated in the TSA PowerPoint presentation and has been cited by numerous local supervisors. In our view, avoiding unnecessarily alarming the public is not totally without merit. However, it is one factor that must be weighed against the potential health risks to

employees, their families and others. It is difficult to weigh the competing factors when there is a refusal to even acknowledge them.

As stated earlier, the duties of our members who work at ports of entry require them to spend their entire workday in crowded conditions. The Transportation Security Officers in Miami International Airport clear approximately 3,300 passengers on each shift, over half this number are international travelers, at JFK it's roughly 9,000 passengers per checkpoint per shift and at O'Hare it's between 9,000 and 12,000 per checkpoint per day. Both TSA and CBP employees perform duties such as reviewing travel documents, wanding passengers, questioning them and sometimes patting them down. All of these duties require being in close contact with travelers.

The NTEU members who have been most affected by this issue work on the land border with Mexico and at airports that clear international travelers, including many entering the country from Mexico. The U.S. Government has advised against unnecessary travel to Mexico and all of the first cases of H1N1 flu in the U.S. involved people who had recently traveled from Mexico. Those who work on the land border saw their Mexican counterparts, often just steps away, wearing masks as they performed their duties. Everyone who crossed the Mexican border in either direction saw Mexican border officials wearing masks. Would it have unduly alarmed them to see some U.S. border officials also wearing masks?

To my knowledge, NTEU members at ports of entry have followed the directives of their local managers and worked diligently through this swine flu outbreak, even if they have requested the ability to wear protective masks for reasons of great concern to themselves and their families. These protectors deserve better. They deserve to know what the policies are. They deserve to know who is responsible for making those policies. They deserve to know the reasons for the policies. They deserve to have the opportunity to provide information to the policymakers and in this instance they need the policy to be changed to reflect a rational balance that gives more weight to the importance of these employees' ability to protect their health than to the potential for public alarm.

As the spring flu season ends in North American, the number of H1N1 victims has tapered off, but the U.S. Government expects a resurgence of this flu strain in the fall and continues to prepare for the upcoming 2009-2010 winter flu season. The issue of the voluntary use of personal protective equipment must be addressed, if not by the agency, then by Congress before the flu season begins again. The House has made a first step by passing the TSA authorization bill with the Lynch amendment. NTEU looks forward to working with the Senate to do the same and to expand this amendment to cover the CBP Officers and CBP Agriculture Specialists that inspect thousands of travelers daily at the ports of entry.

Thank you again for holding this important hearing.

**AFFIDAVIT**

I, Ryan K. Imamura, do hereby state:

1. I am employed by the U.S. Bureau of Customs and Border Protection, Department of Homeland Security, in the position of CBP Officer. I am currently assigned to the port of Las Vegas at McCarran International Airport.

2. My assigned duties include processing of inbound passengers to ensure compliance of U.S. customs and immigration laws. In the course of these duties I regularly come into frequent contact with members of the traveling public from Mexico. These contacts routinely require interaction within six feet of these travelers.

3. CBP employees at my Port were generally instructed that we were not authorized to wear protective masks unless we were within six feet of an individual who was actively exhibiting flu-like symptoms. These instructions were issued orally at muster to CBP employees by Port Director Debbie Sanders, on or about April 28, 2009.

4. On May 1, 2009, I sent an e-mail message to Ms. Sanders through my respective chain of command. The subject was a request for discretionary use of an N95 respirator mask as means of minimizing my chance of contracting H1N1 and in turn infecting my wife, 20 month old daughter and my newborn son. Also included were references to CDC disseminated information that individuals infected with H1N1 could be contagious while not showing outward signs of being sick.

5. Approximately, one hour later, CBP Chief Antonio Gonzalez, came and verbally informed me that Port Director Sanders denied my request. I asked Chief Gonzalez if I would be receiving a written response and he declined. I noted the time and immediately sent an e-mail message to NTEU stewards Monique Jacobs and Ken Eagan regarding the management response. I also sent a copy to Chief Gonzalez so he would have an opportunity to correct anything I may have misinterpreted. To date, Chief Gonzalez has neither challenged nor corrected my recollection of this encounter.

6. CBP management is gambling with the health and lives of its employees and their families. We are a group of dedicated, vigilant and hardworking professionals that love our jobs and our country. All we ask in return is the right to protect ourselves and our families while we protect America.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: R Imamura Dated: 05/11/2009

# AFFIDAVIT

I, Maria M. Seda Franqui, do hereby state:

1. I am employed by the U.S. Customs and Border Protection, Department of Homeland Security, in the position of Customs and Border Protection Agriculture Specialist. I am currently assigned to the Laredo, Texas Port of Entry, a land port across the border from Mexico.

2. My assigned duties include processing vehicles, passengers, and pedestrians inbound to the United States from Mexico to ensure compliance with, among other laws, U.S. Agriculture, Customs, and Immigration laws. In the course of performing those duties, I regularly come in contact with members of the traveling public inbound from Mexico. The performance of my regularly assigned duties as a CBP Officer requires that I routinely maintain contact within six feet of individuals arriving from Mexico.

