CIVIL SERVICE REFORM I: NPR AND THE CASE FOR REFORM

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

OCTOBER 12, 13, AND 25, 1995

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CIVIL SERVICE REFORM I: NPR AND THE CASE FOR REFORM

THURSDAY, OCTOBER 12, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM & OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:05 a.m., in room 2247, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Morella, Bass, Moran, and Holden.

Ex officio present: Representative Clinger.

Staff present: George Nesterczuk, staff director; Ned Lynch, professional staff member; Caroline Fiel, clerk; Cedric Hendricks, minority professional staff; and Elisabeth Campbell, minority staff.

Mr. MICA. Good morning. I would like to call this meeting of the House Civil Service Subcommittee to order. I would like to start our proceedings today by making an opening statement. We have some of the other Members arriving shortly, but the minority has said that it's fine to proceed, and we want to keep this hearing on track this morning.

Again, I extend a welcome to everyone, especially this morning, because this is the first of a series of hearings in which we will consider reform of our civil service system. Congress conducted a comprehensive review of the Government's personnel management practices before adopting the Civil Service Reform Act of 1978. Over the past 17 years, that law has guided our Federal personnel policies.

With that act, we saw the institution of the career Senior Executive Service, the rise and collapse of a "Performance Management and Recognition System" for middle managers, and the increased use of an appeals system that many observers believe impedes the ability of managers to improve the performance of employees.

We saw the repeal of the Hatch Act restrictions on political activities of Federal employees and emphasis on diversity in hiring, retention, promotion, and termination of Federal employees that some say seriously undermines merit considerations.

With the downsizing that's currently underway and public pressure to reexamine the role of our Federal Government, we have an obligation to review what we have done and to identify where we are, what we have failed to do, and where our civil service system is going from here.

In that regard, the National Performance Review, chaired by Vice President Gore, has written the following: "The Federal human resource administrative system contains major impediments to efficient and effective management of the work force."

Unfortunately, many of those inefficiencies result from an apparatus that is really unaccountable to taxpayers and elected officials. Often we see just a plain waste of human and public resources. That's one of the reasons why I think it's important that we look at where we've been, what we are doing, and where we're going.

It's critical that we continuously strive to improve our Government's personnel management practices. I really, seriously welcome proposals to correct the inefficiencies that we talked about and the ineffectiveness that has developed over the years from our various laws and rules. We have a charge and a responsibility to reduce the size and scope of Government. Citizens demand that we get a decent return on their tax dollars.

At the same time, we must redirect Government agencies to address changing priorities as we head into the 21st century. American business and industry have undergone dramatic changes in the past decade. Now, our Federal Government and civil service system must also respond to changing times.

With the Government Performance and Results Act of 1993, the Congress affirmed that we need performance measures for Federal agencies that better reflect the results of employees' work. With the recent movement away from the multi-step approach toward a "pass-fail" system of rating Federal employees, we have effectively abandoned efforts to use a measurement system to improve the performance of the 98 percent of Federal employees who get, as phrased, "minimally successful" or better ratings every year.

We need to do things not merely differently, but better. Federal managers simply do not need more discretion, as welcome as that may be. They need laws, regulations, and procedures that support their efforts when they attempt to remove poor performers. They do not need an endless appeals process that ties responsible managers in red tape and subverts the process.

The overwhelming majority of Federal civil servants are good performers and hard-working individuals, and most of them have, I believe, adequate pay and an adequate benefits system. We need better methods of recognition and rewards for outstanding performers. We need a civil service system that provides full and fair opportunities for veterans who have served honorably and ably. We need to reverse the culture that sees veterans' preference in conflict with merit and diversity objectives.

This Congress has begun an unprecedented review of the role of our Federal Government's activities. We must not forget the people who work in and administer these programs. This series of hearings will help us to make certain that Federal employees are managed in a common sense way that helps to contribute to their future effectiveness and efficiency. We cannot let this period of change go by without seizing the opportunity to inject additional accountability into public administrations.

Our hearings will draw upon a wide range of expertise and experience. We must ensure that any civil service reforms are responsive to real problems and provide real solutions.

I want to divert from my opening text a little bit here to say that I recently participated in a ceremony with Lou Holtz, who is coach of Notre Dame. In thinking about it this morning, I remembered him speaking about one of the problems in the past few decades. Lou Holtz told the group that one of the problems, he felt, with our society was the attitude in our country recently has been that people talk only about rights and entitlements and not about responsibilities and obligations.

That made a big impression on me. I believe it's important today, as we consider changes in our civil service system, that we incorporate changes that encourage responsibility, require accountability, allow flexibility, reward and promote good performance, and allow us to eliminate poor performers.

As I grew up, civil servants were respected and admired for their commitment to serve the public. I think if we make positive changes in the system, we can enhance the standing and respect of our Federal work force.

However, growing something new requires a great deal of attention, work, and effort. As I thought about our task in the months ahead, while walking to work this morning, I picked up some acorns and brought them in for our Members. Too bad the other side isn't here yet, but we'll give them some, too.

Our mission here is a little bit like that of these acorns. We can take that acorn, just squash it, and nothing would come of it; and that's what we could do with civil service reform, just step on it and wipe it out. But I think that if we planted that seed, and we nourished the seed, and we worked together, we could build something out of it.

I think we have that opportunity. And the little acorns I saw falling this morning, and that I collected here, symbolize that we have an opportunity to build something and nourish something if we work together in it. So I brought in that little personal touch this morning and wanted to open these hearings in that light.

Everyone in this room is a welcome participant in the process. I don't have any fixed ideas, other than my general philosophy, and we're all willing to listen and work with you to do what is necessary to make these important and needed reforms.

This morning, we have our first panel, which includes Mr. John Koskinen, Deputy Director of the Office of Management and Budget, who chairs the President's Management Council. He is accompanied by Mr. Jim King, Director of the Office of Personnel Management, the agency, of course, with the lead responsibility.

This panel also includes Mr. Mortimer Downey, Deputy Secretary of Transportation, and Mr. Walter Broadnax, Deputy Secretary of Health and Human Services. These two agencies are among the biggest employers in Government, and they are facing substantial change agendas in the coming years. For those reasons, they reflect well the human resource management questions facing us. We hope that they can provide good answers to some of the questions that we have today.

Our second panel this morning will include Mr. Nye Stevens, Director of the Federal Management Workforce Issues at the General Accounting Office, and two former Directors of the Office of Personnel Management, Mr. Don Devine and Mrs. Constance Horner, who

directed OPM during the Reagan administration and can attest to OPM's capacity to help or hinder management of an agenda for political change.

[The prepared statement of Hon. John L. Mica follows:]

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Opening Statement of the Honorable John L. Mica
Chairman, Subcommittee on Civil Service
Hearing on Civil Service Reform
October 12, 1995

Good morning, and welcome to this hearing, which is the first in a series to consider reform of our Civil Service System. Congress conducted a comprehensive review of the government's personnel management practices before adopting the Civil Service Reform Act of 1978. Over the past seventeen years that law has guided our federal personnel policies.

With that act, we saw the institution of the career Senior Executive Service, the rise and collapse of a "Performance Management and Recognition System" for middle managers, increased use of an appeals system that many observers believe impedes the ability of managers to improve the performance of employees, the repeal of Hatch Act restrictions on the political activities of federal employees, and an emphasis on diversity in hiring, retention, promotion, and termination of federal employees that seriously undermines merit considerations. With downsizing and the public pressure to re-examine the role of the federal government, we have an obligation to review what we have done and to identify where we are, and what we have failed to do with our Civil Service System. The National Performance Review, chaired by Vice President Gore, has written, "The federal human resource administrative system contains major impediments to efficient and effective management of the workforce." Unfortunately, many of those inefficiencies result in an apparatus that is unaccountable to taxpayers and elected officials. Often it is just a plain waste of human and public resources.

It is critical that we continuously strive to improve our government's personnel management practices. I welcome serious proposals to correct the inefficiencies and ineffectiveness that have developed from laws or rules. We have a charge and responsibility to reduce the size and scope of government. Citizens demand that we get a decent return on their tax dollars. At the same time, we must redirect government agencies to address changing priorities as we head into the twenty-first century. American business and industry have undergone dramatic changes in the past decade. Now, our federal government and civil service system must also respond to changing times.

The administration has been actively "reinventing" personnel practices, but many of the changes make me wonder whether there's been more ceremony than substance. OPM abolished the SF-171, and now allows federal agencies to accept resumes as applications for federal employment. However, resumes for federal employment are required to include much more detail than would ever be provided to a private employer, and OPM has not issued guidance about the acceptability of different forms of resumes. As a result, both applicants and reviewers might be more uncertain about employment screening than before the highly-publicized change.

OPM staged a press conference that consigned the Federal Personnel Manual to the dumpster. While the spotlight was focused on the abolition of the formal manual, the Office of Personnel Management provided twelve "operating manuals" to personnel specialists in federal agencies. In theory, agencies have more discretion in their application of federal personnel laws and regulations. In practice, we may be using the old book in new binding.

With the Government Performance and Results Act of 1993, the Congress affirmed that we need performance measures for federal agencies that better reflect the results of employees' work. With the recent movement away from the multi-step approach towards a "pass-fail" system of rating federal employees, we have effectively abandoned efforts to use a measurement system to improve the performance of the 98 percent of federal employees who get "minimally successful" or better ratings every year.

We need to do things not merely differently, but better. Federal managers do not simply need more discretion, as welcome as that might be. They need laws, regulations, and procedures that support their efforts when they attempt to remove poor performers. They do not need an endless appeals process that ties a responsible manager in red tape and subverts the process.

The overwhelming majority of federal civil servants are good performers with an adequate pay and benefits system. We need better methods of recognition and rewards for outstanding performers. We need a civil service system that provides full and fair opportunities for veterans who have served honorably and ably. We need to reverse the culture that sees veterans preference in conflict with merit and diversity objectives.

This Congress has begun an unprecedented review of the role of our federal government's activities. We must not forget the people who work in and administer these programs. This series of hearings will help us to make certain that federal employees are managed in common sense ways that contribute to their future effectiveness and efficiency. We cannot let this period of change go by without seizing the opportunity to inject additional accountability into public administration.

Our hearings will draw upon a wide range of expertise and experience. We must ensure that any civil service reforms are responsive to real problems and provide real solutions.

Our first panel this morning includes Mr. John Koskinen, Deputy Director of the Office of Management and Budget, who chairs the President's Management Council. He is accompanied by Mr. Jim King, Director of the Office of Personnel Management, the agency with lead responsibility in these areas. This panel also includes Mr. Mortimer L. Downey, Deputy Secretary of Transportation, and Mr. Walter Broadnax, Deputy Secretary of Health and Human Services. These two agencies are among the biggest employers in government, and they are facing substantial change agendas in the coming years. For those reasons, they reflect well the human resource management questions facing us. We hope that they can provide good answers to those questions.

Our second panel this morning includes Mr. Nye Stevens, Director of Federal Management and Workforce Issues at the General Accounting Office, and two former directors of the Office of Personnel Management. Mr. Donald Devine and Mrs. Constance Horner directed OPM during the Reagan administration, and can attest to OPM's capacity to help or hinder the management of an agenda for political change.

We welcome all of you this morning, and look forward to the benefit of your insights and experience as we tackle these issues.

Mr. MICA. We welcome all of our panelists, the audience this morning, and my fellow Members. With those comments, I will yield to Mr. Clinger, the chairman of our full committee, for any opening comments.

Mr. CLINGER. No opening statement, Mr. Chairman. I just commend you for holding this initial hearing and what I'm sure are going to be very productive hearings on how we can reform the whole civil service system. I welcome all of our participants who are here this morning and look forward to your testimony.

Mr. MICA. And Mr. Bass.

Mr. BASS. Thank you, Mr. Chairman. I have a written statement, which I will submit for the record.

Mr. MICA. Without objection, it will be made part of the record.

[The prepared statement of Hon. Charles F. Bass follows:]

STATEMENT ON CIVIL SERVICE REFORM
BY CONGRESSMAN CHARLES F. BASS

Mr. Chairman, I thank you for calling this important hearing on civil service reform. Today we will be listening to the Administration's position as set out by the September 1993 Accompanying Report to the National Performance Review. The NPR identified several shortcomings in the current system and pledged the Administration to undertake a comprehensive review and reform.

Some of the subsequent suggestions I find reasonable and encouraging. For instance, the requirement that agencies link individual performance plans to objectives established under the Government Performance and Results Act seems like a step in the right direction, though I have concerns about NPR's intention to repeal managers' authority to remove employees for poor performance. I am similarly concerned that the Office of Management and Personnel's decision to scrap the SF-171 application form has resulted in little real flexibility and simplification for agencies.

Beyond this, I do not believe that the NPR has sufficiently studied issues that will surface as a result of government downsizing. As this subcommittee will be concerning itself with the practical ramifications of cutting the Federal workforce, I find this omission troubling.

I thank the Chairman.

Mr. MICA. Mr. King, Mr. Koskinen, Mr. Broadnax, and Mr. Downey, as is customary with our panel, we will swear you in.

[Witnesses sworn.]

Mr. MICA. Thank you again. I want to welcome to our panel a long-running participant and let him start our proceedings this morning. Mr. King, we're going to start with you and hear your comments.

Mr. KING. Thank you, Mr. Chairman.

Mr. MICA. We don't have our usual timer working, but George, here, will get your attention.

Mr. KING. He could throw acorns at us if we run over.

Mr. MICA. Yes. He is going to get your attention when you get beyond 5 minutes or come and grab you by the collar and pull you away. Welcome, Mr. King, and we'll let you proceed.

STATEMENTS OF JAMES B. KING, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT; JOHN KOSKINEN, DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, AND CHAIRMAN, PRESIDENT'S MANAGEMENT COUNCIL; WILLIAM BROADNAX, DEPUTY SECRETARY, DEPARTMENT OF HEALTH & HUMAN SERVICES; MORTIMER L. DOWNEY, DEPUTY SECRETARY, DEPARTMENT OF TRANSPORTATION

Mr. KING. Thank you very, very much, Mr. Chairman and members of the subcommittee. It's a pleasure to appear before you with a lot of my distinguished colleagues to discuss the ways which we can improve the Federal civil service.

I think, consistent with your acorn analogy, those of us from New England understand that the Indians used the white oak acorn, harvested it, turned it into gruel, and were able to immediately eat it once you took the outer husks and the tanning crust off.

For those of us who just needed a wood lot, we would wait patiently for 20 years, and we would have good, hard wood, once we seasoned it for a year, to keep us warm and to cook with.

And for some who wanted to enjoy both the good life, if you would, we could have shade for a lifetime and then still harvest the branches and the acorns to meet the other two needs. I would like to think that that might be the approach that we see in looking at the civil service and the reforms that, I think we all agree, have to come.

Since the passage of the original Civil Service Act in 1883, we have seen a steady evolution of a system that has become more fair, more open, more professional, and more solidly based on merit principles. Among the milestones in this evolution have been the leadership of Theodore Roosevelt, the rapid growth of Government during the Second World War, the passage of the Civil Service Reform Act of 1978.

That act, which created the Office of Personnel Management, set out to define a modern management system that would continue to protect the merit system while placing increased emphasis on personnel programs, improved management, and greater productivity. It was a historic reform, but the needs of 1978 may not be the needs of today.

The 1990's are a time of rapid economic, social, and technological change, and that change must be reflected in how our Government

does business, and that's why this particular hearing is so appropriate, Mr. Chairman.

The report of the National Performance Review has focused renewed attention on performance management, customer service, greater cooperation between workers and management, increased flexibility, and individual accountability. There is much Government can learn from the recent revolution in the private sector management, yet we recognize there are basic differences between Government and the private sector.

Government has to build a much broader consensus than any business to guarantee, and then it has to guarantee, equity. It has to work in a constitutional context, and it must be guided, in many cases, by more than the profit motive. For these and other reasons, Government cannot follow the private sector's lead in every instance, as you know so well.

We at OPM are deeply concerned with certain principles that must endure in this time of change. One is the merit system, which today, more than ever, must be protected. To that end, OPM has created a new Office of Merit Systems Oversight and Effectiveness, which reports to the Director and has new leadership and a very clear mission.

For many years, our oversight focus was on direct intervention to solve specific problems. Now, we'll be focusing much more on system-wide issues in order to improve the total human resources management program.

Another basic principle is veterans' preference, and in my context, you will hear me speak of veterans' preference in totality, that it is commingled in my mind, as I believe it is everyone at OPM, as part of merit principle. So that commitment can't be changed, and we don't see that happening.

Merit protection and veterans' preference are bedrock values. There can and will be no hint of a compromise in this area on our part. In that connection, I might comment on a recent article by one expert, who charged that the Clinton administration seeks to weaken veterans' preference, and who has also called for an end of the administration's program of employee-management partnership.

As to veterans' preference, nothing could be further from the truth. As a matter of fact, Mr. Chairman, we work closely with veterans' organizations, and although they can well speak for themselves, I believe you'll find they consider us a loyal ally, and I hope that really understates our relationship.

What is interesting to note, that the percentage of veterans hired in the last few years has gone up by almost 6 percent, so that substantial improvement has occurred in that area and, we hope, will continue.

Let me say, as chair of the National Partnership Council, that Federal employee-management relations had deteriorated during the last decade. Partnership has been our way of rebuilding trust and understanding that are needed to increase productivity in an era of downsizing. As you know, Mr. Chairman, partnership has also been extremely important in the most successful private sector companies. It's well written about and well reported, and its successes are certainly there.

Today's OPM is committed to playing a leadership role in governmentwide change. We intend to maintain the old principles of merit, but in new ways, based on accountability and results, and not necessarily on conformity to outdated, unresponsive processes.

The command and control style of management, once dominant in both the private and public sectors, had to give way to new methods that conform with the reality of today's change.

We are proud of our progress in eliminating red tape, including the Standard Form 171 and the 10,000-page Federal Personnel Manual. We have eliminated most civil service examination registers, and instead, agencies announce most vacancies as the need occurs.

We have moved, by regulatory and nonregulatory means, toward action, toward greater flexibility in hiring, classification, and performance management, but still maintaining central oversight. We have shifted authority from personnelists to managers, enabling the managers to make personnel decisions and to accept accountability. The old process-oriented system enabled managers to avoid responsibility. Now, they are free to seize it.

We are restructuring our job classification system to reduce the number of categories and make them more flexible. The old system was too rigid. Employees were paid on the basis of their length in the system, not their actual value to it. We want an employee's pay to reflect his or her actual contribution to the Nation's business. It's the knowledge-based jobs market that we're so familiar with in other areas.

We have implemented an automated state-of-the-art examining system and a high-tech job information system and have helped move agencies toward the goal of a paperless personnel office. We're moving to that route, Mr. Chairman. We haven't achieved it yet.

We have developed new selection tests to enable agencies to assess their applicants and also to predict their success in training and identify those best qualified for promotion in some areas and judge suitability for law enforcement jobs. We have provided leadership and technical assistance and training to help agencies with all aspects of downsizing, including buyouts, early retirement, and career transition programs.

Mr. Chairman, in your letter, you asked me to identify the major strengths and weaknesses of our current personnel laws. To sum up, their major strength is that they enforce the merit system and ensure equity, and their major weakness is they are too complex and rigid and tend to make agencies process-oriented rather than result-oriented.

We will be glad to work with you and work on correcting those weaknesses, Mr. Chairman, and I want to thank you.

[The prepared statement of Mr. King follows:]

STATEMENT OF
HONORABLE JAMES B. KING, DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

at an oversight hearing on

CIVIL SERVICE REFORM

October 12, 1995

Mr. Chairman, and members of the subcommittee, it's a pleasure to appear before you, along with my distinguished colleagues, to discuss ways we can improve the Federal civil service.

Since the passage of the original Civil Service Act, in 1883, we have seen the steady evolution of a system that has become more fair, more open, more professional, and more solidly based on merit principles.

Among the milestones in this evolution have been the leadership of President Theodore Roosevelt, the rapid growth of Government during the Second World War, and the passage of the Civil Service Reform Act of 1978.

That act, which created the Office of Personnel Management, set out to define a modern management system that would continue to protect the merit system while placing increased emphasis on personnel programs, improved management, and greater productivity.

It was a historic reform, but the needs of 1978 are not the needs of today.

The 1990s are a time of rapid economic, social, and technological change, and that change must be reflected in how our Government does business.

The report of the National Performance Review has focused renewed attention on performance management, customer service, greater cooperation between workers and management, increased flexibility, and individual accountability.

There is much Government can learn from the recent revolution in private-sector management. Yet we recognize that there are basic differences between Government and the private sector.

Government has to build consensus, to guarantee equity, to work in a Constitutional context, and to be guided by more than the profit motive. For these and other reasons, Government cannot follow the private sector's lead in every instance.

We at OPM are deeply concerned with certain principles that must endure in this time of change.

One is the merit system, which today more than ever must be protected. To that end, OPM has created a new Office of Merit Systems Oversight and Effectiveness, which reports to the Director and has new leadership and a new mission.

For many years, our oversight focus was on direct intervention to solve specific problems. Now we'll be focusing much more on systemwide issues in order to improve the total human-resource-management program.

Another basic principle is veterans' preference, a commitment that cannot and will not be changed.

Merit protection and veterans' preference are bedrock values. There can and will be no hint of compromise.

OPM is committed to playing a leadership role in Governmentwide change. We intend to maintain the old principles but in new ways, based on accountability and results, and not necessarily on conformity to outdated process.

The command-and-control style of management, once dominant in both the private and public sectors, reflected an earlier era and had to give way to new methods that conform with the reality of change.

We are proud of our progress in eliminating red tape, including the Standard Form 171, and the 10,000 page Federal Personnel Manual.

We have eliminated most civil-service examination registers, and instead agencies announce most vacancies as the need occurs.

We have moved, by regulatory action, toward greater flexibility in hiring, classification and performance management, while still maintaining central oversight.

We have shifted authority from personnelists to managers, enabling them both to make personnel decisions and to be held accountable. The old, process-oriented system, enabled managers to avoid responsibility. Now they are free to seize it.

We are restructuring our job classification system, to reduce the number of categories and make them more flexible. The old system was rigid and hierarchical. Employees were paid on the basis of their rank in the system, not their actual value to it. We want an employee's pay to reflect her or his actual contribution to the nation's business.

We have implemented an automated, state-of-the-art examining system and a high-tech job information system, and have helped move agencies toward the goal of a paperless personnel office.

We have developed new selection tests to enable agencies to assess their applicants, and also to predict success in training, identify those best qualified for promotion in some areas, and judge suitability for law-enforcement jobs.

And we have provided leadership, technical assistance and training to help agencies with all aspects of downsizing, including buyouts, early retirement, and career-transition programs.

Mr. Chairman, in your letter you asked me to identify the major strengths and weaknesses of the current personnel laws. To sum up, their major strength is that they enforce the merit system and ensure equity.

Their major weakness is that they are too complex and rigid and tend to make agencies process-oriented rather than result-oriented.

We will gladly work with you to correct those weaknesses. Thank you, Mr. Chairman.

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Mr. MICA. I want to thank you, Mr. King. I wanted to make sure you went first this morning, even though you weren't first, because sometimes I neglect you and put you second, but we know your rightful position.

Mr. KING. Would you remind OMB of that occasionally, Mr. Chairman?

Mr. MICA. And for the benefit of Mrs. Morella and Mr. Moran, who missed my eloquent opening statement, I brought you both an acorn this morning that I picked up. I said that it reminded me of our task, that we could plant something here and watch it grow, or somebody could come in and squash it. Mr. King has suggested that in New England they make gruel out of it. I'm not sure if I should have let him go first.

Mr. Moran came a couple of minutes late, our ranking member, and I know he's interested. As I saw from some statistics yesterday, I think you represent some 116,000 Federal employees and retirees that all have some interest in what we do here. I think we should yield to him for an opening statement or some remarks before we get to you, sir.

Mr. MORAN. Well, thank you very much, Mr. Chairman, and I know that Connie is as heartbroken as I am over missing your eloquent statement.

Mr. MICA. We'll make copies available.

Mr. MORAN. The civil service reform could turn out to be by far the most important and productive effort that we undertake with this subcommittee. I think we've had two examples of the way things can work in different ways.

I don't think we're ever going to reach the kind of agreement we might like on retirement cuts, for example. That's going to be a bitter battle, particularly with the Federal Health Benefits Plan changes that have been proposed, and that discussion may turn out to be more destructive than constructive.

But we had an example of the way things really can and should work with procurement reform. We had the administration and the Congress working together toward an agreed-upon goal. We got it passed. It's a good change, a substantive change, and I think that should be the model for the way we go about the civil service reform.

There's no question that the work force is changing throughout the country, both in the public and the private sector, and we ought to try to be a model for the way in which it can change in the most constructive manner.

I think the National Performance Review gets good marks for what it has accomplished. Even though a fair number of Federal employees and retirees may be adversely affected, it was bound to come, and I think it's an appropriate objective that the Government cost less and do more.

Not all downsizing, of course, is good, and we may have some disagreements there. I wish that there might have been a little more cooperation at the outset, but I think that that's something we can reach agreement on.

In terms of civil service reform, so far we've gone about it in the right manner. There has been complete cooperation on the part of the administration. I think that there's a consensus on our objec-

tives. We have got to be more results-oriented. We have got to be much more flexible. Managers need to have the discretion to be able to hire and to discipline employees, to reward them when appropriate, to get the most productive work out of them.

And so I think the result of this is going to be a much more flexible work force, but also one that recognizes employees as an asset and not just a cost on a balance sheet. Those employees that remain after this Reinventing Government initiative are going to have even more important roles to perform and be even more appreciated for what they bring to the Federal work force.

So I think we can accomplish a lot this year, this term. I know that you prefer the model of procurement reform to some of the misguided approaches to the Federal Employees Health Benefits Plan, for example, and I'm pleased to see that, Mr. Chairman.

With that, let me turn it over to my colleague on the other side to underscore the bipartisan cooperative nature of this effort. Thank you, Mr. Chairman.

[The prepared statement of Hon. James P. Moran follows:]

COMMITTEE ON
GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON CIVIL SERVICE
RANKING MINORITY MEMBER
COMMITTEE ON
INTERNATIONAL RELATIONS
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

Congress of the United States
House of Representatives
Washington, DC 20515–4608

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Statement of Representative James P. Moran
On Civil Service Reform
Civil Service Subcommittee
October 12, 1995

Mr. Chairman:

I appreciate your having this hearing today to focus on the issue of Civil Service Reform and the work of the National Performance Review Council.

Civil Service Reform could be the premiere accomplishment of this Subcommittee this Congress. We will not agree on changes to the retirement system and will continue to disagree on how the Federal Employees Health Benefits Program should be run, but we can agree on the need and the process for reforming our civil service system. This reform effort could work like procurement reform and operate with the Congress and the Administration working together to achieve common goals. Or it could turn into a partisan, ideological battle that serves no one and accomplishes nothing. I am pleased that you are dedicated to ensure that it remains bi-partisan.

The workforce is changing, both in the federal government and in the private sector. Where there was once a hierarchical, top down management structure, there is now a results oriented, flexible workforce. Layers of middle management that is not as productive, or effective is being trimmed away. You see it almost weekly in the private sector. Another company announces another large scale lay-off and restructuring in an effort to become more competitive. And, since the inauguration of the Clinton Administration, we have seen the effects of downsizing in the federal government.

Not all downsizing is good, and originally, I was concerned that this Administration's downsizing effort appeared arbitrary and ill conceived. But as this process has progressed and the National Performance Review has matured, we have seen positive results and a commitment to creating a government that does work better and does cost less.

But as the federal downsizing has progressed, it has become obvious that we need a civil service system that is responsive to the needs of a changing workforce and flexible enough for the

21st Century. This will be a workforce where managers are given more flexibility to hire and discipline employees, where managers and union works together to promote a better workplace, and where employees are treated as assets rather than costs and rewarded accordingly. Across the country, in the private sector, these reforms are occurring. It is time to make them occur in the federal government.

At the outset of these hearings, however, it is important to say what we will not do. We will improve the RIF procedures, but we will not destroy employee protections. We will allow managers greater flexibility in setting employee pay and rewarding high performance. We will not allow managers to act capriciously or unfairly discriminate against any employee. We will give managers greater flexibility to hire employees and craft their workforces. We will not, however, allow competitive hiring practices to be dismantled and will not reduce the professionalism and independence of the federal workforce.

This is the first is a series of hearings and hopefully the beginning of a long and productive process. I look forward to working with the Chairman and the Administration to take advantage of this opportunity to enact meaningful civil service reform this Congress.

Mr. MICA. Well, I thank you, and I look forward to working with you. We both recognize there's some need for improvement and I think the administration has been excellent to work with so far. We want to welcome the employee groups and others. Tomorrow, we've expanded one of the panels, and will listen to folks and meet with them personally. I know Mr. Moran and the other Members will. We do want to make this effort successful.

I see also that one of our senior Members of the panel is here, Mrs. Morella.

Mrs. MORELLA. Thank you.

Mr. MICA. She arrived after my eloquent opening.

Mrs. MORELLA. But I read it, sir. It's wonderful. It reads well.

Mr. MICA. No, you didn't. Actually, you didn't read the good part; it's on the yellow page. But I'll give you a copy of that later. Mrs. Morella, we want to yield to you at this time.

Mrs. MORELLA. I appreciate that. I wonder if the acorn also implies, you know, the sweets for the sweet, et cetera. I don't know about these nuts.

Mr. MICA. I was waiting for that, but only Mrs. Morella could say it so eloquently.

Mrs. MORELLA. Get away with it, you mean, get away with it.

I want to commend you, though, Mr. Chairman, for calling the hearing, because the changes affecting the Federal Government and its work force demand a responsive human resource management system, which is what this is about. I'm pleased that you're intensifying discussions around this issue and preparing to move toward reform. I look forward to working with you and the other members of the subcommittee on this initiative.

Clearly, the world has changed since the last major reform of civil service in 1978, and Director King has mentioned that the dynamics surrounding Federal employment have indeed changed, particularly with technological advances, emerging management philosophies, employment stability or instability, social and health issues, and the emphasis on family.

We know that the administration has ideas regarding human resource management reform, and some of them I embrace and I would consider bold, but, as a total package, I don't find it necessarily ideal. I'm sure that some of my feeling can be attributed to not receiving a clear justification from the administration on the root causes for proposed solutions, so I hope that the administration today is going to be enlightening us so that we can move forward.

However, a theme that we all have to embrace in reform is that the role of human resource management policies and programs is to assist Federal agencies in accomplishing their missions. These policies must be totally integrated and be seamless in design and implementation. In the past, this has been a criticism of human resource management, its inability or lack of flexibility to effectively support mission accomplishment. I am going to try to give a synopsis of my total statement, which I hope you will include in the record.

The private sector typically can create HRM policies and programs with flexibilities to streamline hiring practices, create attractive compensation packages and design performance feedback

systems. All are geared toward increasing job satisfaction, employee retention, and organizational productivity, while structured to support the missions. And the truth is, it's much easier to do this in a private organization.

But, if you buy into the concept that Federal organizations are separate businesses with unique missions, functions, and cultures, and that these separate businesses need their own human resource management systems in order to succeed, you could structure reform so that each agency was able to develop a need-based HRM system.

There lies the quandary. There's a school of thought that Government is an entity unto itself. Its HRM policies would be consistent across the board, and this, in itself, is a streamlining mechanism, preventing costly redundancies in Government. However, I think that the ideal reform package will fuse the principles of those two schools so agencies can get their flexibility without distorting the oneness of Government.

There are a couple of items I want to mention, because these are some areas of interest that I have as we begin this transformation. These areas are complements to the work that must be done on the macro level first.

When the legislative branch Appropriations bill is signed into law, GAO will have authority to develop its own RIF procedures. This could establish a dangerous precedent if each agency believes it, too, should have similar authority.

Changes to RIF procedures have been avoided in the past because of, let's say, political sensitivities. It's now time we take a critical look at RIF procedures. These procedures no longer meet the needs of the work force, and more emphasis must be placed on performance.

Regarding the probationary period, we must decide if the probationary period should be based on results or demonstrated competence. In the case of USDA, it may take a research scientist up to 3 years to achieve results on a project.

That same scientist, however, should be able to demonstrate competence sooner than that. Once we decide this, we should ensure that the probationary period is occupational-based, meaning a scientist, a specialist, a secretary should have different probationary periods.

Reform must allow for greater partnerships with the private sector. We should examine the applicability of extending the administration's idea of nonreimbursable details to the private sector.

Initially, we should set this up as a demonstration project. I think the opportunities for Government employees to find work in a downsizing Government will be slim, and establishing placement partnership with the private sector has to be one of our goals. The Defense Department is doing this. Further data is needed, but all indications are, it is going well.

I have other comments. It is important, for instance, that we carve out the most effective role for OPM. I believe its existence is critical to exact the reform. OPM has been tortured over the last 18 to 24 months with RIFs, funding losses, and privatization. A gravely injured physician is in no position to offer medical assist-

ance. We must stabilize this organization so it can do what must be done.

I have other comments in my opening statement, Mr. Chairman, but at least I got some of the items out on the record, because I feel strongly about them, and I thank you very, very much.

[The prepared statement of Hon. Constance A. Morella follows:]

STATEMENT OF THE
HONORABLE CONSTANCE A. MORELLA
HEARING ON CIVIL SERVICE REFORM, PART I
SUBCOMMITTEE ON CIVIL SERVICE
OCTOBER 12, 1995

I would like to commend Chairman Mica for calling this hearing. The changes affecting the federal government and its workforce demand a responsive human resource management system. I am pleased that the Chairman is intensifying discussions around this issue and is preparing to move forth on reform. I want to express to the Chairman that I look forward to working with him and other members on this initiative.

Clearly, the world has changed since the last major reform of civil service in 1978. The dynamics surrounding federal employment have indeed changed, particularly with technological advances, emerging management philosophies, employment stability or instability, social and health issues, and the emphasis on family.

We know that the Administration has ideas regarding human resource management reform. Some of the ideas I embrace and would consider bold. But as a total package, I do not find it necessarily ideal. I'm sure some of my feelings can be

attributed to not receiving a clear justification from the Administration on the root causes for proposed solutions. Today, I hope the Administration is prepared to enlighten the Subcommittee.

However, a theme we must all embrace in reform is that the role of human resource management policies (and programs) is to assist federal agencies in accomplishing their missions. These policies must be totally integrated and be seamless in design and implementation. In the past, this has been a criticism of human resource management -- its inability or lack of flexibility to effectively support mission accomplishment.

I believe the Administration, through its reform package, is saying, "agencies need more flexibility." Earlier, this precept was embodied when Director King wheeled the FPM out the front door of the Theodore Roosevelt Building and into an awaiting trash truck. The question now becomes, "how do we get there?" You see, although its demise clearly gives agencies more flexibility, the FPM was guidance that had become mistaken for law. Most of the laws and rules that were the foundation for the FPM are still in place. Even with that, I

would venture to say that four out five personnel specialists still have applicable chapters of the FPM in their desk drawers.

The private sector typically can create HRM policies and programs with flexibilities to streamline hiring practices, create attractive compensation packages and design performance feedback systems. All are geared toward increasing job satisfaction, employee retention, and organizational productivity, while structured to support the mission. And the truth is, it is much easier to do this in a private organization.

But, if you buy into the concept that federal organizations are separate "businesses" with unique missions, functions and cultures and that these separate businesses need their own human resource management systems to succeed, you could structure reform so that each agency was able to develop a need-based HRM system.

But, there lies the quandary. There is a school of thought that government is an entity into itself. Its HRM policies should be consistent across the board. This, in itself, is a streamlining mechanism, preventing costly redundancies in government.

However, I believe that the ideal reform package will fuse the principles of these two schools, so agencies get their flexibility without distorting the "oneness" of government.

I, myself, have some particular areas of interests as we begin this transformation. These areas are compliments to the work that must be done on the macro level first.

When the Legislative Branch Appropriations bill is signed into law, GAO will have authority to develop its own RIF procedures. This could establish a dangerous precedent if each agency believes it too should have similar authority. Changes to RIF procedures have been avoided in the past, because of, let's say, political sensitivities. It is now time we take a critical look at RIF procedures. These procedures no longer meet the needs of the workforce. More emphasis must be placed on performance.

Regarding the probationary period, we must decide if the probationary period should be based on "results" or "demonstrated competence." In the case of USDA, it may take a research scientist up to three years to achieve results on a project. That same scientist, however, should be able to

demonstrate competence sooner than that. Once we decide this, we should ensure that the probationary period is occupational-based, meaning a scientist, specialist, and secretary should have different probationary periods.

Reform must allow for greater partnerships with the private sector. We should examine the applicability of extending the Administration's idea of nonreimbursable details to the private sector. Initially, we should set this up as a demonstration project. The opportunities for government employees to find work in a downsizing government will be slim. Establishing placement partnership with the private sector has to be one of our goals. The Defense Department is doing this. Further data is needed, but all indications are, it is going well.

We must strengthen the linkage between training and the agency's strategic plan and the Government Performance and Results Act. The strategic plan should be the driving force behind training priorities and performance goals of the agency. An agency must understand the cost-benefits of training programs and establish a "business case" for developing training programs.

It is also important that we carve out the most effective role for the Office of Personnel Management. I believe its existence is critical to exact this reform. OPM has been tortured over the last 18 to 24 months with RIFs, funding losses, and privatization. A gravely injured physician is in no position to offer medical assistance. We must stabilize this organization so it can do what must be done.

This concludes my statement. I look forward to hearing from the witnesses. Again, I would like to thank Chairman Mica for calling this hearing.

Mr. MICA. You're sure you don't have anything else?

Mrs. MORELLA. Well, I do.

Mr. MICA. Thank you. She's always so thorough, and I do appreciate her comments, except for the part about the nutty suggestion.

We have our newest Member of our panel with us this morning, the gentleman from Pennsylvania, Mr. Holden. Did you have any opening comments?

Mr. HOLDEN. Thank you, Mr. Chairman. I do not have an opening statement. I just thank you for having this hearing and look forward to hearing the testimony of the panel on this very important issue.

Mr. MICA. Thank you. He's going to do very well on this panel.

Mrs. MORELLA. It's still a balancing act.

Mr. MICA. I used to come to some of the panels. We knew which chairmen and ranking members had long opening statements, and timing was everything. Get there just as they concluded.

I do want to thank you for your patience. We have heard from Mr. King, and now we have John Koskinen, who is Deputy Director of the Office of Management and Budget, and also holds the position of chairman of the President's Management Council.

John, we thank you for your patience. You got to hear all the Members, and we welcome your comments this morning.

Mr. KOSKINEN. Thank you, Mr. Chairman, members of the subcommittee, Chairman Clinger. We appreciate your holding these hearings on an important subject for improving Government management.

I'm just a city boy, so I don't have a further acorn analogy, although, when I grew up in Ohio, we had buckeyes, which were significantly larger and harder. The key thing we discovered in grade school, as you walked to school, was to visibly have a few buckeyes around as sort of a nuclear deterrent.

The net result of that was, we all moved cooperatively toward school. I guess my analogy would be that if we kept our rocks, put them away, and actually worked as Congressman Moran said, much as this committee has done with procurement reform, cooperatively, there is a lot of progress we can make together.

The September 1993 report of the National Performance Review identified four key principles to guide the effort to reinvent Government—cutting red tape, putting customers first, empowering employees to get results, and cutting back to basics.

What they amount to is producing better Government for less. NPR found these to be necessary characteristics of any successful reinvention effort. Since then, the NPR has issued status reports evidencing the wisdom of this approach and the progress and early successes of the NPR enterprise. We remain on the path of continuous improvement, focused on creating a Government that indeed works better and costs less.

The initial NPR report, as the chairman noted, concluded that the Federal personnel system was too complex, too rule-bound, too prescriptive. We recognize that today's civil service work force is unlike that at other points in its over 100-year history. Today, the Federal civil service has more scientists and engineers and computer specialists than ever before.

The work civil servants now do no longer matches the stereotype. Civil servants today manage a $200 billion procurement program that buys many of the services previously done in-house. The higher pay-graded jobs are not just filled with executives and managers. They are physicians, attorneys, physical scientists, and others bringing needed technical knowledge and specialized skills to Government programs.

As we implement NPR recommendations to increase the span of management controls and decentralize decisionmaking, more members of the Federal work force will manage their own work. We cannot hold employees or organizations accountable, however, unless they have more freedom to make choices about what is best for their particular situation and mission.

The civil service system is built on a solid core of merit principles, open competition based on ability, fair and equitable treatment, equal opportunity, fair compensation, high standards of integrity, and protection from arbitrary actions.

In the past, we have functioned in most areas in a top down, prescriptive manner. We assumed that if we set forth a clear set of detailed rules describing how things should be done, we would have an effective organization. If we ran into problems, we would just add new rules and prescriptions. As a result, layer upon layer of complexity and over-control have been added over time and inhibit our getting the good job done.

Today, the components of our civil service system form a burdensome array of barriers and obstacles to accomplishing an agency's mission. Hiring is complex and rule-bound. Classification and pay systems are inflexible and overly centralized, and performance management systems are not adequately linked to an organization's missions and outputs.

Now, in both personnel and procurement, we, like the private sector, have discovered that we need to provide employees with discretion and authority they have not had before, but still within a broader set of rules and procedures. The challenge is to devise rules at the right level of detail and to train our employees how to operate under these new rules. While OPM and the agencies have accomplished much administratively, more needs to be done.

As everyone says, we all want progress, but we don't like change. In managing our human resources, we confront this conundrum most directly—decentralizing authority, empowering employees, delegating responsibility, simplifying, holding accountable, rewarding accomplishment.

These are the words and terms we hear used in discussions on improving personnel policies and operations in Government, the same words and terms found in the management science literature and taken from the successful experiences of organizations, private and public, that have achieved recognition as model employers with high performance workplaces.

Studies, such as the Volcker Commission, pointed to the complex hiring system and called for action to simplify and expedite the hiring process. The National Partnership Council's report to the President on implementing recommendations of the National Performance Review endorsed agency-specific performance management and incentive programs.

The National Academy for Public Administration called for a less complex and more flexible classification and pay setting system. The National Partnership Council has documented through its surveys the benefits to Government and the taxpayers of greater employee involvement in workplace decisionmaking.

The President's Management Council, composed of the chief operating officers of the departments and major agencies, is constantly reminded of the need to improve the way we manage our human resources. As you will now hear from some of my colleagues on the President's Management Council, the need for change is great. The benefits to be achieved will bring us closer to our common goal of a Government that works better and costs less.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Koskinen follows:]

TESTIMONY OF JOHN A. KOSKINEN
DEPUTY DIRECTOR FOR MANAGEMENT
OFFICE OF MANAGEMENT AND BUDGET

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

HEARING ON

NPR AND THE CASE FOR CIVIL SERVICE REFORM

October 12, 1995

Mr. Chairman and Members of the Subcommittee:

The September 1993 report of the National Performance Review identified four key principles to guide the effort to reinvent Government: cutting red tape, putting customers first, empowering employees to get results, and cutting back to basics. What they amount to is producing better Government for less. NPR found these to be necessary characteristics of any successful reinvention effort. Since then, the NPR has issued status reports evidencing the wisdom of this approach and the progress and early successes of the NPR enterprise. We remain on the path of continuous improvement, focused on creating a Government that works better and costs less.

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engineers, and computer specialists than ever before. The work civil servants now do no longer matches the stereotype. Civil servants today manage a $200 billion procurement program that buys many of the services previously done in-house. The higher pay-graded jobs are not just filled with executives and managers. They are physicians, attorneys, physical scientists and others bringing needed technical knowledge and specialized skills to Government programs.

As we implement NPR recommendations to increase the span of management controls and decentralize decision making, more members of the Federal workforce will manage their own work. We cannot hold employees or organizations accountable, however, unless they have more freedom to make choices about what is best for their particular situation and mission.

The civil service system is built on the solid core of merit principles -- open competition based on ability, fair and equitable treatment, equal opportunity, fair compensation, high standards of integrity, and protection from arbitrary actions. In the past, we have functioned in most areas in a top down, prescriptive manner. We assumed that if we set forth a clear set of detailed rules describing how things should be done, we would have an effective organization. If we ran into problems, we would just add new rules and prescriptions. As a result, layer upon layer of complexity and over-control have been added over time, and inhibit our getting the good job done. Today, the components of our civil service system form a burdensome array of barriers and obstacles to accomplishing an agency's mission. Hiring is complex and rule-bound, classification and pay systems are inflexible and overly centralized, and performance management systems are not adequately linked to an organization's mission and outputs.

Now, in both personnel and procurement, we, like the private sector, have discovered that we need to provide employees with discretion and authority they have not had before, but still within a broader set of rules and procedures. The challenge is to devise rules at the right level of detail and to train our employees how to operate under these new rules. While OPM and the agencies have accomplished much administratively, more needs to be done.

As they say, we all want progress, but we don't like change. In managing our human resources, we confront this conundrum most directly: decentralizing authority, empowering employees, delegating responsibility, simplifying, holding accountable, rewarding accomplishment. These are the words and terms we hear used in discussions on improving personnel policies and operations in Government – the same words and terms found in the management science literature and taken from the successful experiences of organizations, private and public, that have achieved recognition as model employers with high performance workplaces.

Studies, such as the Volcker Commission, pointed to the complex hiring system and called for action to simplify and expedite the hiring process. The National Partnership Council's report to the President on implementing recommendations of the National Performance Review endorsed agency-specific performance management and incentive programs. The National Academy for Public Administration called for a less complex and more flexible classification and pay setting system. The National Partnership Council has documented through its surveys the benefits to Government and the taxpayers of greater employee involvement in workplace decision-making. The President's Management Council, composed of the Chief Operating Officers of the

departments and major agencies, is constantly reminded of the need to improve the way we manage our human resources. As you will now hear from some of my colleagues from the President's Management Council, the need for change is great; the benefits to be achieved will bring us closer to our common goal of a Government that works better and costs less.

I will be pleased to answer any questions that you may have.

Mr. MICA. Thank you. We will now call on Mr. Mortimer Downey, Deputy Secretary of the Department of Transportation, for his remarks.

Mr. DOWNEY. Thank you, Mr. Chairman. It's a pleasure to participate along with my colleagues this morning, and we look forward to working with you on this issue. I have a somewhat longer statement, which I would like to put in the record.

Mr. MICA. Without objection. If you would like to summarize, go right ahead.

Mr. DOWNEY. I would like to put my comments on this issue in the context of our Department's vision, what we're trying to do to provide future generations with a transportation system that's safer and more efficient. To get there, we're using a strategic plan.

We're also trying to develop a leaner and more effective agency. Today, we have 7,000 fewer civilian employees than we had in 1993. We're well along on our 5-year target of reducing by 8,450 positions, but at the same time, we're trying to empower our employees and streamline the operation so that we do serve our customers better. We're making changes in our regulatory areas. We're reducing paperwork. We're using new technology, really doing business differently.

But this effort is not supported well by the current civil service requirements. Mr. King has covered the history that brought us to this point, and I won't repeat his observations, but let me just note that there were laws in the past that reflected the management practices of their time, and today, a new philosophy impels us.

The successful organizations are those that have focused on becoming high performance units, rewarding knowledge, judgment, teamwork, problem-solving, and accountability, able to respond to rapidly changing forces.

The private sector and some public agencies have responded well to this organizational impetus, and they've shown substantial increases in productivity. I think the public expects no less of Government.

Let me begin with the classification system. It's based on a 46-year-old law and an organizational approach to work which is no longer viable. It was designed to meet and match a hierarchical structure, but, over time, it gave rise to what we call hierarchical organizations.

Additional grades could be earned by becoming a supervisor. That's not consistent with the idea of an organization that really reflects personal accountability. It's not consistent with our initiatives to move from the hierarchical command control structures to flatter, team-based organizations.

For example, we've recently, at the Department of Transportation, reorganized our administrative functions, forming a new Transportation Administrative Services Bureau, focused on the customers, focused on teams to provide the various administrative services.

But the classification system didn't provide us with the flexibility we need to change what were hierarchical layers of supervisory positions to the new need for team leaders or facilitators who could really focus on providing services. That has resulted in significant

resistance among the employees to moving toward flatter organization.

We need to change the way we work to become more efficient and customer-focused. To do that, we need a classification system that both supports and is consistent with restructuring objectives.

We're also working with OPM on competency-based pay systems for certain occupations, such as the Airway Facilities organization that maintains the FAA systems. It's important that we have incentives for those employees to achieve additional competencies, especially as new technologies are being introduced. A competency-based system would allow pay of the staff involved in installing and maintaining air traffic equipment to increase as they achieve specific job-related competencies.

We've worked closely and collaboratively with the affected employee unions on this issue. We think we are making some progress, but it is impeded by the present system, which should be more flexible, should become more integrated with our other human resource systems, and should be able to support change.

I think it's reasonable to believe that pay in some occupations might be driven by competencies and pay for other occupations might be driven by factors such as the complexity of the work. But it's unreasonable to believe that the pay for all occupations should be driven by the same system, so we believe reform is necessary.

Let me also comment on employee performance management. The Department is in the process of redesigning its performance management system within the existing law. We want to rate and reward our employees based on outcomes and based on results. These are derived from the organization's goals, particularly the Government Performance and Results Act goals, where we have those already in place.