3. On or about April 27, 2009, at approximately 1700 hours I was assigned to and working the secondary inspection area at the Laredo Port of Entry. I was in the process of inspecting a vehicle and its passengers, and writing a penalty. A young woman (age 14-16 years), one of the passengers in the vehicle I was inspecting began vomiting. Despite the obvious illness, Supervisory Customs and Border Protection Officer Francisco Molina ordered me to remove the protective mask I was wearing. He said he had decided that the woman was sick because she was pregnant and that I did not need to wear the mask unless the passenger showed signs of sickness. The woman's mother had also placed an ice-pack over the woman's head at all times I was present with her. I understood that I had to obey the orders of the supervisor, and that is why I removed the protective mask.

4. I desired to wear the mask because of concerns about contracting swine flu.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: Maria M. Seda Franqui Dated: 05/08/2009

**AFFIDAVIT**

I, Lilia Pineda, do hereby state:

1. I am employed by the U.S. Bureau of Customs and Border Protection, Department of Homeland Security (hereinafter referred to as "CBP") in the position of CBP Officer. I am currently assigned to the Otay Mesa Port of Entry, a land border.

2. My assigned duties include processing inbound passengers, vehicles and pedestrians to ensure compliance with U.S. Customs and Immigration laws. In the course of performing those duties, I regularly come in contact with members of the travelling public inbound from Mexico. These contacts routinely require contact within six feet of those individuals.

3. On or about April 28, 2009, I was working at Otay Mesa, Primary Lane 4, and decided to wear an N-95 respirator mask. I made this decision for several reasons. I have been fitted for an N-95 respirator mask. (I had also been trained to fit other CBP Officers for the N-95 respirator mask.) I was encountering individuals who were coming from Mexico City and other cities in central Mexico, where the swine flu is prevalent. Also, I had a cold at the time and felt I was especially vulnerable to getting another illness. I was also concerned about exposing other family members to the swine flu, including my infant nephew, whom I see regularly.

4. At approximately 9:30 a.m., while wearing the N-95 respirator mask while working, I was approached by Chief Kait who instructed me to remove my mask. I explained to him that I had taken the training for respirator fit test trainer, that I felt it was a health and safety issue for me to wear the mask, that I had been fitted for a respirator mask, etc. Despite my objection, Chief Kait refused to allow me to wear the mask. He repeatedly asked me angrily with his hands at his waist, "Are you going to comply or do you want to go home sick." I did comply.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: _____ Dated: 05/08/09

**AFFIDAVIT**

I, Kenneth Bagan, do hereby, state:

1. I am employed by the U.S. Bureau of Customs and Border Protection, Department of Homeland Security, in the position of Customs and Border Protection Officer. I am currently assigned to the Las Vegas Port of Entry, an airport.

2. My assigned duties include processing inbound passengers, to ensure compliance with U.S. customs and immigration laws. In the course of performing those duties, I regularly come in close contact with members of the traveling public arriving from Mexico. These contacts routinely require contact within six feet of those individuals.

3. On Monday April 27 2009, I was scheduled to work Primary Inspection Booth 8 from 0930 until 1730. After I set up in the booth to begin processing passengers, I donned protective gloves and the N-95 mask. The first two flights of the day were from Mexico, and one of those was from Mexico City, the epicenter of the swine flu outbreak. During the second flight, Mexicana flight 996 arriving from Mexico City, Chief Gonzalez came to my assigned booth and blocked the isle so no new passengers could approach. The other supervisor, Ernie Campbell blocked the booth door behind me. I was processing a passenger at the time and Chief Gonzalez interrupted the inspection, ordering me to remove the mask. He stated, " TAKE THE MASK OFF NOW, YOU ARE NOT AUTHORIZED TO WEAR A MASK." I finished processing the passenger, removed the nitrile gloves, used hand sanitizer to clean my hands and then removed the N-95 mask.

4. After I removed the mask, Chief Gonzalez told me not to wear a mask while processing passengers. He told me that the only time I could wear a mask was if the person standing in front of me was showing obvious signs of the flu, as had been explained in a muster briefing. I told Chief Gonzalez that if I waited for someone to hack (cough) on me, it would be too late for the mask to protect against exposure. Additionally, I advised him that according to the CDC, a person could have the flu from one to seven days without showing any symptoms, but would be contagious within 24 to 48 hours after becoming infected. He again ordered me to not wear any protective masks until flu symptoms were being displayed by the passenger in front of me.

5. CBP employees at my POE were generally instructed that we were not authorized to wear protective masks unless we were within six feet of an individual who exhibited flu-like symptoms. These instructions were issued verbally at multiple musters by Chief Gonzalez, Supervisors Ernie Campbell, Frank Hoopes, Olivia Dorsey and Port Director Sanders.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: _____ Dated: 05/08/2009

AFFIDAVIT

I, Samuel Santiago, do hereby state:

1. I am employed by the U.S. Customs and Border Protection, Department of Homeland Security, in the position of Customs and Border Protection Officer. I am currently assigned to the Laredo, Texas Port of Entry, a port on the land border with Mexico.

2. My assigned duties include processing vehicles, passengers, and pedestrians inbound to the United States from Mexico to ensure compliance with, among other laws, U.S. Customs and Immigration laws. In the course of performing those duties, I regularly come in contact with members of the traveling public inbound from Mexico. The performance of my regularly assigned duties as a CBP Officer requires that I routinely maintain contact within six feet of individuals arriving from Mexico.

3. On April 28, 2009, and again on April 30, 2009, U.S. Customs and Border Protection management instructed me not to wear a protective mask and to remove the protective mask that I had been wearing.

   On April 28, 2009, at around 0740 I arrived at Bridge 1, Laredo POE to begin my assigned shift (0800-0400). I inquired what preventive measures were being taken to avoid exposure to the Swine Flu, to which I was informed that face masks were available for use. I opted to wear one. A few minutes later Supervisor Esteban Morales communicated by radio that the use of face masks was not authorized. I asked to see the policy in writing, as I was led to believe that the masks were provided by the agency for safety reasons, to be used by all employees. After this incident, I went into the CBP Net website which indicated that the use of masks was to be at the employee's discretion if official duties were to be carried out at a distance of less than 6 feet of other individuals. I proceeded to pass this information on to Supervisor Morales, who forwarded it to Chief CBP Officer Adriana Arce.

   On April 30, 2009, at approximately 0930, I was working on primary when Supervisor Juan Garza approached me and indicated that my presence was requested at a meeting with Chief CBP Officers Arturo Ramirez and Adriana Arce. I immediately complied, and when I reached the office, Supervisors Herminia Garcia, Jorge Ruiz, Esteban Morales, and Juan Garza were present. Two other CBP Officers, Miguel Medrano and Carlos Garcia, had also been called in to the meeting. Chief CBP Officer Arce and the other managers told me we were not authorized to use the face masks as protection against the risk of exposure to the Swine Flu, but that we could keep them within reach, in case we encountered an infected person. I requested the order in writing, to which Chief Arce replied that she would not put anything in writing. Chief Arce became very upset and said she could proceed to take disciplinary action against me.

   The Chief indicated that the public was not to be alarmed, as it would create a negative economical impact, that the Swine Flu was only a virus, and there was no reason to be concerned. I responded that I was not a doctor, and had no medical training, so how was

I supposed to know when a person might be ill. I was also told to escort any person who was ill to another area, far from the rest of the traveling public. I wanted to know what that area was, or where it was, since we had not received instructions on how to properly process an ill person.

I asked if I was expected to pay medical expenses out of my own pocket if I were to become ill due to the Swine Flu, to which the managers indicated that the agency would not be responsible for any of my expenses, even though they would be directly responsible for any exposure and subsequent illness.

4. I desired to wear the mask because of concerns about contracting swine flu.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: Samuel Santiago Dated: 05/08/2009

**AFFIDAVIT**

I, Monique Jacobs, do hereby state:

1. I am employed by the U.S. Bureau of Customs and Border Protection, Department of Homeland Security (hereinafter referred to as "CBP") in the position of CBP Officer. I am currently assigned to the Las Vegas Port of Entry, an airport.

2. My assigned duties include processing inbound passenger to ensure compliance with U.S. Customs and Immigration laws. In the course of performing those duties, I regularly come in contact with members of the travelling public inbound from Mexico. These contacts routinely require contact within six feet of those individuals.

3. On or about May 1, 2009, I sent an email to Chief Antonia Gonzalez, and requested that I be afforded the option of wearing a protective mask while processing passengers to protect me and my family against the H1N1 flu. I asked for a YES or NO answer to my question. What prompted my email was an incident that occurred earlier in the day, where a concern arose about whether an inbound passenger had been infected. By the time the passenger had been identified numerous CBP Officers had been physically within six feet of the passenger.

4. While on my nutrition break at 1728, I was approached by Chief Gonzalez. He requested that I turn off the television because he needed to speak with me. He stood in front of me - on the other side of the table - while Supervisor Hoopes stood behind me in front of the door. Chief Gonzalez then told me that in accordance with the directive, unless a passenger appears to be ill, I am not allowed to don a mask and that this was as close to in writing as I was going to get. I later confirmed in writing that based upon this conversation, I understood that I was being denied the right to don a mask unless I have visual signs of an ill passenger.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: _____ Dated: 5/8/09

M. Jacobs

**AFFIDAVIT**

I, Scott Cottingham, do hereby state:

1. I am employed by the U.S. Bureau of Customs and Border Protection, Department of Homeland Security (hereinafter referred to as "CBP") in the position of CBP Officer. I am currently assigned to the Otay Mesa Port of Entry, a land border.

2. My assigned duties include processing inbound passengers, vehicles and pedestrians to ensure compliance with U.S. Customs and Immigration laws. In the course of performing those duties, I regularly come in contact with members of the travelling public inbound from Mexico. These contacts routinely require contact within six feet of those individuals.

3. On or about May 8, 2009, I was working at the Otay Mesa POE on primary and decided to wear the N-95 respirator mask. I have received the necessary training and fitting to wear the mask. I decided to wear the mask, because many of the individuals I was in contact with were coming inbound from central Mexico, where there have been many reported cases of swine flu. I was instructed to remove the N-95 respirator mask and told that I was not to return to working primary until I took the mask off.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: _____ Dated: MAY 10 2009

Scott T. Cottingham

**BACKGROUND**
**PROTECTING OUR EMPLOYEES: PANDEMIC INFLUENZA PREPAREDNESS AND THE FEDERAL WORKFORCE**
**JUNE 16, 2009**

## Background

Senators Akaka and Voinovich requested that GAO examine the following issues for its report:

1. The extent to which federal agencies have reported plans to protect their workforce should an influenza pandemic occur and have reported identifying essential functions, other than first response, that cannot be accomplished remotely in the event of a pandemic;
2. The plans selected agencies have established for certain occupations performing essential functions other than first response; and
3. The opportunities to improve federal agencies' planning enabling them to protect their workforce while maintaining their essential functions in the event of a pandemic.