We think this is a simpler and more direct approach to results. It is a more meaningful tool for measuring both employee performance and the goals of the organization, and it should help us identify those employees who are not contributing in ways that benefit the organization.

Finally, we think the current hiring system needs an overhaul. Although, at the moment, we are not in a hiring mode, eventually, we will have to start building a pipeline for the future, and what we need is a way for managers to have a system in place that produces quality people without a lot of red tape.

Overall, our goal, as both Mr. King and Mr. Koskinen have described, is a Government that works better and costs less. We think civil service reform can be an important tool in doing that and serving the needs of the American public, and we look forward to working with you on these issues.

[The prepared statement of Mr. Downey follows:]

Testimony by
Mortimer L. Downey
Deputy Secretary
Department of Transportation

Before the

Subcommittee on Civil Service

of the

House Committee on Government Reform and Oversight

Hearing on Civil Service Reform
October 12, 1995
Washington, D.C.

Good morning. Mr. Chairman and members of the Subcommittee, I am Mortimer Downey, Deputy Secretary of the Department of Transportation. I thank you for the opportunity to participate, along with my colleagues John Koskinen, Jim King, and Walter Broadnax, in this panel discussion on Civil Service Reform.

Let me put this issue in the context of DOT's vision of providing future generations with a transportation system that is safer and more efficient. In support of this vision, we are utilizing a strategic plan and are making notable strides towards a leaner, more effective agency. The Department has 7,000 fewer civilian employees than it had in 1993 and is well along its 5-year reduction target of 8,450 positions. At the same time, we are empowering our employees to help reinvent and streamline our operations and to serve our customers better. The Department is also currently making

many changes to decrease regulatory and paperwork burdens, permit electronic filing, facilitate the use of new technology, and make a variety of other improvements. For example, we will eliminate about 1,450 pages from the Code of Federal Regulations, about 13 percent of our total--and are rewriting another 37 percent to make them easier to understand and more outcome-focused.

But, quite frankly, this effort struggles against a headwind of outmoded civil service requirements. I will be citing several requirements that impede our ability to make changes in the work force, changes that are urgently needed if we are to serve the public better.

Before I do, it is important to consider the backdrop of the laws and regulations that currently affect us. Our Federal Civil Service System has its roots in the post-Civil War era. Those roots were based on a philosophy that produced an exemplary merit system and brought the patronage system to an end. The early merit system served the country well for several generations. In the post-World War II period, when the United States emerged as the predominant world leader, the system incorporated major and appropriate changes that stressed structured organizations. A score of other laws reflected the management philosophy of the times. Among them were the Classification Act of 1949, the Performance Rating Act of 1950,

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health and life insurance benefits laws, the Government Employees Training Act of 1958, and so forth.

Today, it is a new philosophy that impels us. The successful organizations are those that have focused on becoming high-performance units. They reward knowledge, judgment, teamwork, problem-solving, and accountability. Organizations must be shaped, staffed, and managed to respond ably to rapidly changing forces in a world that is fiercely competitive. Recent events at AT & T are excellent examples: They know that if they do not change, they will not survive. The private sector has responded extremely well to the organizational impetus, attested to by surging productivity in recent years, the tax paying public expects no less of government.

I would like to begin with the classification system. As noted earlier, it is based on a 46-year old law and it is a system based on an organizational approach to work which is no longer viable. It was designed to match a hierarchical structure. The law in effect linked pay to a very detailed schedule of grades and even spelled out general job requirements in ascending order of complexity. Over time, it gave rise to hierarchical organizations, since an additional grade could be "earned" by being a supervisor. Not surprisingly, a bulky, midlevel bulge (GS-13, 14, and 15)

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exists across government. It is exceedingly costly and does not always translate into better services for the public.

The current classification system is not consistent with our initiatives to streamline, flatten or delayer organizations. As we streamline, many Federal government organizations are moving from hierarchical, command and control structures to flatter, team-based organizations. For example, DOT recently reorganized its administrative functions by forming a new Transportation Administrative Services Bureau.

Many functions have been consolidated, and a flatter, more customer focused, and team oriented organization has been formed. However, the current classification system does not provide the flexibility needed to change supervisory positions to less traditional team leader and facilitator positions without creating serious morale problems. In many cases, team leader and facilitator positions are just as complex or difficult as supervisory positions, but rarely, is it possible to support the grades of these new jobs because the highest grades are based on supervisory work. This often results in significant resistance among the employees to move to a flatter organization like the new Services Bureau. We are making major strides to change the way we work to become more efficient and customer focused. However, we need a classification system that both supports and is consistent with our restructuring objectives.

We are also working with OPM on a competency-based pay system for certain occupations within the Federal Aviation Administration's Airway Facilities organization. In this area, it is important that we have incentives for employees to achieve additional competencies, especially as new technologies are introduced. A competency-based system would allow pay of staff involved in installation and maintenance of air traffic control equipment to increase with the achievement of specific, job-related competencies. The outcome we seek through this proposed system is greater safety at a reasonable cost. This serves the public. We worked closely and collaboratively with the appropriate employee unions. Without their involvement and support, we would not have been able to push forward on these ideas.

In order for us to move forward in our effort to make Government work better, we need a classification system that is fully integrated with other human resource systems, and one that is flexible enough to support change. It is reasonable to assume that pay for some occupations should be driven by competencies and pay for other occupations should be driven by other factors such as complexity. We recognize that pay flexibilities must be used in an accountable and responsible fashion. However, it is unreasonable to assume that the pay for all occupations should be driven by the same system. Therefore, we believe that reform is necessary.

I would now like to address employee performance management. The Department has recently redesigned its performance management system. Instead of recognizing characteristics and behaviors, we will now reward our employees based on outcomes and results. The desired outcomes must be based on the organization's goals and must improve organizational and individual performance. We believe this is a more direct and simpler approach to improve employee performance and to realize the organization's goals. It is also a tool to help identify those employees who are not contributing in ways that benefit the organization. We would like for any change in legislation in this area to be compatible with our outcome-based system.

We also think the current hiring system needs an overhaul. Although, like many other Federal agencies, we are not in a hiring mode, periodically we are filling gaps and eventually we must start to build a pipeline for the future. Managers want a system that produces quality people without a lot of red tape. While we are aware of the necessary constraints inherent in a civil service system, there must be many fine examples of state and local government systems that work well, and that could be benchmarked and emulated.

That completes my statement. I would be glad to answer any questions.

Mr. MICA. We thank you for your testimony. Now, we'll recognize Mr. Walter Broadnax, who is Deputy Secretary of the Department of Health and Human Services. Welcome.

Mr. BROADNAX. Thank you, Mr. Chairman, members of the subcommittee, Chairman Clinger. I'm pleased to be here with all of my colleagues this morning to appear before you and have the opportunity to testify before you concerning the need to improve all aspects of the personnel management and administration in the Federal Government.

For purposes of illustration, I would like to focus on classification and compensation issues related to one of this country's most important national resources, the National Institutes of Health.

The National Institutes of Health has had a long-standing interest in obtaining increased personnel authority and flexibility to improve the effectiveness of the management of its research mission, simplify process, increase speed to effect hiring and other personnel changes, reduce costs, and link its human resource program more strategically with NIH research mission.

Over the years, there have been a series of independent studies recommending that the NIH research programs not be constrained by unnecessary rules and regulations and concluding that a more flexible personnel system would improve the ability of NIH to recruit and retain a superior scientific work force.

Within the constraints of the current system, Secretary Donna Shalala has already approved increased delegation of authority to NIH which will further these goals. NIH also has flexible authority with respect to recruiting and retaining bench scientists—HHS' Senior Biomedical Research Service, known as SBRS, with up to 500 positions authorized, as well as authority to pay higher salaries under Title 38. However, for the many NIH staff under the regular civil service system, improvements are still necessary.

The current regular classification system is a rigid system with 15 grades. Except for a few flexibilities, it inhibits NIH's ability to recruit new scientists, to support personnel, and to fairly compensate current employees through the regular process. Let me provide you the following illustrations.

Under the current system, it is sometimes the case that in order to promote scientists to higher grades, they must be made to take on supervisory responsibilities. Thus, these employees are forced to divert some of their time and energy away from research to take on administrative responsibilities just to receive the additional compensation which they clearly deserve, based on their research alone.

We should have a system that provides for much broader grade bands so an employee's salary could be increased without having to give him or her supervisory responsibilities which, under the current system, are necessary to justify a new grade.

In other words, additional compensation would be a true reflection of the valuable research which the employee is doing. We recognize that pay flexibilities must be used in an accountable and responsible fashion.

While some flexibilities have been added over the years, the regular system is still very rigid. For example, if a non-SBRS position is classified at a particular grade, NIH is limited to setting pay

within that grade, regardless of what the true value of the individual will be to NIH's mission.

There should be a much broader band in the regular civil service system which would allow NIH to be more competitive in its recruitment efforts. A more flexible system would decrease the time required to complete negotiations with scientists and others who often are considering several competing offers simultaneously.

NIH needs greater flexibility in the regular civil service system to move outstanding scientists to a higher pay level and meet the competition in order to retain these scientists. When senior scientists leave, there are significant gaps and costs which result not only because of the individual who must be replaced, but because more junior scientists and other support personnel often follow them.

In addition to the examples which I have provided, the current system is very labor and paper intensive to administer. In order to ensure that we comply with its requirements, we must devote staff and resources to it. For example, a supervisor must write a new position description every time a key researcher is to be compensated at a higher level with a grade promotion. Thus, scarce resources could be redirected to research, which, after all, is the agency's mission.

I do not believe that it is an overstatement to say that implementation of a modern personnel system will help to ensure that NIH will remain one of the world's leading biomedical research organizations.

Mr. Chairman, I thank you for hearing my comments.

[The prepared statement of Mr. Broadnax follows:]

TESTIMONY OF
DR. WALTER BROADNAX, DEPUTY SECRETARY
DEPARTMENT OF HEALTH AND HUMAN SERVICES
BEFORE THE
HOUSE GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON CIVIL SERVICE
OCTOBER 12, 1995

Mr. Chairman, and members of the Subcommittee, I am pleased to have the opportunity to testify before you concerning the need to improve all aspects of personnel management and administration in the Federal Government.

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Over the years there have been a series of independent studies recommending that the NIH research programs not be constrained by unnecessary rules and regulations and concluding that a more flexible personnel system would improve the ability of NIH to recruit and retain a superior scientific work force.

Within the constraints of the current system, Secretary Donna Shalala has already approved increased delegations of authority to NIH which will further these goals. NIH also has flexible authority with respect to recruiting and retaining bench scientists -- HHS' Senior Biomedical Research Service (SBRS) with up to 500 positions authorized, as well as authority to pay higher salaries under title 38. However, for the many NIH staff under the regular Civil Service System, improvements are necessary.

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In addition to the examples which I have provided, the current system is very labor and paper intensive to administer. In order to ensure that we comply with its requirements, we must devote staff and resources to it. For example, a supervisor must write a new position description every time a key researcher is to be compensated at a higher level with a grade promotion. Thus, scarce resources could be redirected to research which after all is the agency's mission.

I do not believe that it is an over statement to say that implementation of a modern personnel system will help to ensure that the NIH will remain the leading biomedical research organization in the world.

Mr. MICA. I thank you and the other members of the panel for their testimony and comments. I have a couple of quick questions, and then I'll defer to Mr. Moran.

First of all, one of the things we've got to look at is the role of OPM in any future reconstruction of civil service as we know it.

Mr. King, you've heard from two departments who want more flexibility in classification. They want more authority. They want more responsibility. Maybe you could elaborate a bit on your position, just informally, as to how you see OPM evolving in this process and what its role will be. You've already undergone some downsizing, some changing, but looking toward the future, what should be the responsibility of OPM?

Mr. KING. Mr. Chairman, first I thank you for recognizing the downsizing. Our agency right now is 30 percent smaller than it was when I took it over, and it will be smaller still as we move toward privatization, as you know so well, Mr. Chairman.

Our role as we see it, looking to the future, is to lead agency managers and employees in creating a productive, high-performing workplace in a framework of the merit principles, and we plan on doing this in three major ways, quite frankly.

First, to preserve and strengthen the merit system through our oversight system. That implies that the people that this will be delegated to understand those responsibilities, and our experience has been that they do, but we will continue to follow this through our oversight.

Second, we'll provide agency managers with new tools and new systems they need for success. Let me give you some examples, if you would—in general, to move human resources management from an ethos of process and procedure into an ethos of accountability and results.

A general example would be the elimination of the Federal Personnel Manual as a symbol that there will be change and that there is change. You have heard the criticism of this, and I know you have.

This was our personnel manual that we disposed of, Mr. Chairman. I don't know if I'm being fair or not, because the picture is a little small. This is the original 10,000-page manual. Now, we're criticized because we have this. We replaced it with this.

Now, these are the two pictures. This is before and after. Now, essentially, we did boil it down. That's true. The baby didn't go out with any bath water, but I notice a nostalgia toward the larger, because, in that, we virtually assured non-progress, non-accountability, non-responsibility. We now have moved to an area where people now understand where the accountability lies. So, yes.

By the way, the way we did it was a little bit—I think there was some pride; there was a sense of public relations. But the single biggest thing was to send a signal, Mr. Chairman, as you know, how effective in the work your committee is doing. You send a number of signals that there's going to be an approach and an air, and the committee does, on certain kinds of changes that you believe have to be made, as we do. We share so much in this area. So that's just one example in there.

In hiring, the elimination of the 171 form. That elimination was not the elimination of the form, per se. It is the elimination of the

requirement to use it, because consistently—I think Mr. Downey and, I believe, Dr. Broadnax, and John, I know you've run into it—but again and again, we've especially heard, at a recruiting level, people look at a 171 and say, "This is crazy."

You know, Nobel laureates do two pages to be considered by MIT for employment, and if you're of the age that we're talking about—well, in my case, my 171 exceeds 11 feet. When you roll it on out, it goes out for 11 feet. Do you really need 11 feet of print to do that? I mean, that's the sort of thing that borders on the goofy.

And by the way, it affects our credibility. I mean, when someone looks at you and looks at this form, and says—well, enough of that. But if you want to keep, if you want to cling to it, if it gives someone comfort somewhere in the bureaucracy, what we've said is use what you think would be best to do that and followup with your own form, so development of automatic hiring and testing systems that produce results in far less time. We can use scanners now. We can get into that in detail, Mr. Chairman. You've seen some of that yourself. I know you've visited the facility, and you're familiar with it.

Career transition is going to be an important thing in Government. It's out-placing our employees as we're downsizing. It won't all be attrition, as you well know, Mr. Chairman, and we're going to continue to do it, so that we can make Government smaller in a humane fashion.

Performance management, the delegation of our current sister-in-law agencies to craft their own programs at work. For example, we're working right now with the classification, the consolidation of 442 job series into 22 job families, compressing them into that. So it makes a lot more sense.

I'm not suggesting any of these things, Mr. Chairman, is the magic pill, the silver bullet, whatever we want to call it. But its incremental steps, now that we're doing that, don't require legislative change, in that we're working together to bring change.

And then, finally, I think the President and the agencies are going to continue to push for the best personnel policies and practices, and there will be some legislative change that will accompany that, and that's really what we're beginning in the process today, Mr. Chairman.

Mr. MICA. I think it's important that we look at the role of OPM for the future and what will be the responsibilities of OPM and the various agencies.

One of your comments I wanted to question, you talked about strengthening the merit system, and I have no problem with that, insofar as we don't strengthen it to the point that we obliterate its purpose.

But my concern is the poor performer and how the system is now being used and abused to subvert the process. It's demoralizing to many people who go to work and do a good job when they see people who are protected by a system that was established to create protections for other reasons, not to ensure their tenure on and on, regardless of performance.

So to the gentlemen from the agencies, do you have some way to deal with this endless appeals process, this problem of eliminat-

ing the poor performers, something that we should be looking at? Mr. Downey.

Mr. DOWNEY. It is a long and difficult process, and we certainly would support ways to streamline it. There needs to be a balance between fairness and assurance of due process and ability to take appropriate actions. I think the present system just has too many steps, too many appeals, too many blind alleys, and I think you are correct in saying it's a deterrent to performance within the agencies, because it suggests that performance is not a critical issue.

Mr. MICA. Mr. Broadnax.

Mr. BROADNAX. I would agree with my colleague, Mr. Chairman. I think that if the process could be streamlined, I think it would provide greater fairness, because as these proceedings are dragged out, I think it really, in many instances, adversely affects performance in these organizations, these large, complex organizations.

And so I certainly think that our experience has been one where streamlining, looking closely at processes that are being followed and procedures now to streamline them, make them move more quickly, more expeditiously, would bring both fairness and increased performance in the agencies.

Mr. KING. As a matter of fact, Mr. Chairman, I know that we're looking right now at a way to streamline that, and we're doing it in a legal area. There is Chapter 43 and Chapter 75. What we're trying to do is move Chapter 43 into 75 and perfect Chapter 75.

So you can streamline the process and then give it coherence across the board, so that there is one particular area being moved to remove pecple who are not performing at the correct level, and Chapter 75 is used substantially today to remove. But, again, there is going to be a dialog with folks who like the old system. They feel comfortable with it. They're knowledgeable.

But everyone here who has ever worked with removing anyone for performance usually does it once in their entire career. It's one of those things, I think, you do once. Part of it is that you must follow every single step. I mean it is a checklist that seems to go on to the horizon, Mr. Chairman.

If we could start by consolidating the law that's actually applicable, that all of us use, and then we get a clear, documented handbook on how we approach that, it's a first step. Again, no silver bullet here, Mr. Chairman, but the beginning of progress, and I just would like to raise it, because I know it's an area that will be up for discussion, and it's sensitive, but it's important.

Mr. MICA. I think it's critical. John Koskinen.

Mr. KOSKINEN. I think the balance here is, no one maintains that we should remove any protections from an employee to be sure that they are treated fairly and equitably.

I think one of the major concerns that people have reflected, in addition to the complexity is the multiple forum problem. As Jim said, if you start down this road, oftentimes managers find that they're defending their action not just in one forum or one time, but, actually, two and sometimes three times in different areas.

So I think it's important to provide an efficient system, but I think no one is saying that it should be so efficient that the rights of employees are undercut. I think every employee deserves to have

an appellate jurisdiction, but it should be consolidated so you get that once, rather than running through hoops two or three times.

Mr. MICA. Thank you. Mr. Moran.

Mr. MORAN. Thank you, Mr. Chairman. I'm going to have to go give some testimony on a housing bill, so I'm not going to be able to ask questions that would elicit the kinds of answers I want to get into, but I will return to this. I want to bring up some points and really lay out where I'm going to be coming from on this.

One thing I wanted to change is the bumping system when RIF's take place. The ultimate result, too often, is that you're paying people at inappropriate levels for jobs that are inappropriate to their skills. It's an outmoded system that has got to be changed. I recognize the need to protect employees, and I'm a strong advocate of that, but this is something that has got to be changed within this context.

I do think that managers need to be freer to hire the people that they feel are necessary to get the job done that they're charged with accomplishing, and I like the broad bands in terms of pay. We need to be able to reward people, to provide performance incentives.

At China Lake, broad banding worked, but they had an unlimited budget, and that's one of the reasons it worked. So we've got to figure out a way where it can work within the context of severe fiscal limitations.

I'm glad to hear what you say about the need to provide more flexibility in terms of there being accountability for performance. If people perform well, there should be incentives. If they are not performing, management has got to be able to either fire them or move them into a position where that is more comparable to their performance ability.

Right now, we have a grossly ineffective system and one that really is designed to discourage anyone from trying to remove somebody on the basis of performance. I've been there; I've seen it happen. I would discourage any manager from trying to remove anybody because they were not performing, and that should not be the case, and it can't continue to be the case in the Federal Government.

As I said, the people that are left, we need to have a system in place where they're going to stay, where we are not going to go through this kind of disruptive process that is occurring now.

When we get through this, we want a reasonable civil service system that is competitive with the private work force but provides the kinds of individual employee protections and that insures the professionalism of the Federal work force. So we've got a lot to do, but I think we can accomplish it, because I think we don't have a choice to do otherwise.

So, with that, I'm going to try to return as soon as I can, Mr. Chairman, and I appreciate the opportunity to have this hearing and to hear from these professional individuals.

Mr. MICA. If any of you wish to respond to Mr. Moran's comments, I'll sit and listen. He set forth some of his concerns, and we're definitely going to work with him and try to see that some of those ideas can be incorporated in whatever we do. Seriously, if any of you wanted to respond.

Mr. KOSKINEN. Let me make one comment that I think is important as background, and that is, the items we're discussing are important. The procedures, we need to rationalize. We need to provide a system that's flexible.

But, ultimately, one of the things we need to do is recognize, as we keep referring to the private sector, that the management paradigm has changed in the private sector. Government didn't invent top down management. It was, in fact, modeled on what happened in the private sector over time.

One of the things the private sector has learned, thanks to the demonstrations by the Japanese and other companies, is that top down management no longer works. You now need to provide supervision and guidance from above, but the best organizations work with input and participation from their workers and their employees.

So all of our systems, no matter how prescriptive or non-prescriptive they may be, no matter how we design them, by themselves will not self-execute. We will not improve management in the Federal Government simply by changing the rules. What we need to do is change the culture.

We have to judge the changes we're making in terms of increasing the ability of managers to work with their employees to redefine their work and to determine what needs to be done and how best to do it. That is a major difference in the way of approaching work.

It's a difference that's going on in the private sector, and those companies that are responding to that change are the ones that are successful. Those that continue to think that the answer is magical, as Jim says, "silver bullets" or changing some requirement or sticking with the old system are the ones that are failing.

Therefore, if we're going to look at anything, it seems to me, we've got to understand that there's a major shift in the way organizations manage themselves, and we ourselves have to move in step with that.

Mr. MICA. Did anyone else want to comment? Mr. King.

Mr. KING. No, thank you. Nothing, Mr. Chairman, thanks.

Mr. MICA. I have a couple of questions in summary for this panel. Mr. King, you did reaffirm in your opening statement the administration and OPM's commitment to veterans' preference.

Tomorrow we're going to have a coalition of veterans' organizations testify, and they're concerned a bit about the question of whether or not veterans' preference is being honored in the law and OPM is really providing an enforcement mechanism to make the legal provisions effective. Could you describe what mechanisms and procedures you have for enforcing veterans' preference?

Mr. KING. Sure, we do it by oversight. But let me first start, Mr. Chairman, as I suggested earlier—just a quick history, putting it in context.

In 1955, veterans represented about 55 percent of the Federal work force, which was a very substantial number. World War II and Korea had really given us this large cadre, as it were, of applicants with preference eligibility and, by the way, with a genuine and sincere interest of working for Government. There was a real commitment there.

By 1984, the percentage of the work force had dropped to about 37 percent, and last year it was 28 percent. It's the aging of the population, and, quite frankly, the lack of major conflicts has reduced the veterans' numbers.

Now, although the overall numbers have declined, the number of new hires who are veterans remains fairly constant due to a careful administration of the program—and it was recently verified by GAO, so it might be helpful to have that GAO report available—and an improved VRA authority, sponsored by OPM, has been very successful in hiring veterans.

As a result—and I'll come back to process, Mr. Chairman, because I think there's no question that has usefulness, but it might be useful, also, to go right to what the percentage of new hires that have been going to veterans, and it has risen steadily from 12.1 percent in 1990 to 18 percent in 1994, an increase of—well, you can do the math.

Our relationship with veterans-serving organizations is excellent and, of course, as I suggested in my testimony, they can speak for themselves. But I will say this much. I'm personally proud to work with the veterans' groups.

I meet with them on a fairly regular basis personally, and we meet with them in structured meetings on a regular basis and go over all the issues affecting veterans, and, quite frankly, we draw enormous pride from that relationship, and we feel that we're delivering. Now, what I'm saying is, the results are there. We work with veterans' groups in any areas they feel where there's a problem.

Let me give you an example. We're doing a demonstration project at the Department of Agriculture. I know you've heard of our top three list. Someone said, "Well, gee, that really protects veterans." On the surface, that may appear to.

In point of fact, we find that in a demonstration project, if we open it up so that the eligibles—and, by the way, on these eligible lists, many times you'll hit 50 people with identical scores. So now you're "sending the top three." When you give an eligibility list of eligible qualified, what we found was more veterans got hired in a broader list. It runs counter-intuitive to some of the old, traditional things that were approached. We find it works better.

Again, if you look at the results through different processes and ones that work—and again, I look at my colleagues, because each one of them have processes that are unique unto them and give them opportunities, if they're freed from rigid systems.

So, again, we still give the ongoing oversight. We're responding to the veterans, by the way, who are extremely well informed and very sophisticated in their perspective, so that's really where it comes. So the results are there.

Mr. MICA. We might ask you to come back and repeat that statement tomorrow after they appear. Thank you, Jim.

Mr. KING. Thank you.

Mr. MICA. Mr. Koskinen, I believe that it was in November 1994 that, accompanying the report of the National Performance Review, the administration had said that they were going to submit a civil service reform proposal, and we have seen only a sort of a draft so far, and I guess there has been some outlying release to the media.

When can we expect some definite proposal or legislation from the administration?

Mr. KOSKINEN. We continue to work on it. These hearings, obviously, are propitious and can cause everyone to come together. I would expect, in the very near future, we should be able to provide the committee with a proposal from the administration.

As you know, and I understand that you'll discover further in these hearings, this is a very complicated area. For every proposal, there is a respondent. As you will hear through these hearings, there are great defenders of what we think of now as systems that were once very useful that now are inflexible.

We're trying to chart a course through that. As the other witnesses have said, we look forward to working with you and, once we have that proposal, to see if we can tailor and fashion a program that will allow us to move forward and make progress.

Mr. MICA. Well, we would even be glad to do a joint announcement, so we look forward to working with you on it.

Mr. KOSKINEN. Well, I think I would like to stress that we do not view this, much like procurement reform and other management improvements, as a political issue. We're delighted to share with you the effort and the fruits at the outcome. I don't think it's an issue politically so much as structurally as to how we're going to proceed.

Mr. MICA. The fruits we don't mind. It's the rotten tomatoes that get thrown at us that concern us, but we'll be there with you.

Mr. KOSKINEN. This has turned out to be a very agricultural event.

Mr. MICA. Starting with the acorns I picked up on the way. You all don't pay very much attention to acorns or leaf changes, but when you come from Florida, you don't see those things that you all take for granted here. Maybe it takes someone like me, from the outside, to see some of these things.

Mr. Broadnax, I have a question for you. In addition to the in-house research, NIH uses grants and contract researchers to perform its work. Could some of the artificial pay restrictions in the current system be eased if NIH relied on more contractors and grants and private sources than retaining so much in-house research capability?

Mr. BROADNAX. Mr. Chairman, as I'm sure you know, this is an ongoing discussion at the National Institutes of Health, among the researchers and the leadership there, as to what is the proper balance between the intramural and the extramural research program there.

Under the current leadership, under Dr. Harold Varmus, he, too, has been trying to rework and recalibrate that balance, but I think, in the final analysis, history has shown that each Director has come down on what I would call a relatively robust intramural research program. There is tremendous support for that research program, not only within the National Institutes, but by sister research organizations outside the Institutes, as well.

Having said that, I think there are great flexibilities gained by working through contracts and grants with universities and other organizations, but there is significant work done within the Insti-

tutes themselves which warrant, based on national acclaim as well as international acclaim, a strong intramural research program.

I have it on good authority from the scientific community there that it would be very helpful to them if they had some greater flexibilities, particularly at the junior levels, of bringing younger scientists in. There have been several things mentioned here this morning by my colleagues which could be helpful, as well as talking about probationary periods and some other things, but some greater flexibility of bringing in junior people, particularly.

Mr. MICA. Well, we're not going to be able to get into the question of privatization and use of contract services today, but I'm sure we'll have a hearing devoted just to those items. It's something we need to look at, whether it's research, FAA controllers, or investigators with OPM, or whatever. I think this is also another area that we must define and redefine.

Mr. Koskinen.

Mr. KOSKINEN. I think this is a very important area. This subcommittee has pursued it in different ways in the past, focusing on contracting out.

I think that my only addition to Dr. Broadnax's comments are that we should be making decisions about what work should be done internally and what work should be contracted out on the merits of where that work gets done best.

I would hope that we would not want to stick with a system that doesn't work very well and then argue that, "Well, we can solve that problem by just having the work done on the outside." There are times when it's appropriate to have contracting done outside, but one of the reasons ought not to be because it's the only way to get the work done effectively because of the failings of our own systems.

Mr. MICA. Well, as I said, we'll save that subject for another complete hearing. I want to yield to Mrs. Morella, who has joined us.

Mrs. MORELLA. Thank you, Mr. Chairman. I wanted to direct this, I guess, to Director King—it picks up on what Mr. Koskinen mentioned—and anyone else who wants to comment on it.

Does the culture in Government have to change before reform, or could reform create the culture that's needed to assure change and assure results?

Mr. KING. I think we create it.

Mrs. MORELLA. Create it.

Mr. KING. I think we create the climate, but there will be and continue to be internal—because, quite candidly, until some time passes—reforms have been announced again and again, since I was a very young person. At every level of Government, everybody that I ran into was going to reform the Government during their stay. So folks have heard it, and those folks have come and gone.

There's no one sitting at this table who hasn't heard, first person—I'm willing to bet, without ever talking to them, that some person in their agency, either a junior level or a senior level, who looked at them and said, "I was here before you came. I'll be here after you've gone, and I was here before the previous 16 of you came, and I've seen you come and go, and it hasn't changed."

So what you're talking about in this is really the implied area, taking real risks, taking genuine chances with your career as you

perceive it, seeing the approach that has, in the past, brought people up through the system, and now we're suggesting that that ethos change, where risk-taking—the things the chairman just talked about in relation to how do you manage contracts, how do you talk about basic performance, the other conflicts, all of those that are being put on the board now.

You would be simply amazed, the number of folks in the ranks who don't give it a heck of a lot of credibility. They're getting the message at this stage. I'll yield to my colleagues, obviously, but I will say it's changing. I believe it's changing in a positive way. I believe that our Federal employee groups, it's not that they're recalcitrant, it's just that they've heard one thing, and they've seen something else happen.

Mrs. MORELLA. So you create it, and then you bring the reform in with the creation.

Mr. KING. Well, we create a climate in which you can actually respond to legitimate needs, so when Dr. Broadnax mentions it as layering, there isn't an agency I'm familiar with or have been around where we haven't layered people in to pay them appropriately, but we pay on the basis of management, rather than on the basis of knowledge.

What we're saying, we're acknowledging now that we're in knowledge-based businesses, and we should pay for real knowledge, and is there a way to do that? Now the systems start to follow the real needs. Would that be a fair statement?

Mrs. MORELLA. Anybody else want to comment?

Mr. DOWNEY. Yes, I think, in our agency, the signals need to be sort of consistent across the board. If our employees see the law changing, as well as management changing, as well as their own thinking about their jobs changing, we'll have progress in the right direction. But if all the signals aren't the same, then you run the risk, as Mr. King said, of people saying, "Well, I've been here before. Been here, seen that, and I'll just wait."

Mrs. MORELLA. So you have to try for consistency.

Mr. KOSKINEN. To replay my theme song, sort of the equivalent of the acorns.

Mr. KING. Play it again, John.

Mr. KOSKINEN. Part of the reason reforms haven't really worked in the past is because often in a top-down management structure, we've assumed if we changed the rules and asserted that this is the way it would be done, it would happen automatically.

Again, what people have discovered, in the last 15 to 20 years in management, is that first, you need to have the changes. You need to have flexibility. But then, to get changes executed and implemented, you've got to involve employees in those decisions. We're all that way. Nobody likes to have things done to them. Everyone gets very enthusiastic and motivated when they're part of the process making the changes.

Therefore, the culture has to change. We have to be more focused on involving our work force, who were here before we were here and are going to be here after we're gone, in making those changes.

But it only works if we've provided the context, so that to try to make that change when there's a system that many of them view very cynically as overly restrictive, particularly the middle man-

agers, and ask them, "Now we're going to make change, and it's up to you," without sending the signals, as Jim and Mort said, that, it seems to me, won't work.

Mrs. MORELLA. I would like to also ask you, gentlemen, and maybe Mr. Broadnax and Director King, particularly, what impact do you think that broad banding will have on recruitment and performance and other economic consequences, from an agency point of view, from the Director's point of view? And then, a follow-up question you may want to consider in your responses, could broad banding work across the board in Government?

Mr. KING. Well, let me yield to Dr. Broadnax. By the way, first of all, could it work across the board? We get back into the one size fits all, and I think what we've been saying—and I know you've heard it, so it's a good question—is, can you make some of these things a smorgasbord that is consistent with merit principles and the other kinds of things that are included in our governance of Government in relation to employment? The answer is yes.

The question is the flexibilities and the willingness of people to make them work. I think we're all sensitive to the fact that there are folks sometimes who are out there working so that systems don't work. What we want to do is to create a climate in which there's an affirmative view.

I think Dr. Broadnax said it in specific terms, areas where broad banding would be quite applicable and help his management unit move forward. Did I hear you correctly on that one, Doctor? Then I would come back to the oversight in relation to the salary issue, the economics of it, which have profound implications.

Mr. KOSKINEN. That's the new American record for the longest yield.

Mr. BROADNAX. I would agree with that, Congresswoman. I would simply say that we recognize that there are potential economic impacts which would require some very careful monitoring and oversight if you were to follow our broad banding approach.

At the same time, we think that it's worth the effort on that side of the equation to garner the benefits in terms of the speed with which you could move and, I think, the fairness that you could bring about within the overall system.

You have to remember that the people that we're talking about, in the example which I was giving, at the National Institutes are people being competed for by organizations on a worldwide basis, private and public, in many instances, and so speed becomes very important. If we, as the potential employer are running 2, 3, 4 months behind the competition in terms of being able to respond, it's deleterious to our desires to have the best research cadre possible.

Mr. KING. On the economic issues, I think we at OPM could work in a system where the employees are broad banded, quite frankly. We would establish a governmentwide limitation on the total amount of funds that could be spent each year, limitations on pay increases within the pay bands, and controlled performance ratings, if they are in any way driving, pay determinations, set or control yearly pay increases by placing a limit on pay increases within pay band and/or allowing no more than one such pay increase per year.

Let me give you, also, a specific example that we're doing in anticipation of pay banding at some point, somewhere. We're doing a classification study—we're just getting underway—to study a statistically valid sample of 200 GS–12's. This is nationwide, administrative positions nationwide.

We believe that the result in cost avoidance could be over $200 million if we move from our present classification to one of broad banding. But if we don't look at those kinds of things, you know, in advance, then they capture us downstream. And you are absolutely correct that the economic implications of this can be profound. They have to be looked at, and there has to be oversight and control built in. It just can't be willy-nilly.

So that's a sort of—but there is real possibility for the kind of flexibilities, the kind of opportunities, and the avoidance of this thing that has been called layering in Government that is really one of the most difficult and one of the areas that compromises the integrity of our leadership within our organizations.

Mrs. MORELLA. If I could just ask a couple of more questions, then, a few for the record, Mr. Chairman.

Should RIF procedures be changed? Are the procedures outdated? If there should be change, how could they be changed to place more emphasis on performance while protecting veterans' preference?

Mr. KING. One of the interesting things I've run into—and I should yield. Should I yield earlier? They're not jumping at the mikes, Mr. Chairman.

One of the items, I think, that we don't often mention when we talk about RIF's is performance appraisals. Generally, most places have been using, as you know, the five-level appraisal system. In that is built-in seniority—20 years if you get outstanding, 16 at your next level, and so forth.

Now, let's just pause for a moment. I'm always interested when I hear people say, "We were faced with a RIF, Mr. Chairman, and we are losing some of our best people." I think you've heard that. You certainly have heard it. I have.

And you turn around and say, "Well, who's bumping them?"

"Well, these people we rated 'outstanding,' who really are not very functional."

"Oh, you were victimized by yourself, then?"

"Yes, but we need relief."

So, to some degree, we have to understand that some of the situations that we face have been self-created and that we're going to have to exercise some real leadership and some discipline, so that the system that presently has difficulties, we could start to address it.

There are a number of ways that that could be addressed. I would like to again yield to the folks who also work with this, because we have lost a number of people, as you know, so RIF's are real to us. It's not an academic discussion. But let me yield, though, to my colleagues who are also living with this same situation.

Mr. DOWNEY. Well, I can't add any personal experience on the RIF side, because, in Transportation, we have been successful so far in avoiding that necessity as we've looked at downsizing, and,

as I mentioned earlier, we've reduced our civilian force by 7,000 since 1993, but we've done it all through buyouts and attrition.

We think if we think ahead about where we're going, if we think about the organization we want and try to get there over time and through a careful plan, we can avoid the RIF because of a lot of problems that exist within it.

Mr. BROADNAX. I would simply say that, first of all, thank God, I haven't had the experience of dealing with reductions in force with this administration. However, I carry some very strong memories from another experience in a great State in the northeast corridor where we were doing a lot of downsizing using the RIF's, and it is very burdensome and can cause tremendous dislocations.

We at HHS, like my colleague at Transportation, have been fortunate in that management has been able to focus on its needs and use the buyouts and early outs and other tools available to us to bring our work force size down without using the reductions in force, and we're hopeful that we will not have to do that, because I would say, again, at a place as complex, for example, as the National Institutes of Health, if you start reductions in force, I think your imagination can quickly tell you the kind of dislocations you could quickly run into in an environment like that.

Mrs. MORELLA. I guess I would like to, then, ask our two agency people, Mr. Broadnax and Mr. Downey, does a pass-fail performance system compromise performance measurements and high performance incentives? What do you think?

Mr. DOWNEY. We've gone in the direction of a pass-fail. We have already put in place a three-level system, as opposed to the previous five, but we've linked it to the goals of the organization. We've said, within the broad organization, whether it's Federal Aviation or Federal Highway, what are we trying to achieve? Within your unit, what is it contributing to the broader goal? And then, you as the individual, what is your contribution?

I think it's pretty obvious on a pass-fail basis, either you're contributing to achieving the goal and your management has been supportive in defining what that goal is, or you are not. To expand it into several different ratings—which, over history, shows most everybody winds up among the higher ratings, the higher levels—doesn't really contribute to that. So we think linking it to real performance and linking it to real achievement is the important step that we should take.

Mrs. MORELLA. Mr. Broadnax.

Mr. BROADNAX. No one could disagree with my colleague in terms of his comments. I think the important thing here is being able to look at your work force, determine who are those who are the best performers, and then be able to reward people accordingly. Obviously, the objective is to link that performance to the organization mission, which is really the trick here.

I think a pass-fail would stop a lot of, if you will permit me, said games that are played in the performance management process and get managers to focus on what the real issues are and, where people are in need of training or retraining or educational opportunities to bring them up to snuff, that maybe they would get to those conversations more quickly if they didn't have all these little cat-

egories and boxes that you could fill that often help to skirt the issue.

So, as much as pass-fail would move us toward focusing on what the real issue is, which is high performance and improving performance where necessary, maybe it's a strong step in the right direction.

Mrs. MORELLA. Could I try one more, then?

Mr. MICA. One more.

Mrs. MORELLA. This, I guess, would be the final one to Director King. Do you have human relations experts or specialists ready to play the consultative role that would be needed to integrate HRM with the strategic planning process?

Mr. KING. Yes. What we've done—would this be within the context of say, GPRA? Is that what we're in?

Mrs. MORELLA. Yes.

Mr. KING. Yes. I think we had the first training session in Government when the GPRA bill went into effect, when they first announced GPRA and did this in a forward-looking way.

We also pulled together our counterparts throughout Government. We've done the first training sessions cross-Government already, and we're moving in that direction already, so that yes, as an organization, we've moved forward. We've alerted our counterparts in every part of the Government.

They understand the seriousness of it, and we're on track in that area, including our chief financial officer, who is extremely sensitive to the implications of that. He's moving in that direction, and in other areas, in our resource planning—and that includes, obviously, our human resources—we are preparing everyone, bottom up, for what's coming, and we're doing that through partnership, which has been an effective way to communicate.

By the way, I should mention just as an aside, in our organization, partnership cuts across the line. It's not just a labor-management in the formal sense. It is, as we call it, the high-wire act that's done in a partnership, that cuts across. It's an employee—whether you're in a bargaining unit or not makes no difference—and it's a management group.

And then there's always the net of the formal bargaining with our bargaining unit. Now, our bargaining unit is part of the partnership, but it is not the total partnership, by any stretch of anyone's imagination. That's in our agency, and that varies from place to place.

Mrs. MORELLA. Thank you. Thank you, Director King. Thank you, gentlemen. Thank you, Mr. Chairman.

Mr. MICA. Thank you, members of the panel, our first panel this morning. As you can see, we have additional questions. I have some that I would like to submit to you in writing. Mr. Moran and the minority may have some. We will leave the record open and also ask you to respond. As you know, this is just the beginning, and we're just scratching the surface.

We wanted to get your comments on the record today, and I expect this will be a rather lengthy process, but we hope to move it along, and I appreciate your contribution today and look forward to working with you. Thank you.

Mr. BROADNAX. Thank you.

Mr. DOWNEY. Thank you, Mr. Chairman.

Mr. KOSKINEN. Thank you.

Mr. KING. Thank you, Mr. Chairman, and to stay with your agricultural mode, John Deere would be proud of you for scratching the surface, sir.

Mr. MICA. I didn't get into your high-wire act and your net.

Mr. KOSKINEN. No, you didn't want to know what he was falling into.

Mr. MICA. If we had more time, Jim, we could work on that.

Mr. DOWNEY. Thank you, Mr. Chairman.

Mr. MICA. I would like to call our second panel. We have Nye Stevens, Director of the Federal Management and Workforce Issues of the General Accounting Office. We have Mr. Don Devine, who is the former Director of the Office of Personnel Management, and Constance Horner, also former Director of the Office of Personnel Management.

So if you would come and join us. I see Mr. Devine making his way from the back. Mr. Stevens. If you all just remain standing. If you would raise your right hand and be sworn in, please.

[Witnesses sworn.]

Mr. MICA. Let the record reflect that the witnesses answered in the affirmative.

We have several of our witnesses back today. We heard from the current OPM Director, and we have the experience and expertise of two former OPM Directors to hear from now, and also Mr. Nye Stevens, Director of the Federal Management and Workforce Issues of the General Accounting Office.

We're going to start with Mr. Stevens. Again, if you would like to submit a complete statement for the record and summarize, we would appreciate it. You're recognized.

STATEMENTS OF L. NYE STEVENS, DIRECTOR, FEDERAL MANAGEMENT AND WORKFORCE ISSUES, GENERAL ACCOUNTING OFFICE; DONALD J. DEVINE, FORMER DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT; CONSTANCE HORNER, FORMER DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Mr. STEVENS. Yes, I'll certainly be very brief, Mr. Chairman, and boil it down to three central points that we would like to make.

First, ever since the creation of the competitive service in 1883, Congress has periodically updated its provisions in response to changing conditions. Despite the Civil Service Reform Act of 1978 and some of the other measures that have been taken since then, the civil service as a whole is still viewed by many as burdensome to managers, unappealing to ambitious recruits, hide-bound and outdated and over-regulated and inflexible.

The National Performance Review seemed in its rhetoric to recognize the need for a more flexible civil service system, but as the earlier dialog pointed out, the specific proposals have not been formulated, and those that have been floated have not really gained much enthusiasm on the Hill. This hearing, to us, is a welcome signal that Congress recognizes the need for change.

The second point is that it's clear that today's leading private sector employers, as well as some Government entities, both within our States and abroad in the international context, are creating

personnel systems that diverge sharply from the Federal Government's traditional approach, and if changes occur in the Federal personnel arena of the scope and depth that are already being experienced in the private sector, tomorrow's civil service will look very different from today's.

We explored these experiences in a 2-day symposium in GAO in April that we held at the request of Senator Roth, who was then chairman of the Senate Governmental Affairs Committee, and while the results of that are not quite yet published, they're being reviewed by the participants, including my colleague, Mrs. Horner, here.

We believe that will present for congressional consideration a new model of human resources management that is more decentralized, that is more focused directly on mission accomplishment and sets out more to establish guiding principles rather than to prescribe detailed rules and procedures.

The new private sector approach has emerged in response to many of the same societal and economic and technological pressures that the civil service also is encountering. The emphasis on innovation, flexibility, and decentralization stems from the recognition that organizations must adapt continually to change. Part of this involves acknowledging that employers cannot, and perhaps they should not, guarantee job security for the employees throughout the totality of their working lives.

Regardless of the success of these new approaches in the private sector, whether they can or should be adapted to the Federal civil service will depend on what sort of civil service this Government wants, and this ultimately involves the fundamental policy calls that you in the Congress need to make.

For example, we believe that a consensus exists that the current administrative redress system for Federal employees is weighted toward protecting employees and their presumptive right to their jobs, rather than providing either a streamlined, inexpensive system for handling employee complaints or providing managers with flexibility to use discretion in directing the work force toward achieving results, rather than adhering to minutely detailed procedures. Ultimately, Congress is going to need to decide where it wants the balance between these competing objectives to fall.

My third and final point is that if Congress does adopt a model like this and creates a more fully decentralized civil service system under which Federal employees do have more flexibility to manage their employees, it will still need to establish effective oversight and accountability mechanisms to ensure that the agencies adhere both to merit system principles that we've discussed today and to meet the goals that are established for agencies and their work forces.

If Congress decides to further decentralize the civil service—and I would point out that 45 percent of people who are Federal employees are under alternative merit systems already today—we believe that the need for guidance and oversight is going to grow, rather than diminish.

Even as you eliminate prescriptive rules for agencies, you're going to need to set measurable expectations by which to evaluate their adherence to established principles, to goals, and to outcomes.

Our view is that whatever Congress decides, oversight strategies for a more decentralized civil service should be developed before further decentralization is allowed to take place.

I would be glad to respond to questions after my colleagues' testimony.

[The prepared statement of Mr. Stevens follows:]

United States General Accounting Office

GAO

Testimony

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Committee on Government Reform and
Oversight
House of Representatives

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CIVIL SERVICE REFORM: Changing Times Demand New Approaches

Statement of
L. Nye Stevens, Director
Federal Management and Workforce Issues
General Government Division

GAO/T-GGD-96-31

Civil Service Reform: Changing Times Demand New Approaches

Summary Statement by
L. Nye Stevens, Director
Federal Management and Workforce Issues

Despite both the Civil Service Reform Act of 1978 and the other measures taken since then, the civil service system as a whole is still viewed by many as burdensome to managers, unappealing to ambitious recruits, hidebound and outdated, overregulated, and inflexible. To be effective in an environment of rapidly changing public expectations, the civil service will need to keep evolving. In this regard, GAO makes three points:

- First, ever since the creation of the competitive service in 1883, Congress has periodically updated its provisions in response to changing conditions. The goal of reform today should be to fashion a system that not only fulfills today's needs but is also flexible enough to quickly respond to further demands as they unfold.

- Second, it is clear that today's leading private-sector employers–as well as some government entities both here and abroad–are creating personnel systems that diverge sharply from the federal government's traditional approach. The new model is more decentralized, focused more directly on mission accomplishment, and set up more to establish guiding principles than to prescribe detailed rules and procedures.

- Third, should Congress adopt this model and create a more fully decentralized civil service system under which federal agencies have more flexibility to manage their own employees, it will still need to establish effective oversight and accountability mechanisms to ensure that the agencies adhere to civil service principles and meet established goals.

The new private-sector approach has emerged in response to many of the same societal, economic, and technological pressures the civil service is now encountering. The emphasis on innovation, flexibility, and decentralization stems from the recognition that organizations must adapt continually to change. Part of this involves acknowledging that employers cannot–perhaps even should not–guarantee job security to their employees.

Regardless of the success of these new approaches in the private sector, whether they can or should be adapted to the federal civil service will depend on what sort of civil service this government wants. Ultimately, this involves fundamental policy calls that are Congress' to make.

If Congress decides to further decentralize the civil service–already, some 45 percent of federal workers are employed under alternative merit systems–the need for guidance and oversight will grow. Even as Congress eliminates prescriptive rules for the agencies, it will need to set measurable expectations by which to evaluate their adherence to established principles and goals. It will also need to establish effective oversight and accountability mechanisms to ensure that agencies are accomplishing the desired results.

CIVIL SERVICE REFORM: Changing Times Demand New Approaches

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss some of the issues surrounding the future of the federal civil service. Calls for a smaller yet higher performing workforce are prompting a major reexamination of civil service principles and practices. How far this effort will go toward producing fundamental changes in the system cannot be predicted, but if changes occur in the federal personnel arena of the scope and depth already experienced in the private sector, then tomorrow's civil service will look considerably different from today's. The civil service is no stranger to change; it has been evolving since it was created. To remain effective in an environment of rapidly changing public expectations, it will need to keep evolving into the future.

I would like to make three points:

- First, the civil service is a work in progress. Ever since the creation of the competitive service in 1883, Congress has periodically updated its provisions in response to changing conditions. The goal of reform today should be to fashion a system that not only fulfills today's needs but is also flexible enough to quickly respond to further demands as they unfold.