In this report, which resulted from a survey of 24 different federal agencies covered by the Chief Financial Officers Act of 1990[1], GAO recommends that the Homeland Security Council ("HSC") direct the Secretary of Homeland Security to monitor and report to the Executive Office of the President on the readiness of agencies to continue their operations while protecting their employees in the event of a pandemic. GAO also recommends that Congress consider requiring a similar report from the Department of Homeland Security ("DHS"). GAO's report is discussed in greater detail below.

## Pandemic Influenza

An influenza pandemic occurs when a new subtype of influenza that has not previously circulated in humans emerges and starts spreading as easily as normal influenza – by coughing and sneezing. Generally, influenza pandemics are caused by influenza viruses circulating in animals that adapt to spread between humans. In recent years, there has been significant concern that the H5N1 avian influenza virus will mutate to allow it to spread easily between humans. To date, H5N1 only rarely infects humans, but has a high mortality rate. The vast majority of avian influenza viruses, however, do not infect humans.[2]

When a new virus begins circulating the human immune system has no pre-existing immunity. This makes it likely that people who contact pandemic influenza will experience more serious

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[1] 31 U.S.C. § 901.

[2] *Ten things you need to know about pandemic influenza*, World Health Organization, www.who.int./csr/disease/infuenza/pandemic10things/en/.

disease than caused by normal influenza. When a pandemic virus strain emerges, 25 to 35 percent of the population could develop clinical disease, and a substantial fraction of these individuals could die.[3] The projected direct and indirect health costs alone (not including disruptions in trade and other costs to business and industry) for a moderate pandemic (similar to those in 1957 and 1968) with no interventions have been estimated to approach $181 billion.[4]

It is most likely that a pandemic will come in waves, each lasting a number of months. Once a fully contagious virus emerges, its global spread is considered inevitable. The pandemics of the previous century encircled the globe in 6 to 9 months, when most international travel was by ship. Given the speed and volume of international air travel today, it is probable that the virus will spread more rapidly, possibly reaching all of the continents in 3 months or less. In an affected community, a pandemic outbreak could last about 6 to 8 weeks, and at least two pandemic disease waves are likely.[5] The World Health Organization, which coordinates global pandemic preparedness and response efforts, estimates that the number of resulting deaths from a pandemic influenza outbreak could range from 2 million to 7.4 million.[6]

**Effects of a Pandemic Influenza on the Federal Workforce**

Worker protection strategies are vital to sustain an adequate federal workforce during a pandemic influenza. According to the June 2009 GAO report, during the peak of an outbreak of a severe influenza pandemic in the United States, an estimated 40 percent of the total workforce could be unable to work due to illness, care of ill family members, or the fear of infection from co-workers.[7] As pandemic influenza presents unique challenges to the coordination of the federal effort, joint and integrated planning across all levels of government is essential to ensure that detailed plans and response actions are produced to ensure, to the fullest extent possible, that the federal workforce continues to perform its essential functions.

**Preparedness of Federal Agencies**

**A. Pandemic Plans, Essential Functions, and the Notification of Employees**

According to the June 2009 GAO Report, although all 24 federal agencies reported that they were engaged in planning for pandemic influenza to some degree, several agencies reported that they were still developing their pandemic plans.[8] Moreover, GAO found that several agencies are at the beginning stages of the development of practices to protect the federal workforce in the

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[3] *Pandemic Influenza Plan*, Department of Health and Human Services

[4] *Id.*

[5] *Pandemic Influenza Plan*, Department of Health and Human Services.

[6] *Ten things you need to know about pandemic influenza*, World Health Organization, www.who.int./csr/disease/influenza/pandemic10things/en/index.html.

[7] GAO, Influenza Pandemic: *Increased Agency Accountability Could Help Protect Federal Employees Serving the Public in the Event of a Pandemic*, GAO-09-404.

[8] *Id.*

event of a pandemic. All of the agencies surveyed, with the exception of the Office of Personnel and Management (OPM), the National Science Foundation, and the Department of Housing and Urban Development, required their components (component agencies, field or regional offices, or other operating divisions) to develop pandemic plans.[9]

One important aspect of pandemic influenza preparedness is for federal agencies to determine which functions can be performed at remote locations through telework. This is important because many employees likely will not report to work during a pandemic. Of the 24 agencies surveyed, 19 reported that they have identified essential functions at both the department and component levels that *cannot* be continued through telework in the event of pandemic influenza.[10] In the case of OPM and the United States Agency for International Development, it was determined that *all* essential functions could be performed remotely.[11] Five agencies reported that they had not identified essential functions that cannot be performed remotely.[12]

Another important step in continuing the work of federal agencies during a pandemic influenza is to identify the employees who perform essential functions and notify them of their work options. Of the 24 agencies surveyed, 18 reported that they have notified some or all employees in department-level essential functions that they may be expected to continue operations during a pandemic, and 16 agencies reported doing so for employees in component-level essential functions.[13] GAO also found that pandemic coordinators of 3 agencies were unaware of whether their employees had been notified at all that they may be required to work during a pandemic influenza.