- Second, it is clear that today's leading private-sector employers–as well as some government entities both here and abroad–are creating personnel systems that diverge sharply from the federal government's traditional approach. The new model is more decentralized, focused more directly on mission accomplishment, and set up more to establish guiding principles than to prescribe detailed rules and procedures. Whether this new model can or should be adapted to the civil service is a question for Congress to decide.

- Third, should Congress adopt this model and create a more fully decentralized civil service system under which federal agencies have more flexibility to manage their own employees, it will still need to establish effective oversight and accountability mechanisms to ensure that the agencies adhere to civil service principles and meet established goals.

THE CIVIL SERVICE IS A WORK IN PROGRESS

The Civil Service Act of 1883, which established the competitive federal service, was passed to replace a corrupt and outmoded spoils system, under which political patronage determined who worked for the federal government, for how much, and for how long. Over the years, Congress returned to civil service issues again and again, establishing, for example, the first civil service retirement plan in 1920, uniform job classifications in 1923, and standardized efficiency ratings (the precursors to performance management) in 1949.

In the 1950s, Congress instituted life insurance and health benefits programs. In 1978, it passed the Civil Service Reform Act (CSRA)–one more step in its continuing effort to create a professional, well-managed federal workforce in keeping with modern employment practices. CSRA was not intended to completely overhaul the civil service but rather to refine or modernize the system in several key areas, such as leadership (through creation of the Senior Executive Service (SES)), staffing, performance management (including Merit Pay) and dealing with poor performers, administrative redress for federal employees, labor-management relations, and demonstration projects.

The CSRA was passed 17 years ago. Since then, as the pace of social, economic, and technological change has increased, Congress has responded with further refinements to the civil service. Congress created a new retirement system (the Federal Employees Retirement System (FERS)) in 1986; passed the Federal Employees Pay Comparability Act in 1990, putting into law the principle of locality pay; made changes to the Hatch Act in 1993; passed the Workforce Restructuring Act in 1994, which, while downsizing the federal workforce, provided broader training flexibility to make federal workers more employable; and passed the Family Friendly Leave Act in 1994. The civil service now allows telecommuting, alternative work schedules, and flexitime, and it provides assistance with dependent care problems. Recently, the Office of Personnel Management (OPM) has loosened the rules governing the design of agencies' performance management systems and made it easier for agencies to design their own systems to deal with employee grievances.

The point here is that the civil service has never stood still. Nor would it be typical of Congress, based on what we have seen in the past, if it were to stand pat on civil service issues today while the world of work outside the government continues to change at an ever faster pace. We can expect Congress, for instance, to revisit many of the issues addressed by CSRA. While that legislation is widely recognized as a landmark in civil service reform, its accomplishments were uneven: Merit Pay (and its successor, the Performance Management and Recognition System) were failures; the SES succeeded in some aspects but fell short in others, such as the mobility of SES members; the redress system provides extensive protections for employees but is complex, time-consuming, and expensive; the poor performers issue remains a frustration. And despite both CSRA and the other laws passed and regulatory changes made since 1978, the civil service system as a whole is still viewed by many as burdensome to managers, unappealing to ambitious recruits, hidebound and outdated, overregulated, and inflexible.

This perception was the main impetus for the National Performance Review's (NPR) recommendations for change in federal human resource management systems. A recurring theme in many of the NPR's recommendations is that central control and regulation are unnecessarily hindering agencies' abilities to manage their employees, and that greater autonomy in such matters as determining the number of employees needed, recruiting and hiring, position classification, and performance management would allow agencies to establish policies better tailored to their own circumstances. OPM has acted on some of NPR's 14 recommendations–by discontinuing, for example, its central

registers for entry-level professional and administrative positions–but others await further study and/or executive or legislative action.

The NPR, of course, is not the only voice calling for changes in the civil service system. Throughout the government–in the agencies, at OPM, here on the Hill–practitioners and policy makers have pointed to problems in need of attention. The National Academy of Public Administration has been active in this area as well. There is general recognition that in one way or another, the civil service must be made more flexible in response to a changing environment.

A NEW APPROACH TO MANAGING PEOPLE

If changes in social, economic, and technological conditions have put pressures on the civil service, these same pressures are by now quite familiar to private-sector organizations, which in recent years have had to deal with such issues as a more diverse workforce, heightened global competition, and steadying or declining resources. Many of these organizations have looked hard at their human resource management (HRM) approaches, found them outmoded, and turned to new ways of operating.

In our contacts with experts from private-sector organizations and from other governments both here and abroad and with labor representatives, academicians, and experienced federal officials, we have identified several newly emerging principles for

managing people in high-performing organizations–principles you may find relevant as you consider the future of the civil service. These principles came to the fore at a symposium we held in April of this year at the request of Senator William V. Roth, then Chairman of the Senate Governmental Affairs Committee. The 32 symposium participants, some of them representing large private-sector employers such as Xerox, Federal Express, and AT&T, told us that changing conditions made new thinking necessary, and the organizations that can best adapt to change–now and in the future–are the ones that will succeed. We will be issuing a full report on the symposium in the near future.

Among the principles we distilled from the discussions are these: First, in today's high-performing organizations, people are valued as assets rather than as costs. They are recognized as crucial to organizational success–as partners rather than as mere hired help–and organizations that recognize them as partners invest in their professional development and empower them to contribute ideas and make decisions. Second, organizational mission, vision, and culture are emphasized over rules and regulations. A strong organizational culture with high standards for both performance and personal behavior can make detailed, prescriptive rules unnecessary. Third, managers are given the authority to manage their people flexibly and creatively so they can focus on achieving results rather than on doing things "by the book." They are held accountable for outcomes–for furthering the mission and vision of the organization–rather than for adhering to a set of minutely defined procedures.

This approach is built on allowing managers and employees the flexibility to innovate and make independent decisions–acting, all the while, within a strong framework of expectations provided by the organization's mission, vision, and culture. At the organizational level, this approach involves adopting a particular organizational structure because it supports the organization's mission, rather than because it conforms with structures that have been adopted elsewhere. Under this approach, "personnel" is no longer a function that is uniform from one organization to the next and no longer an isolated function within any organization. Instead, HRM activities are integrated into the business of the organization. By decentralizing and deregulating authority for HRM–for example, by delegating a considerable share of this authority to line managers–the practice of managing people effectively becomes the concern of the whole organization.

This approach is a far cry from the civil service system's traditional emphasis on laying out both guiding principles and detailed rules of implementation. The new approach retains the former and drops–or at least deemphasizes–the latter. Leading figures in organizations that have taken this new path have told us they did so in response to a rapidly changing environment and in expectation that rapid change will continue into the future. They said they need the flexibility to innovate and respond to changing internal and external expectations while still pursuing a clear mission, articulating a defining vision, and building a strong and supportive organizational culture.

The question arises: Can or should this new approach--based largely on private-sector experience but thus far applied to a limited extent in the public sector as well--now be adapted to the federal civil service? It is a complex question, involving, to some extent, the question of whether the government wants to treat its employees much as private-sector organizations do theirs.

For example, the private sector has begun moving away from the idea that employers can--or even should--guarantee job security. Instead of "lifetime employment," the private-sector practitioners at our symposium emphasized "lifetime employability"--that is, preparing their employees for a fluid work life in which they must be prepared for periodic downsizings and shifts in the job market. This expectation that employees will come and go contrasts with the traditional expectations surrounding the federal employment system, which, after all, has been based on the concept of a "career" civil service. The government's traditional emphasis has been on retaining its employees for the duration of their careers, not on preparing them for moving from job to job.

Yet signs have emerged that this is changing. FERS created a portable retirement system, in contrast with the older, career-based CSRS; the Workforce Restructuring Act mandated large cuts in a workforce that had thought itself largely immune to layoffs; and as efforts are made to make the government more economically efficient, new attention is being paid to using temporary, part-time, or intermittent workers; contractors; and former

employees in new enterprises to do work that might previously have been done by full-time, career federal employees.

My point is that the question of adapting private-sector HRM approaches to the civil service will depend, in large measure, on what sort of civil service this government wants. The answer could have a profound impact on the nature of federal employment and on the government's ability to retain, and eventually attract, the best employees. Ultimately, it involves fundamental policy calls that are Congress' to make.

For example, a consensus exists that the current administrative redress system for federal employees is weighted toward protecting employees rather than toward providing a streamlined, inexpensive system for handling employee complaints. Judging by the number of proposals to revamp the system, there is broad agreement that the balance between resolving employee complaints swiftly and providing employees with the maximum due process needs to be shifted. In exploring the possibility of redesigning this system, Congress will need to decide where it wants the balance between these competing objectives to fall.

In the classification area, many organizations are moving toward broad banding systems. These systems provide management with increased flexibility to use employees to meet critical organizational needs without being constrained by narrowly defined classification requirements. This can also result in flatter, more responsive organizations. However,

broad banding can result in increased costs, as employees move to the top of their bands more rapidly than in traditional classification systems. The impact of this cost needs to be weighed against the increased flexibility provided by these systems.

ESTABLISHING EFFECTIVE OVERSIGHT AND ACCOUNTABILITY

If Congress decides to adopt a more fully decentralized civil service system–one under which federal agencies have the flexibility to tailor their personnel systems to their own missions and circumstances–the need for congressional guidance and oversight will grow in importance.

Congress will need to decide upon principles and goals for the civil service–as today's civil service incorporates merit system, equity, equal opportunity, and other national objectives. Even as Congress eliminates prescriptive rules for the agencies, it will need to set measurable expectations by which to evaluate their adherence to these systemwide principles and goals. And finally, it will need to establish effective oversight and accountability mechanisms to ensure that agencies are accomplishing the desired results.

In the matter of oversight and accountability, Congress should keep in mind that the current civil service is already highly decentralized and that current oversight is by no means uniform. What is commonly thought of as the "civil service"–the federal civilian workforce subject to all the provisions of Title 5–comprises only about 55 percent of all

federal civil servants. Technically, this segment is known as the "competitive service," operating under the federal merit system. The other 45 percent of federal workers are employed in agencies or other federal entities–such as government corporations (like TVA) and quasi-governmental organizations (like the U.S. Postal Service)–that operate outside Title 5 or are statutorily exempted from parts of it. These workers, while all members of the civil service, are in the "excepted service" and are covered by a variety of alternative merit systems. One of Congress' reasons for establishing alternative merit systems for some federal organizations was to exempt them from the strict rules governing the competitive service under Title 5. Congress may want to consider examining these alternative merit systems for ideas about how the competitive service could be made more flexible.

Today, responsibility for the oversight of the decentralized civil service is split between OPM and Congress. OPM has oversight authority for the competitive service, while oversight of the excepted service rests directly with Congress. If Congress chooses further decentralization, it will need to address its own role and that of OPM (or any central personnel agency) in ensuring that the principles and goals of the civil service are upheld throughout the federal government. One path may be through annual oversight hearings specifically addressing the full range of HRM-related issues within each agency or organization.

Our view is that whatever Congress decides, oversight strategies for a more decentralized civil service should be developed before further decentralization is allowed to take place. Not only will effective oversight help ensure that agencies are adhering to civil service principles and meeting established goals but under the best circumstances it will also allow for information sharing, so that successful practices developed in one part of the government can be brought to the attention of others.

In closing, Mr. Chairman, we feel that to reexamine the civil service in a changing environment is both grounded in precedent and a fundamental congressional responsibility. In fact, ensuring that American taxpayers get the best government for their money requires it.

This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions you or other Members of the Subcommittee may have.

Mr. MICA. Thank you, Mr. Stevens. We'll get back for questions in a minute. We're going to recognize Mr. Devine next.

Mr. DEVINE. Thank you. I have a report I prepared for the Heritage Foundation that is my formal testimony. I would like permission to have that admitted.

Mr. MICA. Without objection, That will be part of the record. Thank you.

Mr. DEVINE. Thank you, sir. I'll just be very brief. It's interesting listening to the discussion today.

Mr. MICA. Would you pull the mike up? We don't want to miss a morsel of this.

Mr. DEVINE. It's interesting how little the issues change. I remember when my predecessor, who was also my professor at graduate school, Alan Campbell, reformed this civil service in a way that seemed to me, then outside, to be a dramatic new reform of the Federal Government based upon a model that made sense.

I was very enthusiastic about it and never had any idea that I would end up implementing most of it; since he set it up, but didn't have the time to carry it out. I think it was a good experiment. I think it worked well in the beginning; but it's terribly difficult to sustain the kind of model that was set up by the Civil Service Reform Act. I think some of the comments made in the previous panel are very valid.

The old hierarchical system—which, I'll disagree with one of the panelists there—was not created by the private sector, but, as Max Weber said, it was created by Government and was adopted by the private sector. Today the hierarchical model is truly outmoded.

To choose between the Civil Service Reform Act system and some of the things that the administration is talking about—like pass-fail and weakening management rights, giving significantly more powers to labor-management committees, limiting the flexibility of temporary employment—if I have to choose between the two, I would clearly choose the route of the Civil Service Reform Act.

But I do think it's time to move on to a new model in the Federal Government and one that is more appropriate to modern times. But, again, I would like to respectfully disagree with one of the previous speakers, who used Japan as the new model.

I would suggest that we take a close look at Japan and see Japan is in a very, very serious economic and management situation. The people I've talked to there seriously don't think they're going to be out of it for a decade; and it's because they also have this single hierarchical model, in fact, much more so than the United States.

The model that's succeeding, both in the United States and around the world, is a model of contracting out, of using other companies, especially small companies, to perform major functions. All of the major large businesses in the United States, sure, they're making changes within their own management structure, but the main thing they're doing is contracting work out to small business outside of their own employment.

I'm not talking about Government. This is the private sector. Ford, General Motors, General Electric, you name it, they are contracting out to others, and the reason is because those people can concentrate on a single part and master that particular product or process.

I believe that the Federal Government needs to adopt a new model instead of the triangle-hierarchic model, one I call a core, spoke, and rim model. The core should be a highly paid, highly skilled, upper status, upper-graded group of core Federal managers whose job is basically to manage contracts on the outside. With that kind of Federal employment, then you can have tremendous flexibility.

Again, a lot of the decentralization the administration is suggesting, I would oppose vigorously under the present model. But if we had a model of a small, highly skilled group that was evaluated on strong performance goals with high bonuses for getting jobs done right, that kind of system we could decentralize dramatically, and I would recommend that. So the core should be this relatively small, skilled group whose main job is to supervise contracts.

The rim is the contractors. It should be, and in fact is today, most of our Federal employees or people who do work for the Federal Government are contractors or State Government employees, about 6 to 1, probably, although we don't have any accurate figures on this. Most of the work is done outside.

Then, in the middle, the spoke is temporary employees, so that when the work must be done in the Government, it can expand to meet the problem, but with temporary employees, make it easy to downsize again when the need goes away.

One of the elements of the administration's last series of reforms I object to most, people think I'm crazy, because it's such a minor thing, is making temporary employees basically permanent employees of the Government.

It seems to me that's precisely the wrong direction to go in, that we need to have more flexibility for temporary employees in the Government with less benefits and easier to separate and to worry less about getting rid of bad performers, because a temporary, it's a lot easier to do that than it is with this core, which probably, under the circumstances, the Government does need special protections, because of the strange nature of this system.

So I would argue that the thing Congress needs to do most, as we go through this significant downsizing, is for Congress to set the priorities for what the Federal Government is going to do. I think that's the most exciting thing going on anywhere in the world. As Congress is deciding what functions are for the Federal Government and the States and the private sector, as they go through that process, they also need to look at the management side. They need to move toward this model, which I think is the future of the private sector and the only possible way that the Federal sector and Government can hold its head up and say: "Yes, we're doing a great job. We're Federal employees. We're proud of it for a change," instead of having to apologize. Under a proper model, I think Federal employees will be able to say that.

Thank you, Mr. Chairman. I would be pleased to answer any questions later.

[The prepared statement of Mr. Devine follows:]

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MAKING GOVERNMENT WORK: HOW CONGRESS CAN REALLY REINVENT GOVERNMENT

INTRODUCTION

The Clinton Administration is making federal management worse. Congress can, and should, do a better job, making employee performance and management accountability the key features of the federal civil service.

When the Administration made "reinventing government" the slogan for its efforts to overhaul the federal civil service, its principal goal was "to make the entire federal government both less expensive and more efficient, and to change the culture of our national bureaucracy away from complacency and entitlement toward initiative and empowerment."[1] But the details of the Clinton personnel reform policies and proposals show that this reinvention will weaken management, lead to greater inefficiencies, dilute individual performance initiative, reinforce the culture of complacency, and make government less accountable to federal taxpayers.[2]

Specifically, a close examination shows that the proposed reforms would:

1 For an early assessment of the Clinton effort at government reinvention, see Donald J. Devine, "How To Cut the Federal Bureaucracy," *Memo to President-Elect Clinton* No. 2, December 14, 1992. See also Adam D. Thierer, "The National Performance Review: Falling Short of Real Government Reform," Heritage Foundation *Backgrounder* No. 962, October 7, 1993, and Donald J. Devine, "Why President Clinton's Reinvention of Government Is Not Working," Heritage Foundation *Backgrounder* No. 970, December 28, 1993.

2 The corpus of the Clinton Administration's civil service proposals can be found in three documents developed by the United States Office of Personnel Management (OPM): "Human Resource Management Reinvention Act of 1995" (proposed legislation), May 24, 1995; "Draft Specifications for HRM Reform Legislation," January 20, 1995; and "Report of the Federal Labor Law Reform Working Group," January 8, 1994.

Note: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

- ✘ Weaken policies on hiring, promoting, and rewarding federal employees based on individual merit and performance.
- ✘ Eliminate presidential standards for job performance, reducing the President's authority to direct agencies and weakening effective control over the executive branch.
- ✘ Enhance federal agency and union control over setting salary levels, leading inevitably to abuse.
- ✘ Weaken long-standing "veterans' preference" standards for men and women who have served America in the armed services.
- ✘ Create a new role for federal unions that would undermine management authority for defining and assigning work and lead to a more irresponsible federal bureaucracy.

Rather than adopt these regressive proposals, Congress should take the initiative and really reinvent government using principles of sound management. That means Congress must begin by defining the core responsibilities of the federal government and then act to strengthen management systems at the federal level for the remaining functions. As management authority Peter Drucker observed in a February 1995 *Atlantic Monthly* article, the most important part of "really" reinventing government is to define its proper functions. Specifically, Congress should:

- ✔ **Devolve power to the states.** Congress should decide which of the federal government's existing functions should be retained and devolve the rest to state governments or the private sector. If new Members are serious about revitalizing the Tenth Amendment to the Constitution, which explicitly reserves all non-delegated powers "to the States respectively, or to the people," they can do nothing less.
- ✔ **Define agency missions.** For each function retained for direct supervision by the federal government, Congress must specify a mission that is simple enough to be performed in a rational manner with the resources available.
- ✔ **Privatize government functions.** For these remaining functions, the existing Office of Management and Budget (OMB) A-76 contracting system should be revised so that agencies can provide plans to compete against private bids for relevant agency work under a new competition procedure.
- ✔ **Protect the merit system.** The Office of Personnel Management (OPM) should prepare an A-76 competition plan for its own operations, privatizing but also ensuring its ability to provide leadership and protect the merit system, and then submit its proposals to Congress for review. In the meantime, Congress should repeal the Ramspeck Act, which allows congressional staff to circumvent the competitive hiring process and burrow into the civil service.
- ✔ **Establish responsibility.** OPM should create a model "core-spoke-rim" organization to provide guidance in agency implementation, including effective contract supervision and management leadership, and should report to the President regarding agency progress toward this goal. Moreover, Congress should refrain from cutting the number of presidential appointees in the federal government, thus undermining the President's authority to appoint his own people to carry out his agenda. Political

appointees, not career civil servants, should be held accountable for Administration policy.

- ✔ **Clarify rules.** OPM should be ordered immediately to produce management guidance for an attrition-first government personnel reduction policy, including a possible personnel freeze and procedures to protect the pension system from any abuse of early retirements and buyouts.
- ✔ **Re-establish merit selection.** OPM should be ordered to revise the Uniform Guidelines for Employee Selection Procedure to comply with the law on equal opportunity and merit selection. It also should be required to submit these revised guidelines to the court and to revise all examinations to ensure compliance.
- ✔ **Make hiring rational.** OPM should maintain central and open administration of common-function occupations for efficient hiring, in addition to overseeing classification and performance management while continuing the general Carter-Reagan policy of decentralized management and centralized oversight.
- ✔ **Re-establish pay for performance.** Congress should reinstitute a management-directed pay-for-performance system—this time for all federal employees and focused on contract management—that preserves the Carter-Reagan system of responsible political and career executive direction and control, as well as appropriate employee consultation.
- ✔ **Rationalize federal benefits.** OPM should be ordered to prepare a series of options for reform of the government's compensation structure, including making pension and other benefits more portable and competitive.
- ✔ **End duplication.** OPM should be ordered to prepare a plan to eliminate the duplicate grievance system (insofar as possible), replace it with a single merit system, abolish appropriate supporting institutions, and reassign any affected personnel. It should prepare a plan to simplify the appeals process by consolidating the cases, functions, and staff of the Merit Systems Protection Board, the Federal Labor Relations Authority, and the federal government oversight responsibilities of the Equal Employment Opportunity Commission.
- ✔ **Stop Clinton's devaluation of management responsibility.** Congress immediately should overrule President Clinton's Executive Order 12871 devolving essential management responsibilities to labor-management committees. This might be accomplished most simply through an appropriations rider.
- ✔ **Consolidate the management of federal resources.** OPM should be ordered to prepare a plan to consolidate the Office of Management and Budget (OMB), OPM, and the General Services Administration into a new Office of Management, and to submit this plan to Congress.

MAKING GOVERNMENT ACCOUNTABLE TO FEDERAL UNIONS

The Clinton Administration began its "reinventing government" campaign by announcing that it had cut thousands of pages of red tape by dismantling the *Federal Personnel Manual* (FPM). The FPM was a repository of laws, rules, and management guidance for the federal workforce, put in one place for easy reference at low cost. Now even Congress can-

not obtain a complete copy of all personnel regulations and guidance. Personnel officers confide that they have hidden their old copies for personal, presumably secret reference. But what happens when this generation of management experts is gone? Despite all the media hype, this most publicized Clinton "reform" is merely a revealing example of counterproductive news-release management.

"Reform" is no guarantee of improvement. Reorganization can, and often does, make an organization weaker and less efficient. A Cabinet agency can be eliminated simply by shifting its functions to another department, but the result also can be even more ruinous, confusing, and costly regulation. Similarly, downsizing can save or cost the taxpayer money, depending on how much is contracted out and how many personnel are separated—and on what terms. And while devolving functions to local governments usually is more efficient, decentralization cannot be depended upon to have this effect if it merely buries decision-making deeper within a single large bureaucracy without any other rationale.

For President Clinton, "reinventing government" presented a serious political problem from the outset. The Administration wished to make government more efficient and reduce personnel, but it had relied on the federal employee unions to get elected and could not afford to alienate them.[3] It was clear that these unions could not support, or even ignore, a proposal to cut 252,000 personnel slots unless they received something very valuable in return.

Contrary to the Administration's own staff recommendations, which were overruled personally by Vice President Al Gore, the White House decided to give the unions equal power with management in "labor-management councils" that would make the major management decisions in agencies of the federal government. In addition, it was proposed originally that the unions be given an involuntary dues checkoff from federal employees—without even a requirement for representation elections. While the White House was forced to retreat from the second proposal, the first was codified in Executive Order 12871, issued in 1993, making the unions "full partners" with management in the assignment and classification of work and creating labor-management committees to enforce this throughout the government. A presidential "partnership council" of union and Administration officials was created to make further recommendations, including the proposal for involuntary dues collection and union representation by card submission rather than by secret ballot.

Following the 1994 election, the White House resurrected the council's recommendations as part of a "New Democrat" initiative to reform the bureaucracy. A leaked draft proposed removing "dead wood" personnel and giving agencies more "flexibility" over job classification, pay, hiring, and performance management decisions to increase efficiency. No doubt in recognition of the new Republican majorities in Congress, the involuntary union dues and card-submission plans were shelved and the more appealing proposals highlighted.

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3 For example, the Clinton Administration supported the repeal of key provisions of the Hatch Act, which prohibited civil servants from getting actively involved in partisan politics. See Robert E. Moffit, "Gutting the Hatch Act: Congress's Plan to Re-Politicize the Civil Service," Heritage Foundation *Issue Bulletin* No. 180, July 6, 1993.

CLINTON'S PLAN TO REINVENT GOVERNMENT

In January 1995, the Clinton Administration released "draft specifications" for proposed legislation to implement the National Performance Review (NPR). The draft generally followed the National Partnership Council's recommendations to reinvent the "Federal Government's human resource management (HRM) systems and processes." Final recommendations issued in May were diluted further in an effort to prevent dismissal of their core elements by a Congress now controlled by the other political party.

The Administration's recommendations certainly would "reinvent" government as taxpayers have known it. But would they make government be more or less efficient and accountable than it is now? The following discussion analyzes the executive order (the only part actually implemented) and both the draft and final recommendations, the latter because they are now before Congress and the former because they presumably still represent what President Clinton would submit to a Democratic Congress in the event one is elected in 1996 and he is still in the White House.

Undermining the Hiring System

The law on hiring in government is precise: "selection and advancement should be determined solely on the basis of relative ability, knowledge and skill, after fair and open competition which assures that all receive equal opportunity."

While this rigorous legal standard is often skirted in practice, the Clinton recommendations would legitimize present questionable "examinations" and encourage new ones that improperly use other considerations. Agencies would have the explicit power to appoint individuals non-competitively to any positions designated by the Director of the Office of Personnel Management as "shortage" positions or as requiring "exceptional qualifications."

Government unions long have sought to bargain over so-called crediting plans and to replace legally established knowledge, skills, and ability criteria (KSAs) with seniority or "qualifications" or on-paper educational attainment criteria. Ethnic and gender affirmative action criteria have been used for years to skirt merit selection requirements. Under the Clinton proposals, OPM would set *minimum* standards—which the Clinton draft proposals specifically provided and the final ones imply—that agencies could "augment," allowing these other criteria possibly to dominate the KSAs.

The draft proposals would have allowed agencies "to determine appropriate evaluation methods, announcements, and other processes," and even "when they need to announce jobs," thereby eliminating procedures that allow for open competition. This would effect a long-time goal of the federal union leaders: to give first consideration ("sequential consideration") to members of their own bargaining units rather than allow open competition among all American citizens who apply, as called for under present law.

Most seriously, the final Clinton proposals would provide an alternative ranking process under which candidates for positions could be placed in "quality categories" based on levels of qualifications rather than individual scores. This dilutes relative ability rankings and undermines selection based on individual merit. Veterans also would be placed within these quality groups, with the individual protections to which they are now entitled limited accordingly.

Veterans' preference in hiring and promotion would be diluted further under the recommendation because individuals in other disabled categories, including alcoholism, drug dependence, or mental depression, would be given the same preference as those who have borne the brunt of battle in military service. For lawyers, it would be eliminated entirely. The greatest complaint among veterans organizations is that federal agencies do not follow the OPM regulations on preference closely enough. This situation would be aggravated, not helped, by devolving the examination process further to the agencies and placing individuals in group categories.

A second set of proposals under the hiring section would reclassify temporary appointments as "nonpermanent." Such employees would be placed under union grievance procedures (after one year), would be allowed an advantage in competing with outside applicants (after two years), and would receive fully paid health insurance and retirement coverage (after a year) and within-grade increases (as earned). The practical effect would be to remove many of the flexibilities and lower cost aspects of temporary employment and make it less attractive to hire temporaries.

The stated purpose of hiring reform is to streamline the government's "highly centralized" system. The recommendations are portrayed as decentralizing authority to agencies. But hiring for 85 percent (over 700) of the government's examinations already is decentralized to the agencies, except for so-called common-function appointments. The final recommendations would allow these also to be decentralized even though they are less costly, and can be fairer and more effective in determining merit, when administered by a central authority.

The Clinton hiring initiatives thus would promote the appointment of individuals to positions without the competitive KSA examinations required by law, would weaken individual merit as a principle in civil service appointments by grouping candidates into "quality categories," would erode the existing special appointment status for veterans, and would limit the flexibility of temporary appointments. Some other technical recommendations could be enacted—including one extending the probationary period up to three years—but the proposed reforms hardly would reinvent merit hiring in any positive sense.

Decentralizing Classification Authority

The Clinton reforms would give OPM, federal agencies, and unions substantial control over pay, reducing the authority of Congress over this critical personnel matter. OPM would be directed to establish its own criteria for pay classification, thereby abolishing any statutory definition or control. OPM would set criteria to "broadband" existing grades, but agencies could implement their own systems without prior approval from any central source —except, apparently, a labor union through the labor-management councils established by the executive order. On the positive side, the recommendations would make currently automatic "periodic step" (within-grade) and "additional step" (quality step) increases contingent upon performance, although agencies would base their individual pay decisions on performance appraisals developed by the labor-management councils.

OPM's power to revoke agency classification authority when abused by management would be repealed, as would the requirement that it review the classification of positions, except when such review is requested by the employee. In other words, unless OPM itself desired to undertake a review, it probably would be done only to increase the pay grade of an employee, since no one normally complains about receiving too high a salary. OPM

could still review systems for compliance—but only to direct corrections, not to force them. With OPM relieved of the obligation to assure quality, there would be less supervision of compensation and a vastly increased potential for abuse.

The practical effect of the Clinton classification proposals would be to transfer authority over pay increases (other than across-the-board general pay) from Congress and the President to agencies and their unions. Each agency undoubtedly would create expanded internal reviews and additional control systems, thereby also creating a need for more staff. The President, OPM, Congress, and the taxpayer would be asked to trust the agencies with precisely those decisions it is most in their interest to abuse.

Eroding Performance Management

All presidential or other government-wide standards of job performance would be eliminated under the Administration's plan and replaced with performance standards bargained between agency management and unions. Collective bargaining would be imposed not only for the design of work plans for all employees, but also for setting what work is expected of each individual, determining whether those standards are met, and establishing how the work is to be assigned. Agencies would be required to create award programs to provide incentives for individual or group achievements, with the nature of the awards process also determined by collective bargaining.

The proposed reform most heralded by the Clinton Administration would allow agencies temporarily to reduce the pay of poor performers for a period not to exceed 120 days. The hidden agenda lies in an innocuous-sounding proposal to eliminate "dual track" actions against poor performers, ending performance removals (under Chapter 43) and allowing only disciplinary-action removals (under Chapter 75). This one change would vitiate the performance management reforms of the Civil Service Reform Act of 1978, the whole idea of which was to introduce a fair but management-determined procedure (subject to appeal) to allow removal or denial of pay increases for poor performance without having to resort to more draconian, demanding, and cumbersome procedures (including labor grievances and appeals).

This reform would undermine the ability of the President or his representatives to manage the executive branch. If they cannot set broad rules, they cannot set general management policy. The proposed change would not return to the *status quo ante*. It would impose collective bargaining not only over the standards of work to be performed by employees—which some might accept as reasonable—but also over the performance of the work itself and all disciplinary procedures under it. It would realize in law the promise President Clinton made to the labor leaders in his executive order: that unions would be "full partners" with career managers in managing the federal government. For all practical purposes, the President, his top appointees, and Congress would be relegated to the role of outside observers.

Weakening Management Rights

The number one goal of federal union leaders has been to weaken the strong "management rights" section of President Jimmy Carter's Civil Service Reform Act of 1978. The Clinton proposal would eliminate both the "permissive" right to decide appropriate staffing levels and the corollary right to decide how work is to be performed. The executive order

simply directs management not to exercise this right; the proposed change in law would eliminate it as an option for any future President.

The management rights provision of current law would be replaced with a "good government standard" under which agencies are "obligated to bargain collectively" over how all work is to be performed in the federal government (including much of Congress). The executive order would establish labor-management "partnerships" throughout government, as well as a government-wide National Partnership Council, and would create an agency-level partnership council of management and unions "to develop agency policies and regulations affecting conditions of employment that are binding on agency components and bargaining units subordinate to the council." Under the draft, appeals to any "statutory third party" would be disallowed; decisions of the joint labor-management councils would be final.

Clearly, under the Clinton proposals, labor-management councils would make the major management decisions. Management, even for such essential functions as how many employees are to perform work, how they are to be compensated, and how the work is to be performed, would be by committee. It is difficult to see how this would improve efficiency.

Limiting Presidential, Congressional, and OPM Oversight

The role of the President and his managerial right arm, OPM, under Clinton's proposed reforms is ambiguous. While one of the principal stated proposals is decentralization of management authority from OPM, the agency would retain some type of oversight authority. Indeed, under the alternative personnel systems proposal, OPM alone would have the power to approve even systems radically different from the one contemplated by the proposed new law. It would be obliged only to "notify" Congress of departures from the present proposals, although any change would have to be requested first by a labor-management partnership agreement.

Under the Clinton proposals, OPM could order corrective classification action but no longer could revoke the authority. In other words, an agency could continue classifying while not in compliance. OPM's only enforcement power would be informing the President of violations "involving agency heads and directing corrective action." Thus, while the effective power for personnel decisions would be exercised by labor-management committees, the responsibility would still rest with the political appointee heading the agency, enforced by the President.

The President's OPM Director could try to persuade or dissuade agency heads, but none of them would have the power to overrule the labor-management committees. Nor would OPM, the President, or (under the draft) any other "statutory third party." The only enforcement would be for the Chief Executive to remove his agency head from office.

Unable to order agency compliance, or even to set prior presidential standards for performance, the OPM Director would be ignored—except by an annoyed President, notified when the abuse reached the level of a political crisis involving the resignation of a top official, or by an aroused Congress looking for a scapegoat. Neither Congress nor the President would be able to hold responsible the labor-management committees making the real decisions.

HOW TO ACHIEVE REAL REFORM OF GOVERNMENT MANAGEMENT

A reform supposedly meant to create "high performance government" thus would permit unions and management councils to make the major decisions without having to shoulder any responsibility—and at the expense of those with legal responsibility for performance and oversight. Instead of reinventing government, Clinton's proposal would make things worse by transferring leadership to committees and unions and assuring weak executive leadership. Management expert Peter Drucker argued as early as 1985 that building "entrepreneurial management" into public institutions may be "the foremost political task of this generation." The Administration's proposal ignores this challenge to improve entrepreneurial performance. Instead, it builds more bureaucracy.

Given the strong public support for more efficient and more accountable government, it would be a breach of Congress's oversight responsibility to accept President Clinton's radical plan simply to appease union leaders. The Clinton reform would make the task of managing the bureaucracy even more difficult. Members of Congress therefore must provide an alternative that really reinvents government. To do so, however, they must master the details of bureaucratic administration, especially when "reformers" use terms in ways that confound common understanding. For example, "decentralization" makes perfect sense in the private sector because the profit-and-loss bottom line clearly signals whether devolution has gone too far, endangering profitability or even survival. Devolving functions to state and local governments also makes sense because local voters can sort out the details more easily and fire elected lower-level officials if things go wrong.

But decentralizing personnel management decisions usually just shifts them further away from executive and congressional oversight. Generally, it creates less responsibility, not more. Labor-management councils, quality circles, and group management ideas can be used in government, but only in limited ways and far less than is possible in the private sector. These methods can increase quality, but they have the offsetting cost of delaying decisions. Only the knowledge that profits are threatened forces a decision in the private sector, and that decision is made ultimately by top management, not a committee. In government, with no profit mechanism to limit delays, a culture of inertia becomes the rule.

BACK TO BASICS: THE PRINCIPLES OF REAL GOVERNMENT REFORM

Government is very different from the private sector. In his classic work *Bureaucracy*, the great Austrian economist Ludwig von Mises showed that government management is more difficult precisely because government lacks the price system and bottom line that force action in a market.[4] Prices can simplify complex problems by reducing them to one overriding question: Is the unit making a profit? But government has no such simplifying device. It is therefore essential to understand the different management principles required for government administration.

4 Ludwig von Mises, *Bureaucracy* (New Rochelle, N.Y.: Arlington House, 1969). The work was published originally in 1944.

Principle #1: Keep the mission simple.

In 1971, responding to desperate pleas for assistance following massive loss of life and property in a series of hurricanes in the 1940s, the Army Corps of Engineers had turned 103 miles of meandering, mosquito-infested Florida swamp, the Kissimmee River, into a 56-mile canal system that protected local citizens from floods by utilizing the most modern electronically operated locks available to engineering science.

Eleven years later, in 1992, Senator Bob Graham (D-FL) threatened President George Bush with the loss of Florida's support if he did not agree to re-route the Kissimmee canal back to the original "river" at a cost of almost half a billion dollars. And who was to do this? The same Corps of Engineers, which understandably did not like the idea of destroying its masterwork canal and turning it back into a swamp.

1971 was the era of "can-do government," and the Army Corps of Engineers was the government's best. Only the Marine Corps, Federal Bureau of Investigation, Social Security Administration, and Forest Service were in the same league. All had mastered what James Q. Wilson, professor of management at Harvard University, would identify as the essential ingredient for administrative success in government: a simple, clear mission with an imaginative leadership dedicated to that mission. Government works if it keeps its mission simple and continuously drives that simple message home to a cadre of dedicated employees.

Each of these agencies had an unambiguous sense of mission because its founder made certain that his legacy was ingrained in his troops and communicated to all new recruits. It was, as Wilson stated in his book *Bureaucracy*, "as if they felt the ghosts of Sylvanus Thayer [Corps of Engineers], Arthur Altmeyer [Social Security Administration] and Gifford Pinchot [Forest Service] looking over their shoulders."[5] Like the other two—J. Edgar Hoover (FBI) and Commandant John Russell (Marine Corps)—they made government work.

In the intervening two decades, government missions have become enormously more complex. What made the Corps of Engineers efficient was the ability of its single-minded engineering mission to withstand changes in the political wind for over half a century. What made it great was its pride in creating engineering masterworks. When the poliucal fashion changed from dams, hydroelectric power, canals, and flood protection to environmentalism, it was clear that the mission would have to change. But good government management requires simplicity of mission, and the Corps is cracking under the ambivalence created by trying to absorb environmentalism into its engineering ethos.

The same is happening to the other elite agencies. The Social Security Administration (SSA) was unmatched when it processed claims for elderly Americans; when Congress gave it supervision over disability, its "pay benefits on time and accurately" ethos broke down. Deciding how old one was and whether one had contributed to Social Security were simple matters, but evaluating medical evidence was often subjective and very difficult. Giving checks to some and not to others seemed unfair in the SSA culture.

5 James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1989), p. 110.

Government foresters were fine at managing their domain until economists, engineers, and conservationists were forced into the Forest Service by Congress, bringing with them different definitions of "forest yield" based on their own conceptions of "good" forest management. The result: divisions were created that confused the Forest Service's mission and restricted its performance.

Even the FBI's ethos of clean, professional, and straightforward investigation was transformed as the Bureau was pushed more into drug, mob, and gang investigations, all of which require difficult undercover work and unorthodox methods. The result: the bloodshed at Waco and Ruby Ridge.

The paradox is that liberals in Congress and elsewhere who wish government to do all good things are the ones who destroy its ability to do so. Government can work efficiently only when relatively few things are assigned unambiguously to a few institutions with sufficient *esprit de corps* to do them well. Because the Founders understood this, they created a system in which responsibility was divided between levels and branches of government, and between private and public sectors, so that the work of society could be administered more effectively.

Principle #2: Keep national functions national.

American government has strayed far from its federalist roots. Beginning with President Woodrow Wilson's Fair Deal, and during World War I, an expert federal bureaucracy was created that has continued to expand its powers. A temporary weakness in state government and business finances during the Depression era of the 1930s led to President Franklin D. Roosevelt's New Deal and its dramatic expansion of the national government's position as the preeminent sector of American society. With President Lyndon B. Johnson's Great Society in the 1960s, the national government was spending almost one-quarter of the nation's total wealth and exercising regulatory control over almost every aspect of the economy and society.

Even before the 1994 election, a serious public reaction was developing. Veteran *Washington Post* columnist David Broder noted that "federalism issues are back on the national agenda in a serious way." Governors were bargaining with the President and congressional leaders in a way not seen in years, if ever before. The original federalist idea was to specify, primarily in Article I, Section 8 of the Constitution, the powers of the national government and to leave the rest to the states or to the people. That idea, specified in the Tenth Amendment, largely disappeared from court decisions after the 1930s but now seems to be undergoing a serious revival that extends into actions of the post-1994 Congress and even into recent court decisions.

The discussion on welfare policy reform, for example, has changed dramatically since the 1994 election: Now both political parties are outbidding each other to show their desire to decentralize power. There are serious proposals to transfer many of the major welfare programs, such as Aid to Families with Dependent Children (AFDC), public housing, and even Medicaid, to the states. Members of Congress, and even the President, are re-evaluating which functions should be performed by the national, state, or local governments and which should be performed privately, based on constitutional grants of power and a rational

division of labor.[6]

Functions properly performed by the states should be transferred back to them, together with a corresponding federal income source. Devolution to the states, and through them to local communities and the private sector, promotes efficiency by simplifying the work. Both the traditional constitutional grant and James Q. Wilson's modern administrative logic suggest that national functions be limited so that they can be performed well. In a complex, interdependent world, it is essential to de-construct large bureaucratic structures, in both the public and the private sectors, to keep them from being overwhelmed by red tape.

Principle #3: Get serious about privatization.

Once the new, streamlined national government's functions are set, a budget can be devised and decisions can be made regarding what should be done by government employees and what should be contracted out to the private sector. Governors and mayors across the United States recognize the reduced costs, greater efficiency, and improved management that flow from contracting work out to the private sector and utilizing other forms of privatization. Heritage Foundation analysts have identified hundreds of billions of dollars in federal assets that could be put to more efficient use in the private sector while increasing federal revenues.[7]

Still, unlike chief executives at lower levels of government or national leaders in other countries, no recent U.S. President has given contracting out and other forms of privatization the top-level attention they must have in order to prevail against the predictable resistance of bureaucratic interests. The current U.S. program exists as a neglected backwater within the Office of Management and Budget and receives almost no support.

One reason so little is contracted out in Washington is that the OMB A-76 procedure for comparing government and private costs for the same work is skewed toward having the work done by government. Federal pensions, for example, are badly undervalued and understate the cost of government management. The procedure for comparing costs needs to be reformed if it is to be of any real value in deciding how work should be allocated.

Another reason is that not enough attention has been paid to winning, or at least neutralizing, federal employee support. Giving part of the savings from contracting out to managers and employees who recommend privatized services, to employees who agree to shift with a function to the private sector, and to those who remain to oversee the operation, for example, can reduce employee opposition. The more or less moribund FED CO-OP program—designed to give shares in private firms to federal workers who assist in making the transfer—should receive greater attention. Indeed, the whole work of contracting out and contract management must be reorganized in a new and more rational manner.

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6 For an excellent series of initial recommendations in this area, see Scott A. Hodge, "A Budget Strategy to Reinvent the Federal Government," Heritage Foundation *Backgrounder* No. 1014, January 16, 1995. See also Ronald D. Utt, "Closing Unneeded and Obsolete Independent Government Agencies," Heritage Foundation *Backgrounder* No. 1015, January 25, 1995, and Scott A. Hodge, ed., *Rolling Back Government: A Budget Plan to Rebuild America* (Washington, D.C.: The Heritage Foundation, 1995).

7 See Hodge, *Rolling Back Government*. See also Stuart M. Butler, *Privatizing Federal Spending: A Strategy to Eliminate the Deficit* (New York: Universe Books, 1985).

Principle #4: Get serious about performance management.

The new workforce must be organized properly for a contractor-based system. Actually, contract employees are already predominant: perhaps eight million, compared to the federal government's two million civilian employees. Millions of state government employees also implement federal rules. No one knows the total number or is in a position to manage it properly. Government is still organized as if it were the 1930s.

A new "core-spoke-rim" organizational structure must be created. Core federal employees would be expert, highly compensated executives charged with setting plans and managing the contractors who perform most of the work on the rim of government. In between, spoke (temporary) employees with few benefits and little or no job protection would be used in cycles demanding more work than the government's core employees were able to perform.

This is where the Clinton reforms go most astray. Rather than increase managerial flexibility, they would expand the bureaucracy by layering labor-management committees at multiple levels of administration and create more permanent employees by granting protected status to formerly temporary employment. They unnecessarily divide central responsibilities, further encouraging duplication of work within agencies. They also ignore the negative effect on pension flexibility. Even a larger permanent workforce would be more mobile if pensions were made fully portable, like 401(k) plans in the private sector; no employee would have to be tied for 30 years to a job that has become obsolete and that he or she has come to hate.

One of the principal advantages of contract management is that it rewards performance. Rather than leave pay classification and pay-for-performance to the mercies of labor-management committees, OPM should be instructed to transmit to Congress a compensation system that rewards both savings and mission accomplishment that is on time and as specified. Classification should be broad-banded, but only under congressional rules and tight OPM supervision to reduce the normal temptation of agencies (shown in demonstration studies already conducted) to push compensation up unnecessarily. While employee and even union input are essential, the final decisions ought to be made on mission-accomplishment grounds by top agency management under the supervision of the President.

Principle #5: Get serious about merit.

Because a core-and-rim staffing system requires a higher quality permanent employee, it is important to restore selection based on knowledge, skills, and abilities. OPM should seek immediately to end the sweetheart consent decree, entered in the last days of the Carter Administration, that abolished its Professional and Administrative Career Examination (PACE) for competitive selection of superior college graduates and replaced it with a credentials-based system requiring that blacks and Hispanics be hired in proportion to the number standing for the examinations. The decree was to last only five years but already has placed the federal courts in control of hiring under non-merit requirements for 15 years.

There is a reason for centralized hiring. General ability tests like PACE are better and cheaper than any separate tests for particular occupations. Unfortunately, however, the federal courts have ruled that such tests raise the problem of disparate impact against racial, ethnic, or gender groups. While an argument might be made for some temporary form of affirmative action to assist victims of previous discrimination, 15 years without a merit entry examination certainly deserves some notice and redress. The courts have agreed to review

the decree if the Uniform Guidelines on Selection Procedures are reformed. This challenge must be accepted so that federal hiring once again comports with the law requiring selection based on knowledge, skills, and ability (KSA) criteria. A central agency like OPM, with the knowledge base to take on the job of updating PACE, should be assigned this responsibility.

Centralized examining for common positions is still required by law. It also is cheaper. OPM has been shown to select employees at between $10 and $15 less per applicant than other agencies. Core-and-rim organization has other advantages. In general, it takes less hiring and fewer personnel resources for a small core of skilled professionals to manage a larger number of temporaries and contractors with a single mission focus.

Just as the law requires that hiring be based on skills, retention and reward are supposed to be based on good performance. The Clinton reward and disciplinary systems are to be operated with substantially greater union involvement. Indeed, the apparent purpose is to shift totally to labor-management control and union grievance review. While intelligent mechanisms for employee involvement can be devised, there is no prospect that a public-sector, union-dominated system like the one envisioned by the Clinton reforms will lead to higher standards of performance and more action against poor performers. Unions do not thrive by being tough on employee performance or discipline.

True labor reform requires an entirely different approach: eliminating the expensive and duplicative grievance system and re-establishing a true merit system. This was the justification for creating a civil service in the first place. It is what President Carter desired before a union-dominated Congress forced him to compromise and create the present system. That abuse of power can be corrected by substituting the Merit Systems Protection Board (MSPB) appeals system as the exclusive remedy. The responsibilities and staff of the Federal Labor Relations Authority and the federal government oversight responsibilities of the Equal Employment Opportunity Commission should be merged into the MSPB to provide a "one-stop" appeals process. OPM should devise a plan to integrate these functions under general merit system principles and then submit this proposal to Congress and the President.

Principle #6: Get serious about management.

President Carter's 1978 reforms gave political appointees the tools they needed to manage the bureaucracy. President Ronald Reagan implemented and advanced these same tools. For a few years, it worked. More was accomplished with less as measures of productivity increased and personnel were cut.[8] But the thrust of the Clinton reforms is to remove authority from the political and career executives responsible for better management under the Carter-Reagan reforms and transfer it to labor-management councils. The deliberate weakening of political control is a long-sought goal not only of union leaders, but also of career manager-dominated groups such as the American Society of Public Administration. A recent Brookings Institution study, typical of the Washington bureaucratic mindset, suggests cutting the already minuscule number of political appointee positions by one-third. Incredibly, Congress has incorporated this proposal in its budget resolution, thus advancing the political agenda of Washington's bureaucratic establishment.[9]

8 See Devine, "How to Cut the Federal Bureaucracy."

Without political leadership, when the President gives an order, there is no reason to assume anything will happen down the line in the federal bureaucracy. That is why responsibility in current law rests with the political agency head. In a perverse way, the Clinton recommendations acknowledge this by proposing to transfer power to labor-management councils. The recourse against abuse, however, is the political agency head. Democratic government, at some level, must place responsibility in the hands of political appointees representing the elected executive.