**B. Social Distancing and Telecommunications Infrastructure**

Federal employers may choose to implement "social distancing" strategies to their functions during a pandemic influenza. "Social distancing" generally means that people should limit close contact with others when possible. According to the June 2009 GAO Report, 18 of the agencies surveyed were considering low-cost social distancing strategies, such as planning for restrictions on meetings and gatherings and canceling unnecessary work-related travel. Because telework may be used for social distancing, it is important that agencies be in a position to ensure that their telecommunications infrastructures are capable of handling telework arrangements. Only one agency of the 24 agencies surveyed - the National Science Foundation - stated that it has tested its information technology infrastructure to a great extent to determine if it was capable of handling a telework arrangement in the event of a pandemic influenza.[14] Five of the agencies

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[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

surveyed by GAO acknowledged that they had tested their information technology to little or no extent.[15]

### C. Keeping Federal Employees Informed of Policy and Options Prior to an Outbreak

In the event of a pandemic influenza, it will be vital that federal employees understand polices and requirements of their agencies, and the alternative work arrangements available to them. GAO found that 21 of the 24 agencies surveyed reported making information available to their employees on how human capital policies and flexibilities will change in the event of a pandemic outbreak.[16] This information was provided on internal websites, through staff briefings, and at town hall meetings. Only one agency – the Department of Housing and Urban Development - reported sharing information on this issue with the labor organizations representing its employees.[17] Three of the agencies surveyed by GAO – the Department of Commerce, the General Services Administration, and the Social Security Administration – reported that they have not made any information available to employees.[18]

DHS recently issued guidance to all of its employees regarding the use of personal protective equipment ("PPE"). Specifically, this guidance, issued on May 29, 2009, provided that employees may *voluntarily* use personal protective equipment in "high risk category of exposure" occupational settings.[19] The May 29, 2009, DHS guidance replaced the interim guidance provided by DHS on April 30, 2009, which *required* employees to wear personal protective equipment in high risk occupational settings.[20] The guidance does not address whether employees may voluntarily choose to wear PPE in non-high risk occupational settings.

The H1N1 flu outbreak this spring demonstrated some of the existing problems with respect to the Federal agencies' ability to provide clear and concise pandemic guidance to their employees. Transportation Security Officers ("TSOs") received conflicting information from Transportation Security Administration management regarding whether they were permitted to wear personal protective equipment at work. TSOs working at some airports were denied PPE when they requested it, whereas TSOs working at other airports were told that they could don PPE if they

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[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Memorandum from Elaine C. Duke to all employees regarding the Personal Protective Equipment*, Department of Homeland Security, May 29, 2009.

[20] *Memorandum from Elaine C. Duke to all DHS employees regarding Interim Guidance on Personal Protective Equipment*, Department of Homeland Security, April 30, 2009 ("In addition, the following employees MUST wear Personal Protective Equipment . . . Employees who work closely with (either in contact with or within 6 feet of) people specifically known or suspected to be infected with the H1N1 virus must wear respiratory protection.") (emphasis in the original).

had a note from a doctor. Organizations representing these employees have stated that the employees do not know their agencies' policies or what rights they have to protect themselves in the workplace and that uniform guidance is needed.

**Improvements that can be made with Respect to the Preparedness of Federal Agencies**

GAO's review demonstrates that while all of the agencies are taking some steps to protect their workers in the event of a pandemic influenza, the progress is uneven, and some agencies are only in the earlier stages of developing their pandemic plans. Although HSC's *Implementation Plan* includes action items aimed at developing and tracking progress relative to the national response for pandemic preparedness, *there is no mechanism in place to track the progress of federal agencies' workforce preparedness efforts*. According to White House Counsel, the HSC plans to take on the monitoring role through its agency pandemic plan certification process and report to the Executive Office of the President.[21] It is unclear, however, whether this report will be made available to Congress.

According to GAO, any monitoring process "should ensure that federal agencies are making progress in developing their plans to protect their workforce in the event of a pandemic and have the information and guidance they need to develop operational pandemic plans."[22] As noted above, GAO recommends that Congress require reports from DHS so that it can monitor progress agencies are making to be ready for a pandemic and implementation of pandemic plans.

[21] GAO, Influenza Pandemic: *Increased Agency Accountability Could Help Protect Federal Employees Serving the Public in the Event of a Pandemic*, GAO-09-404.

[22] *Id.*

**Post-Hearing Questions for the Record**
**Submitted to Rear Admiral W. Craig Vanderwagen,**
**Assistant Secretary for Preparedness and Response,**
**Department of Health and Human Services (HHS)**
**From Senator Daniel K. Akaka**

**"Protecting Our Employees: Pandemic Influenza and the Federal Workforce"**
**June 16, 2009**

1. **Medical uncertainty may contribute to inconsistent agency policies on employees' rights and responsibilities during an emergent disease outbreak and inconsistent advice to employees.**

   a. **Please explain the interagency process for providing medical advice to inform workforce guidance.**

**Answer:**

Each agency is required to have a pandemic influenza plan that addresses how it will reduce the impact of an influenza pandemic on its workforce and the delivery of its mission- critical function. However, the implementation of each agency's plan is based on available knowledge of the particular virus. With a new virus, such as the 2009-H1N1, it can take some time to understand the nature of the virus and the epidemiology to then be able to provide sound medical advice.