The Carter Administration's management reforms recognized this essential reality and moved responsibility down the management chain—through successively lower levels of political executives, career executives, and managers—to where the work was performed. All was bound together with a management-directed performance appraisal and reward system to implement the policy set by the President under the laws of Congress. Employee work groups and organizations can be useful in some situations, and managers should consider employee input and needs. But effective government management requires strong agency leadership in the tradition of Thayer, Altmeyer, Pinchot, Hoover, and Russell, backed by effective oversight. Though these men came from the career ranks, they were effective in political positions with the support and supervision of the President. The more the mission is simplified, and the work contracted out and rationally organized around performance criteria, the more such leadership is possible.

It is expecting too much of subordinate career executives and union leaders to make pay, hiring, firing, and performance-rating decisions independent of political executives representing the President. Only political appointees—because their rewards come from the President, not the career civil service system—have any incentive to resist the dominant cultural pressures on management not to make tough decisions.[10] Turning control of these executive decisions over to unions makes even less sense. In an environment in which the public is demanding less but more efficient government, their whole purpose remains getting more government positions at higher compensation for their members.

The Clinton proposals would make things worse. The solution is to return to the Carter-Reagan reforms and make them work; and they can work with intelligent and dedicated leadership operating under sound management principles.

MANAGING THE GOVERNMENT: THE FUNCTION OF OPM

Whatever direction management takes in the future, it is clear that the federal government will be smaller and that personnel will be reduced. President Clinton recommended a reduction of 252,000 positions, later increased to 292,000 in order to fully fund the 1994 crime bill. New budget plans continue this trend. The Clinton approach is for agencies to set their own personnel plans. The alternative is to have a presidentially directed and agency-implemented plan to manage the process efficiently, adhering to sound human resources manage-

9 See Patrick Korten, "Why Congress Should Not Undermine the Presidential Power of Appointment," Heritage Foundation *Backgrounder* No. 1044, July 24, 1995.

10 For an excellent discussion of political managers in the federal bureaucracy, see Robert Rector and Michael Sanera, eds., *Steering the Elephant: How Washington Works* (New York: Universe Books, 1987).

ment principles. This is the purpose of the Office of Personnel Management: to help develop and to manage government-wide personnel priorities set by the President.

As Chief Executive, the President has the constitutional responsibility to "take care that the laws be faithfully executed" and is given subordinate officers to assist in that task. One of these officers is the Director of OPM, responsible for "administering and enforcing the civil service rules and regulations of the President." Most of OPM's work could be (and should be) contracted out—but not its job of helping the President manage the vast federal bureaucracy.

By forbidding the Director or the President from issuing government-wide performance standards, the Clinton proposals undermine the President's constitutional right to manage the executive branch. By transferring management rights from agency political heads, the OPM Director, and the President to labor-management councils, they strike at constitutionally protected executive responsibilities. By granting agency labor-management committees the right to design and administer pay classification, testing and hiring, work allocation, and performance management systems, they subvert the authority of Congress and the President to set basic management policies for the administration of government. They would deny the Director of OPM the tools needed to assist the President in managing the government. Decentralization to agencies should be the operational model, but it is essential to retain some central direction and oversight by the President and his associates, such as the Director of OPM.

It is irresponsible for the executive branch not to devise the outline of a central plan to manage the proposed personnel reductions. OPM—presumably still possessing the necessary human resources management skills—should be a central part of that responsibility. It need not micromanage. Without incurring major costs or inhibiting agency flexibility, a plan could be effected humanely by basing personnel reductions on "attrition first," as was done in the early Reagan years. If needed, a total freeze should be set early, with exceptions only for critical skills and essential functions. To keep agencies from subverting this process, it must be monitored centrally by an expert, clearly focused personnel agency led by an official strongly committed to the President's personnel reduction goals.

Some might expect the Office of Management and Budget, within the Executive Office of the President, to manage these personnel reductions. But OMB has neither the special skills nor the clear focus essential to this mission. Because the budget, not personnel management, necessarily dominates its perspective, OMB analyzes the cost of personnel, not needed staffing levels and skills, and not with the overall objective of reducing bureaucracy and increasing efficiency.

The Office of Personnel Management, by contrast, can devise a government-wide plan. It has—or can regain—the knowledge of agency operations needed to assess true requirements. Through its special pay rates program, it can determine the need for specialized skills and provide the means to secure them. Thus, under a modified personnel freeze, OPM could evaluate agency requests for exceptions.

The best answer, however, and one that could save substantial funds, would be to merge OMB, OPM, and the General Services Administration (GSA) into a single Office of Management (OOM), as recommended by the Grace Commission and other outside evaluations. This also would allow the contracting-out function to receive appropriate attention.

Reducing Personnel. Reductions in force (RIFs) and furloughs should be utilized only when needed to keep costs within budget or to assure lower long-term costs. If RIFs are used at all—as they will have to be if certain operations are restructured—the government should adopt the Reagan Administration proposals and base employee retention during downsizing more on performance than on the current seniority-dominated weighting process. It also should limit so-called "bump-and-retreat" rights, under which employees are "bumped" out of the service by higher-level individuals with greater seniority who are overqualified (and overpaid) for the lower-level positions.

Modifying existing practice not only would cause better workers to be rewarded and the work product to be upgraded, but also would mean that women and minorities were not affected disproportionately affected by RIFs simply because they tend to have the least seniority. Nor do so-called buyouts make sense. Giving an employee $25,000 to retire, in addition to what it costs at the time, inordinately increases the cost to the retirement system. Ultimately, increased costs lead to more separations than necessary. Moreover, a "core" employment emphasis relies on an expert workforce, and buyouts induce the most skilled to retire.

Using Attrition. By following the Reagan Administration's guidance, emphasizing attrition while allowing some RIFs and furloughs, it should be possible to minimize the negative effects. Over 90 percent of the Reagan reductions were achieved by attrition—and many of those affected were moved to other positions through a newly instituted placement prog.am. By contrast, during the Eisenhower Administration—the only other recent administration to reduce the bureaucracy by any comparable size—almost 90 percent of the cuts were achieved by firings.

Any rational reduction in personnel requires a plan that is both flexible and comprehensive. Administrative savings, though often abused as a solution, also must be part of any overall plan. An "attrition first" policy is the first step toward an efficient solution. Benefits also must come under budget scrutiny in this era of limited resources. For example, federal retirement represents four percent of the budget going to relatively few people who, while they should not be unfairly disadvantaged, enjoy earlier retirement and more generous benefits than all but a handful of their fellow citizens.

Without reasonable reform plans, unreasonable ones will be imposed. Fortunately, reasonable approaches do exist. A relatively modest pension reform, for example, could limit future cost-of-living increases to the maximum dollar amount of the Social Security COLA increase. In addition to being more equitable across different federal pension plans, this could save $20 billion over five years. Increasing the retirement age past 55 over a period of time would save many billions more. Moreover, these changes might well be the least disruptive to the workforce and certainly could be implemented for new employees. Other approaches may be better, but an agency like OPM should assess them from a government-wide perspective if anything rational is to be accomplished.

Taxpayers are demanding real reform, and personnel policy must be part of the necessary re-evaluation of government. Total personnel costs equal 13 percent of the budget, and overhead adds another 4 percent. This is not the time to decentralize to labor committees and hope that all turns out well, as the Clinton reforms would do. Only an aggressive, centrally managed policy can insure that real reform takes place.

CONCLUSION

The national government badly needs reinvention. The career managers and public administration associations would return to the pre-Carter system of decentralized authority in the hands of career managers. The unions and the Clinton Administration propose to decentralize authority to labor-management committees. But the best solution would be similar to the Carter-Reagan reforms—placing management authority and responsibility in the hands of the elected President and his appointed and career team, limited by the protections of an enforced merit system. Unfortunately, because some of the essentials of the Carter reforms were compromised to assure passage, the government has two personnel systems operating together. A true reform would complete the reorientation toward performance management begun under Presidents Carter and Reagan by ending this anomaly.

President Clinton issued Executive Order 12871 to implement part of his reforms of the civil service by decree, primarily by ordering agency heads to ignore management rights in labor negotiations and creating labor-management partnership councils "as full partners with management" in areas not forbidden by law. Even with its powers limited by its refusal to change the law, Congress will be able to see how well these changes work. So will the taxpayer. The presidential veto and Mr. Clinton's desire to satisfy the unions probably make any alternative reform most unlikely under the present Administration. Setting out the requirements now, however, will help prepare the way for future reform.

An expert, core workforce will demand merit system hiring, based on skills and open to all, with reasonable preference for those who have served their country honorably in the military. Staffing will need to be flexible: a small, permanent contract-managing core, temporary employment fluctuating with demand, and most of the work performed by contractors. Job classification should be made more flexible but must be monitored carefully. Performance should be evaluated under mutually defined but managerially decided standards, directed and run by strong executives pursuing a simply defined mission and responsible to presidentially designated agency leaders, all subject to oversight and review.

President Carter tried to establish such a system in the Civil Service Reform Act of 1978, and President Reagan implemented its performance-based system in 1981. This included decentralizing most management and examining functions to the agencies and their responsible chief executives, where they now reside, under the general supervision of the President. The Clinton reforms would rely on labor-management committees and decentralize further, undermining presidential leadership and efficient management at great taxpayer cost.

So far, Clinton's emphasis on reinventing government has engendered favorable media treatment of proposals that would make matters even worse than they now are. The challenge to Congress is to "reinvent" government effectively by devolving functions to local governments and the private sector and by intelligently restructuring and reforming the remaining federal functions so that they are conducted more efficiently and at lower cost.

It cannot be completed overnight, but true reform must begin now. A people demanding smaller and more cost-effective government can accept no less.

Prepared for The Heritage Foundation by Donald J. Devine

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Mr. MICA. Thank you, Mr. Devine. We'll turn now to Ms. Horner. Welcome.

Ms. HORNER. Thank you. Thank you very much, Mr. Chairman. I'm very happy to be here today and, if I may, I would like to submit my written testimony for the record and make a brief summary.

Mr. MICA. Without objection, we'll make that part of the record. If you would like to summarize, go ahead.

Ms. HORNER. Thank you. Civil service, as others have mentioned, is more than a century old. Many of its systems are nearing exhaustion; therefore, I think it's a very appropriate thing for the committee to undertake civil service reform.

One of the burdens that is creating this exhaustion in the civil service is not merely a natural aging process, but the fact that there has been a tremendously expanding role for Government over the decades, and these institutions, the systems of the civil service, have been asked to take on more and more.

I think, before discussing the possibilities for reform of particular systems that the civil service operates under, it's important to recognize two things.

One is that no organization can perform well when its missions are so numerous that they begin to conflict with one another; when, in the case of public sector organizations, the public does not reasonably strongly support many of the missions; and when the institutional capacity of the organizations is not commensurate with the assigned missions.

I think that's where we are now, and that's why civil service reform will be more effective as many of the current missions of the executive branch are devolved to the States and some of them terminated. So I think we need to pare down the Federal Government to clear, manageable missions as the civil service is reformed.

A second preliminary observation I would like to make is that civil service reform requires greater congressional analysis than other kinds of legislation, for this reason: civil service issues have only one natural organized constituency, and that is Federal employees. There isn't the usual debate among competing private sector interests, which tends to surface difficulties or second and third order effects.

Therefore, I think that the committee should do a great deal of analysis as it proceeds as to what the second and third order effects of different proposals might be and should take its time to do that, even as it feels under great pressure to move forward.

I would like to comment on three of the systems under which the civil service operates, although virtually every system is in need of change. I would like to comment briefly on performance management and on certain aspects of hiring and classification.

Performance management in the public sector is extremely challenging for the obvious reason that there's no bottom line other than a broad fiscal one, which, fortunately, is increasingly prominent.

A lot of different methods have been tried to improve performance and accountability—the stick of tight regulatory controls over the performance of work, especially controls over managers; the carrot of financial reward, often too minimal to have a perceptible

effect; and cultural assertions, from calls earlier in the century for professionalism to the customer service orientation and recommendation for cultural change under the Reinventing Government initiative.

No one of these elements of motivation suffices to get optimal performance, especially when done in isolation from the others and when carried to an extreme. I would suggest that a good system of performance management would diverge from the administration's current approach in several ways. People need some carrot, some stick, and a strong culture.

The first way, I think, is that the emphasis on encouraging team assessment, although encouraging teamwork is good, assessing people on the basis of whole team assessments, rather than individual assessments, and encouraging a pass-fail rather than more articulated performance appraisal system, goes too far away from individual accountability and is too lacking in rigor. I would fear that it would continue the lowest common denominator performance expectations, which are now endemic, unfortunately.

Second, decentralization to agencies of the performance evaluation system design is, in my view, a good idea. However, giving employee organizations an effective veto over performance appraisal system design will only naturally, in the course of human nature, have the effect of creating uniform pass-fail systems that don't encourage aspiration to strong performance.

A better designed performance management system would have three characteristics—one, agency design; two, the context of strategic goals identified under the Government Performance and Results Act; and three, deregulated managers with very large discretion over pay and promotion who are held personally accountable to the Government Performance and Results Act-established goals of their departments and agencies.

With the combination of greater discretion and greater accountability, managers will have a strong incentive to seek information about their work from employees, whether through organized representation or otherwise. They will also have an incentive to be sensible in the use of their discretionary powers. Otherwise, their work will fail and they, being held accountable, will be deemed to have failed, themselves.

In hiring and classification, I would propose a similar increase in flexibility and enlargement of discretionary authority for Federal managers, as well as simplification and decentralization of design and implementation to agencies.

These recommendations are in keeping with a broad movement that has extended over several administrations. These proposals were incorporated in President Reagan's Civil Service Simplification Act, which he submitted to Congress in 1986, which was not, obviously, enacted, and I have provided it to the committee staff for consideration, as it looks at opportunities for change.

Two final thoughts. Decentralization and deregulation can be dangerous to the integrity of the civil service, especially its merit principles, under certain circumstances. I am concerned that the administration is potentially skirting that dangerous territory.

Any civil service reform which decentralizes and deregulates must retain some effective central oversight and enforcement ca-

pacity. It's a matter of finding the right balance. It's not an either/or. It's simply not clear, because we don't know all the details of the administration's proposals yet, but there are certain signs that the balance may not be being properly struck.

And finally, I am concerned that the administration's proposals to expand employee organization bargaining rights will have two adverse effects on the functioning of the civil service.

One, in the short term, is the obvious potential for tying up the work of Federal managers, just as the regulations which are being abolished are intended to undo, so that it might end up being a wash. Federal managers might find themselves tied by a new system, just as they're getting rid of an old one.

In the long term—and some might view this as being unduly concerned—but, in the long term, I am concerned about the possibility of expanded bargaining rights creating a public sector employee political machine in this country on the European model. I think it is very important to protect the political neutrality of the civil service, especially in light of Hatch Act repeals legislated by the last Congress.

I notice in the Washington Post—just let me say as I conclude—there were two stories yesterday which, to me, I think, ought to be taken as early warning signals to all who care about the integrity of our civil service.

One is that millions of civil servants in France staged the biggest general strike in nearly a decade "to protest the Prime Minister's austerity policies that many fear could threaten their jobs and shrink France's munificent welfare state," in the words of the Post.

We are nowhere near anything like that here, but we should not, by inattention to the details of reform, run the risk that we will put ourselves on track for something like that 10 years down the road.

Second, that the Justice Department has told congressional staff members, according to a report in the Post, that it plans to seek indictments in connection with allegations that Agriculture Department employees illegally collected campaign funds in the 1992 Presidential bid, campaign funds to support the President.

There will always be difficulties of this sort, but we must be extremely vigilant as we go about reform. Thank you very much, Mr. Chairman. I would be happy to answer your questions.

[The prepared statement of Ms. Horner follows:]

STATEMENT OF THE HONORABLE CONSTANCE HORNER
GUEST SCHOLAR, CENTER FOR PUBLIC MANAGEMENT
THE BROOKINGS INSTITUTION

BEFORE THE SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

OPPORTUNITIES FOR CIVIL SERVICE REFORM

October 12, 1995

The United States civil service is a one hundred and twelve-year-old institution which is showing its age. It is showing the wear and tear of more than a century of working to support an ever-expanding role for the federal government in American life. In spite of twelve major reforms in this century to accommodate the demands of this expanding and changing role, some of the systems under which the civil service operates are nearing exhaustion. Changes to these systems are warranted and would improve the capacity of the executive branch to perform well.

I am grateful for the opportunity to provide the committee some observations on the potential for effective reform, based on my experience as director of the U.S. Office of Personnel Management (OPM) during the Reagan Administration and my subsequent study of public management issues at the Brookings Institution's Center for Public Management.

As the committee begins its deliberations, it is important, I believe, to recognize that reform of the internal systems of the civil service, though vital, can go only so far in improving its effectiveness. Reform should not be overburdened with expectations. The single change which would most revitalize the civil service is, in my view, outside the purview of civil service reform. It is the radical paring, simplification, and clarification of the statutory missions assigned the executive branch by the Congress. The civil service will function better when its missions are reduced, by devolution to the states or termination, to programs which have clear public support to be conducted at the federal level. It would be re-moralizing for the civil service to be asked to accomplish goals for which there is broad-based public support and realistic institutional capacity.

2.

Before turning to specific operations offering opportunities for reform, I would like to add an additional caveat. Statutory change requires compromise among competing interests. When the debate is about structural change, rather than funding levels, it is not unusual for compromise to vitiate or warp the reform proposals to such an extent that the result is worse than the status quo ante. Civil service reform is especially susceptible to this dynamic because there is only one organized constituency with a direct interest at stake -- federal employees. The otherwise customary argument among competing constituencies which surfaces substantive and political information does not occur. Therefore, it is more than usually necessary for the Congress to analyze second and third order effects before proceeding to civil service reform. No one else will.

These considerations aside, there are real opportunities to reform the systems under which the civil service operates. Without doubt, the performance of the federal bureaucracy is not all it could be. The Administration's efforts to "reinvent government" are testimony to that effect. So were the Carter Administration's Civil Service Reform Act of 1978 and the Reagan Administration's simplification, deregulation, and performance management initiatives, including the Civil Service Simplification Act submitted by President Reagan to the Congress in 1986, when I was OPM director, as well as the 1993 Government Performance and Results Act passed by the Congress and signed by President Clinton.

3.

Although virtually every administrative and benefits system of the civil service could profit from reform, today I would like to comment on three systems which may especially merit the committee's attention -- the performance management system, the examining and hiring system, and the classification system.

In the public sector, where there is no bottom line other than a broad fiscal one, assessing and motivating performance present unusual challenges. Over the decades, federal executives and managers have focussed at different times on different methods of assuring performance: the stick of tight regulatory controls, the carrot of self-interest through financial reward, or encouragement of cultural values like professionalism or "customer service." Each of these methods, especially when relied upon in isolation or to an extreme, has not sufficed.

The Administration's recently-granted permission to agencies to adopt a pass-fail performance appraisal system in the context of a cultural expectation for an enthusiastic orientation toward "customer service," for instance, discourages rigorous assessment just when the country as a whole is seeking to re-establish standards of excellence. A pass-fail system makes individual financial reward for excellence less likely to occur. The Administration would de-emphasize the carrot of individual reward and replace it with the stick of group pressure to perform by encouraging reward for teams more than individuals. Such a shift runs the risk of increasing

lowest-common denominator performance, a current endemic problem in the federal workplace. This shift toward group evaluation and reward ignores a body of management wisdom reaching back even to the Greek historian Polybius, who noted that there can be "no rational administration of government when good men are held in the same esteem as bad ones."

That being said, simply sharpening distinctions of performance and rewarding them financially will also not alone promote excellence. Managers and supervisors must be held seriously accountable for the performance of their units, so that they employ all sound tools of motivation, including systematic solicitation of employee advice and information, and so that they are checked in any impulse toward abuse. There are two opportunities available for strengthening accountability among federal managers and therefore performance excellence within their work units. One is the full implementation of the Government Performance and Results Act. Although the changing political context in which the executive branch operates will always inhibit strategic planning, the executive branch has a long way to go before it bumps up against the limits that context imposes. Establishing goals, identifying needed resources, and then holding managers to accomplishment of those goals will force managers to care about the quality and efficiency of the work their employees perform more than they currently must. Then, they will likely demand, get, and use the greater discretion and autonomy in decision-making an over-regulated system now denies them.

5.

Woodrow Wilson called "large powers and discretion" for civil servants the necessary "condition of responsibility." It is not only in rewarding performance with pay and promotion that such discretion is denied managers. It is also denied them in overly complex and regulatory hiring and classification systems which force reliance on rules, not common sense, and on the interpreters of rules, not the line managers. These systems induce passivity, not responsibility.

I commend to the committee's attention President Reagan's 1986 Civil Service Simplification Act reform proposal, based on the successful China Lake personnel experiment. That proposal would have provided for agencies to adopt, when ready, a simplified, decentralized, deregulated personnel system permitting manager flexibility and empowerment with respect to hiring, pay, work assignment, and promotion.

The Clinton Administration, in an historically energetic and committed effort to reform the federal workplace, has discussed, proposed, or made similar reforms. However, the Administration's proposals diverge from the broad movement to decentralize and deregulate federal personnel systems in two significant ways which, in my view, not only moot much of their value but also likely make them potentially dangerous to the integrity of the civil service.

6.

The first of those divergences from the broader movement is the lack of certainty respecting effective central oversight of decentralized systems. OPM or some central office of the Presidency should have sufficient staff to recognize agency abuse of merit system principles and sufficient authority to order and achieve corrective action. This requirement becomes especially important in light of the repeal by the previous Congress of some Hatch Act protections against political activity by civil servants.

The second divergence of concern is the Administration's intent to establish employee organizations as "full partners" in the design and implementation of personnel systems. Employee organizations serve as a valuable source of information about conditions of work and a serious check upon managerial abuse. But even applying a "good government standard" to negotiated agreements cannot overcome the obligation of union leaders to support the interests of their members first and the public interest second when there is a conflict, however public-spirited they may be. By way of example, it is usually in the public interest in efficient government to have the broadest, most merit-based competition for federal jobs, to get the very best employees available. The employee organization interest in representing its current members, by contrast, would predict an effort to veto hiring systems which promoted open competition rather than the job protection offered by confining competition to in-house candidates.

Moreover, there should be some concern that further empowerment of employee organizations, for example by extending the right to bargain over pay by bargaining over classification design and work assignment, could lead over time to the creation of a public employee voting block on the model of some European nations. This should be of particular concern given Hatch Act erosions. Such a development would, in the end, destroy the political neutrality of the American civil service and badly damage its capacity to respond to the will of an elected president and Congress.

Finally, it is worth noting that the civil service has historically responded with great integrity and strength to clear direction and effective leadership from our presidents and their appointees. The caliber of political leadership is sufficiently important to the quality of civil service work that political leadership ought first, last, and always be the first venue of accountability.

Thank you for this opportunity to comment upon civil service reform proposals as the Civil Service Subcommittee proceeds to deliberate upon options for reform.

Mr. MICA. I thank all of you for your comments. I have a couple of questions. I want to go back to the first question that I asked our first panel, which was the role of OPM and how you envision OPM being properly structured.

What is the proper role? We have a couple of former Directors here, and Mr. Stevens, maybe you want to comment, too. As we undertake this responsibility of trying to craft a redesigned OPM model, how would you envision it? What division of responsibility between the agencies, et cetera, particularly in light of the downsizing, some of which has already taken place in OPM? Mr. Devine.

Mr. DEVINE. Well, I think Director Horner put it well. Decentralization, the more that you do, the more you need some oversight of what's being done. The more flexibility the agencies have, the more important it is that somebody's watching it, and that's what OPM should be doing. I am concerned that OPM keep some oversight authority.

I think, in an ideal world, OPM, GSA, and OMB should probably be put together in a Department of Management, or an agency, probably better, and to get the basic management functions together so that they can be organized in a rational manner. But it's critical, regardless of grandiose plans like that, that OPM keep the ability to make sure that the agencies don't get in trouble.

Mr. MICA. Ms. Horner.

Ms. HORNER. I would reiterate the necessity for OPM to keep precisely that ability and to exercise it in a highly intelligent and self-restrained fashion. That is, it should offer the highest level assessment of what's going on in agencies.

There's a lot to be said for collapsing all the management responsibilities into one agency or office, either a unit of OMB, or a separate agency. However, I am not to the point where I'm willing to support that idea, for this reason. As a former OPM Director and as a former Associate Director of OMB, I have seen too often that the very intense and politically significant budget decisions supervene over necessary personnel decisions when they come into a situation where one can be traded for the other in internal administration deliberations.

I would like to retain a separate personnel office, wherever located, but distinctly separate with distinctly separate powers, in order to combat the tendency to allow budget to override policy decisions.

Mr. MICA. Mr. Stevens.

Mr. STEVENS. Yes. Mr. Devine mentioned that, in an overall governmental context, we're moving toward a lot more contracting, and the need for oversight of contractors is a central Government activity and a very high-level responsibility.

I would draw some analogy between that and the OPM situation, in which the agencies themselves are undertaking a good deal more responsibility than formerly was centralized in OPM, and I would suggest that the role of overseeing them is quite different from OPM's former role.

They should be developing broad performance measures. They should be determining how agencies are doing at goals that are set. I don't think OPM has yet decided what those performance meas-

ures are. They need to do that and not relapse into the temptation of looking for procedural conformity, detailed auditing of the conformance to particular steps and forms that has, I think, led them down the wrong path in the past.

Mr. MICA. One of the other major emphasis areas that we've heard discussed this morning is how to protect employee rights and yet get rid of the poor performer. I would like to hear your comments on how we can best achieve both of those goals.

Mr. Devine, I know you had said you want to contract out a good number of these positions. But I think we're putting up with a large work force and have the responsibility to do something about rewarding good performers and also getting rid of poor performers, and we have difficulty in doing that now.

Mr. DEVINE. I guess I'm a pessimist on that subject. I mean, the 4 years I was in there, my view was that we had to put the emphasis on rewarding the good ones rather than focusing on the bad ones, although I thought we should put some effort on that. We did.

I think, as long as we have a system that is based on these great number of protections and where we try to put the emphasis of all the reward systems to keeping people, like generous retirement systems, that's going to be a forever problem. That's why I would rather look toward changing the basic nature of the system. But I guess I'm old and cynical, and you shouldn't listen much to me, anyway.

Mr. MICA. Ms. Horner.

Ms. HORNER. I have a number of thoughts on that. One is that there needs to be a serious change in the job entitlement culture. That can be achieved in a number of different ways. It probably needs to be tackled on many fronts simultaneously.

But so long as employees enter young and expect to stay their whole lives in the Federal service, regardless of performance and regardless of changes in the mission requirements of the Government, we are going to have employees fighting tooth and nail through the political system to maintain structures which maintain their jobs. So I think that needs to be changed by changing the structures.

I agree with Don Devine that we need to have more flexibility in the kinds of job structures—temporary employees; contract employees; highly paid experts such as the scientists Walter Broadnax spoke about, who might expect to spend 5 years of their work life in Government, but not an entire life in Government.

Second, I think that if you look at the China Lake experiment, you see that evaluation showed that simply by paying strong performers better, poor performers tended to depart voluntarily. People don't always know they're poor performers.

First of all, they may get overly generous appraisals—and many do—but second, it's human nature to deny the reality. When money came attached to better performance, that reality intruded, and when people simply weren't rewarded with money, as others they worked with were rewarded, they got a message they had been unable to receive before.

So I think going to more management discretion over pay and promotion in the nature of the China Lake experiment will help re-

move poor performers. An objection is raised to China Lake, which was raised when I was proposing the Civil Service Simplification Act in the mid-80's, that it costs more. It can cost more, but what is never understood is the cost savings of having poor performers leave the Government. That's an invisible but very real cost savings.

And finally, I think we do need a radical streamlining of the appeals process, but not one which will put it entirely in the hands of the employee organizations to conduct. There needs to be a much shorter timeframe from start to end of this process, because we lose all the educational value to other employees of seeing the process work well when it's protracted.

Mr. MICA. Mr. Stevens.

Mr. STEVENS. We don't have a magic bullet, Mr. Chairman, on this. I would agree that the structure is now weighted very heavily in favor of employee rights, as opposed to managers' flexibility and accomplishment of results.

I would say, from an individual manager's point of view, the work we've done in the bureaucracy shows that managers perceive that the benefits, weighed against the costs of dealing with the poor performer problem, usually lead them to a calculation that, from their point of view, the costs of dealing with the problem do exceed the benefits.

Perhaps there will be some change in this with greater emphasis on results of a unit's activity, because then a manager will indeed have to pay a cost for having someone not pull his or her own weight in terms of mission accomplishment, which is not now the case when there are the administrative resources that they're given.

Mr. MICA. One of the other questions that I've been intrigued with—and I think we've discussed some of this before, maybe, Mr. Devine and myself—is the question of political appointees and their role in the process.

Is there a Senate provision now to diminish a number of political appointees? What role do you see for political appointees, what oversight, what responsibility in the future, and what is their importance, or is it something we should reevaluate and look at eliminating. Mr. Devine.

Mr. DEVINE. Well, I'm pleased to report that the Senate saw the light on that issue, and they took it out of their bill. I think it was a very large mistake to try to set limits on the number of political appointees, especially when you particularize it to an agency.

We have a system here that needs political and career executives working together. The ultimate responsibility is in the hands of the political appointee, and he or she is a very important component of making the system work. It can't work without the career. It can't work without the political. The career employees and executives provide the stability, the expertise. The political appointees have to provide the direction for changes as each new administration comes in with its own ideas.

I think Congress has been wise to have only very broad limits on that, as a general policy, although there are some specific cases where that isn't true, but in general. The executive branch needs the flexibility, and I think that our system of having the first sev-

eral levels of political appointees is one of the reasons we have a better civil service than most other countries.

Mr. MICA. Ms. Horner.

Ms. HORNER. Mr. Chairman, I think the relationship between career civil servants and political appointees at the SES level and the Presidential appointee level is one of the most fruitful elements in American political life and ought to be protected strenuously. I think that our Government, for all its stresses and strains, works far better as a result of that interaction and as a result of the capacity of a President to offer serious direction to the executive branch.

That being said, I think there is some room for questioning the numbers of lower level political appointees, Schedule C's, used in our system. I don't believe that's a question for legislation or a question for the Congress or even for executive branch regulation. I think it's a question for the political parties in their role as potential leaders, national leaders, to address very seriously.

My personal opinion is that there are many Schedule C's who clutter the Government and obtrude themselves officiously in between Presidential appointees and senior career civil servants in ways that are not productive of executing the President's policies.

But that—anyone who quotes me on that must also say—and I want to emphasize this in the event there are any press here today—that is a minor quarrel with an extremely valuable system.

Mr. MICA. Thank you. Mr. Stevens.

Mr. STEVENS. The GAO, as you know, Mr. Chairman, is an organization in which we basically have career leadership right up to the top, and so the Volcker Commission's conclusions on this matter, I think, resonated more strongly in our organization than in some of the executive branch ones.

In our symposium, we did discern a very strong need in successful organizations for some continuity of leadership at the top, and that's one of the problems with the past experience with our political appointees, that vacancies are so common. The length of the tenure is in the 2-year range. We heard the previous panel talk about how, as political appointees, they sometimes felt ignored by the career staff behind them.

I think it can also have the effect of diminishing attention to long-term management improvement efforts in agencies when political appointees come in with an agenda, with the realization that they probably have a short time to achieve this agenda, and concentrate, therefore, to a greater extent on policy, political legislative developments, than on making the adjustments in the agencies that they will never be there to reap the benefits of. These are some problems in that area, from our perspective.

Mr. MICA. Mr. Stevens, I hate to pop this question on you, but you didn't mention anything about veterans' preference. I'm trying to find out what GAO and the administration's thinking is on this.

You published a study in June entitled, "The Federal Hiring, Reconciling Managerial Flexibility with Veterans' Preference," and from the report, one can conclude that Federal managers consider veterans' preference in conflict with both merit principles and managerial flexibility. Does GAO believe that veterans' preference is in conflict with the merit principles in Federal employment?

Mr. STEVENS. Well, that's certainly a policy matter, Mr. Chairman, and we do not have a position on it. We have done a good deal of interviewing at the request, I believe, of this subcommittee and the House Veterans' Committee on how it works in the hiring process in the executive branch.

We have found that managers tell us that it is regarded as a restriction, as a burdensome restriction on the flexibility in their actions that they would otherwise like to have and believe not so much that the objective itself is difficult to deal with, but that the very minute procedural requirements that they have to adhere to, as Mr. King said earlier, are basically the problem.

When given a good deal more flexibility, they can achieve higher representations of veterans, but not be limited by the rule of three to such small numbers. So we don't have a position on this. We think that it's worth considering in the context of reform of the civil service.

There may be a distinction in the RIF context and in the original hiring context, too, because one of the purposes of veterans' preference—not the only purpose, but one of the purposes—was to make up for lost time at an early stage in their career, and at the other end of the process, when one has had 20 or 30 years of service, maybe the same considerations should not apply. But again, that's a policy question for you to make.

Mr. MICA. In conclusion, we've seen a number of experiments and different personnel models and approaches, some have been successful and some have not been successful. We are now looking at the need to make some dramatic changes because of downsizing, because of just demands that you get a little bit better results, a little bit more goal oriented.

I have heard Mr. Devine talk about his concerns about doing things with certain hierarchy of structure, and I've heard others say that we need to move to a model that allows for more employee involvement and participation and the different world than it was.

Maybe you could just reflect on what system we should have in place or what constraints we should have in place that allow an orderly process of personnel management, flexibility, accountability, responsibility, yet take into consideration that you are in a different era, that we do have a different world that we live in, as far as human relations and activities, and you want the Government to reflect society, but you also want to maintain some of the structure that may be important and that may long exist as far as we know Government.

A rather convoluted question, but what I'm trying to do is say, how do we reach, again, that balance between employee involvement and participation and good management structure? Mr. Devine.

Mr. DEVINE. Well, as I said, I think what Congress needs to do is to look at the big picture. It's a board of directors, in effect, of the largest corporation in America, and it should look toward the long term. Now, unfortunately, in Government, you work with blunt instruments, and especially from the board of directors' point of view, where you don't have direct supervision over it.

I wouldn't do this universally, but I think Congress, as they do budgets that have the effect of reducing the number of people, that

they should put requirements into the appropriations or the authorization legislation to restrict and perhaps eliminate the number of hires, or make them hire within the agency and within the Government. But for any set hiring limits and slowly, over time, through attrition and normal changes in the Government, to limit the flexibility agencies have to hire more employees and to set the direction for them, to limit full-time permanent employment as they go about reducing the size of the Government.

This has the benefit of protecting the people who are there, and also preparing the way for the future. I think the Government needs direction from Congress to say where it should be going in the future. By limiting the number of people they can hire, especially full-time permanent employees, it can help set that direction toward a new kind of Federal Government.

Mr. MICA. Ms. Horner.

Ms. HORNER. Mr. Chairman, I think one of the crucial things that Congress can do to create a strong civil service for the future, to get and keep the right people and keep them as long as they are the right people, is to structure law in such a way as to inhibit the job entitlement mentality.

It's now on its way out, if not almost entirely gone from all the big private sector organizations, both for-profit and non-profit. The Government is the last—no, it isn't the last bastion. The universities are the last bastion, with all the troubles they are encountering in a frequent disconnect from external reality.

I think that we have to break the entitlement culture, and the reason we have to do that is that the public will not respect the civil service and the work it performs until it understands that the people who are there are there because they were the most competitive people for the job and continue to perform as the most competitive people for the job.

That's a broad rubric. The devil is in the details. It's hard to implement, not only technically, but also politically, but we could encounter a death spiral in quality if the public sector is the only remaining sector where jobs are protected.

Mr. MICA. Mr. Stevens.

Mr. STEVENS. Well, Mr. Chairman, I think the essence of our statement is that a number of very fundamental policy questions are involved here for Congress to decide—whether the redress system should be weighted differently from these extreme employee protections it now provides; whether we should manage to budget, as opposed to personnel ceilings, the extent to which the work force should, as a matter of principle, reflect the diversity of the outside community, including the matter of veterans' preference.

These are not matters on which GAO and the kind of work we do leads us to the right answer. What we do believe is that whatever Congress decides to do in these areas, that it set up accountability mechanisms that hold the bureaucracy in the executive branch to account for achievement of the goals that it has set through frequent hearings, through reports, through careful work in directing us toward questions they have, rather than simply let the executive branch swim off on its own.

Mr. MICA. I want to thank you for your testimony and your participation. The former two Directors and our current OPM Director

today bring a great deal of expertise and a variety of good viewpoints and ideas to this process. We thank you also, Mr. Stevens, for your comments.

Our hearings are going to resume tomorrow at 9 a.m., in the full committee hearing room tomorrow, room 2154. Our panels tomorrow include the former officials of the Reagan and Bush administrations, who will describe their efforts to change some of the major Federal agencies under the current civil service laws.

We will also hear from several organizations that represent Federal employees and other scholars and critics of our system. We look forward to continuing this process, and we welcome submission of testimony and ideas, suggestions, recommendations from those who are interested. We want you to be part of this process.

With that, we'll thank the panel. We may have some additional questions submitted to you, and we look forward to working with you in this process. If there is no further business this morning, this meeting will stand adjourned.

[Whereupon, at 11:35 a.m., the subcommittee meeting recessed, to reconvene at 9 a.m., Friday, October 13, 1995.]

[Additional information submitted for the hearing record follows:]

THE DEPUTY SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JAN 29 1996

The Honorable John L. Mica
Chairman, Civil Service Subcommittee
Committee on Government Reform and Oversight
House of Representatives
Washington, DC 20515-6143

Dear Mr. Chairman:

As requested in your November 3 letter, enclosed are my responses to the additional questions you had in follow-up to the Subcommittee's October 12 hearing on civil service reform. I regret the delay in responding to you.

Thank you again for the opportunity to present the Department's views. Please contact me should you need anything further.

Sincerely,

Walter D. Broadnax

Enclosure

Political Appointees

1. Could you comment on the effects of such a reduction (in numbers of Schedule Cs) if an Administration is committed to managing for change in Federal agencies?

   In responding to the President's and Vice President's challenge to reinvent the Department, Secretary Shalala asked me to lead an effort to rigorously review all of our programs and organizations and identify opportunities for improvement, streamlining, and consolidation. Major outcomes thus far have included the elimination of the entire management superstructure of the Public Health Service and the consolidation and streamlining of Departmental administrative management functions. Both career and political officials worked closely together throughout the decision-making process. All involved feel that the shared goal of improving the Department's operations and services was achieved, and that both the career and political perspectives and inputs were critical to achieving that goal. I believe an imposed reduction in political appointees would jeopardize similar future successes.

2. What roles do political appointees (especially Schedule Cs) play that are unique and could or should not be performed by career employees?

   Political appointees play a key role in designing and implementing policy on the President's behalf. They must have the confidence of the Administration, and fully understand and support the Administration's goals. Likewise, the President must have the flexibilities allowed by the political hiring process -- e.g., to appoint and remove employees in key policy-making positions. Thus, there is a legitimate and necessary role for political appointees, which complements the vital public services provided by our career employees.

3. Would you support such a restriction?

   The vast majority of the workforce at the Department of Health and Human Services is career. As of October 1995, of more than 59,000 employees, only 131 are political appointees, including 17 Presidential appointees, 57 noncareer SES, and 57 Schedule Cs. The past two Administrations averaged about 100 Schedule Cs. I believe this shows that in responding to the President's streamlining and downsizing mandates we have achieved reductions not just among career employees, but also within the political workforce. I would not support an imposed restriction on absolute numbers of Schedule Cs. First, it limits the flexibility that this Administration, or any Administration, must have to respond to emerging and critical priorities. Second, I firmly believe it is unnecessary, since through careful and considered management of all of our resources we have limited Schedule C appointments to only the most critical positions.

Classification and Pay Reforms

4. Could the same objectives be reached through the demonstration projects currently authorized under Title 5, Chapter 47?

One of the original demonstration projects (China Lake) involved a pay structure that included pay banding and simplified classification, both of which the Department views as key to civil service reform. The evaluations of the project concluded that it was successful in helping improve recruitment and retention of the best employees. Thus, we do not feel that it would be productive to do essentially the same demonstration project again. In addition, there are several downsides to the process. One is the approval process itself, with its lengthy public notice and other requirements, which can take nearly a year. Further, the law limits coverage of any given demonstration project to no more than 5000 employees, which would not cover all of NIH. Finally, a demonstration project is not permanent, and the possibility exists that it would not be made permanent even if it were evaluated as successful in contributing to mission objectives. Thus, the Department supports permanent system changes.

5. Has the National Institutes of Health proposed either a demonstration project or an alternative personnel system along lines developed under the National Performance Review?

The Department has recently begun implementation of the Senior Biomedical Research Service (SBRS), which will allow up to 500 positions (mostly at NIH) to be filled with outstanding researchers under a flexible and generous pay scale. Other features of the SBRS will enable HHS to recruit and retain biomedical researchers who are leaders in their specialties. We anticipate that this authority will help maintain the internationally recognized quality of NIH research.

The Secretary of Health and Human Services recently approved a landmark agreement with the Director of NIH that delegates to him all personnel authority held by the Department. Under the agreement, which will be evaluated over a 5-year period, the NIH is free to develop its own personnel programs and systems that are responsive to its biomedical research mission. This delegation covers only those authorities held by the Secretary and the department, and thus excludes issues such as pay banding.

We have not submitted to Congress legislative proposals for establishment of an alternative personnel system for the NIH, both because of concerns that such proposals might conflict with legislative initiatives covering the entire Executive Branch and because, while the NIH poses unique problems regarding recruitment and retention, other agencies of the Department have similar needs. For example, the Food and Drug Administration has difficulty in recruiting and retaining physicians to review applications for drugs and medical devices. Please see the previous question for our views on the demonstration project authority.

6. In addition to in-house research, NIH uses grants and contract researchers to perform its work. Could some of the artificial pay restrictions in the current system be eased if NIH relied on more contractors and grants rather than retaining as much research capacity in-house?

There have been numerous studies that have reviewed the intramural research program of the NIH and have compared its productivity to research funded by the NIH but conducted at grantee and contractor institutions. Most notably, the Institute of Medicine (IOM) in 1988 issued a report strongly supporting the continuation of a strong intramural research program at the NIH.

While nearly 80 percent of the NIH budget funds research by grantees and contractors, the IOM study recognized the NIH as one of the most productive research organizations in the world, based on peer review. A more recent study, conducted at the request of the House Appropriations Subcommittee, also concluded that the NIH intramural program was among the strongest in the world.

It is the Department's position that an appropriate balance exists between the NIH's inter- and intramural research programs. If the civil service system is not able to meet our needs, the answer is to fix the system, not to contract out for the wrong reasons.

OPM Administrative and Regulatory Flexibilities (e.g., abolishing the SF-171 and eliminating the Federal Personnel Manual)

7. Have these changes affected your organization?

To date, these changes have not had any significant impact on the Department.

8. Do you think the "pass-fail" personnel evaluation will be of much help to you?

OPM has recently approved a new performance management plan for the Department, in which we have given our operating agencies the option of adopting a pass-fail appraisal system. The Health Care Financing Administration, for example, has long expressed an interest in a pass-fail system and, in anticipation of regulatory changes which would allow such a system, has already worked closely toward implementation with their union partners. Absent any practical experience with a pass-fail system, it is difficult to judge its potential utility.

9. What guidance have you received in place of the Federal Personnel Manual?

It is our experience that OPM's Interagency Advisory Group (IAG) has done an excellent job in working collegially to develop guidance and/or regulation as necessary on emerging critical issues – a recent example is career transition. The fact that agency viewpoints and input have been integral to the overall IAG process

has made the guidance more relevant than had it been unilaterally developed. OPM has also done a very good job in relaying information electronically.

10. How have you used any additional discretion provided through these administrative changes? If yes, please provide examples.

In the area of Departmental human resource policy, we have adopted OPM's philosophy of deregulation, flexibility, and simplification. For example, in a cooperative effort with our operating agencies and union representatives, over the past 2 years we have eliminated some 500 pages of Departmental personnel instructions and delegated extensive authority to our operating agencies. This project has been designated a National Performance Review "success story".

11. Can you describe any ways in which OPM has exercised oversight of merit system procedures and decisions at your agency?

We have recently worked cooperatively with OPM to resolve classification problems which existed at the Centers for Disease Control and Prevention.

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

December 4, 1995

The Honorable John L. Mica
Chairman, Subcommittee on Civil Service
Committee on Government Reform
and Oversight
House of Representatives

Dear Mr. Chairman:

This letter responds to your November 2, 1995 request for additional information as a follow-on to our recent testimony regarding Civil Service Reform.

If you have any additional questions concerning the civil service reform effort, please call me on (202) 512-8676.

Sincerely yours,

L. Nye Stevens

L. Nye Stevens
Director, Federal Management
and Workforce Issues

Enclosure

ENCLOSURE ENCLOSURE

(1) **Your testimony did not address veterans' preference, but GAO's most recent study on the topic, a June 1995 Blue Book, FEDERAL HIRING: Reconciling Managerial Flexibility With Veterans' Preference, implied that federal managers believe veterans' preference can conflict with both merit principles and managerial flexibility. Does GAO believe that veterans' preference conflicts with merit principles in federal employment?**

Answer: The merit system is designed to ensure that the most competent and fit applicants are selected for federal employment from as broad a pool of applicants as possible, after fair and open competition. Veterans' preference represents Congress' desire to reward veterans for the sacrifices they have made for the nation. Preference points arguably give veterans an advantage over nonveterans in the hiring process. However, veterans' preference does not authorize the appointment of those who are incompetent or inefficient; preference is designed to aid only veterans who are qualified for the job in question. In this respect, veterans' preference need not conflict with merit-based hiring.

(2) **Your testimony reports that "managerial flexibility" appears to rank highly among emerging trends in civil service practices. Does GAO believe that veterans' preference impedes "managerial flexibility"?**

Answer: Our June 1995 report, FEDERAL HIRING: Reconciling Managerial Flexibility With Veterans' Preference (GAO/GGD-95-102, June 16, 1995), reported that the majority of managers contacted believed that the application of veterans' preference impeded their flexibility in hiring. As a result, we recommended that the Office of Personnel Management (OPM) actively recruit and assist agencies in carrying out demonstration projects that would test improved methods of implementing veterans' preference procedures. The objective of this recommendation was to find effective ways to overcome the concerns managers had expressed about balancing veterans preference with managerial flexibility. The veterans' groups we contacted generally agreed with our recommendation, noting that they were dissatisfied with the employment opportunities offered under the current system and welcomed a more effective approach. Hopefully, a new model can be developed that will offer enhanced opportunities for veterans while providing increased flexibility for managers.

(3) **Has GAO reviewed the activities of political appointees in agencies? What roles do they perform that are not usually undertaken by career civil servants?**

Answer: In recent years, we have reviewed issues relating to the appointment, tenure, placement, and viewpoints of political appointees. We have also done work on specific, narrow-scope issues involving the activities of a particular political appointee or small number of appointees in an agency. We have generally not, however, examined the activities of political appointees in agencies as a group.

In our 1994 report, POLITICAL APPOINTEES: Turnover Rates in Executive Schedule Positions Requiring Senate Confirmation (GAO/GGD-94-155FS, April 21, 1994), we noted that many of the top positions in the federal government experienced frequent appointee turnover. More specifically, we found that senior political appointees tended to serve in their positions just over 2 years on average; that key vacancies sometimes remained unfilled for months or even years; and that some positions were filled by as many as 5 or more different appointees in the 10-year period for which we obtained data.

These findings underscore what we see as important concerns warranting consideration as Congress explores civil service reform. Our concerns--echoed by others in the public service and academic communities--center on our belief that short tenure and frequent turnover at the top levels of agencies (1) can be seriously disruptive to the efficient and effective management of agency programs; (2) can leave agencies with vacancies in key managerial positions for extended periods of time, thereby creating a "leadership void"; (3) can lessen appointees' personal sense of program ownership and, correspondingly, lessen their identification with and commitment to the accomplishment of program objectives; and (4) prevent the clear assignment of public accountability for program outcomes. These concerns, in turn, raise serious questions as to whether modifications need to be made to the current political appointment and retention processes.

(4) **Could you compare the number of political appointees in agencies to, for example, the portion of executives brought from outside the organization during a business takeover?**

Answer: We have done no work on this issue. However, it is likely that the number of executives would vary depending on the specific requirements of the takeover.

(5) **If an administration were committed to an agenda of substantial political change, could that be accomplished with a significant reduction in political appointees?**

Answer: In our judgment, the critical considerations requisite to accomplishing an Administration's political agenda do not lie in having large numbers of political appointees in agencies. Rather, we believe that the desired results can be achieved with fewer appointees if an Administration commits to: (1) carefully selecting and appointing a small number of high-quality, highly-motivated people with the demonstrated skills, talents, and experiences necessary to successfully manage the programs to which they are assigned; (2) giving these people genuine authority and sufficient decision-making latitude to allow them to truly manage; and (3) persuading these people to actively involve the career executives and other key career personnel in critical planning and operational decision-making activities.