Since 2005, the website www.panflu.gov (now www.flu.gov) has been the central repository for information about planning for an influenza pandemic. In addition, since the emergence of 2009-H1N1 in the spring, CDC has continually updated its website to disseminate information about the 2009 H1N1 virus as it became available. As we understand more about this virus, we will disseminate the medical information through a variety of other channels, including the www.flu.gov, http://www.cdc.gov/h1n1flu/, and the Chief Human Capital Officers Council, and among safety and health professionals.

   b. **Please provide your assessment of how well the process worked during the initial H1N1 outbreak and any recommendations you have for improving the process.**

**Answer:**

There is often a conflict between wanting to communicate with employees in an emerging situation, and wanting to wait to ensure the communication provides the most accurate, scientifically informed information possible. During the initial 2009 H1N1 outbreak, HHS/CDC was working hard to understand the 2009-H1N1 influenza virus,

and was sharing the best available information as well as explaining the limits of what was known at the time with the public.

In the absence of an official USG-wide medical advice for federal employees, many departments and agencies rushed to provide their own advice to their own employees; in some cases this information was not well informed. Other departments and agencies were initially silent on the issue, since they waited several days to try to provide fully vetted information and advice to their employees.

There is often a long delay in providing workforce guidance to federal employees, since general guidance for the public may have to be tailored to include implications for the statutes and regulations that govern federal employee employment law. One recommendation to improve the process could be to develop tailored versions of workforce guidance for federal employees in sync with general workforce guidance produced by the federal government, so special considerations for federal employees can be included from the start. An alternative could be to, immediately share general workforce-related guidance that HHS/ CDC or other federal agencies publish with Departments and Agencies, for USG-wide distribution. If there are special considerations for federal employees, a disclaimer could be added stating that a piece of guidance or advice is being provided for the U.S. population at large and special implications for federal employees are not included. This disclaimer could direct readers where to find how the general medical advice may apply to them.,

Since the initial H1N1 outbreak, specific guidance has been published to assist the Federal workforce. *Preparing for the Flu: A Communications Toolkit for the Federal Workforce* was published by the U.S. Department of Health and Human Services' and the U.S. Office of Personnel Management. To assist agencies and employees in their ongoing efforts to prepare for and manage the upcoming 2009-2010 flu season, the toolkit provides the Government's latest flu recommendations, communications, resources and guidance for Federal employees and supervisors on the variety of human resources flexibilities available to employees who may become ill with the flu (or have sick family members). The toolkit contains questions and answers, helpful fact sheets, posters for workspaces, sample emails, and additional Web resources that will help the Federal workforce prepare for flu season.

2. **Once a vaccine is produced to combat the novel H1N1 virus, what role will HHS play in ensuring that the vaccine is distributed by agencies to their workers?**

**Answer:**

Secretary Sebelius, and John Berry, the Director of the Office of Personnel Management, co-signed a memo to the heads of Executive Departments and Agencies on September 30, 2009, encouraging Federal agencies to provide vaccine and intensively promote vaccination against the 2009 H1N1 flu as well as seasonal flu (available here: www.opm.gov/pandemic/memos/h1n1_20090930.asp) They are both committed to ensuring the Federal workforce has access to both seasonal and H1N1 vaccines as recommended by the Advisory Committee on Immunization Practices (ACIP)[1], and ask that all federal employees all do our part to follow these recommendations laid out as the best strategy for the Nation.

Along with other major employers and good partners, many Federal departments and agencies will offer voluntary vaccination against the 2009 H1N1 flu for Federal employees, following the ACIP recommendations being used nationally, and covering the remaining employee population thereafter. Federal departments and agencies may register with HHS / CDC to receive vaccine and become a vaccine provider for employees. Alternatively, they may use existing or new agreements with HHS' Federal Occupational Health or HHS's Supply Service Center at Perry Point, MD, which are both coordinating with CDC to receive vaccine for existing or new customers. In addition, HHS and other federal agencies also work with the Department of Veterans Affairs (VA) for the vaccination of Federal health care and emergency medical services personnel at VA medical centers across the Nation. To avoid double counting of Federal employees and to ensure equitable distribution, vaccine provided to Federal agencies will be deducted from the relevant States' shares.

All Federal employees, except those with a severe allergy to eggs, are encouraged to get vaccinated against the 2009 H1N1 flu. In the initial 2 or 3 weeks of the 2009 H1N1 vaccination program, limited vaccine may be available nationwide, and specific target groups and high-risk subgroups have been prioritized to receive the first available doses. Thereafter, the 2009 H1N1 vaccine will be produced on a continual basis and be available to all.

Federal vaccination sites can help alleviate the anticipated burden on State and local health departments, especially in areas with large concentrations of Federal employees.