(6) **Would you agree that the current Office of Personnel Management, designed to oversee the Civil Service Reform Act of 1978, is not adequately structured to address the needs of the government workforce that you see developing?**

Answer: We have expressed serious concerns about OPM's handling of its oversight responsibilities in past reports, and believe that the Administration's plans for decentralizing personnel activities raise new concerns about the importance of this issue. As a result, in recent discussions with your office, we have agreed to evaluate OPM's plans for carrying out its oversight function.

(7) **What changes in OPM would be necessary to enable it to perform at least primary oversight of such a system?**

Answer: Our past work on oversight has shown that agencies must assume some of the responsibility for their own human resource activities and must have mechanisms for assuring and demonstrating that their programs are in compliance with statutes. If such mechanisms were in place, OPM's oversight activities would be more efficient. Agencies have often lacked adequate internal evaluation mechanisms because of uncertain requirements for such mechanisms. We have previously recommended that agencies be required by statute to have internal evaluation programs and that OPM provide adequate guidance and performance measures for these programs. As discussed in our answer to question 9, the Government Performance and Results Act (GPRA) could be used as a basis for developing agency performance data in human resource management. As mentioned in our answer to question 6, we will be looking into these issues in an upcoming review for your subcommittee.

(8) **The Civil Service Reform Act of 1978 separated policy oversight from merit systems adjudication functions when it created the Merit Systems Protection Board. If we decide to move toward a stronger oversight authority for OPM, would it make sense to consolidate the MSPB responsibilities back within OPM?**

Answer: Our upcoming analysis of OPM's oversight function may shed light on this issue. We have not yet taken a position on this matter.

(9) **If Congress does not move toward something like the annual oversight hearing that you suggest for OPM, what would be required to enable OPM to conduct the oversight that you believe a more flexible system requires?**

Answer: In testimony before the Senate Committee on Governmental Affairs on May 17, 1995, we reported that agencies have primary responsibility for ensuring that their programs are well managed, funds are properly spent, and merit principles and statutory objectives are being achieved. GPRA provides a possible basis for the development of agency performance information on how these responsibilities are being met. Such data could be used by OPM and the agencies to manage their responsibilities and could serve as the basis for congressional hearings. However, to accomplish this end, performance measures for federal human resource management will need to be developed.

(10) **How should the civil service change to adapt to both improvements in technologies and reductions in the size of government?**

Answer: Computer technology offers an opportunity to increase the productivity of the downsized federal workforce. Beyond re-engineering work processes to take the best advantage of this technology, federal agencies will have to invest in training their workforces to close the gap between workers' skill levels and organizational needs at a time when budgets will be constrained. Managers will also need the flexibility to pursue innovative management approaches that could result in production gains. Greater flexibility in classification and performance management could be needed.

(11) **What factors incorporated into current RIF regulations cause your agency greatest concern?**

Answer: GAO's greatest concern with the current RIF requirements is the inflexibility of the RIF process. The process does not afford the agency the flexibility it needs to structure and staff its operations in the most efficient and

effective manner. Many agencies have told us that uncontrolled bumping and retreating can be disruptive to the management of an organization.

(12) **Would you have any recommendations about modifying current RIF rules that govern all federal agencies?**

Answer: We believe that providing added weight to the performance factor relative to the longevity factor might be beneficial; however, the degree to which performance can be usefully considered depends upon the extent to which agencies have tools to accurately measure performance.

(13) **RIF'S are almost inevitably controversial, and generate a host of appeals and litigation. Are current federal oversight agencies (including the Office of Personnel Management and the Merit Systems Protection Board) doing a diligent job of overseeing the process of downsizing government? Do they have adequate resources to perform this function?**

Answer: Four federal agencies have oversight responsibility for federal downsizing: the Office of Management and Budget (OMB); OPM; the Merit Systems Protection Board (MSPB); and the Office of Special Counsel (OSC). We have not done a comprehensive evaluation of the diligence of these agencies' oversight activities, but, based on the evidence we have observed, OMB, OPM, and MSPB have generally followed law and regulation in carrying out their responsibilities.

In preparation for downsizing, OMB approved the executive agencies' requests for buyouts and ensured that the agencies complied with the offset provision of the Workforce Restructuring Act. This provision required a governmentwide reduction (excluding the Department of Defense and Central Intelligence Agency) of one full-time equivalent position for each buyout given. OMB officials told us that agencies complied with this provision. OMB also reviewed agencies' streamlining plans. The Administration called on agencies to prepare streamlining plans to ensure that they downsized in accordance with the reinvention goals of the National Performance Review. According to the OMB officials we interviewed, the quality of these plans played a role in whether or not agencies' buyout requests were approved. While the plans initially fell short of the Administration's expectations, OMB asked agencies to improve them, and ultimately, all buyout requests were approved.

The Workforce Restructuring Act gave OPM several responsibilities. These included helping to administer agency contributions to the Civil Service Retirement and Disability Fund; working with OMB to ensure annual agency personnel ceilings were met; and submitting a report to Congress containing

various demographic data on buyout recipients. OPM also provided agencies with guidance on their use of buyouts, maintained a computer bulletin board that provided callers with information on downsizing and many other topics, and collected data on agencies use of buyouts.

MSPB is responsible for adjudicating appeals of RIF procedures. According to an MSPB official, RIF appeals as a percentage of all appeals heard by MSPB have increased from 5 percent in fiscal year (FY) 1993 to 24 percent in FY 1995. The RIF procedures that can be appealed include, for example, agency failure to make a reasonable offer of assignment, failure to apply veterans' preference, and improper determination of an employee's tenure group or length of service.

We have no current information on how OSC has carried out its responsibilities, and have not evaluated the adequacy of the resources any of the four oversight agencies have devoted to their responsibilities.

(14+15) Has "merit" fallen behind other principles in managing the personnel system? If so, what other factors outweigh or overshadow merit?

Answer: The core principle of merit still remains legal and viable for the federal civil service system. Decisions about federal employees should still be based on merit to ensure a well-qualified workforce, free from partisan politics and capable of serving Presidents and the Congress regardless of political party. This principle places the responsibility on agencies to ensure merit as the basis for staffing and rewarding employees, but should not be construed as requiring blind compliance with rigid, process-centered rules and standards. High performing organizations are currently stressing values such as focusing on achieving results and delivering services to clients conscientiously and courteously, being accountable and ensuring the accountability of others, and contributing to continuous improvement. These principles should be viewed as additions to, rather than replacements for, the basic merit system.

THE DEPUTY SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

February 29, 1996

The Honorable John L. Mica
Chairman, Subcommittee on Civil Service
Committee on Government Reform and Oversight
U.S. House of Representatives
Washington, DC 20515-6143

Dear Mr. Chairman:

Thank you for the opportunity to provide additional information on the subject of civil service reform. The responses to your questions are enclosed.

If I can be of further assistance, please feel free to contact me or Steven O. Palmer, Assistant Secretary for Governmental Affairs, at (202) 366-4573.

Sincerely,

Mortimer L. Downey

Enclosure

DOT's RESPONSES TO QUESTIONS FROM CHAIRMAN MICA CONCERNING CIVIL SERVICE REFORM

1. **[Concerning proposals to reduce the number of political appointees], could you comment on the effects of such a reduction if an Administration is committed to managing change in federal agencies?**

   When President Clinton challenged each of his Cabinet Secretaries to make Government work better and be more accountable to the American people, Secretary Peña launched an aggressive effort to determine how we should change the way we conduct our work at the Department. Over the past year, we have gone through a thorough review to examine what work we should be doing and how we should be doing it. As a part of that review, we have reexamined the function and role of all of our senior and mid-level managers, both career and noncareer.

   How do we ensure that the DOT has a high performance work force managing agreed-to outcomes and goals and not process? This is a difficult and delicate balance to reach, but I believe we are well on our way to reaching it. We have developed a strategic plan which outlines major areas of effort, have proposed major reorganizations and realignment of many of our programs, and have already substantially downsized the DOT work force. We managed to reduce both the overall number of political appointees as well as senior managers by 10 percent by FY95.

   Managing for change demands our best and most intensive efforts. At DOT, this means changing how we interact with state and local officials as well as key industry and other transportation officials. Whenever you change how you do business, there is a delicate balance in convincing people that the new way is better, more efficient, and effective. Leadership is particularly critical at times like these. We do not support any proposal which arbitrarily reduces further the number of political appointees, especially one based on Governmentwide ratios. Such a reduction in this environment could impair our ability to manage for change. In order to be effective managers of change, we must have the resources available to make changes quickly when needed.

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2. What roles do political appointees (especially Schedule Cs) play that are unique and could not or should not be performed by career employees?

Political appointees implement policy and manage the Executive Branch on behalf of the President and the American public. To maintain accountability, the President -- any President -- must have the ability to appoint, and remove, managers in key positions. Like other political appointees, Schedule C's serve at the pleasure of the President or the Secretary, which allows the President the flexibility he needs to design and carry out Administration programs. In DOT, Schedule C's are carefully selected to perform specific functions where their special judgment or expertise is essential to major departmental programs. Consequently, their expertise is paramount, and few are appointed below the journeyman level. This combination of allegiance to Administration goals and knowledge of important program issues is critical to ensuring effective implementation of Administration policies and statutory programs.

3. Would you support such a restriction [in the number of political appointees]?

The Department of Transportation and Related Agencies Appropriation Act, 1996, permits the use of appropriated amounts for salaries and expenses of no more than 100 political and presidential appointees in DOT. In our view, this limitation is tight, and we do not support any further restriction on the number of political employees. These restrictions are arbitrary, and they reduce flexibility to manage critical situations as they develop. Past history has demonstrated that DOT has the ability to not only manage and adjust its work force to the ever-changing needs of the programs and skills required in a cost effective way, but also to prudently size its political work force to ensure the effective implementation of policy initiatives.

Earlier in my career, I served the Department as the Assistant Secretary for Budget and Programs. When I left in 1981, there were more political appointees in DOT than there are today -- 16 years later. In 1984, DOT had 149 political appointees on board, 39 more than our 1995 ceiling. Yet, during this period, the Department's programs and responsibilities grew substantially. The overall personnel population had also grown, although we have now managed it back to 1989 levels. Any additional reductions would be counterproductive to maintaining important policy initiatives.

We must have the flexibility to adjust our resources. Political appointees are not selected arbitrarily. They are carefully chosen to fill leadership

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positions. Their numbers must not be restricted arbitrarily, especially on a Governmentwide basis. To do that would restrict the President's flexibility to deal with changing priorities and his ability to lead the Department in meeting national transportation goals

4. **Could the objectives [to exempt the Federal Aviation Administration (FAA) from major portions of Title 5 USC] be reached through the Demonstration Projects currently authorized under Title 5, Chapter 47?**

As technology has advanced, FAA has been constrained to work with partial solutions for meeting its customer requirements. The gap between where we are and where we need to be is becoming wider by the day. Our experience has been that demonstration projects are inadequate as a remedy to the problems that are addressed by the Title 5 exemptions for the FAA specified in the FY96 DOT Appropriations Act. Demonstration projects were never envisioned as a medium for change of the scope and magnitude that face the FAA as it deals with the technological challenges and increasingly complex customer demands of the 21st century.

While some of the concepts could be implemented in a limited setting under the demonstration authority, it has several major drawbacks. First, by definition a demonstration project is a time-limited experiment. Even if the project is successful, further legislation is required for it to become a permanent way of doing business. Therefore, the demonstration project authority restricts an agency's ability to make permanent, fundamental changes to its human resources program. Second, the authority has built-in limitations, such as restricting application to no more than 5,000 employees. Therefore, it is not a viable solution for making organizationwide changes in an organization as large as the FAA. Finally, the notice requirements and administrative process required by the authority limit the agency's ability to design and manage systems effectively.

5. **Has the Department of Transportation proposed either a demonstration project or an alternative personnel system along lines developed under the National Performance Review?**

Yes. FAA is currently developing a competency-based system for its Airway Facilities employees. The system will set employee compensation based on the attainment and performance of job-related competencies. The system is comprised of a total fiscal management side, a gain-sharing side, and a competency-based progression side.

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In addition, as part of its human resources management system, the Department has developed a work group to explore the advantages of alternative pay systems. Several of the operating administrations have expressed a strong interest and are pursuing a needs analysis and evaluation plan. Once we complete our review of the DOT field offices and the Coast Guard completes its initial streamlining efforts, we will proceed with consideration of plans for alternative pay systems for certain designated work forces. In the meantime, we have made a conscious decision to wait.

6. What was the reaction to the proposal?

The Department has drafted a general framework for alternative pay systems. The workgroup which developed the framework recognized the diversity of organizations within the Department and determined that the uniqueness and special needs of many organizations are unmet by the current General Schedule (GS) system. The GS system is outdated, complex, and inflexible. In contrast, the work group proposal offers flexibilities to meet the variety of needs facing organizations within DOT. Therefore, the reaction has been positive.

In a more specific context, drafts of the FAA Airways Facilities plan have been shared with the unions and employees who may be covered. Three factors will be key to the plan's success. First, since attainment of competencies is the key to progression, training is a necessary requirement for the system to work. Second, as organizations are flattened, there need to be systems to ensure equity in areas such as work assignments and training selections. Third, DOT will need to budget for startup costs that will initially be greater than current GS costs. In all probability, those costs will be reduced over time and, eventually, they will be equal to or less than the GS costs. FAA is continuing to incorporate customer and stakeholder feedback into the development of this system.

7. Have [the OPM administrative and regulatory] changes affected your organization?

We have welcomed the elimination of the Federal Personnel Manual (FPM) as a signal that OPM is serious about cutting the red tape that has all too often interfered with effective human resources management. The elimination of FPM material will be more effective when it is accompanied by changes in the Code of Federal Regulations (CFR). We are headed in

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the right direction to achieve our objectives for administrative efficiency in Government.

OPM's delegation of agency case examining and hiring authority has contributed to streamlined recruitment. Another positive change has been the elimination of the SF-171. Applicants welcome the ability to submit applications in the written format of their choice. One of the most important flexibilities we have received has been the opportunity to design our performance management systems to complement our organizational culture.

8. Do you think the "pass-fail" personnel evaluation will be of much help to you?

We believe the new regulations will be very helpful inasmuch as they will provide agencies with the flexibility to develop performance management systems which will support organizational objectives. In many cases, the "pass-fail" system is the best approach depending on culture and organizational objectives.

The Department of Transportation's Framework for Performance Management gives operating administrations the flexibility to develop strategies for achieving high levels of performance. Strategies may range from "pass-fail" to a five-level performance program. In addition, the DOT Framework focuses on the following: (1) linkage between individual performance results and required outcomes of organization performance; (2) a focus on required results and objectives of measures, not behaviors and characteristics; (3) the use of performance management processes to facilitate and enhance two-way feedback and communication of organizational and individual objectives on an ongoing basis; (4) employee involvement in the development of performance objectives; (5) management of award funding to reward results and achieve high levels of performance; (6) the use of team or unit performance assessments; (7) streamlined performance management processes; and (8) education for all employees which focuses on "managing for results."

9. What guidance have you received in place of the Federal Personnel Manual?

OPM still issues operating manuals in those areas where Governmentwide consistency is required, e.g., in the benefits programs, in the data standards area, and in the qualifications area. OPM also issues periodic notices on issues of Governmentwide interest or application. Finally, we receive guidance in the form of memoranda from the Director of OPM and his senior staff.

10. How have you used any additional discretion provided through these administrative changes? If yes, please provide examples.

Delegations of agency case examining and hiring authority have been used to expedite the restructuring of the Department's Civil Rights program. Elimination of the SF-171 has made the hiring process more customer-friendly for external applicants. DOT organizations have implemented a variety of performance management systems, including "pass/fail" systems, that are appropriate to their individual missions, work, and cultures. DOT has also developed policies and procedures that improve the process for procuring training services by allowing appropriate employees to buy training services without having to go through the contracting office.

11. Can you describe any ways in which OPM has exercised oversight of merit system procedures and decisions in your agency?

OPM has just recently undergone a major internal reorganization placing greater emphasis on its oversight and effectiveness program. As part of its new program focus, OPM is in the process of completing several Governmentwide studies, e.g., on special salary rates and workers' compensation. We understand that OPM plans to conduct whole agency reviews of a limited number of agencies during each fiscal year. This Department is not on the OPM schedule for FY 1996.

DONALD DEVINE COMPANY
MANAGEMENT CONSULTANTS
BUSINESS, GOVERNMENT, POLITICAL

Hon. Donald J. Devine
President

November 7, 1995

The Honorable John L. Mica
Chairman
Civil Service Subcommittee
Committee on Government Reform and Oversight
U.S. House of Representatives, 2157 RHOB
Washington, DC 20515-6143

Dear Mr. Chairman:

Thank you for your kind words regarding my October 12, 1995 testimony and my background paper for the Heritage Foundation. I was pleased that my remarks opposing the Administration's proposed "pass-fail" system for employee evaluations has had some influence among your colleagues.

You requested that I respond to three questions posed in your letter of November 3, 1995. My thoughts follow.

(1) The Administration characterizes its new role for OPM as moving from "providing services" to "policy oversight." I agree that OPM's major role should not be to provide services. Most regular production services could be performed privately or--for government operations--by agencies, with OPM contract and administrative oversight. However, it is not clear what the Administration means by "policy oversight." If policy oversight suggests that OPM should only oversee policy and not provide administrative oversight as a major function, I disagree. As OPM devolves functions to Federal agencies, oversight of such activities must increase to assure quality control and to see that abuse does not occur. Of course, OPM must also provide policy leadership as a central mission. I would characterize OPM's proper direction as moving from providing services to assuring merit and management system oversight of agency operations and assisting the President in providing leadership for the Government's personnel management policies.

(2) I do not agree that veterans preference is in conflict with merit system principles. Veterans preference is a merit system principle, placed into the system as a reward for those who have served their government in its highest calling. Although veterans preference can conflict with pure merit, that is not what a merit system is. A merit system protects other values than pure merit--such as protection against political reprisal. I can think of no protection more worthy than to assist those who have born the brunt of battle. My experience is that the costs to pure merit are

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minimal and the exceptions justified by earned merit in the military. The only change I would suggest is for better oversight by OPM to assure that the agencies are following the law. The perception is widespread that veterans preference is often circumvented, especially in the use of "name requests" by federal managers.

(3) The long-standing practice in our Federal Government is to rely upon political appointees at the top several levels to provide policy leadership from the President's direct representative, and to utilize career officials to provide the stability and expertise below them in the remainder of the Government. This system has served the nation well and is probably one of the main reasons our government is more responsive and better managed than most others. In recent years, there has been some movement in Congress to limit the President's flexibility to make such appointments, usually by limiting the number of political appointees in an agency or at some rank. Sometimes, the motivation has simply been political, to limit a President of the opposite party. This is short-sighted because it will ultimately limit that party itself when it elects a President. At other times, the motivation is to save money. This is simply misplaced because the position will not be eliminated but simply will be filled by a career person rather than the more appropriate policy-making political appointee. Former OPM Director Constance Horner is concerned that Schedule C (as opposed to Presidential appointees or Non-career Senior Executives) political appointees are sometimes overused; but she properly says that it should be up to the President to correct such situations. Certainly, Congress should be free to alert the President or agency head to practices it deems abusive but legislating management discretion is an endless and unproductive activity. The only changes I would suggest would be to eliminate any restrictions to Presidential flexibility that currently exist in law.

I hope these thoughts might be useful to you and the committee as you pursue your good work to improve government operations. I appreciate the opportunity to present my views and would be pleased to provide further details or other information you may find useful. I applaud your efforts to make the Government work better and more responsively.

Sincerely,

Dr. Donald Devine
President

CIVIL SERVICE REFORM I: NPR AND THE CASE FOR REFORM

FRIDAY, OCTOBER 13, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:05 a.m., in room 2154, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Bass, Morella, and Moran.

Staff present: George Nesterczuk, staff director; Ned Lynch, professional staff member; Caroline Fiel, clerk; Cedric Hendricks, minority professional staff; and Elisabeth Campbell, minority staff.

Mr. MICA. Good morning. I would like to call to order this meeting of the House Civil Service Subcommittee and to welcome you here.

This is our second day of hearings on civil service reform. Yesterday we heard from a panel representing the administration, and a variety of concerns that they have identified were also heard in their testimony. And we reviewed the Government's approach to human resource management and some of their suggestions for improvement.

Also, we benefited from the experience and insight of people who have been closely involved in the implementation and oversight of the Civil Service Reform Act of 1978 and heard some of their commentary.

I believe that the leading question, as we face these issues today, is whether the civil service system is designed for the growing Government of the 21st century. And, as we take on the important responsibilities of streamlining Government that lie before us, we must do it in a responsible fashion.

During the past decade, American businesses have taken advantage of new technologies and more efficient organizations to improve quality while increasing services that they provide to the American people and their consumers. Government has fundamentally different responsibilities, in some respects, but we have an essential commitment to maintain the quality and effectiveness of our Government operations at the Federal level.

Today, we will hear from three panels of witnesses who will provide us with a variety of experiences in working with our civil service system. Our first panel consists of three individuals who served in senior positions within the Reagan administration during efforts to bring about major changes in organizations.

Incidentally, we also invited one of the former Carter administration officials to testify, and because of other obligations, he was forced to decline at this time. But we're going to try to get him at another time to testify.

Ronald Sanders, who now directs the Maxwell School Center for Advanced Public Management in Washington, was the Director for Civilian Personnel Policy and Equal Opportunity at the Department of Defense during the national security buildup of that period.

George Dunlop was appointed Assistant Secretary of Agriculture by President Reagan, a position which enabled him to exercise authority over the Forest Service and the Agricultural and Conservation Service. And George Weithoner served as Associate Administrator for Human Resource Management at the Federal Aviation Administration during the recovery of the firing of 11,500 air traffic controllers who struck illegally in 1981.

We have that panel of witnesses, and I believe they are all with us. If they could come forward—I don't see George. If we can go ahead, I would like to welcome Mr. Sanders.

Can you give me the correct pronunciation; is it Weithoner?

Mr. WEITHONER. Gene Weithoner; yes, sir.

Mr. MICA. OK. Sorry. I just wanted to make sure I got it right. We don't get enough Smiths and Joneses here.

I do want to welcome you to our panel. If we could take just a moment, it is the custom and tradition of our committee, because of its investigation and oversight responsibility, to swear you in. If you would raise your right hands.

[Witnesses sworn.]

Mr. MICA. Mr. Dunlop isn't here yet, but we will begin with Mr. Sanders.

Gentlemen, I've seen your statements, some of which run more than 20 pages—we would appreciate your trying to summarize your remarks. Your entire statements, without objection, will be made a part of the record. We would like you to summarize, if you can, in 5 minutes, and it will give us the opportunity for some exchange and discussion.

So, with that, I will recognize Mr. Ron Sanders.

STATEMENTS OF DR. RONALD P. SANDERS, DIRECTOR, CENTER FOR ADVANCED PUBLIC MANAGEMENT, SYRACUSE UNIVERSITY; CHARLES E. WEITHONER, FORMER ASSOCIATE ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION; AND GEORGE S. DUNLOP, FORMER ASSISTANT SECRETARY, DEPARTMENT OF AGRICULTURE

Mr. SANDERS. Thank you, Mr. Chairman. The life of an academic, like the life of a personnel specialist, you kind of get paid by the pound of paper, so I will try to be brief.

I appreciate the opportunity to speak to you this morning on the subject of the Federal civil service system. You asked me to come talk about the strengths and weaknesses of that system and some of the improvements that can be made, and I'm going to do that, but from a particular vantage. I'm going to talk as someone who has had about a quarter of a century experience as a senior executive manager and human resource professional.

From that vantage, my own assessment is that the current civil service system isn't broken yet. "Broken" suggests that it has failed, and I don't want to leave anyone with that impression, nor do I want to suggest that the core values and principles that underlie the system, things like merit and accountability to the public, are flawed or faulty, because they are not.

I think we are facing a case of fit, a system that is stretched and perhaps becoming obsolete; bogging down in the silt and the sediment of bureaucratic rules. Given the consequences of that rule-based model, I think we need a more revolutionary approach to civil service, a result-based, sort of block grant model, characterized by principles, performance measures, and strong leadership that has authority and accountability for both of those things.

Before we can provide a prescription for the future, however, let me take you back to the past very briefly, to look at the origins of that system, to see where all of those rules came from. If you look at the origins, you can see that the designers of our system intended a public service characterized by both competence and continuity; in our Government of checks and balances, constancy and merit serve as a counterweight to political pressures and patronage.

As a consequence, the model deliberately values stability and predictability. Those things are fine, if the environment is of similar characteristics. But those characteristics have evolved into a system that emphasizes permanent, virtually lifetime employment, legalistic protections, and a very, very complex and arcane adjudicatory system to enforce those protections, and a compensation system that rewards years of service over contribution.

Continuity and merit. There is that issue of merit, perhaps the most precious component of our civil service system; however, even there that strength has become weakness as a result of bureaucratic rules. What we are left with today are volumes of rigid, standardized job classification and qualification standards, and a by-the-numbers definition, a sort of formula approach to merit and relative worth.

I guess I would argue that the core assumptions and values that ground our civil service are still as valid today as they were over a century ago. Merit, accountability, neutral competence, protection from arbitrary action, those things are the strength of that system. And it becomes increasingly apparent that the dysfunctions in that system come from the way those values have been operationalized by a system of rules and regulations largely standardized and embedded in what has become a culture of compliance. In that culture, rules become more important than results.

Some examples: Inflexible appointment rules make it very difficult for Federal agencies to hire other than permanent employees for less than permanent work, and when that work is done, they are forced to conduct traumatic reductions in force among those permanent workers. Think of the ramifications of that for an industrial depot in the Defense Department.

Centralized evaluation and referral procedures prevent agency college recruiters from making competitive, on-the-spot offers, except under the narrowest conditions. A complex, arcane job classification system encourages and rewards narrow technical speciali-

zation, results in overstaffing and the compartmentalization of work. A reduction-in-force system typically requires a chain reaction of five or six separate personnel actions, bumps, and retreats to separate a single employee.

All of these rules were likely issued with the noblest of intentions, in many cases to deal with an individual abuse, but, taken together, they have the unintended consequence of impeding the performance of Government organizations, and they end up forcing uniform, lowest common denominator treatment of Federal organizations and employees, regardless of personal or situational circumstance. One size fits all; sameness over effectiveness.

If that's the case today, what about the 21st century, which I understand is part of the scope of your review here. Even today, Federal agencies face a turbulent environment where change is constant, uncertainty and chaos are the rule, and flexibility and adaptability become organizational survival traits. By the year 2000 it's going to get worse. There is no question that the executive branch will be a lot smaller, but this isn't just a matter of sizing. The role of Government will change dramatically as well.

Many of the functions that the Federal Government performs today, especially those involving service delivery, will be outsourced, privatized, or devolved. The Federal Government will likely emerge as the public's prime contractor, establishing strategic partnerships and alliances with States, localities, private corporations, and other in-between entities for the delivery of public goods and services, and then making sure they deliver on those promises.

That requires a lot more flexibility, the capability to constantly reengineer itself, and a civil service that is decidedly more flexible as well. For example, a career component that is much smaller than it is today, much less stable, lower fixed cost, even greater agility, much less specialization, with teams of multiskilled, rapidly deployable knowledge and information workers sent to deal with particular problems.

I think this smaller career component will be bound together, not by the framework of rules that we have today, but by performance measures, core principles, strong leadership, and maybe not much else.

It's all too clear that we need a new civil service model to support those requirements, one that preserves the core values of our civil service system without resorting to bureaucratic rules that impede effective delivery. And I think the blueprint for that model is right in front of us. As we speak, you in the Congress and the executive branch are in the process of devolving responsibility for many Federal functions to States and localities, and I think there are lessons there for the Federal civil service.

That blueprint has three core elements, I think: one, an overarching Federal framework for a particular policy or program; two, a set of tangible, clearly defined outputs and outcomes, performance measures, output objectives, et cetera; and three, broad grants of authority to various governmental entities to design and deliver things within that framework. This is eminently applicable to the Federal civil service and indeed is precisely the human resource management model that many of our best companies have adopted.

Think of it as a block grant approach to civil service, where discretion to design and administer human resource management systems would be devolved to individual Federal agencies, conditioned on conformance to broad principles: merit, accountability, and other things like veterans' preference, and also conditioned on performance, with the Government Performance and Results Act providing a ready-made framework for establishing and assessing that condition.

Those two conditions, conformance and performance, serve as the basic architecture for a truly reinvented civil service. And there is a default option. What happens if these conditions aren't met? If freedom, organizational freedom, is the reward for meeting those principles and the bottom line, then the penalty, or the default option, is revocation. If an agency can't meet those conditions, it returns to the rigidity of existing governmentwide rules and compliance.

That dismal prospect and the leverage it would give oversight bodies ought to be sufficient to deter most abuse, and it establishes an accountability mechanism that is self-enforcing in many respects.

Mr. Chairman, let me close by saying there is ample precedent for that kind of model. As I have suggested, we are looking at that as a way of managing major Federal programs now outside of the civil service. New Zealand has tried it. The United Kingdom has tried it. And we have many Federal agencies that are moving down that path. As you heard yesterday from the General Accounting Office, almost 45 percent of the Federal work force, broadly defined, now finds itself outside the broad sweep of our uniform civil service statutes.

So it's a model that I think is worth considering as we move toward a civil service that has the flexibility and agility to meet the 21st century demands.

Thank you.

[The prepared statement of Mr. Sanders follows:]

MAXWELL SCHOOL
Center for Advanced Public Management

Statement of
Dr. Ronald P. Sanders

Director, Center for Advanced Public Management
Maxwell School of Citizenship and Public Affairs
Syracuse University

Before the

Subcommittee on Civil Service
Committee on Government Reform and Oversight
United States House of Representatives

October 13, 1995

The opinions expressed in this statement are solely those of the author. They are the personal views of Dr. Sanders and are not intended to represent or reflect the official position of the U.S. Department of Defense or any other agency of the Federal government, or the position of Syracuse University in this matter.

Statement of

Dr. Ronald P. Sanders

Director, Center for Advanced Public Management
Maxwell School of Citizenship and Public Affairs
Syracuse University

Before the

Civil Service Subcommittee
Committee on Government Reform and Oversight
US House of Representatives

I. Introduction

Mr. Chairman, I appreciate the opportunity to speak to you and your Subcommittee this morning on the subject of the Federal civil service system. In your letter of invitation, you asked me to talk about the strengths and weaknesses of that system, as well as any reforms that may improve it. I certainly intend to do so, but from a particular vantage: that of a practitioner and academic who has dealt with this subject for most of his working life. In this regard, I will offer you my personal views and professional opinions -- I do not intend or pretend to speak for the Department of Defense, although that is where I acquired most of my managerial experience in government.

From that vantage, my own assessment is that that current civil service system isn't broken -- it is just obsolete. "Broken" suggests that it has failed, and I do not want to give anyone that impression. Nor do I want to suggest that the core values and principles that underlie our Federal service -- such things as merit and accountability to the public -- are somehow flawed or faulty, for they are not. Rather, this is a matter of "fit," a case of simply outgrowing a system that has become bogged down by the silt and sediment of bureaucratic rules.

In offering this assessment, I do not want to minimize the urgency of the matter, for the rule-based rigidity that constrains the management of the Federal government's human resources has serious ramifications for its performance. Simply put, that rigidity impedes mission -- especially in a public sector

environment that increasingly requires organizational "agility." This inflexibility is rooted in the notion that a single, overarching set of personnel management rules and regulations can be centrally developed and applied across all of the Federal government -- in effect a unitary, "one size fits all" approach to governance that no longer comports with an environment that demands a more customer-oriented (and hence, a more customizable) model.

To support that conclusion, we must consider where the Federal civil service has come from, where it stands today, and perhaps most importantly, where it needs to be in the future. To that end, we will begin by first reviewing its origins, with particular attention to the basic purposes and core values that ground the Federal service, this in order to establish a baseline for our assessment. With that context in hand, we will then examine the state of the Federal government's present human resource management system, focusing on the consequences of its rule-based paradigm, as well as the efficacy of some of the previous attempts to reform it. Taken together, these consequences and reforms suggest the need -- both today and tomorrow -- for a more revolutionary approach to civil service, and in that regard, we will close with a look to the future, outlining the requirements and specifications of a 21st century Federal service and proposing a results-based, "block grant" strategy to meet those requirements.

II. Origins: Continuity, Competence, and Covenant

At the time of its creation just over a century ago, the Federal civil service was considered a model of modern personnel management, a grand design that separated the sometimes unseemly world of politics from the theoretically more antiseptic administration of government. In that context, it was originally intended to provide for a public service characterized by continuity and competence -- in our system of checks and balances, constancy and merit as a counterweight to political pressures and patronage. If Federal laws represent a covenant between the government and the governed, then the civil service was intended to be the keeper of that covenant -- and continuity and competence make that possible.

First and foremost, our present civil service system was designed to insure the continued day-to-day operation of government, no matter the partisan political

agenda. As a consequence, the model deliberately values stability and predictability to dampen the vagaries of political change. These values have been manifested by personnel rules that emphasize permanent employment to offset to the comings and goings of Administrations, as well as a system of complex, legalistic protections from arbitrary (originally defined as politically motivated) adverse action. In and of itself, such continuity is a laudable, and traditional, objective of civil service. However, this strength has become a weakness: over time the rules established to achieve that objective have created the expectation of tenure and virtually lifetime employment. These expectations derive from the very words we use to initiate people into the civil service, words like "career appointment" -- a lofty status that once attained, becomes an entitlement revocable only with the greatest of difficulties -- and a compensation system that rewards years of service over contribution.

While this bias towards permanence in both security and salary certainly serves the goal of continuity, it may no longer comport with the reality of government, where stability and predictability are gone, and the inflexibility and inertia they engender are dysfunctional. In today's uncertain environment, flexibility is the key. This means a workforce with fewer permanent employees and lower fixed personnel costs, one that can be rapidly sized and shaped to meet competition, customer, or fiscal constraint. It also means no more de facto lifetime employment. Indeed, the very notion of a large career Federal service needs to be reexamined -- the protections and entitlements that define that service were originally designed to guard against political abuses, but they have ossified to the point that they may vitiate the competitiveness of Federal organizations -- and the employees they were intended to protect.

Then there is the issue of merit. Our civil service system was also intended to forever abandon the practice of political patronage -- the so-called spoils system -- for all but a very few senior positions. In part, this was to further the objective of continuity, but more importantly, it was intended to insure that those in government service had the skills and abilities necessary to administer increasingly complex Federal programs. Thus, the system places great value on neutral competence in service of "the government of the day" -- and upon selection based upon merit, perhaps the most precious characteristic of civil service. However, once again, strength and purpose have become weakness. Like continuity, competence and merit have been submerged and subverted, in this case by a complex, rule-based approach to valuing people and positions. An

almost taken-for-granted tradition of civil service, this approach is characterized by volumes of rigid, standardized job classifications and qualifications requirements, "by the numbers" definitions of merit and relative worth, and centralized evaluation and referral of new entrants.

III. Consequences: A Culture of Compliance

Clearly the core assumptions and values that ground the Federal civil service system -- continuity, neutral competence and merit, accountability to the public -- are the strength of that system, and they remain just as compelling today as they were one hundred years ago. In this regard, it becomes increasingly apparent that the dysfunctions in the system derive from the way those values have been operationalized: by standardized, centralized rules. Simply put, our current civil service system (including the 1979 Reform Act) is rule-based. It operationalizes its underlying core values the "old fashioned way," through a complex set of uniform laws, rules, and regulations that are intended to control the behavior of public officials and organizations in ways that are consistent with those values. Hence, the smallest of details concerning the management of the government's human resources may be found in Federal statute or regulation.

There are historical antecedents for this as well. Traditionally, we've been careful to circumscribe and delineate the authority of government -- part of our cultural "distrust" of central authority of any kind -- and our present civil service model is no exception. While that system values tenure and technical competence, it also recognizes that these characteristics can vest considerable power in bureaucrats, and the plethora of civil service rules serves in part to limit and constrain that power. Those rules become ends in themselves, interpreted and enforced through complex accountability mechanisms that emphasize process compliance in the exercise of administrative authority. In this regard, Federal civil servants have traditionally been measured on how well they conform to the rules, so that is precisely what they do.

Nowhere is this control more apparent than in the rules that govern the Federal civil service, where the organizations and individuals who administer those rules -- government personnel offices and personnel specialists -- have over time established a veritable culture of compliance. In that culture, "what

gets measured gets done," and rules becomes more important than results, a prospect that becomes even more problematic in a system that is centralized and standardized like ours. Just imagine trying to write a set of rules that accommodate the needs of a Navy shipyard, a national park, and the Internal Revenue Service during filing season. Well we have such a set, and its your worst nightmare. All of these rules were likely issued with the noblest of intentions, in many instances to deal with some individual case of abuse, but taken together, they have the unintended consequence of impeding the performance of government organizations, increasing their operating costs, and in many cases diminishing employment and career opportunities for civil servants. For example:

- Inflexible appointment rules make it difficult for Federal agencies to hire other-than-permanent employees for less-than-permanent work, and when that work is done, they are then forced to conduct traumatic reductions-in-force among those permanent workers.
- Rigid, government-wide job qualifications standards preclude agencies from exercising any judgment in evaluating candidates, especially college recruits, and centralized evaluation and referral procedures prevent them from making "on the spot" offers except under the narrowest of conditions.
- A complex, arcane job classification system encourages and rewards narrow, technical specialization, causes the "compartmentalization" of work, and impedes an agency's ability to develop and deploy multi-skilled workers to meet surges and bottlenecks.
- Formula compensation rules reward years of service and longevity, with permanent increases to base pay almost automatic and irrevocable and bonuses limited to relatively insignificant amounts.
- Reduction-in-force rules typically require a chain reaction of five or six separate personnel actions ("bumps and retreats") for every involuntary separation, uprooting employees and placing them in jobs that may not match their competencies. And last-in/first-out retention rules unduly impact diversity.

Other examples abound. However, one can argue that somewhere among the volumes of civil service regulations (yes, they still exist, even after the "sunsetting" of the Federal Personnel Manual) there are ways to achieve the kinds of flexibilities needed by Federal agencies -- indeed, as a former personnel

official, I used to pride myself on my ability to find those ways. However, therein lies the fundamental essence of the problem. In a rule-based system, problems are solved by writing more rules, with still more conditions and exceptions, until we literally become mired in them. Federal organizations are forced to focus on finding and following those rules -- and not on doing the job.

IV. Reforms: A "Better Rules" Strategy

To be sure, civil service rules can always be improved, by writing better ones (clearer, less complex, fewer conditions, more exceptions, etc.), but they are still rules. They can also be made more flexible by delegating greater authority to administer and apply them, but that too remains essentially rule-based. The Civil Service Reform Act of 1979 provides an object lesson in this regard. "Better rules" was the essence of that legislation. It sought more rational and responsive regulation of the Federal civil service; however, note the underlying assumption here -- that civil service still needed to be regulated. The Reform Act did not really depart from the present paradigm: a monolithic, rule-based model of civil service; to the contrary, it took that model for granted, the only way to achieve the purposes of continuity and competence. To their credit, the architects of the Reform Act promised -- and delivered -- greater delegation of authority within that model, from the brand new central personnel agency (OPM) to agencies and managers within that unitary framework. But the limits on that delegation are important: as a general matter, the Act did not devolve authority to try a different model altogether, and as a consequence, it produced predictable results.

Among other things, the Reform Act attempted to put public accountability (and by implication, less permanence) back in the Federal service by making the pay of managers more contingent upon performance -- the beginnings of a variable pay compensation strategy. But by mandating the same rating-reward formula for every manager in the Executive Branch, the system had the unintended consequence of inducing classic bureaucratic work-to-rule behavior: inflated performance appraisals, "everybody gets a little" bonus distribution schemes, and ratings rotation games ("...every three years its your turn") that usually bore little relationship to performance. The result: a merit pay program

that was almost universally reviled by managers, despite the fact that it made most of them financially better off; while managers had plenty of authority to administer that program, they had no power to adapt and tailor it -- no "ownership" stake in it -- and its failure became a self-fulfilling prophecy.

In the same spirit of more accountability and less permanence, the CSRA also attempted to make it easier to fire poor performers, primarily by reducing the evidentiary standards required to sustain a performance-based adverse action. It clearly did that, but in so doing it also imposed additional regulatory requirements and due process procedures (critical performance elements and standards, improvement periods, and the like), yet another complex appellate system complete with its own adjudicatory agency, and eventually a whole new body of "legal" precedent and case law governing performance management. The result: a system that is arcane and intimidating to line managers and employees alike, requiring the advice and assistance of lawyers and para-legal personnel specialists to administer the day-to-day relations between them.

The inherent flaws of rule-based reform are perhaps most evident in the Reform Act's demonstration project provisions. Generally intended to encourage experimentation in human resource management, those provisions allow OPM, under certain controlled conditions, to waive various statutory and regulatory restrictions for up to ten such projects. Here was the chance to try something other than a rule-based approach to civil service. Of course, a rule-based system requires rules to conduct such experiments, with results that are all too predictable. In the more than sixteen years since the passage of CSRA, demonstration authority has never been fully utilized, largely because of the daunting procedural constraints -- including public notice and hearings, inflexible project plans, and centralized oversight -- that must be met. In my own experience with one such project in the Air Force, it literally took years to gain approval, and even then, we faced the prospect of almost constant reports and compliance evaluations during its life -- not to mention lots of "Monday morning quarterbacking."[1] But after all, in a rule-based system, one must have rules, even where the statutory objective is to try something else.

As should be apparent, our reliance on rules (even reformed ones) has had unintended consequences, and we have come to place far too much faith in them as a basis for managing the government's human resources. Designed to insure continuity and competence, those rules and regulations -- pages and pages of them, many centrally imposed and largely standardized -- end up

forcing uniform, "lowest common denominator" treatment of Federal organizations and employees, regardless of personal or situational circumstance, a "one size fits all" approach to human resource management that imposes sameness at the expense of effectiveness. At one time, this may have been the system's greatest strength, but paradoxically, it has become its greatest weakness, for sameness and rigidity are two sides of the same coin.

V. Futures: 21st Century Civil Service

This is not to suggest that we abandon a "better rules" strategy -- indeed, most of what you have heard over the last two days of hearings has focused on the need for certain incremental changes to Federal human resource management. Our current civil service system clearly needs such immediate adjustments, to be sure, but these may beg a more important strategic question: Even with the adjustments discussed here, is our present system capable of meeting the human resource management needs of 21st century Federal government? If you will permit that much broader question, let me try to answer it, first by speculating on the demands that may be placed on the Federal civil service at the end of this decade and beyond, and then by describing the kind of civil service system that may meet those demands.

Even today, Federal agencies face a turbulent environment where change is constant, uncertainty and chaos are the rule, and flexibility and adaptability become organizational survival traits. This is nothing new to our private sector, and many state and local governments have already begun to confront this challenge, but for most of the Federal government, this is a "brave new world," a real culture shock for organizations rooted in the traditions of stability and permanence. Unfortunately, by the year 2000, it will likely get worse. There is no question but that the Executive Branch will be considerably smaller and less hierarchical by then, with fewer cabinet departments and agencies, as well as fewer managers and front-line employees.

However, the future is not just a matter of sizing. The role of the Federal government will also change dramatically. With many of the functions it performs today (especially those involving service delivery) devolved, privatized, or competitively outsourced, the Federal government will likely emerge as the

public's "prime contractor," establishing strategic partnerships and alliances with states and localities, private corporations, and other in-between entities for the delivery of public goods and services -- and then insuring that they perform as promised. This new role will require it to be much more flexible, constantly reengineering itself and its programs to meet the imperatives of demanding citizens and balancing budgets. In effect, government organizations will have to be much more "elastic," literally capable of changing shape -- rapidly expanding and contracting in response to stakeholders.

In this context, the Federal civil service will be no less important than it is today, but it too will be much different. For example, the career component of the Federal civil service will be much smaller and less stable, lowering fixed costs and providing even greater flexibility, but also reflecting the more "nomadic" work-life patterns of its employees. The government's workforce will be much less specialized and rigid as well, comprised primarily of multi-skilled, rapidly deployable teams of "knowledge" and information workers (both white and blue collar, although this distinction is becoming less relevant) who are more agile and mobile, particularly in a functional sense. Bound together by common values, protections, and benefits -- but maybe not much else -- these new public servants will be held accountable by performance contracts, both individual and organizational, for an outcome-based bottom line. And everybody's pay will be more variable, a function of that bottom line.

If these are the characteristics of a 21st century Federal civil service, how does the present system match up to them? If the examples described above are any guide, not very well. The rigidity of that system simply does not (and perhaps cannot) provide the degree of human resource management flexibility required to respond to a constantly changing environment. The needs of Federal agencies today -- and more importantly, the needs of a reinvented and reengineered Federal government on into the next century -- exceed the capabilities of a rule-based model. In short, the Federal government has outgrown its civil service system.

No doubt you have heard this assessment before, and it has given rise to various proposals for civil service "reform," some of which may be considered by this Subcommittee. However, I would like to suggest to you that those proposals, while fine as far as they go, may still be rooted in the taken-for-granted notion that new (or different) rules are the answer. Our civil service system may need more radical surgery.

VI. Block Grants and Results-Based Civil Service

It is all too clear that we need a new civil service model, one that preserves the core values of our present system without resort to bureaucratic rules that impede effective delivery of services to the public. In other words, we need a results-based civil service, one based on devolution, flexibility, and bottom line performance -- not process and compliance. The good news is that our own private sector, a number of state and local governments, and several other nations have pioneered their own versions of just such a model. And at the Federal level, the blueprint for such a model may be right in front of us. Indeed, a surprising number of Federal agencies have already been allowed to follow it.

As we speak, the Congress and the Executive Branch are in the process of devolving responsibility for many Federal functions and programs to states and local governments, all in the name of greater flexibility. While there is much debate over how much devolution should take place, there seems to be considerable consensus on a few general assumptions: that one size cannot fit all, that the central government cannot micromanage everything from Washington, and that those who are closest to the problem are invariably in the best position to know how to best deal with it. Note that none of these assumptions equate devolution with abdication -- that is, they implicitly acknowledge that the Federal government should have a role in the delivery of various services to the public -- but a dramatically different one that focuses on objectives and results, not rules and procedures. There are lessons here for Federal civil service.

These emerging results-based models of governance seem to have three basic elements in common: (1) an overarching Federal framework for the particular policy or program -- goals, guiding principles, etc. that set forth the basic purposes of the initiative; (2) a set of tangible, clearly defined outputs and outcomes -- performance measures, program objectives, anything but more rules; and (3) broad grants of authority to various governmental entities (for example, states and localities), with or without money, to design delivery systems and programs within that larger policy and program framework, so long as certain conditions are met. This is results-based government, and as a general proposition, it would seem to be eminently applicable to Federal human resource management. Indeed, this is precisely the HRM model that many of our best-

performing private companies employ, companies that are just as diversified (and value-oriented) as the Federal government. Think of it as a "block grant" approach to civil service, where the discretion to design and administer human resource management systems would be devolved to individual Federal agencies and their subordinate components -- but with some institutional strings attached.

First, the design and delivery of these civil service "subsystems" would be guided by an overarching, government-wide framework of common human resource management principles. That framework would be grounded in the core values that we have today: continuity, merit and equal opportunity, neutral competence and fair treatment, accountability and integrity -- but it should also include new ones that recognize the demands of modern government: flexibility and responsiveness, quality and customer service, high performance at reduced cost. Devolution of civil service authority -- both initial and continuing -- would be conditioned upon conformance with these principles and values. This would preserve the traditional strengths of the Federal civil service, but in a manner that would avoid the weaknesses of the present rule-based model. As a general "rule" in this regard, these core principles and values would not be operationalized by rigid, uniform regulations, nor would agencies be judged on narrow technical compliance. Of course, there would still be a place for government- or even agency-wide personnel rules (for example, establishing appellate systems or a common benefit program), but they would be the exception -- unless the other conditions of devolution are not met.

Secondly, devolution of civil service authority would be conditioned on performance. Under this model, such authority would be earned: organizational freedom as the ultimate incentive -- a privilege and not a matter of regulation or management right. This would go far to insure that discretion is exercised responsibly. In this regard, initial block grant authority could be conditioned on an approved Government Performance and Results Act (GPRA) strategic plan, one with tangible performance objectives and hard output and outcome measures, and it would be periodically renewed only if those bottom line measures are met -- after all, an agency's human resource management system should contribute to its performance, and the GPRA offers a ready-made framework for establishing and assessing that contribution. These two conditions -- conformance and performance -- serve as the basic architecture of a truly reinvented Federal civil service, one that focuses on results rather than

rules, and offers considerable organizational freedom (for both managers and employees) as an incentive for achieving them.

But how will we know if these conditions are satisfied? With GPRA performance measures, that determination is relatively easy -- an organization either meets them or it doesn't -- although there should be a grace or probationary period, or some flexibility in this regard, as agencies learn to develop measures and measurement systems that are up to this task. However, in the case of human resource management principles, conformance accountability becomes somewhat more problematic, a matter of judgment that doesn't easily lend itself to a "by the numbers" approach. Nevertheless, such judgments can be made. These would clearly be the responsibility of a central personnel agency -- in our system, OPM -- albeit employing common sense and qualitative measures rather than strict compliance as the metric. There may even be a role for congressional authorizing committees in this regard. And what happens if these conditions are not met? If freedom is the reward, then the penalty -- or the "default option" -- is its revocation: a return to the rigidity of existing government-wide rules and compliance. That dismal prospect -- and the leverage that it would give oversight bodies -- ought to be sufficient to deter most abuse, and it establishes an accountability mechanism that is self-enforcing in many respects.

This block grant model may sound somewhat far-fetched, but there is ample precedent for it. As noted, it has acquired "best practice" stature among many of our most progressive private employers. In the case of public management, you may already be familiar with the case of New Zealand, where central government ministries are run by career "chief executive officers" on fixed-term employment contracts; these CEOs are accountable to their ministers for achieving certain contractually-established results, and with that responsibility, they are given almost complete authority to craft their own human resource management systems. By all accounts, the country has not fallen into anarchy as a result. The United Kingdom, with its broad Citizen Charter organizations, has adopted a similar devolutionary approach to its storied civil service, again with encouraging early returns.

However, you may be surprised to know that this model has already been successfully employed by a number of Federal agencies, albeit without the results-based conditions proposed above. For all practical purposes, the several agencies that successfully obtained CSRA demonstration project authority have

tested this approach -- for example, the Air Force's PACER Share experiment at McClellan AFB. In addition, the General Accounting Office has reported that several dozen Executive Branch organizations now fall outside the broad sweep of our unitary civil service statutes: for example, agencies involved in the regulation of the banking industry, State Department foreign service officers, and in the Defense Department, its military academy and senior service school faculties, and intelligence organizations. The latter is typical: several thousand civilian DoD employees are covered by an "excepted" civil service system that is described by its authorizing legislation in less than a page. However, those employees are still subject to merit principles, as well as to the Federal government's retirement and health insurance plans, all on an exception basis. In this regard, it is interesting to note that OPM still provides evaluation and oversight, but measured largely against broad principles -- on conformance with the "spirit" of the law, in part because it has so few letters!

These Federal agencies and organizations have moved beyond our current civil service system in part because its rule-based rigidity could not accommodate their unique missions. However, their needs are no longer so unique -- almost every Federal agency could use this kind of flexibility, and these pioneers have demonstrated that it can be devolved, albeit conditionally, without fear of widespread abuse. As noted, two of the necessary ingredients in this regard are already available: a strong set of common, overarching human resource management principles (merit, integrity, accountability, etc.) imbedded in the culture of the Federal civil service; and a new, government-wide system of output and outcome-based accountability -- the GPRA, with its mandate for strategic plans and hard performance measures. Properly combined, these ingredients can form the basis for a new results-based civil service system, one that remains true to the original purposes of the Federal service without sacrificing the flexibility it needs to survive the 21st century.

Now, such a prospect is frightening to some -- they would argue that you cannot trust political appointees (or managers, or employees, etc.) with such broad civil service authority without risking widespread abuse. However, I believe that the incentives, conditions, and sanctions that attend such authority are a more than adequate substitute for rules of behavior. Taken together, they would serve as a sufficient deterrent against abuse in most cases -- and in those cases where they do not, there is always the default option. Moreover, the proposed human resource management policy framework proposed here could

still include rigid, government-wide rules (for example, prohibited personnel practices, due process requirements, veterans preference entitlements, even merit principles), but they would be the exception, promulgated only where there is a compelling need for uniform treatment. And implementation of such authority could be incremental, perhaps beginning where we have had the most practice with government-by-results: the several GPRA pilots that are currently underway.

Gradual or otherwise, such radical surgery will eventually be necessary just to survive the turbulent environment of the next millennium. A a rule-based system is a comfortable tradition of civil service, but it suboptimizes Federal organizations and employees. While it is hard to imagine an alternative to that system, a more flexible, bottom line approach to human resource management has become state-of-the-art in our private sector (our competition for the best and brightest in the labor market, and perhaps other markets as well!), and the Federal government faces a widening "performance gap" if continues to hold on to its security blanket of rules. On the other hand, there is the promise and potential of a results-based Federal civil service, agile and high-performing, but without any compromise in the core principles and values that have served it so well. Which course will it be?

Mr. MICA. We thank you and will now call on Charles Weithoner.

Mr. WEITHONER. Thank you, Mr. Chairman.

The staff asked me to comment, in particular, on the impact of civil service regulations during a period of rapid and dramatic change. In the case of FAA, while I was working there, that was built around the strike of 1981. In that strike in August 1981, 11,500 air traffic controllers went out on strike all at once.

The President gave them 48 hours to come back to work, and by and large, they didn't. So we had to proceed immediately with the termination of 11,500 people, following the procedures which Mr. Sanders, I think, correctly described as complex and arcane. To say that we were in a sea of paperwork is sort of an understatement, to process all those actions.

The personnel regulations really had a big input. All those folks also had multiple levels of review and appeal, and we had to go through all of that, with procedures that were actually designed to handle cases one at a time, and we did it all at once. I am happy to report that, in well over 90 percent of the cases, we were sustained on ultimate appeal. We did follow the correct procedures and were sustained.

Turning to the recovery from the strike, real quickly, in a very brief period we had to recruit, test, train, place, and promote a whole new controller work force. In that operation, we had, of course, the support of the President, and we got excellent support from the Office of Personnel Management. They gave us the assistance, the flexibilities, the waivers that we required to move things more rapidly than we normally would. You could say we got the kind of support from OPM that managers would like to get all the time, as a matter of routine. They were terrific.

When the recovery was underway, we, of course, determined to change the way we managed the people in the FAA. We started on a whole range of things. For example, we did a lot of employee consultation. We drastically changed our management training. We began to consult employees on things like the evaluation of supervisors. We did attitude surveys, and we published the results. We followed up and took action on the problems that were identified in those surveys, and we did it on a regular, sustained basis.

We also changed the way we dealt with labor unions. We started working with the union, Professional Airway Systems Specialists, that represented 9,000 of the technicians who maintain the computers, radars, and so on. And we developed a good working partnership with them. That continues, has been expanded, to this day, and the concepts of that way of working with unions are now being developed in the air traffic work force. I hope we get similar results there.

In that instance, the regulations were not really a factor; that is, you can change those kinds of things, the way you manage your people, the way you treat your work force, and the regulations just don't come into play.

We have a couple recommendations for the future. And on this one point, I speak for an organization of over 50 retired senior career FAA executives, people who rose to the top in air traffic control, flight safety, electronic engineering, and so on. We formed an

organization—we have been in existence over a year—to try and help provide our input into the process of reforming FAA.

One facet of that FAA reform, which is being considered in both the House and Senate, deals with personnel flexibilities. As a general proposition, we support the flexibilities that have been proposed in various bills being considered. The one we pick out as the most important of those flexibilities is the ability to pay more for certain locations where, historically, it has been very difficult to fully staff our facilities, and, second, to pay more for a limited number of high-level technically complex positions.

For example, one I worked on before I left was the recruitment of somebody who is a specialist in wing flutter. There are not a lot of people in that field. They tend to be highly paid, and we were unable to attract, at that time, the quality of person we needed. There are other flexibilities that would be nice, but that's the one we would pick out at the top.

Second, and referring now back—this is my own, not the organization—there have been several references from the Chair and others, and witnesses yesterday, about the need to streamline and improve the disciplinary system. And when you do that, I hope you keep in mind that those removals do not always come just one at a time. I hope there is never a strike like the one we had. It was a tragedy. But if there is, you need some ability to deal with those, both in the removal process and in the appeals process, that doesn't tie up such a huge chunk of the agency for so long.

Second, I would suggest that the committee consider giving the President some sort of stand-by authority to deal with unions that conduct strikes. In this case, they did it openly. They established a strike fund, for example; PATCO, the controllers' union, did. And they called it a "strike fund." And we filed an unfair labor practice charge against the establishment of that fund, and we lost on that one. The authorities ruled that it was not illegal to establish a strike fund.

Then, when the strike started, there was a fair sized number of people, who were union members, who did not go on strike. They stayed with us; they were working every day; they were going through picket lines, and so on. And for many months, we had to withhold dues for PATCO, PATCO on an illegal strike. For the controllers with us we had to take away money from their paychecks to send to the union.

Also, it took months to go through the legal process to get PATCO decertified. I think, in an emergency situation involving a strike, a slowdown, or a sick-out, the President ought to have some exceptional authority to deal with those situations very rapidly. I would think, in terms of immediate decertification of a union that calls a strike. I hope the committee considers that sort of thing.

Thank you for the opportunity.

[The prepared statement of Mr. Weithoner follows:]

STATEMENT OF CHARLES E. WEITHONER

FORMER ASSOCIATE ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION

also representing

SENIOR AVIATION FEDERAL EXECUTIVES - RETIRED (SAFER)

TO THE CIVIL SERVICE SUBCOMMITTEE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

U.S. HOUSE OF REPRESENTATIVES

October 13, 1995

Mr. Chairman, my testimony is based on my experience as the FAA Associate Administrator responsible for human resource management at the time of the air traffic controller strike in 1981 and in the strike recovery effort which followed. My recommendations on needed changes in personnel laws and regulations also reflect the opinions of the Senior Aviation Federal Executives - Retired (SAFER), an organization of over 50 retired career FAA executives, experts in air traffic control, flight safety, electronic engineering, aviation medicine, aviation security, and other aviation safety specialties.

My testimony covers three topics: (1) the actions required immediately after the strike to remove striking controllers, make optimum use of controllers who remained on the job, and recruit and train new controllers; (2) the actions required to revamp FAA's management of its work force; and (3) recommendations for changes in current laws and regulations.

In August, 1981 over two thirds of FAA's air traffic controller work force went on strike for higher pay and greater benefits. After striking controllers ignored a warning from President Reagan to return to work within 48 hours, over 11,500 were removed from their jobs. The removals represented a huge workload because FAA had to follow the elaborate procedures designed for the firing of individuals, one at a time, on the basis of their poor work or poor conduct. Those 11,500 removals were successfully pursued and, although thousands of cases were appealed through administrative and judicial processes, well over 90% of FAA's actions were sustained.

We had to recruit and train new people to fill the vacant jobs. Getting applicants was no problem, over 100,000 people applied. Picking the right people and getting them trained was difficult.

However, personnel regulations were not a serious obstacle. Thanks to the President's support and excellent fast work on the part of the staff of the Office of Personnel Management, we were given the waivers of regulations and other flexibilities we needed to test, train, promote, and place new controllers where they were most needed and we did as rapidly as the control towers and centers could absorb new trainees. You could say that FAA, in a time of emergency, got the support managers would like to have as a matter of routine. I am also mindful that hundreds of FAA people did high quality work for long hours over many months to make it all work out and to keep the air traffic control system safe during the recovery period.

As soon as the most immediate strike-related problems were resolved and FAA was on its way to recovery, we began a major effort to change the way FAA managed its employees and worked with our employee unions. These efforts to change an entrenched culture also required a massive effort and are, in certain respects, still in progress. Here too, personnel laws and regulations were not a significant factor. We could do almost all the things we needed to do. We launched a major effort which included: comprehensive and sustained employee attitude surveys, improved management training, expanded consultation with employees, and development of new screening tests for identifying the best new recruits.

Working closely with the Professional Airways System Specialists (PASS), the union which represented 9,000 maintenance technicians, we began a program of cooperative work on substantive plans and problems, problems not covered by union contracts. This program, jointly managed by PASS and FAA, has grown substantially and has been a real success. Those principles of joint union-management efforts are now being applied in air traffic control and, in my opinion, show great promise for improved relationships with the National Air Traffic Controllers Association and the controllers they represent.

With regard to changes needed in personnel laws and regulations, Senior Aviation Federal Executives - Retired, endorses legislative proposals now being considered in the House and Senate which would strengthen FAA in several respects. One facet of those proposals would give FAA authority to devise many of its own personnel systems geared to the problems with which FAA must deal. The most important of these flexibilities, in our opinion, is the authority to increase pay for certain FAA employees. Flexibility is needed to help recruit and retain employees in a relatively small number of locations. Pay flexibility is also needed for a limited number of highly technical jobs in aeronautical engineering, electronic engineering, computer software development, and other specialties for which FAA has historically been unable to pay enough to attract top talent from outside government.

Finally, I urge the Subcommittee to consider the need for legislation to cope with illegal jobs actions, and perhaps with other emergency situations. Under present law, strikes by Federal employees are illegal. But if a union calls a strike in violation of the law, the Government must go through a legal maze to respond. For example, when PATCO went on strike, some union members remained on the job. FAA was forced to deduct union dues from the salaries of those who did not strike. It took months to proceed against PATCO.

I believe the President needs a stand-by authority to deal swiftly with unions which conduct, encourage, or fail to take action to end any job action - strike, slow down, or sick out. Such a union should be immediately decertified. The Subcommittee should also consider streamlining the procedures for disciplinary action against any employee who goes on strike or engages in a slow down or sick out. Appeal rights such an employee may have should be limited and susceptible to quick resolution.

We appreciate the opportunity to present our views to the Subcommittee.

Mr. MICA. Thank you both for your testimony.

I have a couple of questions for you, Mr. Sanders. You suggested a range of options to make organizations more flexible. The Government Performance and Results Act, which you referred to, provides some of the results-oriented focus that appears consistent with what you recommended in your testimony. How would you manage a transition between a rules-oriented and a results-oriented system? I believe you advocated a move toward a results-oriented system.

Mr. SANDERS. I think you're right, Mr. Chairman. I think the Government Performance and Results Act may actually provide the vehicle for that kind of transition. There are some 70-odd GPRA pilots, I think, in various stages of implementation right now. I've done some research on them, and, as best I can tell, I haven't found any that are using the human resource management flexibilities of GPRA. I'm not sure why that is.

But I guess I would encourage those pilots to begin looking at some sort of linkage between the hard outcome and performance measures that GPRA is requiring and flexibilities in the rules, moving away from a rule-based system, as the law currently allows to some extent.

GPRA is limited in the human resource management flexibilities; it primarily focuses on compensation. Perhaps that could be broadened so that it is not just pay that is the focus, but intake, and classification, and deployment, and expanding and contracting, some of the issues that you've heard this morning.

I would use those pilots as the laboratory. I don't want to suggest a laboratory like the CSRA demonstration projects, because I'm not sure that they were an effective one, but certainly a laboratory to experiment with a results-based system.

Mr. MICA. One of the other things that has concerned us, we talked yesterday quite a bit about ways to deal with poor performers. And we also deal here with Government employment, which is different from private sector employment, and certain rights that have been established.

How would you balance those rights in public employment and create safeguards for employees to incorporate into such a system? Again, trying to devise something that recognizes that you have public employees with certain rights, yet get to a system with a different basis than in the past, what safeguards?

Mr. SANDERS. I don't think the fault lies in the notion of protection against arbitrary action. I think that's a core value that's worth preserving in the civil service. Again, it's a matter of how we operationalize that. We've got an appellate system that looks like the wiring diagram for a missile guidance system; it has become very, very complex and legalistic. And when it comes to taking an action, that, I think, is what is so intimidating to managers and employees alike. You just can't wade through it; it takes years.

There was one very famous case, Mr. Chairman, I can't remember the citation, where the appellant passed away before his case had run its course. Again, it's not the protections themselves but a different way of operationalizing them.

That's going to take some experimentation, but I would look to the private sector and the organized private sector where they use

what amounts to a small claims court, labor arbitration, to resolve the overwhelming majority of workplace disputes. They have experimented with alternatives to that system, and it has become very, very streamlined. You just don't have the same kinds of legalisms that we've built in the public sector.

Mr. MICA. Yesterday we heard some calls for a limit on appeals and for a timeframe limit. You're saying that we should explore arbitration as an alternative. Would that be a one-stop opportunity? Is that what you're advocating?

Mr. SANDERS. I would certainly recommend one of the guiding principles be a one-stop shop, as opposed to the system we have today which permits a lot of form shopping, where you can literally pick and choose. In some cases, you get a choice. In some cases, you can pursue multiple forms at the same time. Frankly, when you look at the root issue in many of these cases, it stems from the same fact base. So I think a more streamlined single forum would have some merit.

Mr. MICA. One final question I wanted to ask is, in a transition, people are accustomed to doing things in a certain way and one of the hardest things to implement in any activities of Government is change. What kind of a transition would you recommend? Is this going to require instant shock therapy, or do you advocate some type of progressive approach in implementing these changes?

Mr. SANDERS. Mr. Chairman, the book would say the latter, but I'm not sure the public is going to afford the Federal Government that luxury. We faced that, to some extent, in the Defense Department. You know, all of the authors say you sit back and you look at the organization and you reengineer it, and then you cut your work force to meet whatever you have come up with. In our case, the cuts came first, and we reengineered to fit.

I think, frankly, that's what the Government is facing. The good news and bad news of all the reductions is that it serves as an engine to drive the change in that culture. I mean, granted, there are casualties, and that's the sad part. On the other hand, I'm not sure the bureaucracy would change without that kind of impetus.

Mr. MICA. Thank you.

Mr. Weithoner, you recommended that we give the President special authority to deal with some of these work disruption situations, and I think your recommendation was decertification of the unions. Is that the sole way we can deal with this?

Mr. WEITHONER. I think it's, administratively, about the only way you could deal with a union. You could provide for lesser penalties, but I don't see that a lesser penalty would be called for, if a union actively, openly supports a strike that is against the law. It's clear; it's not an ambiguous situation. Decertification would end their dues withholding, and it would cutoff their official ability to deal with the agency on matters in the work force.

Mr. MICA. I'm not aware of many situations like you deal with. Is this something that we absolutely must address in any reform, or is it just a protection that you think we should have in our back pocket in case we need to use it?

Mr. WEITHONER. I couldn't call it an absolute necessity for the reason you mentioned. To my knowledge, it's only occurred once on a scale like this. On the other hand, if another one comes along in

10 years or 20 years, there is no time to get through the Congress changes that would provide that sort of authority.

I also think that, if such an authority were established, it would have an impact on unions that might be considering some sort of illegal job action, whether it was a strike or the more different things to deal with, sick-outs and slowdowns. And I would like to see some authority for the President to deal with those, a club, if you will, to hold over the head. If the actions are illegal, they shouldn't be doing it.

Mr. MICA. I imagine you will stir up the pot with that recommendation.

Mr. WEITHONER. I'm sure.

Mr. MICA. But we will consider your ideas. I will now defer to the gentlelady from Maryland.

Mrs. MORELLA. Thank you, Mr. Chairman. I would like to ask unanimous consent that an opening statement be included in the record.

Mr. MICA. Without objection.

Mrs. MORELLA. Thank you. I won't even read it. But I do want to thank you for this second in the series of very important hearings that we've had on civil service reform. And I'm very pleased that we have, also, the unions coming before us and some people who are experts in this area.

[The prepared statement of Hon. Constance A. Morella follows:]

STATEMENT OF THE HONORABLE CONSTANCE A. MORELLA HEARING ON CIVIL SERVICE REFORM, PART II SUBCOMMITTEE ON CIVIL SERVICE OCTOBER 13, 1995

I would like to commend Chairman Mica for calling this second hearing to examine the overall framework for reforming human resource management in government. There, of course, will be more specific hearings over the next few weeks. However, this is an appropriate and critical start.

I made a very detailed statement yesterday, and today I plan to keep my remarks short. This obviously will delight the Chairman. However, I would like to make a few key points.

The changes affecting the federal government dictate a more responsive human resource management system. No one can argue against that. Yesterday, agency representatives strongly supported reform that would increase the flexibility in the current system, while establishing accountability for managers and executives. I mentioned and several of the panelists echoed that reform must also focus on assuring the integration of human resource management policies (and

programs) with mission accomplishment. I believe that this is crucial if we are going to have meaningful reform.

Clearly, we are going to have to do something to create better performance management, hiring, and pay systems. In light of the amount of downsizing on the horizon, I don't believe we can look the other way on RIF reform any longer. The procedures are outdated.

We must examine the intent of the probationary period. Is it "results" or "competence" based? I also believe probationary periods structured around occupations have some validity.

The final reform package must allow for greater partnerships with the private sector. We should examine whether it makes sense to extend the Administration's idea of nonreimbursable details (tryouts) to private sector organizations.

We must strengthen the linkage between training and the agency's strategic plan. It is also important that we carve out the most effective role for the Office of Personnel Management in reform.

But, I feel very confident that with the insight of the employee groups and other advocacy groups assembled here

today we can create a system that works and achieves the results necessary for effective human resource management.

Again, I would like to thank Chairman Mica for calling this hearing. I look forward to hearing from the witnesses.

Mrs. MORELLA. I was interested, Dr. Sanders, in perusing the testimony you submitted, because you used the term with great frequency, "block granting," and that's something we hear a lot of around here, the "block grant concept" and "results-based." I wonder if you would elucidate a little bit more on the implications of that. Are you talking about flexibility in terms of block granting or demonstration programs?

Mr. SANDERS. Flexibility, primarily, and not in the traditional model of a demonstration program. I think we're talking about building an overarching framework for our civil service that deals with the core principles we've always had but without all of the rules that implement those values. But within that framework, basically letting agencies and organizations design systems that meet their needs.

There is a difference between that, which I would characterize as devolution of authority, and delegation of authority. We tried the latter with the Civil Service Reform Act. It basically was an effort at better rules and giving managers authority within those rules to make decisions. But those managers had no authority to actually craft personnel systems that met their mission, met their customers, met their environment.

So I would suggest devolving that kind of authority. The twist here is that it would be conditional. You would literally hold that freedom hostage to meeting the bottom line and conforming with those core principles that we would establish for public service.

Mrs. MORELLA. How should procedures—speaking of demonstration projects that I mentioned—how should procedures that surround demonstration projects be changed so there are the needed flexibilities and the inducements for creating innovative systems?

Mr. SANDERS. Well, let me contrast with the current system where the procedures are so daunting that they literally deter experimentation, with public hearings and project plans that become etched in stone. That's not the sort of laboratory conditions, I think, that are conducive to innovation.

My own view is to basically condition demonstration project authority on a strategic plan approved under GPRA, something that says, here are your results measures; here are your performance indicators. So long as you are meeting those indicators and so long as you remain true to those broad principles, then you would be permitted to experiment.

It would be revocable. If you don't meet the bottom line, if you depart from those principles, then the default option is, you go back to the web of rules that we have today. But I would make it much easier to allow that kind of innovation.

Mrs. MORELLA. I would like to turn to Dr. Weithoner. Is that how you pronounce it?

Mr. WEITHONER. I'm not a doctor, but that's my name, yes.

Mrs. MORELLA. Well, if you're my constituent, I can call you a doctor. [Laughter.]

Mr. WEITHONER. Thank you.

Mr. SANDERS. Honorary degree.

Mrs. MORELLA. Like a professor.

Mr. WEITHONER. I am your constituent, so I accept the title.

Mrs. MORELLA. I know you are, and I'm delighted that you're here and you bring the expertise to our hearing. How would you suggest that we streamline the appeals system while at the same time preserving individual rights?

Mr. WEITHONER. I think, essentially, the way Mr. Sanders indicated, provide one level of appeal. I think, to be fair to all parties, that appeal ought to be to someone outside the agency, not involved at all in the original decision. I think, with those two steps, that would make, all by itself, a great improvement.

Mrs. MORELLA. I would like to ask—we've had legislation to do that—I would like to ask both of you, what private sector practices do you think would most effectively apply to these kinds of changes? What could we implement from the private sector?

Mr. WEITHONER. Well, I'll pick two: One, I mentioned is the ability to adjust pay without making a Federal case of it, in a limited number of situations. And second, Ron also referred to this, the ability to recruit rapidly, and without referral to other agencies, for a limited number of jobs, highly technical jobs or jobs that are very difficult to fill.

Mr. SANDERS. Let me pick a more strategic practice, something that the GAO witness alluded to yesterday. I think many of the best performing private companies, particularly those that are very diversified, not unlike the Federal Government, have concluded that a one-size-fits-all approach to human resource management doesn't work. And their corporate approach to HR is basically to set results measures and to establish a set of company values and personnel policies without getting so specific, and then let their operating divisions craft things that meet their needs within that framework.

Mrs. MORELLA. As you look at the individual differences, and combining what both of you have said with regard to the ability to hire, to adjust pay, do you run into problems from agency to agency, department to department, when you have inconsistencies? How do you handle that, if, in fact, you believe you do?

Mr. WEITHONER. My guess is that you would run into some problems with people who feel they are treated differently. My contention would be that if you keep basic pay structures, basic benefits, like retirement and health benefits, the same, that that provides enough uniformity across Government lines. Government agencies, employees, perhaps even the Congress would learn to tolerate a little bit of difference from one organization to another.

The price we pay for this uniformity is very high. I would hope we would permit a little diversity in that respect.

Mr. SANDERS. I would certainly agree. I'm not sure sameness is something we ought to pursue. A job in one agency with a research and development mission literally may be valued more than that same job in another agency that has service delivery as its function. Yet today we say they are of equal value, and we have volumes and volumes of rules to try to force-fit that equality. I'm not sure that that's worth all of the trouble.

Mrs. MORELLA. Well, Mr. Chairman, I will yield back any time that is remaining, in the interest of pursuing the issue. Thank you.

Mr. MICA. We have been joined by our ranking member, Mr. Moran.

Did you have any opening comments, and would you like to question two of the witnesses? The third just arrived; we will get to him in a second. He is going to be penalized for coming in late.

Mr. MORAN. Mr. Chairman, we can move on to the third witness. We have a number of witnesses today, and I made a statement yesterday, so I don't need to take up the room's time now.

Mr. MICA. Mr. Dunlop, with whom I served in the Senate, has arrived late. It is the custom of our subcommittee to also swear in the witnesses, so, George, I'm going to ask you to stand and raise your right hand.

[Witness sworn.]

Mr. MICA. Do you promise not to be late again?

Mr. DUNLOP. Yes, sir.

Mr. MICA. All right.

Mr. DUNLOP. You all are operating more promptly than has been the experience.

Mr. MICA. Yes. You're used to the Senate side, George, where they are tardy. We start right on time here and have a penalty box if you're late. So you have 4 minutes and 32 seconds to summarize your remarks. Your entire statement will be made part of the record. So if you would like to begin.

Mr. DUNLOP. Thank you, Mr. Chairman.

For the record, my name is George Dunlop. I reside in Arlington and Richmond, VA, and earn my living in private business. I have had some 30 years' experience in direct professional relationships with the Federal work force, including that time which began in 1986, when President Reagan appointed me Assistant Secretary of Agriculture. For 35 months, I served on the line with responsibility to the President and to the Congress for the performance of the two largest agencies of the Department of Agriculture: the Forest Service and the Soil Conservation Service.

My prepared remarks address my view that civil service reforms can be successful only in the context of more extensive governmental reform. In summarizing my testimony, permit me to focus on the subject of accountability that you asked me to address, specifically, in your invitation to me.

"Accountability" is the key word, I believe. And indeed this one word sums up the challenge of this committee and the Congress in trying to figure out how to induce elements of personal responsibility and organizational accountability into bureaucracies that, by definition, find such notions radical and unnerving.

In my experience, any reforms that you consider should be able to satisfy this test: Does the reform encourage accountability and responsibility by individuals who provide leadership to the bureaucracies?

On page 4 of my prepared remarks are six bulleted items that list my recommendations, and I might draw your attention to those. In my experience, it's my counsel that you consider increasing the number of individuals who are directly accountable to higher authority in the executive branch. This would include increasing the number of Senate-confirmed appointees, both political appointees and civil servants, who are directly accountable to the Secretaries, to the President, and to the Congress.

I think you should increase the number of direct hires and fires that work for these people, that the tools of personnel management can be used with, that is, in hiring and firing them, in promoting them, in commending them, in awarding them, and, yes, if necessary, in reprimanding and penalizing them.

And then I think, also, that this would involve increased numbers of senior executive service officials who are accountable to the Assistant Secretaries. In my experience, the SES reform was a great idea, but all of these guys are staying up here in the central headquarters in Washington, and they should be out in the field. They should be using their managerial experience, built over 25 years of professional service, to induce accountability on the line, in the field.

Second of all, I believe that you should streamline the procedures, that are very cumbersome right now, for Assistant Secretaries. That is, those people responsible on the line for performance who participate in the selection of SES officials, promotion of civil servants to the SES, and in other civil service personnel actions.

I believe, on the third bullet, that you should require agencies to submit biannual goals and objectives, do some strategic planning in a formal way that is reported to the Secretaries and to the Congress. Then you would be able to have these organizations focus on measurable outputs, not on the process-focus that bureaucratic organizations, whether they are in private business or in Government, like to do.

Next, I think if you streamlined the procedures whereby the Assistant Secretaries, the people on the line, could develop and measure specific performance requirements for each individual civil servant, you would find that there would be increased opportunity to provide for measurable outputs, getting away from this process and how many meetings one attends, and get to the bottom line of what we're trying to accomplish.

And, finally, I would mention that I think streamlining procedures whereby Federal employees may be terminated for poor or wrongful performance is very important. Elimination of the entitlement to perpetual Federal employment enervates the bureaucracy, demoralizes the senior civil servant executives who have to put up with gross incompetence. It is really a punishment to them; it drives them crazy. And if they had that authority to remove people from perpetual employment, it would be a great improvement.

As regards the comparison to the two agencies I had, I commend the Natural Resources Secretariat. I had two agencies, the two largest maybe in the Government, 55,000 people total. The Forest Service was the epitome of an organization that was an entrepreneurial, change-oriented organization dedicated to increasing its efficiency and effectiveness and seeking to accomplish increased measurable outputs of every commodity and service. Forest Services executives tried constantly to motivate its people to think independently and to take meaningful risks.

On the other hand, the Soil Conservation Service was an organization of fine, dedicated people, totally captured by what President Reagan called the "Iron Triangle," the total epitome of an organization that existed for the benefit of the people who worked in it. And if there were any material benefits that happened to inure to the

American people as a result of their activity, great, but they existed as an organization that existed for their own benefit. And that's really the dirty little secret of the governing class in America today.

So those two agencies might be a great opportunity for you all to use as a laboratory to further your investigations.

I thank you, Mr. Chairman, and of course will be available to answer any questions you may have.

[The prepared statement of Mr. Dunlop follows:]

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George S. Dunlop
Vice President

October 13, 1995

Testimony before the U. S. House of Representatives
Committee on Government Reform and Oversight
Subcommittee on Civil Service

Mr. Chairman, my name is George S. Dunlop. I reside in Arlington and Richmond, Virginia and earn my living in private business as a management consultant and as an entrepreneur specializing in business start-ups and international trade.

I thank you and the Subcommittee members and staff for your interest in investigating ways in which the federal work force can be managed more efficiently and effectively, and am pleased to comply with your request to share my experience with you at this hearing today.

My experience in dealing with the career civil service spans almost 30 years, beginning in 1966 when my first real experience in working with a federal bureaucrat was my DI at Parris Island.

Beginning in 1973 I served as a constituent relations specialist for a United States Senator. As you know, this involved daily working relationships with employees of numerous federal agencies -- ranging from the relatively junior civil servants in bureaus to Cabinet Secretaries. In 1981 I became the Chief of Staff for the Senate Committee on Agriculture, which involved major investigatory and oversight responsibilities into the operations and activities of the Departments of Agriculture and State, and a number of independent agencies, as well as work with the Congressional services bureaucracies.

In 1986 President Reagan appointed me Assistant Secretary of Agriculture. For thirty-five months I had responsibility for the performance of the two largest USDA agencies, the U.S. Forest Service and the U.S. Soil Conservation Service. The Forest Service had at that time some 36,000 employees and managed some 42,000 volunteers. The Soil Conservation service had some 14,000 employees and about 2000 volunteers. Also, I was responsible for significant coordination with other Departments and Agencies, including the Departments of Interior and Justice and the Environmental Protection Agency and the White House. My most pertinent experience was in dealing with Senior Executive Service executives and their staffs who ran these agencies, and my testimony today is best understood in the context of my experience in managing these highly accomplished professionals.

Agenda. Chairman Mica asked me to testify to my experience in managing federal agencies during periods of change, with particular emphasis on overcoming impediments to efficient and effective management and accountability of the federal work force, the relationship of political appointees and career civil servants, and a comparison of agencies with which I was involved.

Here are my insights on these topics, one-by-one:

1. Accomplishing Change

Change requires leadership, strong and courageous leadership with vision, effective in explaining the rationale for change and in providing the moral authority to accomplish it.

The Reagan Administration and the Assistant Secretaries who were directly responsible to be agents of that change faced overwhelming opposition to change. Civil Service reforms must be undertaken in the context of more extensive governmental reform.

Iron Triangle. President Reagan himself addressed the impediments we faced by identifying what he called the "Iron Triangle" – the combined forces of those who have an insatiable desire to grow their programs and power: 1) the entrenched civil servant bureaucracies in the executive branch agencies; 2) the entrenched elected bureaucracies in the Congressional committees responsible for agency authorizations and appropriations; and, 3) the entrenched special interests outside of government which benefit directly and personally from government programs, monopolies and other accretions of power into the hands of a governing elite.

The nasty little secret of the governing class in any society is that they know that the propensity of government is to exist mostly for the benefit of those who govern.

Diminishing the overwhelming power of the iron triangle is the first step in providing opportunities for responsible change in managing government for the efficient and effective benefit of the people. People who love liberty will protect that liberty by making it difficult for the iron triangle to function effectively.

Bi-Annual Budgeting. Another massive inefficiency inherent in the system is the annual budget process, particularly in circumstances in which Congress cannot seem to complete its budget work before the beginning of the fiscal year.

During my watch at USDA, I strongly advocated a bi-annual budget for the Forest Service, and was successful in persuading OMB and the Appropriations Committees to institute a trial, which as I recall, was first used for FY-1990. A two-year budget/appropriations cycle for federal agencies would result in enormous savings in time and money for the Agencies and the relevant Congressional Committees.

Inefficient Work Rules. Many federal civil servants are highly motivated people who are eager to perform with excellence. Many work rules in place impede these people. In my experience, rules and peer pressure that prohibit employees from working extra hours ties the hands of those eager to accomplish more. Also, the typical bi-weekly 9 work day arrangement, in which some civil servants take their 10th day off on Monday and others take theirs on Friday essentially means that the only days in which decisions can be arrived at are Tuesday through Thursday each week. This creates massive inefficiency and is maddening to people who are trying to get things accomplished.

Examples of change oriented reforms I recommend include these:

- Require SES Executives to be assigned outside their agencies for promotion;
- Term limits for Congressmen or at least for Committee Chairmanships;
- Strict limits on use of federal funds for lobbying, and restrictions on grants and contract awards to organizations tied to public advocacy;
- Appropriations line items should be made transparent and public;
- Line item veto for the President;
- Decentralize federal bureaucracies away from Washington;
- Turn responsibility for government back to the States or the private sector;
- Provide for bi-annual budgeting, allowing carryover of unspent appropriations into the second year. Change budget/appropriations accounting from "as planned" to "as performed."

2. Accountability

In this one word is your challenge, to wit: how can Congress induce elements of personal responsibility and organizational accountability into bureaucracies that are, by definition, almost inherently abhorrent to such notions?

In my experience any reforms you consider to the Civil Service Reform Act of 1978 should be able to satisfy this test: <u>does the reform encourage accountability and responsibility by individuals who provide leadership to the bureaucracies</u>? If you accomplish this, you will greatly motivate and empower the Senior Executive Service.

As a corollary, I recommend you provide for streamlined, practical and effective means whereby civil servants of all levels who do not meet rigorous standards for performance may be dismissed. In my experience, the virtual entitlement to permanent employment by federal civil servants, no matter how unsatisfactory or wrongful one's performance, enervates bureaucracies and demoralizes leaders.

Examples of important reforms to encourage better accountability include these:

- Increase the number of individuals directly accountable to higher authority:
  - Increase Senate confirmed appointees accountable to Cabinet Secretaries/President;
  - Increase numbers of Schedule C's accountable to Assistant Secretaries;
  - Increase numbers of SES officials accountable to Assistant Secretaries;

- Streamline procedures whereby Assistant Secretaries may participate in the SES selection process and other senior civil service personnel actions;

- Require Agencies to submit bi-annual goals and objectives focused on measurable outputs (not process) and require bi-annual performance reports;

- Streamline procedures whereby Assistant Secretaries may develop and measure specific performance requirements for civil servants. Provide these performance requirements to focus on measurable outputs -- not bureaucratic process;

- Streamline procedures whereby employees may be terminated for poor or wrongful performance. Eliminate the entitlement to perpetual federal employment;

- Make civil servants personally and individually responsible for violations of law, wrongful acts, gross incompetence and negligence by themselves or their agencies.

3. Comparison of Agencies

My experience in working closely with the senior civil servants in my agencies at the Department of Agriculture generally caused me to be very favorably impressed with their high degree of professionalism, technical and personal competence, and thorough dedication to their agencies and their missions.

Forest Service. The U.S. Forest Service in this period was the epitome of an entrepreneurial bureaucracy that was thoroughly dedicated to increasing its efficiency and effectiveness, always seeking to accomplish increased measurable outputs of every commodity and service, and to motivate its people to think independently and take meaningful risks.

Chief F. Dale Robertson and Deputy Chief George Leonard, career civil servants, were two of the most energetic and enthusiastic people I have ever met, and their leadership made itself felt throughout the entire organization. They paid careful attention to the policy direction the Administration and Congress provided, and were self-confident enough to offer counsel and advice on policy and practical operations. Secretary Richard Lyng often said that the Forest Service was the Marine Corps of civilian agencies. During my watch, we increased outputs by more than 20%.

While time does not permit a detailed review here, I strongly recommend the Committee interview former Chief Robertson and the SES civil servants who worked for him. I believe they can provide you with a long list of recommendations about how Congress can increase the practical workings of the federal bureaucracy drawn from their extensive, real-world experience in managing one of the largest federal agencies.

Note well that I caution you this: If every federal agency operated with the enthusiasm, espirit d'corps and effectiveness of the Forest Service, I'm not sure how long we'd keep our liberties. President Reagan used to say that the American people can be thankful that we don't get all the government we pay for.

Soil Conservation Service. During my tenure this agency was almost the opposite of the Forest Service. It was then (and may yet be) an epitome of an agency caught in the Iron Triangle, operating for the benefit of the employees and those who directly benefited from its monetary disbursements. To feed the Iron Triangle a steady stream of those indentured to its plantation, the SCS had the unreasonable requirement that line employees must have highly specialized and highly technical educations and degrees.

The Reagan Administration struggled with the SCS Iron Triangle to re-direct the mission to providing technical assistance and away from pork-barrel programs and self-serving activities. We had much success in getting the SES executives to understand the importance of inducing elements of accountability focused on measurable outputs into individual performance standards, but I don't believe most of what we accomplished survived more than a year or two after we left. The SCS Chief was a political appointee who meant well, but who went completely "native" in the face of the unrelenting assault of the Iron Triangle. The SCS would be a good prospect for a case history of how an organization with an important and helpful mission is completely enervated and entrapped by bureaucratic inefficiency. Despite all the difficulties, we accomplished a 13% increase in efficiency in the operations of the SCS during my watch, according to the USDA office of Budget and Program Analysis.

I believe this demonstrates that enormous opportunities for increased efficiency can be captured by vigorous and determined leaders held accountable for specific performance.

Mr. MICA. Thank you, Mr. Dunlop. A couple of quick questions. We heard you talking about increasing the number of people confirmed by the Senate; is that correct? In policy type positions, I would imagine, you were advocating, or key management positions. Part of the testimony we heard yesterday was actually suggestions that we reduce, for example, the number of Schedule C's. Ms. Horner, a former OPM Director, said that a lot of those folks get in the way. So she asked that we have fewer of those.

You are saying that the number of people at a policy level or management level with Senate confirmation, be increased. Also, at this time, the Senate is cutting or recommending a cut in the number of political appointees, from 3,000 to 2,000. My figures may not be right, but there has been some move toward that. Your emphasis, if I'm correct, is on the people who are setting policy or involved in management, and increasing that number; is that a correct assumption?

Mr. DUNLOP. Yes, sir, I think so. That's my experience. The key is to induce elements of accountability for people. Now, if you were going to totally reform the civil service, incorporating all of the other bullets that I had, that might not be necessary. If you were going to allow the senior executives themselves to dismiss people and not have to go through all of this 40-year rigmarole to try to get somebody disciplined or dismissed, then that might not be so important.

But what I'm getting at is the necessity to have people, yes, in policy, but also in management, which may include people who come and go or people who stay a long time. You know, the nature of political appointees is to have a mind-set when you go in that, you know, "I'm here for a short time. I'm here for maybe 19 months." That's the average tenure of an Assistant Secretary; mine was 35. But, you know, you tend to have an idea that "I'm going to come in, and then I'm going to go." But you might want to have Senate confirmation or other accountability for people that would plan to stay longer.

Mr. MICA. Well, another interesting point you raised was trying to get the SES out in the field. As the new chair of this subcommittee, I was absolutely stunned to find the number of people that are in Washington, DC, or within a 50-mile radius. I think it's over 350,000 Federal employees. Mr. Moran has somewhere in the neighborhood of 50,000 or 60,000 just in his district and Mrs. Morella has a pretty high number in her district.

One of my interests is to try to get some of these folks, in addition to SES, out into the field. Am I headed in the wrong path?

Mr. DUNLOP. Oh, no, sir, I think you're exactly right. In fact, you know, the SES, these are the creme de la creme; these are the professionals. These are the most accomplished people in the entire Federal service, if there is any kind of merit at all in selection of that, and I think there is, to a substantial extent, even though the "Iron Triangle" comes over the top of it every once in a while.

And to get these highly accomplished people out in the line where they can use their usually 25 or more years' experience to help the organizations perform measurable outputs would be absolutely instrumental. Now, if you thought that you were going to cast them out to the field forever and they couldn't come back, you

know, that might be demoralizing to them. But if you said, "Look, we expect you to go out and to your duty on the line for 6, or 8, or 10 months, or 2 or 3 years," that would be a decided improvement.

Also, I think it's just as important to get them out of their agencies. My Forest Service people, great guys, but they panicked at the idea when I said, "You know, I'd like you guys to go over to HUD for a while, or I'd like maybe you to go to Defense," or, you know, "Would some of you be willing to serve at the Soil Conservation Service?" "Oh, please don't make us do that!"

But for the system to get the benefit of that reform, that I think one of your witnesses was instrumental in putting in, Scotty Campbell, is absolutely essential, and, ultimately, they would be improved by it, and so would the performance of the Federal bureaucracy.

Mr. MICA. So you're saying the 3,600 SES we have here in Washington and the 2,400 we have in the field, we might look at reversing that ratio.

Mr. DUNLOP. By all means.

Mr. MICA. All right. Well, I have some additional questions, but I want to defer to the ranking member, Mr. Moran, at this time.

Mr. MORAN. Thank you, Mr. Chairman.

I'm not going to take up much time, but I do think it needs to be considered that, in many of these agencies, we are automating. We're finding that improved technology enables us to communicate, not just by audio means, but visually, as well. And if we are going to continue downsizing, then we're going to have to make greater use of that, rather than replicating the same function in 13 different regions in order to have our people out in the field.

Now, in the Soil Conservation Service and the Forest Service, we may have some unique service responsibilities that are better done on a face-to-face basis. But with a lot of our programs, such as Social Security and Medicare, there's no reason why you need people out in the field doing what can be done at headquarters in a more efficient manner.

I think what we do need is the retention of experience and skill in people that have shown themselves, over years, to be responsible and more than willing to be held accountable for the results of the programs that they operate in.

I would hope that we would reach a consensus on civil service reform that would not be ideological but would be a practical reevaluation of what needs to be done to make this Federal work force the most efficient and effective. We already have the most independent and least corrupt Federal work force in the world. And I would hope we would buildupon our strengths and simply update the civil service for the need for greater flexibility and improved technology that have developed since 1978 when the last revision occurred.

So having said that, I'm not going to ask questions of this panel. We have two more panels. If anybody wants to respond, they certainly can.

Mr. Dunlop.

Mr. DUNLOP. Mr. Chairman, I would like to make a point. I think that what Congressman Moran has said about being careful

about where you put people is very important, the new technologies and things. In my experience, I think you could pretty well eliminate and terminate all regional offices. When I'm talking about the field, I'm talking about on the line, where things are done in the dirt, where people get dirt under their fingernails.

We had a lot of regional offices in both the Forest Service and the Soil Conservation Service, totally unnecessary layer of bureaucracy. Just eliminate them entirely and put those people to work on the line would be my recommendation. And that would be responsive to the point that you raised about new technology, et cetera; it's a very good one.

Mr. SANDERS. Mr. Chairman, I guess I would second that. I suspect you would find that most career executives would like nothing better than to get their hands dirty.

Mr. MORAN. Well, there aren't a lot of jobs other than perhaps the Soil Conservation Service that enable bureaucrats to actually get their hands dirty.

Mr. SANDERS. I meant figuratively.

Mr. MORAN. And I'm not even sure how the Soil Conservation Service—if we want our SES people picking up soil. I gather that's a figure of speech, but I understand the point that you're making.

Mr. MICA. We spend all our time trying to keep our hands clean.

Mrs. Morella.

Mrs. MORELLA. I would like to pick up on the Forest Service. I found it very intriguing, just a couple of sentences from your statement that are written here. It says, "I want to caution you. If every Federal agency operated with the enthusiasm, esprit de corps, and effectiveness of the Forest Service, I'm not sure how long we'd keep our liberties. President Reagan used to say that the American people can be thankful that we don't get all the Government we pay for."

Now, I would really like to have you kind of comment on that.

Mr. DUNLOP. Well, you know, to those of us who really think about and love liberty, we know there are bureaucracies and civil services and things, and they engage in delay and obfuscation and stick-in-the-mudism, and all kinds of reasons why they don't want to do things and take risks, and sometimes that means we don't rush to judgment.

I think that what President Reagan was saying—I remember visiting with him about this one time, and he was asking us questions about our experiences and things, and several of the people were complaining about how maddening it was to, you know, get civil servants to do anything. And that's when he made that remark, "Well, let's be thankful we don't get all the Government we pay for."

Mrs. MORELLA. Except that your sentence, not President Reagan's, has to do with sometimes you have too much enthusiasm or esprit de corps. This is the kind of thing we're trying to develop, to up-raise the morale and increase the productivity and the sense of accomplishment.

Mr. DUNLOP. Yes. Well, but, you see, when you put the force of the sovereign in the hands of individual people, we all are, you know, limited in our human nature, and we can do bad things. And

we have to be careful that people don't get too exuberant about their role and how important they are.

I can report to you that, very literally, if Secretary Lyng or I had gone to the Chief of the Forest Service and said, "Chief, you know, we've got problem *X, Y,* or *Z,* you name it, we've got to the moon and we don't know how to do it. Do you think the Forest Service could do it?" And he'd say, "By all means." And they would turn every energy they had to do it, even though it had nothing whatsoever to do with their mission.

Mrs. MORELLA. Maybe they could do it.

Mr. DUNLOP. And what I'm saying is that people need to be focused on what their measurable outputs need to be, and they need to be managed to keep that focus. And that's really what I meant by that remark that, if you're going to make your agencies of Government efficient and effective and dynamic and vigorous, watch out, because Government can be not only a helpful servant but a fearful master.

Mrs. MORELLA. Yes, except I would say that, if you can devote those kinds of energies and enthusiasm and attitude toward a mission, then the public is well served.

Mr. DUNLOP. Well, indeed, I concur.

Mrs. MORELLA. Just one other point. With regard to political appointees, I think one of the concerns that should be considered is, an appointee comes in, has this wonderful vision of a mission for an agency, department, whatever, and then that person is whisked out after 12 months, 18 months, whatever, someone new comes in with a new vision and mission and whatever. Would you like to comment on the difficulties or the problems of the lack of kind of consistency or eye on the prize, or whatever?

Mr. DUNLOP. Well, I worked up here for 15 years in the Congress. And running a committee of the Congress I likened to being a tank commander on a hot battlefield. You had to punch and dodge and shoot and move quick.

When I got down to the Department of Agriculture and I shouted into the line, "Hey, let's do this," I found I wasn't driving a tank, I was driving a battleship. And I'd holler down there, "Hey, guys, let's have a, you know, three degrees to the starboard here," and, you know, nothing would happen. I'd think, well, they didn't hear me. And I'd say it again. And I'd call them all in, "Why isn't this happening?"

And the bottom line is, there's a lot of continuity in running bureaucratic organizations, and you would be surprised by the fact that Assistant Secretaries and other political appointees can't go in with big, broad, wide visions and agendas and change things. You can pick two or three things that you think are important, and you can focus on them, and you can get them done. And the rest of the time you spend managing and working with the Congress and all kinds of other people that have to have inputs.

The continuity problem, frankly, is a favorable thing, because it brings in fresh ideas and fresh blood. If they are bad ideas, there's lots of ways they get vetted, believe me.

Mr. WEITHONER. I would like to comment on that, if I may, as it applies to the FAA, which is quite a different organization. I would say that, for the FAA, the last thing we need is a lot more

Presidential appointees to come in and rotate every 19 months, as Mr. Dunlop indicated, when we're trying to sustain an operation that's heavily safety-oriented, when we're trying to get something done.