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[1] The Advisory Committee on Immunization Practices (ACIP) provides recommendations to the U.S. Department of Health and Human Services' (HHS) Centers for Disease Control and Prevention (CDC) for the prevention and control of vaccine-preventable diseases in the U.S. civilian population. ACIP recommended that specific groups receive the earliest doses of 2009 H1N1 vaccine; these recommendations can be viewed here: www.cdc.gov/mmwr/preview/mmwrhtml/rr58e0821a1.htm

Some Federal employees may choose to receive the 2009 H1N1 vaccine through their personal health care provider or other private mechanism, as they can for seasonal flu vaccine, depending on States' distribution plans. Any vaccine not used by Federal agencies will be made available to the States.

Vaccine shipments will be phased to ensure that Federal employees are offered vaccine in the same manner as the civilian population. The initial shipments of vaccine to the Federal Government should be targeted to health care and emergency medical services personnel and others in the highest-risk subgroups. As more vaccine becomes available, other employees in the original ACIP target groups – and, ultimately, all employees – should be encouraged to get vaccinated.

**Post-Hearing Question for the Record**
**Submitted to Rear Admiral W. Craig Vanderwagen,**
**Assistant Secretary for Preparedness and Response,**
**Department of Health and Human Services (HHS)**
**From Senator Lindsey Graham**

**"Protecting Our Employees: Pandemic Influenza and the Federal Workforce"**
**June 16, 2009**

1. As you know, containment of an H1N1 pandemic virus will be very difficult. Experts note that antivirals are most effective if administered in the first 48 hours of symptoms. Thus, the demand for antivirals, especially at the beginning stages of an outbreak, could increase dramatically. In anticipation of this increased demand, most State governments and hundreds of companies have stockpiled antivirals or pre-positioned them so that they can be quickly distributed to infected populations.

   In addition, several federal agencies have taken steps to stockpile antivirals to protect their workforces in the event of a widespread outbreak. As the Department of Health and Human Services is the agency tasked with the implementation of the National Strategy for Pandemic Influenza, including providing guidance on antiviral stockpiling for federal agencies, state governments and the private sector, it is critical that HHS have plans in place to protect its own workforce during a pandemic influenza outbreak.

   For this reason, please describe any plans HHS has in place to protect its own workers.

   **Answer:**

   Secretary Sebelius has shared *Preparing for the Flu: A Communication Toolkit for the Federal Workforce* (www.flu.gov/professional/federal/workplace/index.html#prepare) with all HHS employees. This toolkit contains detailed information about steps HHS employees and other members of the federal workforce should take if they or someone they work with gets the flu.

   This guide, which is available on flu.gov, also provides information and communication resources to help federal agencies and employees implement recommendations from CDC in planning and responding to the 2009–2010 Influenza Season.

Furthermore, in the near future the Department of Health and Human Services, along with many other federal departments and agencies, will offer employees voluntary vaccination for both the seasonal flu and the 2009 H1N1 flu. HHS employees were encouraged by the Secretary to be on the lookout for upcoming HHS announcements about where and when they can receive both seasonal and H1N1 vaccine at their local worksite or within their community. Information on how vaccine will be distributed to the federal workforce is available from *Policy of Immunization of Federal Workers with 2009 H1N1 and Seasonal Flu Vaccines (www.opm.gov/pandemic/memos/h1n1_20090930.asp)*.

**a. What policies are in place at HHS for the use of antivirals as a prophylaxis or preventative medicine for HHS workers?**

**Answer:**

HHS workforce protection measures for 2009-H1N1 flu will follow guidance published by the HHS/ CDC for the U.S. population at large. As HHS/ CDC learned more about the new 2009 -H1N1 flu virus, the Department published updated, interim guidance for the 2009-2010 flu season describing when medical professionals should prescribe antiviral drugs in September 2009. This guidance emphasizes using antiviral drugs to treat people who are at highest-risk of influenza-related complications.

The new CDC guidance also states that post-exposure antiviral chemoprophylaxis (antiviral drugs given after exposure to prevent infection) can be considered for health care personnel, public health workers, or first responders who have had a recognized, unprotected close contact exposure to a person with confirmed, probable, or suspected 2009 H1N1 or seasonal influenza during that person's infectious period. Consistent with the new CDC guidance, antiviral drugs that HHS is purchasing for workforce protection could be used for members of the workforce who fit the above description.

If and when occupational exposures occur among its applicable workforce, HHS will also promote an alternative to the use of antiviral drugs to prevent influenza infection mentioned in CDC's guidance, which is to counsel health care personnel, public health workers and first responders with occupational exposure to the virus about the early signs and symptoms of influenza, and advice them to contact their own healthcare provider immediately for evaluation and possible treatment should signs or symptoms appear.

**b. What guidance is HHS providing to other agencies or the private sector on antiviral prophylaxis use?**

**Answer:**

In September 2009 HHS/CDC published updated, interim guidance for the 2009-2010 flu season describing when medical professionals (whether they are federal or not) should prescribe antiviral drugs. This guidance emphasizes using antiviral drugs to treat people who are at highest-risk of influenza-related complications. The new HHS/ CDC guidance also states that post-exposure antiviral chemoprophylaxis (antiviral drugs given after exposure to prevent infection) can be considered for health care personnel, public health workers, or first responders who have had a recognized, unprotected close contact exposure to a person with confirmed, probable, or suspected 2009 H1N1 or seasonal influenza during that person's infectious period.

With the exception of health care related occupational exposures mentioned above, HHS/CDC currently discourages the use of antiviral drugs to prevent illness in healthy children or adults based on potential exposure in community, school, camps or other settings.