One of the major impediments to getting the capital programs done in the FAA right now is that you start off on a 10-year technical effort, and you're going to have five different people leading that effort.

Mr. MORAN. We're not getting clear signals here.

Mrs. MORELLA. I appreciate this.

Mr. MICA. Well, it's interesting, because FAA sat on that subcommittee, and they change administrators like we change socks, and that's been a big problem there.

Well, I tell you, this is an interesting panel and we wish we could spend the rest of the morning with you. It would be good to have this group back sometime to continue the discussion. You have certainly opened a number of avenues for thought and review, and we appreciate your testimony and participation today.

We will excuse the panel at this time.

Mr. DUNLOP. Thank you. We're grateful for the opportunity to appear.

Mr. MICA. Thank you. Good to see you, George. Incidentally, I didn't know they were going to call you as a witness, but was glad to see you. Thank you.

We have our next panel, and I would like to call them forward, please. William Niskanen, chairman of the Cato Institute; Mr. Robert Tobias, national president, National Treasury Employees Union; Mr. John Sturdivant, who is the national president of AFGE, AFL–CIO; and Carol Bonosaro, president of the Senior Executives Association.

I would like to welcome you. I think just about everybody has been on our panel before, maybe with the exception of the chairman of the Cato Institute. It is our custom to swear in the witnesses, so if you would stand, please.

[Witnesses sworn.]

Mr. MICA. Thank you and welcome. We have a great deal of expertise in this panel, and we look forward to your comments.

We will start right off with the chairman of the Cato Institute, Mr. William Niskanen. Welcome. If you would like to summarize, your testimony will be made, without objection, a part of the official record. We would appreciate your summarizing, and then we will have time for discussion.

STATEMENTS OF WILLIAM A. NISKANEN, CHAIRMAN, THE CATO INSTITUTE; ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION; JOHN N. STURDIVANT, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO; AND CAROL A. BONOSARO, PRESIDENT, SENIOR EXECUTIVES ASSOCIATION

Mr. NISKANEN. Thank you, Mr. Chairman. I value this opportunity to address what are often neglected issues affecting the management of Federal personnel.

First, most recent personnel management reform proposals call for increased discretion by agency managers on personnel issues. As a former Federal manager, I am sympathetic with these proposals. All too often, it is difficult to hire the most qualified, to promote those who contribute most to the agencies' missions, and to terminate an employee for poor performance. The personnel system seems designed to frustrate an administration of either party from pursuing its own version of good Government.

The most important lesson from this experience, however, is that performance accountability is the price of managerial discretion. Unless accountability and discretion are paired, we are not likely to realize increased performance. Managers, understandably, would like increased discretion without increased accountability. The administration and Congress, in many cases, of course, would like increased performance but are reluctant to authorize increased discretion.

These are the tensions that transform Federal managers into bureaucrats, congressional committees into micromanagers, and the Federal sector into a bureaucracy. The necessary corollary of personnel management reforms, thus, is increased accountability for agency performance. Congress and the administration should first clarify the performance they expect of agencies, and then competition and contract are the best means to assure accountability.

Congress and the administration should be more willing to shift activities and programs among agencies at the Federal level, among levels of Government, to private contractors, and through vouchers, for some programs, to any potential supplier.

Our Constitution and our shared political values provide moderately good guidance about what services the Federal Government ought to finance, but we really don't have any very clear guidance and any shared principles about what services the Federal Government ought to supply by Federal employees. I suggest that the services that are supplied by Federal agencies should be determined by superior performance but in a more competitive environment than they now face.

I encourage you, also, to explore the very innovative new contract system in New Zealand, where the executive in each major agency has a formal written contract with his or her minister, committing the agency to a particular or specific performance schedule, and committing the executive to resign if the schedule is not met.

We met for several hours this week with Mr. Brash, who is the head of the Reserve Bank of New Zealand. His contract is public knowledge and is monitored regularly by the financial community and by the press, the consequence of which is that the inflation rate in New Zealand has been brought close to zero, and the unemployment rate has also been cut in half.

In summary, I share the concerns that have led to the recent proposals for personnel management reform, but, at the same time, I caution you not to expect too much of these reforms unless Congress, at the same time, is willing to open up the supply of services financed by the Federal Government to increased competition and to hold Federal managers accountable for the performance of their agencies.

Second, I suggest that Congress should move quickly to reverse a major threat to the merit system. Nothing will undermine the morale and the performance of an agency faster than a pattern of personnel decisions based on status rather than merit. Such patterns, however, now seem to be official policy.

A Congressional Research Service report last winter identified 180 Federal race and gender preferences. A Department of Defense memo is reported to state, "In the future, special permission will be required for the promotion of all white men without disabilities." A position announcement by the Forest Service stated, "Only applicants who do not meet OPM qualification standards will be considered." At the Justice Department, workplace discipline "cannot be initiated against any group of employees at a statistically higher rate than any other group."

Such policies provide very strong support, I suggest, for the Equal Opportunity Act proposed by Senator Dole and Representative Canady, a bill that would prohibit discrimination in Federal employment, in Federal contracts, and in Federal policies. A policy of what I call aggressive nondiscrimination has proved consistent with unit morale and superior performance, as the U.S. military has proved, in part because it is more consistent with our shared values.

Third, the Federal compensation system needs to be substantially restructured. Current compensation is not sufficiently variable by skill, experience, and region, and Federal pension benefits are far higher than in the private sector. As a consequence, Federal employment no longer attracts many of our most skilled young policy experts, and it includes many disgruntled older employees who are locked in by their pensions.

Federal jobs that are a prize in some regions go begging for applicants in other regions. The system is biased in favor of the risk-averse and the time-servers, not the innovative and those who are most impatient to get the job done.

Let me switch to the pension issue. In 1979, in an Aspen Institute report, John Macy and Elmer Staats identified five major problems of Federal pensions: unusually high income replacement rates compared to the private sector, unusually early retirement, the explosion of costs due to indexing, overlapping eligibility, and lax standards for disability retirement.

None of these characteristics has been significantly changed in the meantime. As a consequence, Federal pension benefits now cost about $65 billion a year. The present value of the liabilities for future pensions is now about $1.6 trillion, and the present value of future health benefits for Federal retirees is another $300 billion.

I do not recommend reducing the pension and health benefits of those who are now retired or in the work force, but I encourage you to consider a major restructuring of the benefits to new Federal employees, both to change the relative incentives for Federal employment and to avoid an explosion of future annual pension costs.

Again, thank you for your attention. That should be enough to chew on for a while.

[The prepared statement of Mr. Niskanen follows:]

Several Neglected Issues in Federal Personnel Policy

William A. Niskanen

Chairman

The Cato Institute

Testimony
to the
Civil Service Subcommittee
of the
House Committee on Government Reform and Overnight
Washington, D.C.
13 October 1995

Mr. Chairman and members of the subcommittee: I applaud your review of federal personnel policies, and I value this opportunity to address several often neglected issues affecting the management of federal personnel.

1. Most recent personnel management reform proposals call for increased discretion by agency managers on personnel issues. As a former federal manager, I am sympathetic with these proposals. All too often, it is difficult to hire the most qualified, to promote those who contribute most to the agency's mission, and to terminate an employee for poor performance. The personnel system seems designed to frustrate an administration of either party from pursuing its own version of good government.

The most important lesson from this experience, however, is that performance accountability is the price of managerial discretion. Unless accountability and discretion are paired, we are not likely to realize increased performance. Managers, understandably, would like increased discretion without increased accountability. The administration and Congress, similarly, would like increased performance but are reluctant to authorize increased discretion. Such are the tensions that transform federal managers into bureaucrats, congressional committees into micromanagers, and the federal sector into a bureaucracy.

The necessary corollary of personnel management reforms, thus, is increased accountability for agency performance. Congress and the administration should first clarify the performance they expect of agencies. Competition and contract

are the best means to assure accountability. Congress and the administration should be more willing to shift activities and programs among agencies, among levels of government, to private contractors, and through vouchers to any potential supplier. Our Constitution and shared political values provide moderately good guidance about what services the federal government ought to finance. The services that are supplied by federal agencies, however, should be determined by superior performance in a more competitive environment. Congress should also explore the innovative new contract system in New Zealand, where the executive in each major agency has a formal written contract with his or her minister committing the agency to a specific performance schedule and the executive to resign if the schedule is not met.

In summary, I share the concerns that have led to the recent proposals for personnel management reform. At the same time, I caution you not to expect too much of these reforms unless Congress is willing to open up the supply of services financed by the federal government to increased competition and to hold federal managers accountable for the performance of their agencies.

2. Congress should move quickly to reverse a major threat to the merit system. Nothing will undermine the morale and performance of an agency faster than a pattern of personnel decisions based on status rather than merit. Such patterns, however, now seem to be official policy. A Congressional

Research Service report last winter identified 180 federal race and gender preferences. A Department of Defense memo is reported to state that "In the future, special permission will be required for the promotion of all white men without disabilities." A position announcement by the Forest Service stated that "Only applicants who do not meet [OPM] qualification standards will be considered." At the Justice Department, workplace discipline cannot "be initiated against any group of employees at a statistically higher rate than any other group." Such policies provide strong support for the Equal Opportunity Act proposed by Sen. Dole and Representative Canady, a bill that would prohibit discrimination in federal employment, contracts, and policies.

A policy of "aggressive nondiscrimination" has proved consistent with unit morale and superior performance, as the U.S. military has proved, in part because it is more consistent with our shared values.

3. Finally, the federal compensation system should be substantially restructured. Current compensation is not sufficiently variable by skill and region, and federal pension benefits are far higher than in the private sector. As a consequence, federal employment no longer attracts many of the most skilled young policy experts and includes many disgruntled older employees who are locked in by their pension. Federal jobs that are a prize in some regions go begging for applicants in other regions. The system is biased in favor of the risk averse and time servers, not the innovative and those impatient to get

the job done. The surprise is that there are so many skilled and dedicated federal employees, despite the compensation system.

The single best guide to the appropriate changes in current compensation are not the periodic studies of federal and private compensation but would be data on the voluntary quit rate by skill, responsibility, and region. The compensation for jobs with an unusually high quit rate should be increased or the job should be contracted out. Conversely, current compensation is more than adequate for jobs with an unusually low quit rate. Congress should ask the Office of Personnel Management for comprehensive data on quit rates before any periodic review of federal compensation.

There is more reason to worry about the federal pension systems. In a 1979 report of the Aspen Institute, John Macy and Elmer Staats identified five major problems of federal pensions: unusually high income-replacement rates, unusually early retirement, the explosion of costs due to indexing, overlapping eligibility, and lax standards for disability retirement. None of these characteristics has been significantly changed in the meantime. As a consequence, federal pensions benefits now cost about $65 billion a year. More important, the present value of future federal pension liabilities was about $1.6 trillion at then end of FY 1993 and the present value of future health benefits for federal retirees was another $300 billion. Let me be especially clear on this issue: I do <u>not</u> recommend reducing the pension and health benefits of those now retired or of those

now in the federal workforce. Congress is well advised, however, to consider a major restructuring of the pension benefits to new federal employees, both to change the relative incentives for federal employment and to avoid an explosion of future annual pension costs.

Again, thank you for your attention. That should be enough to chew on for a while.

Mr. MICA. I just hope we don't get enough to choke on, not just from you, but from the whole group. [Laughter.]

Mr. Tobias.

Mr. TOBIAS. Thank you very much, Mr. Chairman.

I brought today a package of acorns for you. [Laughter.]

Mr. MICA. I'm going to take some of those back to Florida. We haven't seen that many acorns back there.

Mr. TOBIAS. I brought several of them, because it's my view that we can't run the risk of seeking one tree, that the goal is to plant many trees and have them all grow large and strong.

I believe, Mr. Chairman, that, with all due respect, your goal is to figure out a way to manage the Federal Government more efficiently and effectively, and I agree with that goal 100 percent. When I use the term "manage," I mean each agency achieving its goal and its objective; each agency setting its 1-year and 5-year goals consistent with the Government Performance and Results Act, and then utilizing its resources to achieve the declared outcomes.

Managing is not limited to personnel policies and practices. Personnel policies are a tool to be used to manage an agency; they are not an end unto themselves. Personnel policies are a piece of the management puzzle, an incredibly important piece, but only a piece.

The responsibility for mission accomplishment and declared outcomes must be linked with the authority to create personnel policies. No President, and certainly no Congress, can hold an agency head responsible for failure to meet its goals and objectives if the creation of personnel policies is not within the authority of that agency head.

Now, some personnel management authority has been delegated in conjunction with the abolition of the Federal Personnel Manual. That delegation of authority, together with Executive Order 12871, which urges the creation of labor-management partnerships, has led to a better bottom line in many agencies.

And the better bottom line comes from, first, cost avoidance: fewer grievances, fewer unfair labor practices, decreased amount of bargaining, decreased negotiability determinations, fewer court suits. But more importantly than cost avoidance, there is also cost savings, in conjunction with reworked work processes and procedures; faster implementation of needed changes, we don't have to bargain impact and implementation, changes get implemented, change management occurs; also, better decisions, in the first instance, because people doing the work are included as part of the decisionmaking process.

We're on the right track, Mr. Chairman. These efforts should be nurtured and encouraged. They are bottom-up efforts which save taxpayers money. We should be extremely wary of returning to any system which mandates governmentwide solutions to any perceived problem.

There is no expert who knows or who can know the Government and provide a fix. That is why we urge, Mr. Chairman, that agencies be allowed to apply for changes in Title V in the applicable regulations, based on an identified need and in the context of an evaluation process against a baseline that is established. Such an

approach would allow OPM approval, congressional oversight, and a continuing atmosphere of experimentation.

The quickest way to extinguish risk-taking and experimentation is to mandate a change. All energy is then focused on implementation, no matter the consequences. We urge, Mr. Chairman, that you avoid the sideshow of mandating governmentwide changes in personnel policies and instead focus on the real drama of aligning personnel authority with mission accountability.

So we believe, in short, Mr. Chairman, that allowing many acorns to grow and prosper will indeed result in agencies increasing their productivity and increasing their efficiency and increasing their effectiveness.

Thank you very much.

[The prepared statement of Mr. Tobias follows:]

TESTIMONY OF
ROBERT M. TOBIAS
NATIONAL PRESIDENT

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

ON

CIVIL SERVICE REFORM

OCTOBER 13, 1995

U.S. HOUSE OF REPRESENTATIVES

901 E Street, N.W. • Suite 600 • Washington, D.C. 20004-2037 • (202) 783-4444

Mr. Chairman and Members of this Subcommittee, my name is Robert M. Tobias. I am the National President of the National Treasury Employees Union. NTEU is the exclusive representative for fourteen diverse agencies throughout the federal government. These agencies include, but are not limited to the Internal Revenue Service, the Customs Service, Pension Benefit Guaranty Corporation, Health and Human Services, Nuclear Regulatory Commission, Federal Election Commission, Department of Energy, Federal Communication Commission, the Federal Deposit Insurance Corporation, Food and Consumer Services, and the Patent and Trade Mark Office. Each of these agencies provide a very distinct and meaningful contribution to our Nation. Therefore, we must look closely at the civil service laws governing the work place for these employees to ensure that the American taxpayer is receiving the highest order of service.

The Federal Service is in its third century of providing for the security, well-being and operations of democratic governance for our republic. While the scope, size and tasks of the Service have grown and changed in response to the needs of the nation, public service remains the underlying principle and defining goal that must guide and motivate the Federal work force. Management and labor in the Federal sector have been confronted with the tasks to reduce costs, upgrade skills, improve productivity and ensure quality of service.

NTEU believes that the current concept underlying the Civil Service Reform Act of 1978 (CSRA) needs to be revisited. It is predicated upon archaic notions of a centralized command management structure; and an extremely limited and totally reactive role for employees and their unions. While the private sector and the non-federal public sector are recognizing the essential role of expanded employee participation, outcome measurements, empowerment, and rejection of top down hierarchal management, the current system has mired the federal sector in the patterns and perspectives of the past.

In 1978, proponents of CSRA argued that its enactment would bring private sector concepts of management and efficiency of operations to the federal service. The provisions of CSRA, however, reflect the authoritarian management model originating in the 19th century, and not the emerging participative management theories that are leading the private sector through the 21st century. It has spawned endless litigation and engendered adversarial relations. It has locked both labor and management in a straight jacket of politicized central personnel management, irrelevant rules, cumbersome procedures and arbitrary restrictions on a substantive labor-management relationship.

This Administration recognized that change in the public sector was no longer a seminar topic but rather was necessary and imminent. In early March of 1993, President Clinton began

fulfilling a campaign pledge to "radically change the way government operates - to shift from top-down bureaucracy to entrepreneurial government that empowers citizens and communities to change our country from the bottom up." He announced the initiation of a National Performance Review to be conducted by Vice President Albert Gore. It was President Clinton's goal, relying on the recommendations of the National Performance Review to "redesign, to reinvent, to reinvigorate the entire National Government."

On September 7, 1993, Vice President Gore released the Report of the National Performance Review, "From Red Tape to Results: Creating a Government that Works Better & Costs Less". In response to the report, on October 1, 1993, President Clinton issued Executive Order 12871, "Labor Management Partnerships," which established the National Partnership Council (NPC). The NPC is composed of representatives from the three largest federal employee unions, the Public Employee Department, AFL-CIO and seven representatives from Federal agencies. Its responsibilities include: advising the President on labor-management relationships; supporting the creation of labor-management partnerships and promoting partnership efforts; and proposing legislative changes related to labor relations, staffing, compensation, and performance management to the President.

The creation of the labor management partnership in the

federal sector is a recognition that the challenges of the future could not be met within the existing framework of centralized personnel management and adversarial labor relations. The talents and creativity of the federal work force were being suffocated in a system of irrelevant rules and cumbersome procedures. Partnership frees labor and management from the constraints of the old system and gives the opportunity to forge a new relationship based on a commonality of purpose in the interest of public service.

The nascent dawn of recognition by labor and management that it is possible to cooperate and achieve mutually beneficial results has been thwarted by conventional wisdom which stated that efficiency and productivity could be increased only by increasing pressure on employees to produce more. It is becoming more and more evident that an employee's productivity is linked to an employee's work processes and work procedure -- working harder will not automatically improve productivity. Rather, involving employees in work process decisions, who have the knowledge, skills, and ability to understand what is the current work process and what must be done to improve it, will enhance productivity. The creation of the federal labor management partnerships provides everyone with a common goal: dedication to the agency mission and improvement in the quality of the accomplishment of that mission.

These concepts are not new. The most successful corporate

restructuring have been based on labor management partnerships. Many companies, including Saturn, Xerox, A.O., Smith, Harley Davidson, NUMMI, Cadillac have created partnership between management and its unions which resulted in increased profitability. Although its inception is only recent in the public sector, the labor management partnerships developing everyday in our agencies have been critical to achieving increased efficiency and productivity, the traditional goal of management, and increased employee job satisfaction, the traditional goal of unions.

Federal employees and their unions have already proven their sincerity and ability to assume a partnership for the public service. The National Performance Review included in its report the goal for IRS of delivering refunds to taxpayers within 40 days. Well today, all ten IRS service centers don't do refunds in 40 days. They do them in 38 days, on average. This achievement resulted when IRS asked taxpayers for feedback and involved employees in reform of the refund process. The IRS could not have reached this goal without cooperation and commitment from NTEU.

Members of the trade community complained that the processing of air cargo was needlessly slow. Employees from the local NTEU Customs Chapter met with management officials to work out the problem in "partnership." Soon thereafter the lag time for air cargo was cut by 72 hours. The NTEU agreement with the Patent and Trademark Office, notably the first labor-management partnership

within the Commerce Department, has already produced partnership programs for family-medical leave, compensatory time and part-time work. The examples are endless. Each one points to the same conclusion - when management involves its employees in decision making - the decisions work better, morale is enhanced and productivity increases.

While partnership agreements are being signed daily, one cannot ignore that change is difficult. Resistance is abundant. The gains that we have made to date must be locked in. Without action by Congress and the administration to change the laws that bind the hand of federal managers and employees, "reinventing government" threatens to become another energetic attempt to reform government that didn't work. NTEU strongly believes that the National Partnership Council should be statutorily mandated. This provides a strong signal to managers that they must involve their employees in decisions and to employees that their work place decisions are part of their responsibility.

The National Performance Review also reviewed and made recommendations for change on civil service issues including the hiring system, the general schedule classification system, and the performance management systems. We believe that change is necessary in all of these areas. However, we strongly believe that we must proceed cautiously in making these changes. These changes must be incremental to prevent mass chaos in the federal

government. NTEU strongly endorses the concept of demonstration projects to allow agencies to change consistent with its goals, and missions rather then mandating a change uniformily implemented throughout a two million person work force.

To implement the concepts in NPR via demonstration projects some legislative changes will need to be made. We support eliminating the caps on the number of participants and actual number of demonstration projects. In order to ensure a thorough accountability for demonstration projects, we believe that a public hearing on the proposed projects continues to serve a purpose. In addition, we believe that congressional action should be required before any demonstration projects are converted to alternative personnel systems.

Thank you for providing me with the opportunity to share our views on this important matter with you. I believe there exists a real opportunity for labor and management in the federal sector, and I'm hopeful that we're smart enough, wise enough, and patient enough to seize it. I would be happy to answer any questions.

Mr. MICA. I thank you, Mr. Tobias. I like your analogy much better than Mr. King's, who talked about making New Hampshire gruel out of acorns. I like your approach much better.

Mr. TOBIAS. Thank you very much. I disassociate myself from Mr. King's analogy.

Mr. MICA. Thank you.

Mr. Sturdivant.

Mr. STURDIVANT. Thank you, Mr. Chairman.

I would like to thank you for the opportunity to testify today on the subject of civil service reform, but more on the subject of how do we provide better value for the taxpayers. The current desire to change the management and administration of the Federal Government is not new. The modern civil service system was created nearly a century ago. Civil service reform has been a frequent target of Democrats and Republicans alike.

Many of these past reform efforts were built on the false premise that Federal employees are inept and untrustworthy. Politicians of every stripe discovered that one way to get elected was to run against Government, and the best way to run against Government was to run down Government employees. As a Nation, we can do better than this and we must, if we hope to maintain the democratic—and that's with a small "d"—promise of a Government that exists to serve its citizens.

Unfortunately, the current civil service system is painfully out of step with the challenges facing the Federal work force as we move to the next century. In its emphasis on rules and regulations, centralized control, and top-down decisionmaking, the system sends a loud message to employees that says they can't be trusted to do the right thing, and naturally it has bred resentment and indifference in the workplace.

American corporations have abandoned this obsolete "command and control" model in droves, in order to remain competitive in the new world of tough global competition. These companies learned the hard way that, in the transformation from an industrial age to an information age, from the Model T to the computer chip, a premium is placed on highly trained, creative workers who can think and think on their own.

There is no question that the engines behind the high-performance quality revolution sweeping through private industry are the principles of employee empowerment and labor-management partnership. At Saturn, Xerox, Corning Glass, and many other unionized companies, the evidence has shown that quality improvement efforts will not succeed in any lasting way without the support of unions and the employees they represent. Private industry found that involving the union, and the employees through the union, as a true workplace partner, was good for shareholders and good for the bottom line.

I must say that this did not exactly come as a surprise to AFGE or its members. As Federal employees who believe deeply in public service, AFGE members want to make Government work better and more efficiently. But time and again we have been frustrated by a sluggish bureaucracy that favors rules and regulations over innovation and results.

We figured out a long time ago that neither our members nor the American people are well-served by the status quo. That is why AFGE supports President Clinton and Vice President Gore in their efforts to reinvent Government. Reinvention is fundamentally about change. It is about a change in the very culture of the Federal Government, its habits, its attitudes, its performance. It is about a change in the way unions operate. It is about change in the way unions interact with each other, and it is about change in the way unions interact with management.

AFGE has a new vision for Federal service that speaks directly to the urgent need for change. We believe that, in the new Government workplace, labor and management have a shared interest in accomplishing the mission; or, as I say to many of my friends in DOD, when the base closes or when the work is contracted out, management doesn't get to stay behind. Partnership offers a way for labor and management to find common ground around mutual goals of productivity, efficiency, and quality customer service.

As you can see in some of my written testimony, we have been seeing practical, bottom-line results across Government since the President's Executive order on partnership was signed just 2 years ago. We are starting to see improvements. We are starting to see cost savings, cost avoidance. We are starting to see better work done by the people who are charged with the responsibility of doing the work for the American people.

We have taken an important first step, but we can't stop here. To achieve the fundamental changes at the core of reinvention, the structure of the Federal civil service must be reshaped; it must be decentralized, simplified, and deregulated. At the same time, additional management flexibilities must be balanced with a comprehensive effort to involve employees and their union representatives as workplace partners.

In that spirit of partnership, let me present AFGE's recommendations for reforming the civil service system. The failure of the centralized civil service system is perhaps seen most clearly in the way Government employees are classified. Virtually all Federal agencies, regardless of mission, structure, or size, are locked into a 15-grade, 10-step classification system.

There is little disagreement that the classification system must provide greater flexibility to individual agencies, but bear in mind that changing the way white collar jobs are classified and compensated in the Federal sector substantially and directly affects the pay and careers of over 1.5 million employees. If these changes are to have lasting success, employees and their union representatives must be closely involved in their design and implementation. No other approach is acceptable to us nor makes sense.

As you see from my written testimony, and I would like to have some dialog about it later on—I see I'm running out of time—we make specific recommendations for changing the performance management and reward system. We also make specific recommendations for removing some of the barriers, some of the legal barriers, to labor-management partnerships.

We firmly believe that we are on the right track; we are going in the right direction. As I said earlier, we are beginning to see changes; we are beginning to see areas where the work and the

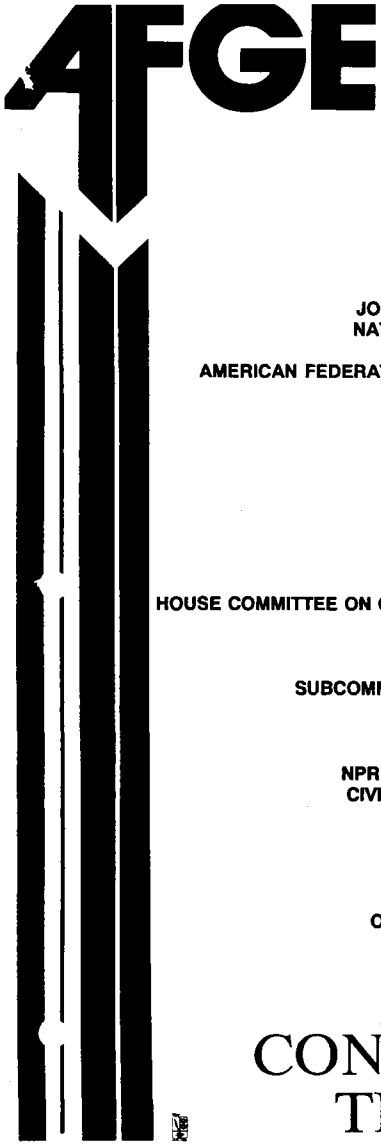
service delivery that we are providing for the American people is coming to the bottom line.

The main recommendation that we want to make, and it kind of ties in with what Mr. Tobias is talking about, is broadening the activity, broadening the opportunity for experiments, for demonstrations, for innovative initiatives. The Government is a very complex structure. One size does not fit all.

But one thing I can guarantee you, Mr. Chairman, if you give us the opportunity to do that, if you give us the opportunity to work together to provide good, more effective and more efficient services for the American people, then you will be having hearings about how well these innovations and experiments are working and how do you replicate them in the Federal Government, rather than having hearings about what doesn't work and how do you fix it.

Thank you. I would ask that my entire statement be entered into the record, and I look forward to a dialog on these issues.

[The prepared statement of Mr. Sturdivant follows:]



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STATEMENT BY

JOHN N. STURDIVANT
NATIONAL PRESIDENT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE

HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

SUBCOMMITTEE ON CIVIL SERVICE

ON

NPR AND THE CASE FOR
CIVIL SERVICE REFORM

OCTOBER 13, 1995

CONGRESSIONAL TESTIMONY

Mr. Chairman and members of the Subcommittee: my name is John Sturdivant and I am the President of the American Federation of Government Employees, AFL-CIO. On behalf of over 700,000 employees represented by AFGE, I would like to thank you for the opportunity to testify here today on the subject of civil service reform.

The current desire to transform the management and administration of the federal government is not new. Since the modern civil service system was created nearly a century ago, civil service reform has been a recurring theme in our political culture and a frequent target of Democrats and Republicans alike.

Many of these past reform efforts were built on the false premise that federal employees are inept and untrustworthy. Politicians of every stripe discovered that one way to get elected was to run against government, and the best way to run against government was to run down government employees and blame them for the low regard in which government is often held. This was clearly the view of the Civil Service Reform Act's architect, President Carter, who identified federal workers with "inefficiency, ineptitude, and even callous disregard for the rights and feelings of ordinary people."

The sad but predictable results of these exercises in bureaucrat-bashing ranged from the misguided attacks of the Grace Commission to the overregulation and micromanagement of the Civil Service Reform Act. Failed reform efforts like these, built on a foundation of distrust and disdain for the federal employee, have alienated the workforce and failed to accomplish what they set out

to do: improve the performance of government.

As a nation, we can do better than this and we must. The dedicated men and women who make up the federal civil service -- over 2 million hard-working Americans -- are a vital part of our democratic government. It is federal workers who transform the rough mandate of laws passed by Congress into the indispensable reality of government services and benefits. Whether stopping the flow of illegal drugs or caring for veterans, federal employees serve as a tangible reminder that in a democratic nation, the government exists to serve its citizens.

But this democratic promise of government is under strain. Today the most visible threat comes from an anti-government frenzy that has many in Congress engaged in a futile and destructive bidding war to see who can cut the most federal programs or slash the most federal jobs. What the slash and burners fail to recognize is that the cries for deficit reduction have not and will not reduce the taxpayers' insistent demand for high-quality services and the skilled performance of basic governmental functions. Whatever government does and whether it costs less or not, it is federal employees who must ensure that it is done well and meets the needs of a demanding public. Every endeavor of the federal government ultimately relies on the skills, ability, and motivation of federal workers.

Tied closely to the harsh realities of budget deficits and the steady demand for high-quality government services are the demographic and technological changes reshaping the character of

the federal civil service. The years ahead promise far more ethnic, racial, and gender diversity in the workforce. The increasing number of two-income families and an aging population will demand more flexible work schedules and dependent care services to help those struggling to balance child care, elder care, and other family commitments.

Rapid changes in technology will fundamentally alter the nature of work, requiring higher-skilled employees who can adapt quickly to a constantly changing work environment. Management and labor are both facing the need to reduce costs, upgrade skills, improve productivity, and ensure the delivery of high-quality service.

Unfortunately, the current civil service system is painfully out of step with the challenges facing the federal workforce as we move to the next century. In fact, it is fair to say that this system is at the heart of the government's most enduring performance problems and has contributed more than any other factor to the lack of faith many Americans have in their government, the sense of many that government simply does not work.

The problems with the civil service system are deeply rooted. Its structural foundations are found in an obsolete management philosophy which evolved in the early part of this century and reached its zenith in the corporate culture of the 1950s. This organizational model featured centralized control with layer upon layer of management to keep it tightly in place; autocratic, top-down decisionmaking; and rigidly defined job tasks. With its

emphasis on control, rules, and standardization, this model was designed to take the thinking out of work and to devalue and discourage employee participation in workplace decisionmaking.

The federal civil service system effectively replicated this "command and control" model of corporate bureaucracy. The government's front-line workers were hamstrung by red tape and silly rules, buried under stacks of pointless paperwork, and micromanaged to within an inch of their lives. The central message of this system was that employees could not be trusted to do the right thing. In almost every way, the civil service system was designed not to produce results, but to avoid mistakes.

By the early 1980s, American businesses began to abandon this outdated management philosophy of "command and control" in order to remain competitive and survive in the new world of tough global competition, complex new technologies, and lightening-fast communications. These companies learned the hard way that in the transformation from an industrial age to an information age -- from the Model T to the computer chip -- a premium is placed on intelligent, highly-trained, creative workers who can analyze new situations and act quickly and effectively.

A revolution based on quality and customer service began sweeping through private industry. Companies like Corning Glass, GM, Motorola, and Xerox began shifting their organizational structures from centralized control and hierarchy to trimmer, flatter management structures and greater employee participation. As more and more companies moved to form high-performance work

organizations, they discovered that the knowledge and creativity of their employees was often the margin of difference between mediocrity and excellence.

There is no question that the engines that drove this high-performance quality revolution were the principles of employee empowerment and labor-management partnership.

Employee empowerment rests on a simple but powerful idea: the people who are closest to the work know where the problems are and usually have the best solutions. Not all good ideas flow from the top down. When front-line workers are trusted to identify and correct problems, and when their decisions are supported by top management, they will be motivated to make continuing and meaningful improvements to the work they do. The key is to push decisionmaking down and give workers the authority to think creatively and act independently, while guided by the organization's objectives and values.

The other essential feature of the high-performance workplace is a partnership between labor and management. At Saturn, Xerox, Corning, Harley Davidson, Cadillac, Dayton Power and Light and many other unionized companies, the evidence has shown that quality improvement efforts and work restructuring plans will not succeed in any lasting way without the support of unions and the employees they represent.

The evidence also shows that long-term organizational success is bound together inseparably to good relations between labor and management. Companies that were trying to remake themselves in

every other area of their operations discovered that business as usual between labor and management was not good enough. Over time they found that involving the union as a true partner in identifying workplace problems and crafting solutions to those problems was good for shareholders and good for the bottom line.

Partnerships led to increased productivity and quality, better customer service, and greater employee satisfaction on the job. The private sector discovered that it is impossible to build a quality operation by treating employees as costs to be minimized or by denying the legitimacy of labor to participate in basic workplace decisions.

I must say that this did not exactly come as a surprise to AFGE or its members. As federal employees who believe deeply in public service, AFGE members want to participate in positive ways to improve the performance of government. But time and again we have been frustrated by a sluggish bureaucracy that favors rules and regulations over innovation and results. For years federal employees have offered their thoughts on how to make government work better and more efficiently, but we've been told "that's management's job."

This attitude was emblematic of everything that was wrong about government. AFGE members know firsthand what it's like to be dedicated, skilled employees trapped in systems that stifled their creativity and made little use of their ideas. AFGE came to understand a long time ago that the civil service system's brand of

top-down decisionmaking did not serve the interests of the working men and women we represent.

But just as important, the current structure of the federal civil service is incapable of producing the quality and quantity of services demanded by the public. The challenges of the future cannot be met within the existing framework of centralized control. Neither our members nor the American people are well-served by the status quo.

That is why AFGE has supported President Clinton and Vice President Gore in their efforts to reinvent the government through the ongoing work of the National Performance Review. Reinvention is fundamentally about change. It is about a change in the very culture of the federal government: its habits, its attitudes, its performance.

It is also about a change in the way the American people think about their government. Reinvention means that government is no longer seen as too inflexible, too slow, or too unresponsive. A reinvented government is one that can effectively and efficiently serve the needs of its customers, those millions of citizens who count on the government every day to inspect the food we eat, deliver our Social Security checks on time, safeguard our workplaces, and keep our water clean.

In a welcome break from past reform efforts, this Administration did not see the federal employee as an obstacle on the road to change. They recognized that federal workers are nothing like they are portrayed by the political opportunists,

radio talk show blowhards, and other cut-rate demagogues. They're not lazy or incompetent and they're not satisfied just going through the motions. The NPR discovered what AFGE has known for years: federal employees work hard, they're smart, and they want to be freed from inflexible, archaic rules and empowered to do the job the right way.

AFGE has a new vision for federal service that speaks directly to the urgent need for change. In the new government workplace, we believe that front-line workers must be empowered to participate meaningfully in workplace decisions, and must be free to do the right thing, rather than compelled to do the prescribed thing.

We believe as well that in the new government workplace labor and management have a shared interest in the success of any agency operations, and must work together as full partners to make the government work better for the American taxpayer. If the government is serious about recapturing the trust and respect of the American people, it must discard the inflexible and discredited management practices of the current civil service system in favor of the high-performance, high-value practices adopted by more and more of the Nation's most successful private and public organizations.

At the heart of this transformation to a high-performance organization is the creation of labor-management partnerships. President Clinton confirmed this when he signed Executive Order 12871 in 1993 and called for a "new partnership" between federal labor unions and management to achieve the goals of reinvention.

This represents an extraordinary milestone in the history of labor relations in this country. For the first time, the federal government's Chief Executive has recognized that there is a meaningful role for federal workers and their unions in the day-to-day operations of the government. And for the first time, it was acknowledged that government-wide reform efforts will fail without the full and active participation of labor unions and the employees they represent.

Partnership offers a way for labor and management to work together identifying problems and crafting innovative solutions in accordance with the shared goals of productivity, efficiency, and quality customer service. In this way, we believe that partnership can bring about dramatic improvements in government performance. And perhaps most important, partnership is not tied to one political party nor is it rooted in any particular ideology. As we see it, partnership is a practical, bottom-line response to the public demand for a more responsive, effective government.

And we have been seeing practical, bottom-line results across the government since the Executive Order was signed. Let me share just a few examples with you:

- In just three years at Kelly Air Force Base, the move from labor-management conflict to labor-management partnership led to an 89% drop in unfair labor practice charges, from a high of 193 in 1992 to only 8 in 1995. This reduction in litigation costs saved the taxpayer approximately two million dollars. Even more taxpayer

dollars were saved as grievances dropped 84% and arbitrations fell 76%.

♦ At the VA Medical Center in Des Moines, self-managed work teams established through partnership have slashed annual overtime costs from thousands of dollars down to zero. These same teams have also cut in half the amount of time veterans have to wait for treatment at the hospital.

♦ At another VA hospital in Albuquerque, the local AFGE union and management have jointly designed several new clinical programs, including a new drug-rehabilitation center, a pain-management clinic, and a women's clinic. Other quality improvements designed jointly by labor and management have reduced the waiting time for patient care from 4 hours to 30 minutes.

♦ By jointly designing new work systems and using self-directed work teams, AFGE and management at the Naval Warfare Center in Indiana were able to eliminate 150 mid-level management positions, saving the taxpayers a bundle in the process.

♦ At the U.S Mint, employee-led work teams reinvented work systems and introduced new work procedures to an organization that delivered only 50% of its orders in 8 weeks. Now, as a result of the changes made be the agency's own front-line workers, the Mint ships better than 92% of its orders in only 4 weeks.

These are just some of the ways in which labor-management partnerships have invigorated the federal workplace, investing it with fresh ideas and a new spirit. Partnership is enabling the government to better serve the taxpayer at a lower cost.

And for many employees, the empowerment gained through partnership has made all the difference in the world to their morale and job satisfaction. All employees want a sense of meaning and accomplishment in their work -- the fulfillment that comes from a good job well done. Partnership has offered employees an outlet for their untapped ideas and a vehicle for shaping the quality of their working lives.

An AFGE member who works at the VA medical center in Des Moines captured it best when she said that before partnership and the advent of self-managed work teams, she felt like she worked only for her boss. Now, with the capacity to participate in workplace decisions and really make a difference on the job, she said she feels like she works for veterans, the agency's real customers.

That is why AFGE has set its sights on creating high-performance workplaces that better serve the public and the working men and women we represent. That is why it's been so important for managers, employees, and union leaders to concentrate their efforts on cooperation, not confrontation; on joint problem-solving instead of rights-based disputes, and on creating new work systems that fundamentally alter the way in which work is organized and how workplace decisions are made.

By creating labor-management partnerships and empowering front-line workers, we have taken an important first step toward a truly reinvented government. But we cannot stop here. Reinvention must extend across the government's entire rigid and obsolete human resource systems. To achieve the fundamental changes that are the core of reinvention, the legal structure of the federal civil service must be reshaped to allow for personnel systems that are decentralized, simplified, and deregulated.

At the same time, additional management flexibilities must be balanced with a comprehensive effort to involve employees and their union representatives as workplace partners in the design and implementation of these new human resource systems. In that spirit of partnership, let me present AFGE's recommendations for reforming the federal civil service system.

REVISE AND SIMPLIFY THE FEDERAL CLASSIFICATION SYSTEM

The failure of the centralized civil service system is perhaps seen most clearly in the way government employees are classified. Virtually all federal agencies -- regardless of mission, structure, or size -- are locked into a 15-grade, 10-step classification and salary system. Under this scheme, employees are divided into hundreds of distinct and rigidly defined job categories, and their salary levels are determined by job descriptions written in excruciating detail.

This creaking 45-year-old system bears no relation to the realities of today's government workplace. It is too inflexible,

too complex, and too inefficient. These serious shortcomings make it almost impossible for federal managers to adequately respond to changing organizational needs.

Employees hate the system, too. It shackles them to narrow job classifications that hinder professional growth and stifle creativity. And they don't trust the system: employees frequently complain of pay inequities caused by the system's complexity and the difficulty in accounting for variations in job qualifications. This dinosaur of a system no longer fits the way work is done. It has clearly outlived its usefulness.

To remedy these problems, the NPR has recommended that agencies be allowed to design their own classification systems in accordance with standards developed by the Office of Personnel Management. While we agree that government job classification must move in the direction of decentralization and greater flexibility, employees and their union representatives must be involved in the design of these new classification systems. No other approach is acceptable to us, nor makes any sense.

Changes in the way white-collar jobs are classified and compensated in the federal sector substantially and directly effect the pay and careers of over one and-a-half million employees. It is dangerously naive to think that employees or their unions will support new classification systems or even find them credible if they have no say in how they were designed and implemented. The absence of rank-and-file involvement on such a crucial workplace issue virtually guarantees that many of the system's current

failings, especially its lack of credibility, will live on.

There is no question that the introduction of flexibility in the way work is classified is essential to a reinvented government organized around high-performance principles. The most effective way to accomplish this objective is to permit labor and management to work together as partners to design and implement innovative new systems.

At the same time, we are mindful of the challenges presented by any attempt to revamp an enormous, complex system that has functioned close to 50 years without a major overhaul. For this reason, AFGE is recommending that classification reform be carried out through a series of demonstration projects. These projects should not be limited in number, nor should there be any limit on the number of employees who may be covered by a particular project. Through the use of expanded demonstration projects, cutting edge innovations like broadbanding, pay banding, and pay-for-knowledge could be widely explored on an experimental basis, but in appropriate settings and at an appropriate pace.

CHANGE THE PERFORMANCE MANAGEMENT AND REWARDS SYSTEMS

The NPR called for a thorough overhaul of the government's performance management and rewards system. We agree.

The current system has been saddled with an inflexible, one-size-fits all approach that is unresponsive to the needs of diverse federal agencies. Perhaps reflecting a culture that values individualism and individual achievement, the system also has

placed far too much emphasis on individual performance at the expense of group and organizational success.

And maybe most damaging of all, the very employees whose performance the system purports to measure have been given no meaningful role in the system's design. With no stake or ownership in the system, employees have no real confidence in its fairness or effectiveness.

We believe that true innovation in performance management lies in the move toward a high-performance workplace that emphasizes employee involvement, group measures of success, flexibility, and decentralization. This means that employees and their union representatives must be free to bargain collectively with management over the design and implementation of performance management programs, including award programs. Joint labor-management design will enhance a new system's credibility and increase the chances for a successful, effective program of performance management.

In this context we also strongly advocate the joint development of productivity gainsharing programs. Under gainsharing, employees and agencies share in the productivity gains of the organization. As a team-based system, gainsharing ties rewards to organizational success and mission achievement rather than individual goals. It's like a football coach setting the Super Bowl championship instead of the Most Valuable Player award as each player's goal. AFGE is strongly in favor of legislative

changes which would enable each agency to develop a gainsharing system jointly with its workplace partners.

While I'm on the subject of performance management, let me say a few words about poor performers. Over the past several months I've heard an awful lot of discussion about this issue, much of it complete nonsense. Let me try and sum up AFGE's position on this matter as clearly and briefly as I can: if there are federal employees out there who can't perform their jobs, then the federal government ought to get rid of them.

For close to 20 years federal agency managers have had the easiest legal standard for firing poor performers they could ever wish for. Under Chapter 43 of the Civil Service Reform Act, employees can be removed for unsatisfactory performance by mere substantial evidence -- little more than a supervisor's coherent statement that the employee doesn't meet performance expectations. This standard is less than a preponderance of the evidence, and allows employees to be fired even if a reasonable person could disagree with the agency's evidence.

The Civil Service Reform Act in general and the substantial evidence standard in particular were crafted specifically to give federal managers more flexibility in this area and make it easier for them to get rid of the poor performer. These managers need to stop whining about how hard it is to get rid of the poor performer, they need to stop making excuses, they need to just do it. Where poor performers are allowed to remain on the job, it's not because of the law, or the unions, or civil service rules. It's because of

timid or incompetent managers who either will not or can not root them out. If there is a performance problem here, it's a problem of management performance.

If we are really serious about this issue, one of the areas we should be looking at more closely is the length of time it takes for the appeal of a performance-based removal to wind its way through the administrative and judicial thickets. It seems to me that an employee whose removal case was heard by an arbitrator or the Merit Systems Protection Board has received a full and fair hearing consistent with due process rights. At that point, I can see no reason to needlessly prolong matters by allowing yet another bite at the apple through an appeal into the federal courts.

Apart from this common-sense suggestion for speeding up the appeal process for performance cases, I continue to see the preoccupation with the poor performer as a serious distraction from the real problems at hand. The government has spent the past 17 years devoting precious time and resources to the infinitesimal number of poor performers, when we should concentrate instead on motivating and energizing the hardworking men and women who make up the vast majority of the government workplace. In fact, one of the great failures of the current performance management system is its emphasis on preventing bad performance instead of producing quality results.

The Government Performance and Results Act is a good start in a new direction, with its focus on strategic planning and long-term goals. The critical piece in all this, however, and one that is

supported by the NPR, is the involvement of employees and their unions in helping to design individual employee performance expectations that are tied to measurable results and outcomes, thereby linking an employee's performance to that of the agency. This would not only give employees a clearer understanding of what is needed to help accomplish the agency's mission, it would also give managers -- perhaps for the first time -- a truly effective tool for weeding out the good performer from the bad.

ELIMINATE LEGAL BARRIERS TO LABOR-MANAGEMENT PARTNERSHIPS

The emergence of labor-management partnership has been an important catalyst for change in the federal government. By drawing a clear connection between partnership and the larger goal of a reinvented government, President Clinton has invested labor and management with a renewed sense of purpose. Partnership has created new measures of success for labor and management and forced them to reexamine traditional attitudes and ideas.

Perhaps most important of all, partnership has charged labor and management with the shared responsibility for creating high-performance government organizations and making government more responsive to the needs of American citizens. We are convinced that partnership is the bridge to the government workplace of the 21st century.

But that bridge is a work in progress. To ensure a strong foundation that will stand the test of time, we need to remove the legal barriers to partnership that exist under the current Labor-

Management Relations Statute. Foremost among these is a collective bargaining system that is incompatible with high-performance human resource practices that emphasize employee involvement in workplace decisions and cooperation between labor and management.

Under the current labor relations system, important workplace issues are often reserved to management's unilateral discretion by the "management rights" provisions of the labor law. In the past, this broad prohibition has prevented the parties from bargaining to agreement on the training of employees, the creation of health and safety committees, the establishment of career development programs, and the simple requirement that performance evaluations be fair and objective.

Rather than encouraging discussion on the issues of most concern to management and employees alike, the labor statute draws the parties into a fruitless debate over whether management is allowed to have the discussion at all. This rights-based bargaining system has been a breeding ground for disputes and litigation, which in turn channels precious government dollars into already overburdened administrative agencies and federal courts.

While it is undeniable that the President's Executive Order on partnership has done much to turn this adversarial system around, the strides we've made toward labor-management partnership and shared decisionmaking could be jeopardized over time by a statutory scheme that emphasizes unilateral management prerogatives. A reinvigoration of the federal civil service necessarily entails a partnership with federal employees and their elected unions.

If that partnership is to flourish, the requirements of Executive Order 12871 must be codified in law. At the same time, the restrictions on bargaining imposed by the management rights clause must be eliminated so the parties can work more closely than ever before on improving productivity, increasing efficiency, and producing a more customer-oriented government.

Now it may surprise some of you to hear a union leader talk about labor-management partnership and expanded bargaining opportunities as a vehicle for productivity, efficiency, and better government. These goals have traditionally been seen as the exclusive province of management and managers. But that outdated attitude is precisely what AFGE has been fighting so hard to overcome these past three years.

As federal employees, as American citizens, and as taxpayers, AFGE members want a better, more effective government. Our members are as frustrated as anyone else when government just doesn't work. The chance to influence and shape the design of government reform is in our interest as unionists, to be sure, but also as citizens who are important stakeholders in the enterprise of government. That is why we do not see revisions to the labor law as a zero-sum game where expanded opportunities for employee and union involvement come at the expense of management authority. We see it instead as a win-win situation: a win for government and a win for the American people.