**c. Does HHS currently have an adequate antiviral stockpile to protect its own workers? If not, what steps are needed to ensure that HHS has an adequate stockpile of antivirals for its workforce?**

**Answer:**

Congress appropriated funds to HHS to purchase, and if appropriate, stockpile antiviral drugs for employee protection for general pandemic influenza purposes. HHS is in the process of purchasing antivirals for use to protect its health care workers and other critical members of its workforce from applicable occupational exposures to 2009 H1N1 influenza, and other possible influenza pandemics that may develop.

**Post-Hearing Questions for the Record**
**Submitted to Elaine C. Duke, Under Secretary for Management**
**Assistant Secretary for Preparedness and Response,**
**Department of Homeland Security (DHS)**
**From Senator Daniel K. Akaka**

**"Protecting Our Employees: Pandemic Influenza and the Federal Workforce"**
**June 16, 2009**

1. **In the event of an influenza pandemic:**

   a. **Please describe the manner in which the Federal Emergency Management Agency will coordinate the distribution of personal protective equipment (PPE) from DHS stockpiles to DHS employees throughout the country.**

**Answer:**

Distribution of PPE to DHS employees to address current H1N1 events is a coordinated effort between the DHS Office of Health Affairs (OHA), the Federal Emergency Management Agency (FEMA), and the DHS Office of the Chief Administrative Officer (OCAO)/Occupational Safety and Environmental programs (OSEP). OHA has an existing intra-agency agreement (IAA) with FEMA Transportation by which OHA may request FEMA to pick up PPE from existing stockpiles (located in the Cumberland Logistics Center (CLC)) and deliver PPE to Components. FEMA then utilizes existing contracts, logistics expertise, and the e-Tasker system to select the best carrier for each distribution.

FEMA Logistics Management Directorate has been an excellent partner with OHA in moving PPE to the Components already (including shipping to U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), U.S. Secret Service (USSS), and the U.S. Coast Guard (USCG)). They request that PPE be moved utilizing the IAA originates from a Federal official within OHA.

   b. **Please explain how DHS will determine what locations and which employees are in the greatest need of PPE.**

**Answer:**

Decision makers rely on the Components to demonstrate a justifiable need for PPE based upon job functions, mission assignment, mission essential personnel and pandemic exposure risk assessment. When PPE needs arise, a request is submitted to the Pandemic Influenza Working Group (or directly to the Office of Health Affairs (OHA) Component

Services Division). This Working Group is facilitated by OHA and has members representing many offices and divisions throughout DHS (PPE needs are also communicated to the Office of the Chief Administrative Officer (OCAO)). When a Component requests PPE distribution, a designated team of OCAO and OHA personnel review the Component need justification, the existing PPE stockpile, the needs of other Components, and the overall inventory picture. The team then makes a decision regarding distribution.

2. **Once a vaccine is produced to combat the novel H1N1 virus, what role will DHS play in ensuring that the vaccine is distributed by agencies to their workers?**

**Answer:**

DHS is responsible only for the DHS workforce and the prioritization of DHS employees for vaccination purposes based upon risk, job function and essential mission area. DHS has determined, by count and location, the medical providers and Emergency Medical Service (EMS) personnel within the Department that are available to aid in [or provide for] the proper and efficient distribution of H1N1 vaccine to DHS first phase employees. By the Advisory Committee on Immunization Practices (ACIP) guidelines, first phase employees are medical personnel. Once first phase employees receive the vaccine, DHS will provide vaccine for all other employees according to guidelines established by the Centers for Disease Control and Prevention (CDC) and the Advisory Committee on Immunization Practices (ACIP). DHS will utilize a combination of intrinsic medical personnel from the Department of Health and Human Service's Federal Occupational Health and the Department of Veterans Affairs to vaccinate employees.

3. **What recommendations do you have for mitigating the harm that could occur if an influenza pandemic occurs this fall and agencies have not completed their pandemic planning?**

**Answer:**

Due to the ability of influenza viruses to change, it will always be difficult for agencies to "complete" pandemic planning activities. Pandemic planning at all levels should be crafted with inherent flexibility so that appropriate mitigation measures can be taken based on the specific characteristics and impact of the disease. Pandemic planning is an ever-evolving process. Depending on the specific presentation of the virus and the resulting threat, mitigation measures will have to be adjusted based on the science of the

disease the Nation faces. As evidenced by the current H1N1 situation, many planned response activities were not implemented since (1) the 2009 H1N1 influenza virus continues to be relatively mild in the severity of illness it causes and, (2) the first cases occurred in North America, which negated the potential disease containment effects of passenger screening at international ports of entry.

To best mitigate the impact of a pandemic, there must be clearly defined, accurate guidance readily available. To this end, HHS and DOL issued guidance on 10/14/09 on use of personal protective equipment in healthcare settings. The guidance, entitled "Interim Guidance on Infection Control Measures for 2009 H1N1 Influenza in Healthcare Settings, Including Protection of Healthcare Personnel," can be found at http://www.flu.gov/professional/hospital/infectioncontrolguidance.html. All agencies pandemic plans must be flexible and agencies must keep up to date with the latest guidance from the CDC as knowledge of a pandemic evolves.

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