Now I am not going to sit here and pretend that the issue of expanded bargaining opportunities has not left some folks seeing red in the past. If that's true, they need to clear their eyes and see how the world around them has changed. Discussions about expanded bargaining have mostly taken place at a time in the past when labor and management viewed each other warily across a chasm of distrust and conflict. But that adversarial climate is changing rapidly and widely across government. The parties are no longer viewing collective bargaining as an "I win, you lose" exercise in power. Instead, they are using partnership and negotiations as a basis for finding mutual goals and interests to better serve the agency, its customers, and the American people.

That is why AFGE, the Department of Defense, the Office of Personnel Management, the Federal Labor Relations Authority, and the other unions and agencies who make up the National Partnership Council have strongly endorsed the introduction of new substantive standard for negotiations called the "good government standard."

This standard would supplement the current obligation to bargain in good faith, which is a procedural standard unrelated to the quality of the ultimate collective bargaining agreement. Under the good government standard, the parties would be required to bargain with the goal of promoting increased quality and productivity, customer service, efficiency, quality of worklife, and other commonly-accepted components of good government. In this way, the standard would establish a benchmark for measuring whether the results of collective bargaining are helping to foster the

high-performance, mission-oriented workplace sought by labor and management alike.

This standard would fundamentally alter the nature of collective bargaining. For the first time in this country, a collective bargaining statute would commit labor and management to the principles that are necessary to establish a high quality work organization. The empty debate over whether management or the union should have the "right" to talk about a matter at the bargaining table would be replaced with meaningful discussions about how to improve government performance. If tied to expanded bargaining opportunities and the codification of the Executive Order, the introduction of this standard would dramatically improve the capacity of both parties to create a government that works better and costs less.

PROVIDE FOR TRAINING AND EMPLOYEE SKILL DEVELOPMENT

High-performance organizations in the private sector invest heavily in training and continuous learning. The federal government can afford to do no less for its employees. The most important asset of any organization is its workforce. Training and skill-development must be viewed as a strategic investment in higher quality and productivity, not as a cost to be controlled.

Unfortunately, training activities are among the areas hardest hit in these tight budgetary times. And even where training dollars still exist, they are often concentrated on mid-to-upper level managers, virtually ignoring front-line employees.

Ironically, some of the increased costs of government can be directly attributed to an undertrained workforce.

Federal agencies must receive sufficient funding to turn this training deficit around. The need for adequate training will become even more important as the government eliminates layers of management and front-line workers take on more responsibility for quality and customer service. With the increasing popularity of work teams, employees will also need training in such non-traditional areas as team-building, problem-solving, and conflict-resolution, in addition to the technical skills they will need to get the job done. We urge an investment in training commensurate with the significant challenges ahead for the federal workforce.

CONCLUSION

Mr. Chairman, AFGE believes that our recommendations for reform are this government's best hope for avoiding the failures of the past and meeting the needs of the future. In many ways, the federal government is at the same crossroads where many American businesses stood 15 or 20 years ago, struggling to remain competitive in a rapidly changing world. While the challenge we face is not one for lost market share, it is something just as difficult: to end the long cycle of public distrust and restore the confidence of the American people in the effectiveness and quality of their national government.

No one has a greater stake in the outcome of this struggle than federal workers. AFGE members simply cannot imagine a

continuation of the discredited systems and tired ideas that prevail under the current civil service framework. For the 700,000 men and women that AFGE represents, the quality and future of their working lives hang in the balance. Clearly, it is past time for fundamental change in the management of the federal service.

The cornerstone of this change must be the involvement of employees and their unions in a partnership with management. Only through partnership can we create the skilled and flexible workforce that is the key to efficiency and productivity. Only through partnership can we hope to bring about the innovation and bottom-line results necessary to realize the goal of a better, more responsive government.

At AFGE, we are working to make the vision for better government a reality. We are dedicated to an agenda for change that is based on union values but aligned with goals developed jointly with management. No longer will it be enough for AFGE or any other union to simply oppose or criticize workplace decisions from the outside looking in. Unions and union leaders must be willing to offer their own ideas for improving government performance.

At AFGE we have accepted that challenge. We believe that labor and management have a mutual interest in the success of government and a shared responsibility to work for that success. We are not afraid of change. Our members are proud of public service, and they are committed to working with this Congress and this Administration to bring about the changes that are needed to

build a government the American people can point to with the same sense of pride.

Mr. Chairman, let me conclude with a final comment. For the first time in a generation, we have a real opportunity for meaningful and lasting reform of the federal government. But this opportunity may be squandered if downsizing, privatization, contracting-out, and pay and benefit cuts become the defining reality of "reform" for government workers.

The changes contemplated by the National Performance Review and others will require workers to do more with less. This will demand a renewed commitment by the workforce to the cause of public service. I'm afraid that most workers will be reluctant to make such a commitment if they can no longer afford basic health care for their families, or if their salaries fall even further behind their private sector counterparts, or if they see successful government programs sacrificed at the altar of a destructive anti-government ideology. We urge this Congress to stop eating away at this government's most precious asset, its workers.

That concludes my testimony. I would be happy to answer any questions the Members of the Subcommittee may have about the recommendations I've made here today.

Mr. MICA. Without objection, your entire statement will be made part of the record. We thank you.

I turn now to Ms. Bonosaro.

Ms. BONOSARO. The Senior Executives Association also appreciates the opportunity to testify and is particularly pleased, Mr. Chairman, that you have scheduled a long overdue review of the Civil Service Reform Act.

I will address first the administration's bill for civil service reform, because the association is extremely concerned regarding the proposal to reorganize OPM and the resulting possibility of that agency not being able to carry out its statutory responsibilities. Most personnel authorities would be delegated directly to the agencies, yet, in view of downsizing, cuts in middle management and personnel functions, and other agency reductions, we are not entirely confident that agencies will be able to adequately carry out these new responsibilities.

Further, there must be adequate oversight, which may not be able to be provided by OPM, to ensure that this delegation does not result in personnel systems which differ so markedly that concerns will arise regarding even-handed operation of the merit system itself.

Further, the legislation proposes to codify the provisions of the Executive order which established the National Partnership Council and expanded bargaining rights of Federal labor unions. SEA does support labor-management partnerships; however, we do not support the grant to unions of additional bargaining rights which essentially would give them veto power over many decisions which we believe are appropriately those of management, especially those dealing with the right to assign work or to determine the technology for performing work.

Further, if unions and management do not agree on any of the many issues which are made subject to bargaining, then the authority to make binding determinations is turned over to arbitrators. We oppose decisions which are properly management's being statutorily ceded to arbitrators who have no responsibility for acting in the public interest or answering to the citizenry.

Another inappropriate proposal would allow labor organizations to bargain performance standards for individual employees. We do not object to agencies working with unions to establish performance management systems, however.

Many of the other proposals put forth by the administration are worth consideration by Congress, with the few exceptions that I have noted in my written statement regarding performance and conduct actions. We believe the real problem preventing agencies from taking performance actions is the ability of employees, in many cases, to thwart such actions by filing complaints against their supervisors and managers with numerous agencies.

Often the result is that the agency will settle with a poor performing employee rather than devote the time and resources necessary to respond to a barrage of charges. Unless this multiplicity of processes is circumscribed in some sensible, fair way, managers will seldom make the effort to deal with poorly performing employees, and when they do, they often will not succeed.

SEA has conducted a survey of its career executive membership regarding this problem and will be pleased to provide the survey results to you at the hearing scheduled on this topic.

I would like to proceed to several concerns regarding the Senior Executive Service. Since its establishment in 1978, Congress has adopted several modifications to the act, most, but not all, needed and beneficial. Although the basic structure of the SES remains in place, there has been a tendency to whittle away at the underlying SES premise of greater risk for greater reward, without any consideration of the overall structure or its rationale.

For example, the ability of senior executives to carry an unlimited amount of annual leave over has been restricted by Congress. The administration denied the January 1995 comparability pay adjustment given to GS employees these executives supervise. Some agencies have given no bonuses to senior executives in recent years. Few sabbaticals have been granted, and little effort has been made to promote voluntary mobility.

Many times proposals are made to provide the same treatment for the SES as for General Schedule employees when it would result in the SES losing a benefit, while at other times different treatment is proposed or provided in order to avoid a gain for the SES. The SES is unlike the General Schedule and should not be compared to it, given substantial differences in responsibilities, job protection, pay-setting, appointment process, access to credit hours and compensatory time, and more.

While we make no specific legislative proposals in this regard, we ask the subcommittee to be vigilant regarding attacks on specific provisions of the SES system in the absence of consideration of the whole system.

We do believe it is important, however, that you consider establishing a board composed with a career executive majority and charged with responsibility for active oversight of the career SES governmentwide. We recommend that the SES be divided into a career executive service, over which the board would exercise oversight, and a political executive service, composed of the current noncareer executive cadre. The establishment of such an oversight system would include the creation of an SES director-general position in each agency, the responsibilities of which have been spelled out in my written statement.

I would like to end, if I may, with two other recommendations: One, we recommended that a headhunter system be established in the Office of Personnel Management, which would, of necessity, require some funding initially, but which we believe could become self-sustaining, since agencies would pay a fee to recruit through the program. We think it would begin to change the paradigm for SES entry, advancement, and mobility.

We are also concerned that you consider two pay proposals that we have recommended. The first would set ES–1 pay at 110 percent of GS–15–10, in place of the current 120 percent of GS–15–1. Only in that way can we ensure that we will not be in a position where there is pay overlap between the General Schedule and the Executive Service, pay overlap which causes agencies to bring people in at a higher pay grade or pay rate than they would otherwise.

Second, we are concerned that you consider a provision to guarantee that career executives and their equivalents receive all comparability and locality pay adjustments granted the General Schedule.

I will be pleased to respond to your questions.

[The prepared statement of Ms. Bonosaro follows:]

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TESTIMONY OF

CAROL A. BONOSARO

PRESIDENT

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

ON

THE CIVIL SERVICE REFORM ACT OF 1978

OCTOBER 13, 1995

The Senior Executives Association (SEA) appreciates the opportunity to testify on the important question of civil service reform and commends Chairman Mica for scheduling this hearing for a long-overdue review of the Civil Service Reform Act of 1978. Our testimony will address, first, several of the proposals put forth in the Administration's proposed Federal Human Resource Management Reinvention Act which are of major concern to the Association and, second, several issues of particular concern with regard to the Senior Executive Service.

Administration's Civil Service Reform Proposal

SEA is extremely concerned regarding the proposal to reorganize the Office of Personnel Management (OPM) and the resulting possibility of the agency not being able to carry out its statutory responsibilities. OPM proposes to delegate most personnel authorities directly to government agencies. In view of downsizing, staff cuts (especially in middle-management and personnel functions), and other reductions at government agencies, we have no confidence that agencies will be able to adequately carry out their newly-delegated responsibilities. In addition, as with all "empowerment" of agencies with new authorities, there must be adequate oversight. OPM is but a shadow of its former self, and further staff reductions threaten to make matters worse. Finally, without adequate oversight, the delegation may result in personnel systems which differ so markedly from agency to agency that the ability of employees to apply and be considered for positions in other agencies will be inhibited and even greater concerns than now exist will arise regarding even-handed treatment of Federal employees and of implementation of the merit system

itself. For these reasons, we have grave concerns about many of the proposed delegations of authority to agencies, and the further realignment of OPM as proposed by the legislation.

Further, the legislation proposes to codify the provisions of Executive Order 12871, issued by President Clinton, which established the National Partnership Council and expanded the bargaining rights of Federal labor unions. SEA generally supports the labor/management partnerships which have been established, and, in some agencies, these partnerships are promoting greater and more beneficial cooperation between labor and management. However, we do not support the grant to labor unions of additional bargaining rights which essentially give them veto power over many decisions which we believe are appropriately those of management, especially those dealing with the right to assign work or to determine the technology for performing work. In this period of partnership, such matters may not be considered crucial, but if labor-management strife should arise, the retention of management rights would prove very important. If the unions and management do not agree on any of the many issues which are made subject to bargaining by the Executive Order, then the authority to make binding determinations would be turned over to arbitrators. We strenuously oppose decisions which are properly management's being ceded to arbitrators who have no responsibility for acting in the public interest or answering to the citizens of this nation.

Likewise, we object to a codification of the National Partnership Council created by the Executive Order. We believe that continuation of the Executive Order in this transition period is appropriate, although we object to expansion of subjects of bargaining, as noted above.

We do not feel strongly about many of the other proposals put forth by the Administration. For example, it appears, on balance, that pay-banding proposals, increasing the number of demonstration projects, and even establishing non-reimbursable details as "try-outs" with other agencies for employees who are facing separation under a RIF are all worth consideration by Congress. We also believe that, in some circumstances, making non-permanent appointments for up to five years might be acceptable, but we are unsure what limitations are prohibiting agencies from making such appointments at present. In addition, we agree that employees with non-permanent appointments should be eligible for federal benefits after one year of service, which is also proposed.

We do not believe that the proposal to consolidate all performance and conduct actions under Chapter 75 is acceptable unless the present legal standard in performance cases of "substantial evidence" is retained, along with the prohibition on the Merit Systems Protection Board mitigating penalties. The proposal to reduce the written notice period in performance cases to 15 days and to allow agencies to reduce the pay of poor performers by 25% are bad ideas in SEA's view. The fact is that the real problem preventing agencies from taking performance actions is the ability of employees to thwart such actions by filing complaints against their supervisors and managers with numerous agencies.

For example, it is not unusual for poorly performing employees to try to protect themselves and their jobs by making anonymous (and often false) allegations against their supervisors with their agency's Inspector General or the GAO hotline and, thereafter, making allegations to the Office of Special Counsel that they are being retaliated against as

whistleblowers because they made the IG or GAO "disclosures"; filing EEO complaints against their supervisors about every possible matter (with disability discrimination most often alleged); filing grievances about numerous matters under the agency's grievance procedure or the union contract; and finally, filing Unfair Labor Practices charges with the Federal Labor Relations Authority charging that the real reason the managers are trying to deal with their poor performance is because they are active in their unions. Often, the result is that the agency will settle with a poorly performing employee, often making cash payments to them with the taxpayers' dollars, rather than devote the time and resources necessary to respond to such a barrage of charges.

Unless this multiplicity of processes and the ability to make false accusations against managers and supervisors are curtailed, managers will seldom make the effort to deal with poorly performing employees. As is now the case, they will continue to know that the pain they will suffer personally is much greater than the result they might achieve on behalf of their agencies or the taxpayers.

Last month, SES conducted a survey of its career executive membership regarding the problem of poor performers and is currently compiling the many responses we have received. We understand that the Subcommittee has scheduled a hearing devoted solely to this topic, and we will be pleased to provide the results of this survey to you at that time.

One further proposal which we believe is inappropriate would allow labor organizations to bargain performance standards for individual employees with their agencies. We oppose this proposal because it could

result in union and employees stonewalling management's ability to set performance standards which require the employee to meet the agency's goals and perform in a manner consistent with responsive, efficient service to the public. We do not object to agencies working with unions to establish performance management systems, because such systems can have adverse or positive generic impact on groups of employees.

The Senior Executive Service

I will now proceed to specific concerns regarding the Senior Executive Service. The SES, as you know, was established by the Civil Service Reform Act of 1978. Since that time, Congress has adopted several modifications to the Act. Many of these changes, but not all, have been needed and beneficial. Although the basic structure of the SES has remained in place, there has been a tendency to attempt to whittle away at the underlying SES premise of "greater risk for greater reward" without any consideration of the overall structure or its rationale.

The Senior Executive Service was carefully crafted as a system of increased risk for increased rewards, unlike the General Schedule. When super-grade employees converted to the SES in 1979 (as is true for entering GS/GM 15's today), they gave up substantial job protections and rights in exchange for a series of "rewards," both actual and potential. These "reward" provisions included a bonus system, the Presidential Rank Awards, sabbaticals, and the right to retain annual leave without a ceiling. The curtailment of job protection is perhaps best illustrated by the lack of any effective appeal right for a determination of removal for unsatisfactory performance. In addition, however, they also gave up the

right to be promoted in grade and pay if moved to a higher level SES position, and an appeal right if moved to a lower level SES position.

The ability of Senior Executives to carryover an unlimited amount of annual leave has been restricted by Congress; the Administration denied the January 1995 national comparability pay adjustment given to the General Schedule employees these executives supervise; some agencies have given no bonuses to Senior Executives in recent years; few sabbaticals have been granted Senior Executives during the life of the Service; and little effort has been made to promote voluntary mobility. Thus, we have seen a history of broken promises and some unraveling of the system itself. Many times, both the Congress and the Administration have proposed, or have provided, the same treatment for the SES as for General Schedule employees when it would result in the loss of a benefit (e.g., annual leave carryover), but have proposed or have provided different treatment for the SES than for GS employees when it would result in a gain (e.g., the national comparability pay adjustment in January 1995).

Yet, the Senior Executive Service is unlike the General Schedule and should not be compared to it. It is true that, in comparison to the General Schedule, the SES does enjoy different rewards, including the annual leave benefit. However, the SES, as noted earlier, enjoys considerably fewer job protections. Further, the SES has no right to, and does not, earn credit hours, compensatory time or overtime, as do GS employees, nor do they earn annual within-grade pay increases which can amount to as much as 3% a year, as do GS employees.

Ultimately, the question can properly be raised, is it not right and fair to consider returning job protections to Senior Executives and returning to a system closer to the GS system with its annual step increases, job protections and multiple appeal systems for every grievance? This existed before and substantially impaired the ability of "management" to exercise flexibility in managing the career executive cadre. But, if SES members must give up many of their rights and benefits, while "management" still retains flexibility, what is the objective of retaining the SES system but to benefit "management?"

While SEA does not believe we have yet arrived at that point and makes no specific legislative proposals in this regard, we urge the Subcommittee to be vigilant regarding attacks on specific provisions of the SES system in an absence of consideration of the whole system.

SES Oversight Board

SEA does believe, however, that it is important that Congress establish a board charged with responsibility for oversight of the career SES government-wide and composed with a career executive majority. Further, we recommend that the SES be divided into a Career Executive Service (CES), over which the Board should exercise oversight, and a Political Executive Service (PES), composed of the 10% current non-career executive cadre. Finally, the establishment of such an oversight system should include creation of an SES Director General position in each agency.

Such a Board should have full responsibility for active oversight of the corps and planning for its future management. The Board's role should encompass, for example:

(1) oversight of agency management (or Directors General management) of the SES;

(2) encouraging succession planning throughout the Executive Branch;

(3) promoting voluntary mobility;

(4) identifying emerging concerns and developing appropriate policies;

(5) promoting continuing professional development;

(6) developing frameworks for advancement in rank, including a requirement for periodic consideration of each executive for advancement; and

(7) ensuring that adequate personnel data are available on a timely basis for intelligent "corporate" planning.

The SES Director General position established for each agency should be a career-reserved SES position with responsibilities for:

(1) ensuring that the Executive Resources Board (which the Director General would chair) actually operated as envisioned by statute and regulation;

(2) ensuring that Performance Review Boards function properly, e.g., evaluations are timely and accurate, and non-performing executives are removed;

(3) ensuring that executives have and fulfill career development plans; and

(4) ensuring that a truly effective candidate development program is crafted and in place to ensure that qualified replacements are available when career executives retire or resign.

SEA believes that a system which includes a Board and agency SES Directors General will better ensure that the promise of a high quality, high performing, mobile, responsive corps can be met. This objective is especially critical as government faces a multiplicity of challenges today, challenges which career executives, in particular, must meet as their agencies are downsized and "reinvented." We would be pleased to provide further specifics if the Subcommittee wishes.

SES Voluntary Mobility

The promise of the original concept of the Senior Executive Service, at least in part, as a highly mobile corps of generalist executives has clearly not been met. Relatively few executives transfer to other assignments within their agencies each year, and even fewer to other agencies. For example, 10% of the corps was reassigned within an agency in 1993 (this number includes those whose job titles changed due to reorganization), and only .4% transferred to other agencies in that year. 94% of career SESers have served in only one agency while in the SES.

SEA supports voluntary mobility because it can provide opportunities for career advancement, as well as revitalization, but a variety of factors have conspired to limit movement between, as well as within, agencies. They include 1) executive distrust of agency efforts made to reinforce mobility due to earlier negative experiences with such efforts, 2) the difficulty of establishing increased mobility opportunities in agencies without a clear history of utilization of mobility as a path to advancement, 3) a lack of clarity regarding the relationship of pay and rank to position, 4) the nature of the corps itself, with a high number of retirement-eligible executives and a high level of specialization, 5) agency actions which discourage interagency transfers with highly specialized qualifications requirements and distrust of the quality of executives applying for positions from other agencies, and 6) the need to provide entry opportunities into the SES for GS\GM 15's currently employed in the agencies.

Most important, however, is that few, if any, resources exist to enable those executives who wish to transfer to do so or to assist those agencies with critical executive vacancies to fill them. Thus, we recommend the establishment of a "headhunter" program within OPM. It would, of necessity, require funding for a few staff positions in the early trial period, but would become self-sustaining quickly if properly handled.

This group could respond to reports from agencies of vacancies and qualification requirements, scanning the universe of qualified SES or GS-15 candidates or even searching outside the government. They would provide a pre-screened list of the best 3-5 qualified individuals available for each position, initially contacting these individuals, determining their availability and interviewing them. The agency could then conduct further interviews and make its selection, having the option of negotiating pay, relocation benefits, and reassignment bonuses in order to attract and compete for the individual of their choosing.

Agencies which successfully recruit through the headhunter program would pay a fee to the OPM headhunter group similar to the private sector, which generally is a percentage of salary. Eventually, of course, the group could operate on a revolving fund basis. The agencies utilizing the program would be paying a fee for the headhunter program and, thus, would require value for their expenditures. The headhunter group would be challenged to find the best for that agency, because they were being paid to do so.

The entire SES corps would be energized, and their morale and esprit de corps would increase because they would know that there was a functioning mechanism to identify high-performing executives and promote mobility and career advancement for them. And the public perception would be that these recruited executives were the best available. They would know that the government had used a well-recognized private sector method in order to ensure that top government executive positions were filled with the best available.

By changing the paradigm for SES entry, advancement and mobility, we will have created a pool of talent constantly being evaluated to identify those who are best, so that they can be identified and recruited for other top level jobs in the government. Agencies will recognize that they are getting the best every time they have a vacancy and, in order to retain their best executives, will be much more attentive to the management of their existing executive resources.

SES Pay

Over the years, the career executive corps has often been denied a pay adjustment due to the link with Executive Level IV (SES pay is capped at Executive Level IV for comparability adjustments and at EL III for locality adjustments). Supergrade pay was capped from 1975 to 1978, and SES pay was capped for the first four years of the new system. Furthermore, there was no annual pay adjustment for SES employees at the ES-4 level and above for several years during the 1980's, and SES pay experienced a marked decline relative to inflation and GS pay during this period. In contrast, General Schedule employees received regular pay increases in the 1970's and 1980's.

The question of annual pay adjustments for the executive corps is almost inevitably caught in the crossfire of congressional salary debates, unlike most rank and file employees who typically receive pay adjustments with little public debate. Thus, we began the downward spiral in the 70's and 80's which resulted in the need for the major pay adjustment of 1991. We have begun this process again with the denial of the January '95 comparability adjustment to the SES corps, and the Administration's

indication to us that they are seriously considering denying career executives the increase scheduled for GS employees in January 1996.

At the same time, it is important to note that the gap between compensation of federal career executives and their private sector counterparts is substantial and has grown wider in the last two years. SEA contracted with the Hay Group in both 1993 and 1994 to conduct a study comparing compensation of SES positions with that of comparable positions in private industry. A sample of SES positions (benchmarks) were selected (across a range of agencies, SES pay rates, and functions) from Hay's data bases of SES evaluated positions. Using Hay job content points as a common denominator, these SES positions were compared to positions which Hay has evaluated in a wide variety of industrial organizations and service industries, as well as in some nonprofit organizations and local governments.

The 1994 study revealed that SES total cash compensation ranged from 47% to 74% of that of average industry total cash compensation for jobs of the same difficulty. Thus, SES total cash compensation for these positions would have had to be increased by from 35% to 114% to attain comparability with private industry in that year. These data demonstrate the breadth of the pay gap with private industry (which grows wider as one ascends the General Schedule and reaches its peak in the SES).

When pay adjustments accorded GS employees are denied to SES members and their equivalents, no good reason has been advanced for the decision. SES members and their equivalents are no less affected than other employees by either the disparity between public sector and private sector pay or the high cost-of-living in particular localities. The executive

corps does not seek special treatment, but neither do they deserve to be penalized for having competed for and reached positions at the top of their profession.

Withholding pay adjustments from the SES has resulted in pay compression such that GS 15 pay is coming dangerously close to overlapping SES pay. Such pay compression inhibits recruitment of new entrants into the SES (or requires that candidates be offered higher entry SES pay rates than otherwise indicated) and negatively impacts retention of current executives. Currently, for example, members of the FBI and DEA Senior Executive Service have been especially hard hit by failure to apply both the comparability and locality adjustments to the executive corps. This is true because other adjustments provided to GS-15's in those agencies resulted in an especially pronounced pay overlap with their SES members.

SEA urges the Subcommittee to consider legislation which would 1) set ES-1 pay at 110% of GS 15-10, in place of the current 120% of GS 15-1 and 2) guarantee that career Senior Executives and their equivalents receive all comparability and locality pay adjustments granted the General Schedule. The first provision would ensure that no pay overlap could occur between the General Schedule and the SES, and the second provision would ensure that these executives were never denied pay adjustments provided to those they supervise. We believe these proposals are sound, although we recognize that compression within the SES (due to the statutory ceiling) may well become a problem and will only be relieved by pay adjustments are permitted at Executive Levels III and IV.

I would be pleased to respond to any questions the Subcommittee might have.

Mr. MICA. Thank you for your testimony.

I have a couple of questions. First of all, Mr. Tobias and Mr. Sturdivant, you represent a good number of Federal employees, and we heard Mr. Niskanen mention in his remarks that one of the major threats to the merit system is 180 race and gender preferences that have been established. How do you feel about this? Is it time to eliminate them?

Mr. TOBIAS. I don't think it's time necessarily to eliminate them. I think some of them will be eliminated as a result of the study that, as I understand it, is underway to make sure that whatever is in existence is consistent with the recent Supreme Court ruling. Some of them necessarily will go away.

But I think that labeling these, at least the ones with which I am familiar and the ones with which we deal, as preferences is not necessarily accurate. I believe that the work that we have done works to expand the pool of applicants, works to provide training and development to those who might not otherwise receive it, and makes them competitive in the workplace market. So I think that those efforts ought to be continued, to ensure that indeed we do have a work force which leads to better decisionmaking.

If we are going to include employees as part of creating new work processes and procedures and we are going to make them part of the decisionmaking process, it seems to me that the more viewpoints, the more background, the more skills that we bring to the table, the better we will be.

Mr. MICA. Mr. Sturdivant.

Mr. STURDIVANT. I think it's pretty naive for people to think that we don't continue to have discrimination in this country and for people to believe that we don't continue to have discrimination in the workplace, including the Federal workplace. We don't support reverse discrimination, but we certainly support continued efforts to make sure that the individuals who are responsible for carrying out the policies of this country look like this country and that there is a broad diversity in the Federal work force. We continue to support that.

Mr. MICA. Well, just by way of comment, I noticed in some of the testimony—I'm not sure if you submitted it, Mr. Niskanen—but the Federal work force doesn't appear to be reflective anymore of the populace at large. It appears that all these preferences are now creating an artificial support system and representation and employment base. Again, according to some of the statistics that I saw in some of the testimony for today.

Mr. STURDIVANT. Well, I would invite you to perhaps visit an AFGE convention, which is pretty reflective of the work force that we draw from, and I will guarantee you that you will see a closer reflection to what this country looks like than any other organization that I have looked at, either on TV or anywhere else in this country. So I would say that the Federal Government has done a good job in moving in that direction, but it is not finished yet.

Mr. MICA. Maybe you would like to comment, Mr. Niskanen.

Mr. NISKANEN. I have not seen the data on the representativeness of the Federal work force, but I suggest that that is an inappropriate standard. We ought to be hiring the people who are likely to be best for the job and to promote those who, in fact, perform

best in the job. And I see no particular reason why the Federal work force should look more like the American people than any other institution in American life. It should be those people who do the best job in the Federal Government.

Now, I do want to make a distinction between preferences given on the basis of status, which I think is fundamentally wrong, and what I describe as an "aggressive policy of nondiscrimination."

Several decades ago, the U.S. military embarked on a policy of judging all male soldiers by the same standard, making sure that everybody had the right to be judged by the same standard, and second, making sure that the standards were relevant to the job. Those are the two tests that led the American military to be an absolutely first-rate military force and one that takes advantage of all the skills and abilities and energies of everybody in the United States.

Now, that's a quite different policy than a policy of race and gender preferences. It is also a policy that is much more consistent with statutory civil rights language. The 1964 Civil Rights Act was sold by both Senator Humphrey and Senator Dirksen as being an absolutely color-blind act. And that was the policy that was broadly shared; those were the values that were broadly shared at the time. I think that we have suffered from departing from those policies.

Mr. STURDIVANT. I don't want to get into a back-and-forth here, because I don't know that it would be very productive. But I would say that I would question the caveat that you can't have a work force, certainly a Federal work force, which is responsible for serving all of the citizens of this country, that not only looks like its citizens but also has the best people.

Mr. NISKANEN. That may turn out to be an outcome of a nondiscriminatory policy, and well and good. I think it should not be the standard by which people are recruited and promoted.

Mr. MICA. Well, I just wanted to raise this issue.

Mr. STURDIVANT. You did a good job of it.

Mr. MICA. Some points were made by Mr. Niskanen that I thought should be aired, and I'm going to now stir up the pot with Ms. Bonosaro. You heard Mr. Dunlop testify about the need to get some of the SES out in the field, and I believe the figures we had were 3,600 in Washington and 2,400 outside of Washington. What is your feeling about this ratio and recommendation?

Ms. BONOSARO. Well, the last time I looked—I'm not familiar with the precise numbers you cited—but the last time I looked, the ratio ran something like one-third in the field; two-thirds in Washington. A good number of executives have had, as a routine in their careers, mobility, because some agencies have a tradition of that; the IRS, for example. You understand when you enter that the way you are going to move up is to move around. I think they do that very effectively, in terms of their career development.

We are interested in promoting mobility opportunities, particularly voluntary ones. Whether there is a specific need to have more people, you know, in Hoboken or Kansas City than there is in Washington, I think is obviously a slightly different issue. But the general issue of mobility itself is one that concerns us. I think, if we're going to do that, however, it would be wise to go back and

review again whether, in fact, there are impediments to moving people.

When our friend, Mr. Dunlop, cites executives who don't want to go, clearly there are some obvious reasons, if your family is settled, you have children in school. But beyond that, even though the Congress has adopted better moving cost reimbursement legislation, there are still problems that remain in that area, and I think we're going to have to look at it. But I think that is, to a large degree, a policy decision as to where we best put our people and how we deploy them best.

Mr. MICA. He also creates a dilemma for you, because he recommends you get them out in the field and then abolish the regional offices. So you're getting awfully close to the soil out there.

Ms. BONOSARO. And then also decide whether or not you're going to grant them the locality pay increases everyone else is getting in that area. That's another matter.

Mr. MICA. We haven't gotten into locality pay, but come back for that hearing.

Mr. Niskanen, just one final question: How would you recommend addressing the $1.6-trillion liability that you identified as an unfunded liability of some of our current pension program?

Mr. NISKANEN. Well, those are promises that are already made, Mr. Mica, and I think we are obligated to meet those promises. My suggestion is that we change the structure of Federal pension benefits for new entrants to the Federal work force in both the military and in the civil service work force. I think, ultimately, we will want to move to a defined contribution pension scheme rather than the kind of defined benefit pension scheme that is wholly unfunded.

That will correct the problem over time, in terms of, as new people work through the work force, but I think we have no alternative but to meet the promises that have already been made. That $1.6 trillion is the present value of promises that have already been made, and I think we have to meet those.

Mr. MICA. Well, I would have to question the first part of your response, because the answer indicates, as I've been told by the experts, that even if you change the terms for new entrants, you don't solve the problem. The problem is so massive that it is going to require some additional contributions and changes up front. That's one reason we recommended the very popular high 5 versus high 3, which is getting rave reviews.

If Mr. Tobias would like to comment, but I'm going to defer now to Mr. Moran. Thank you.

Mr. MORAN. Let me first ask Mr. Tobias about the National Partnership Council. We've heard a lot of criticism of it, but I think it was the Federal Labor Relations Board that did an evaluation of it. They said that the number of conflicts between labor and management in the Federal work force has gone down dramatically, and that was the principal reason for setting it up, to avoid those conflicts from surfacing, to try to prevent them from becoming conflicts and to set up a structure that would enable management and labor to work in a much more constructive, cooperative fashion.

I would like to hear from you how you view the performance of the National Partnership Council?

Mr. TOBIAS. Well, I think that the National Partnership Council is basically an important symbol of labor-management cooperation, because it provides some support; it provides some analysis; it provides policy direction. It has no power; it has no authority. The labor-management partnership councils in each agency, that's where the work gets done. And it is the sponsorship of those agency partnership councils which is so important and which has led to the reduction of grievances and unfair labor practices, much speeded-up implementation of changes, and all of those cost avoidance issues.

Mr. STURDIVANT. But the other piece is the cost savings and the improved efficiency and effectiveness. These councils work. We had a meeting just Wednesday of this week, and we had a presentation from the Letterkenny Arsenal, a base that's going out of business. And even though it's going out of business, this partnership council that has been in effect for a couple of years has dramatically decreased the cost of operation, reduced the overhead, and they are going to go out of business not with litigation but in a way that everybody agrees makes sense. Now, that is real savings to the Government and a real example of what's happening throughout the Government.

Mr. MORAN. Well, I would agree with you that that indicates clear progress. That's just what we were looking for from the partnership and really a method of alternative dispute resolution and preventing these problems before they occur and before they become costly, in terms of time and resources.

Let me address another issue. In your testimony, Mr. Sturdivant, I was pleased to see this, you said:

> If we are really serious, we should be looking more closely at the length of time it takes for the appeal of a performance-based removal to wind its way through the administrative and judicial thickets.
>
> It seems to me that an employee whose removal case was heard by an arbitrator of the Merit Systems Protection Board had received a full and fair hearing consistent with due process rights. At that point, I can see no reason to needlessly prolong that by allowing yet another bite at the apple through an appeal into the Federal courts.

Mr. STURDIVANT. Right.

Mr. MORAN. Well, that is an example of the kind of progress we're looking for. I think it's an example of the attitude that Federal unions have been taking toward this process, as well, because that's the kind of improvement in the process of appeal and removal for nonperformance, and so on, that we need, and that's the kind of cooperation we need.

But I would like to make it clear.

Mr. STURDIVANT. Can I just comment on that a little bit?

Mr. MORAN. Yes. Well, that's what I'm going to ask you to, because I think that's a very important statement, if you're saying that we should allow only one appeal for employees that are facing adverse action.

Mr. STURDIVANT. What I was trying to do there was send you a signal, and I guess you got it, that we're prepared to begin, in AFGE, to open a dialog on this whole question of the so-called "poor performers." I've done some testing. I've gone out and talked to our members. My district covers the entire continental United States, plus Alaska, Hawaii, and Europe. So I spend about 50 per-

cent of my time out where people do get their hands dirty and just kind of talking to our folks and getting feedback.

And how do we deal with this so-called "poor performer" issue? Now, quite frankly, we think that it's a phantom issue, but we want to get it off the table, because until we get this poor performer issue or this preoccupation with, "We can't fire folks," off the table, we will not get the necessary attention of the policymakers on how do you motivate, how do you excite, how do you train the 90-some percent of the people who want to do a good job but are poorly trained, poorly led, and poorly motivated.

So that is our way—I like to move stuff off the table. I like to make things go away. And that is our signal, from AFGE, that we are prepared to open up and enter into a dialog on how to change some of these multiplicity of appeals procedures. Some folks get two and three bites of different apples. Quite frankly, in an organized workplace in the industrial sector, a person goes to—they are discharged. They go to an arbitrator. The arbitrator makes a decision. That's the final decision, and that's the end of it. And most of these can be done in 30 days.

Another reason for wanting to kind of move this off the table, quite frankly, is, as a union, we have to change too. We've been pushing change in our organization and changing the mind-set, changing the attitudes, changing where we focus our resources and our attention. As a manager, as the CEO of an organization like AFGE, I'm not interested in spending 90 percent of our resources on perhaps 5 or 6 percent of the people that we represent.

So I think that we ought to have a dialog or have a conversation and try to reach some consensus, with the unions, with the administration, and with Congress, on how to deal with this issue. And I'm signaling you that we're prepared to enter into that type of discussion.

Mr. MORAN. Well, I'm very glad to hear you say that. That's exactly the kind of attitude that we're going to need if we're going to make this work. And I'm glad to hear your recognition of the perception, and I think it is an accurate one, on the part of a lot of Federal employees. It was the case when I worked for the Federal Government back more than 20 years ago and it does seem as though the union is preoccupied with 5 or 6 percent of its membership, many of whom do tend to be the poorer performers, and for that reason their jobs are threatened or they are under efforts to move either out or out of the agency that they are currently in. And that's not the best use of your resources.

I want to raise one other issue, and that is the bumping procedure when RIF's occur, because I think it's a very inefficient personnel policy. It's unfair to a lot of the people as you go down the line, and, as I said yesterday, we wind up overpaying some people in positions which they are not appropriate to be filling.

So let me get some feedback on the bumping procedure. Maybe we can start with Ms. Bonosaro.

Ms. BONOSARO. Bumping is part of the RIF process which includes how one sets competitive areas, as you know. And we have had a real concern of late with regard to how these competitive areas are determined. We are seeing some agencies move to narrow

them both in the conduct of RIF's and the issuance of revisions in their SES RIF plans.

I appreciate your concern with regard to how far do you bump and do you finally have someone doing a job and being paid for something which doesn't make a lot of sense. But, alternatively, I think we're also concerned that people who are fully capable of doing other jobs in the agency, they may have done them before, that they be able to exercise that right and that the rules of the game not be changed on them.

So our concern recently has been that, effectively, the manner of conducting a RIF is changing just by virtue of how agencies are able to narrowly set competitive areas. But that is our particular concern, and I'm sure my colleagues have some others.

Mr. STURDIVANT. Once again, I guess I'm prepared to put everything on the table. And I guess the reason why I'm taking this approach today is because I think that the opportunity that we have to make substantive changes in how we provide services, goods, and other things for the American people, I think we have a window, but I think that that window is going to close if we don't act boldly and if we don't act definitively.

Now, a lot of the things I'm saying here are things that are controversial and certainly are controversial in our union. I believe that the job of a leader is to lead and to convince people that you're trying to go in the right direction. So we are prepared, once again, to sit down and have some dialog, have some discussions about changes in the RIF procedures, changes in how the bumping is done, changes in how the competitive areas are done, as long as we, the union, are at the table and a part of that process.

One of the glaring examples that I think we have is this whole situation of managers and supervisors bumping back down into the bargaining units and ultimately bumping someone who is on the line, perhaps doing service delivery, out the door.

And I would liken it to General Motors. Someone might have been on the assembly line at one time, and they might have gone to school, might have taken promotion opportunities, and eventually they ended up in the executive suite. Well, General Motors decides to downsize its executives. The person who is in the executive suite doesn't end up back on the assembly line. And that's a concern that we have with the current procedures.

So we would propose to limit those like individuals to compete with each other, such as managers and supervisors competing against managers and supervisors and not bumping back into the bargaining unit and displacing some of the front-line workers.

Mr. TOBIAS. I join with my colleague in putting these issues out for discussion. I think that the issue of poor performers, the issue of RIF's are problems. There are perceptions, and they have to be dealt with. I would add that the issue of RIF is really sort of the question that I raised in my initial testimony, and that is, how do you align the resources that you are allocated to achieve the outcome you wish to achieve?

Part of that is having the right person in the right job. And the real squeeze about RIF's is that perhaps the right person is not in the right job. I think that, at least all of the cost calculations that I've looked at say, it is much more effective to use buyouts as part

of a downsizing operation. When Xerox or AT&T announced that they are going to downsize 20,000 people or 15,000 people, the first thing that is done is to announce how much it's going to cost, set aside that money, and proceed with the downsizing.

Here we labor under some myth that somehow it's possible to have it both ways; that is, to downsize by 292,000 people and at the same time have the right person in the right job. The tools that we have or the tools that we create will not give us the kind of precision that we need to accomplish the task. It seems to me that enticement is the best way to solve the problem.

I would add one other thing, Mr. Moran. When you mentioned that when you were in the Government 20 years ago that unions focused on perhaps the 5 percent or the 6 percent of the poor performers, I think that that is reflective of the fact that 20 years ago that's all we could talk about. There was nothing on the table to talk about other than that, and, believe me, we were very aggressive talking about what was on the table. So expanding what's on the table automatically leads to a different perspective.

Mr. MICA. I thank you, and I will yield now to Mrs. Morella.

Mrs. MORELLA. So many questions to ask and so little time. Thank you. This is a fascinating panel, to have all of you together.

Just very briefly, Mr. Niskanen, your quotes are obviously out of context, so you have to recognize that. They kind of glared at me when I read them in your testimony, with regard to, for instance, "Only applicants who do not meet OPM qualification standards will be considered."

I do think, however, that the Federal Government has a responsibility to hire only the most qualified for each job but to also search, to look beyond the blinders that they may traditionally have had. And I think you would probably agree, but it's just that we use this rhetoric always, to look like there is this gross discrimination taking place in pulling others into the work force.

I would say, if we didn't begin to search beyond, we would not have had an Eileen Collins, who is the first woman to pilot a space shuttle, just recently, when mice used to be what were used back in the early 1950's instead of women, for some of the experiments. [Laughter.]

It's true. For some of the experiments that were done, they used men; they used mice.

Mr. NISKANEN. Well, I agree, Mrs. Morella. The issue is whether you open up the applications pool or you close it off. These recent measures actually close the applications pool rather than opening it. And I'm wholly in favor of opening the applications pool to make sure that everybody has an opportunity to be judged by the same standards, and then, second, to make sure the standards are really relevant to the job. You don't want people discriminating on the basis of the way the standards are written either.

But the big difference and the huge difference is between whether the formal action of the Government has had the effect of closing the applications pool, as it has in these recent cases, or whether, as in the military earlier, it had the effect of opening the applications pool. Thus, that's the important distinction.

Mrs. MORELLA. Except a search is sometimes necessary to reach out beyond, if you're finding that you only have one group all the time. But I think maybe you don't disagree that much.

I very much appreciated your statements, Mr. Tobias, particularly with regard to encouraging demonstration programs. That's something I would like to pursue at another time with you.

And Mr. Sturdivant, please know that we do have all of the listing of the issues that you thought were critically important and unfortunately didn't have enough time to talk about, the need for further training and skill development, the legal barriers to labor-management partnerships, which I think we need to look at, because Mr. Tobias likes very much the labor-management partnerships.

And Ms. Bonosaro, you gave us an interesting perspective, too, in terms of the role of management, which we will be weighing as we look at our civil service reform.

I guess one question I could ask all of you is, empowering employees and increasing management accountability sometimes seem to be conflicting principles. I wonder, how do you pull it together; how do you bridge these principles?

Mr. TOBIAS. I don't think they are inconsistent at all. I think they do fit together, because empowering employees means increasing accountability. If I give you the discretion to act, I expect that I'm going to hold you accountable for the exercise of that discretion and the outcome that is achieved.

The problem that we have is that there isn't any delegation of authority nor expanded discretion. And as a result, people do what they are told to do, even when it's wrong, even when they know it's inefficient, even when they know it's ineffective, because that's what they are told to do. They have no way of saying, "Hey, wait, this makes no sense."

What we have been doing, over the last couple of years, is freeing these folks up to say, "Wait a minute. It should be done differently," and to give them a voice that they heretofore have not had and also, I suggest, the rush—the rush—of accomplishment.

Ms. BONOSARO. I think there are several issues that are raised by that question. One is, certainly, it's a challenge for all of us as executives try to develop new roles for themselves and meet what is a very different leadership challenge. And that's exciting, and I think the trick is, if we all have the mission in mind, we can probably get there.

I think there is a difficulty in doing that in the real world, however, when, on average, as the earlier panel noted, every 18 months, at least as far as senior executives are concerned, their immediate superior is changing. So the direction you may have been moving in and being held accountable for, your new superior may well have some slightly different interests in mind. Sometimes I wonder how we ever get from here to there in Government, given the fact that you do have those shifts. That's a reality of life.

The third concern I have is with regard to the accountability issue and the suggestion that we look to other countries such as New Zealand. It's certainly appropriate to consider what they are doing, but my concern would be that we recognize they are very different systems.

In New Zealand, if you're a manager, you've got a 2- or 3-year-out budget. In Australia, for example, the executives are empowered to negotiate directly with the unions. There is such a variety of differences in our systems that, while it's very tempting to look at some of these notions and to want to transplant them here, we have to do it cautiously, I think.

Mr. STURDIVANT. Well, as one of my heroes said, George S. Patton, when he was charging into Germany, he said, "Never tell people how to do a job; tell them what you want done and give them the resources to do it, and they will do it." Of course, his goals and his focus were kind of narrow, and I don't say we should replicate that in the Federal Government.

But I think, to move from that, we have the Government Performance and Results Act, so we're asking agencies to operate toward outcomes, toward results, toward accomplishments. And I think that, as we move that into the agencies, and I think that, as each entity in the Federal Government is clear on what—those that are left when all this stuff is finished—is clear on their mission, clear on what their objectives are, clear on who their customers are, then, in order to accomplish these goals and objectives, the employees have to be empowered, because they are the ones who are doing it.

Now, where does the accountability of the manager comes from? A manager is a leader. You know, we've all learned, even I have, that this "Do as I say," "Do it my way or hit the highway," just doesn't work. You don't motivate employees; you don't get the best ideas; you don't get enthusiasm. So a good manager, who is accountable for not process but outcomes, for getting the job done, these factors fit very well, because somehow that person has got to motivate these employees to play above the rim, to operate in a higher level of intensity.

We have found, there is empirical evidence that is starting to come in as a result of some of the studies and some of the things that the Partnership Council has done, we have found that it works. We know that the old system has not worked. We've been doing it the same old way, and everybody is talking about how Government doesn't work. So why would we continue down that same track. Try something different.

Mrs. MORELLA. I think it's a very good point that so much is going to rest with good management; otherwise, within this empowering employees and letting them decide that something should be done a different way from what they are told, you're going to have the fear of recriminations.

Other questions that I would like you to answer, perhaps in writing, because I must leave, have to do with the pass/fail evaluation. We had some conflicting comments on that yesterday. I'm also interested in picking up on the issue that was raised about the perception of rigging RIF's. You know, when you are delineating in competitive areas, how do you handle that kind of thing?

Maybe if they pursue it when I leave, or in writing, whichever you want to do, Mr. Chairman.

Mr. MICA. We may have additional questions from both sides to submit to you. I don't want to cut this short, but we want to accom-

modate our other panel. We thank you for your participation. This is not the end, by any means, of this process.

Mr. Sturdivant, you are correct that we have a window of opportunity. Mr. Tobias, we're going to be doing a lot of planting together of acorns when I get ready. And we look forward to working with you, Ms. Bonosaro.

The three of you represent a tremendous resource in our Federal Government. I think we can do a good job working together. I have no preconceived notions on how to get there, and your offering to participate and work with us in the coming months will make the work product not only successful but beneficial, and that's what we're looking for.

We also thank you for your testimony, Mr. Niskanen. And we will let the panel be dismissed.

I would like now to call our final panel. We have David Denholm, who is president of the Public Service Research Foundation; we have Lennox Gilmer, association national employment director of the Disabled American Veterans; and we have Bruce Moyer, executive director of the Federal Managers Association.

I would like to welcome the panel, and if they could come forward, I will swear you in. If you would remain standing, please.

[Witnesses sworn.]

Mr. MICA. I would like to welcome you. We're going to start immediately with David Denholm, president of the Public Service Research Foundation.

Gentlemen, if you would, we would appreciate your summarizing your remarks. Your entire statement and prepared remarks, formal presentation, will be made a part of the record.

Mr. Denholm, you are recognized.

STATEMENTS OF DAVID DENHOLM, PRESIDENT, PUBLIC SERVICE RESEARCH COUNCIL; LENNOX E. GILMER, ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; AND BRUCE L. MOYER, EXECUTIVE DIRECTOR, FEDERAL MANAGERS ASSOCIATION

Mr. DENHOLM. Thank you very much, Mr. Chairman. I appreciate the opportunity to be here. I also want to apologize that I'm on the tail end of a drawn-out nasal and chest congestion thing, and the last several days haven't been real good for me, in terms of my mental acuity. So if anything doesn't quite come out right, I hope you will understand.

Mr. MICA. You are fortunate, you only labor under that disability for a short time. There are many of us in Congress who suffer from that on an extended basis. But I also just got over a cold and appreciate your dilemma. Thank you.

Mr. DENHOLM. Our organization focuses on the influence of unions on public policy and public policies regarding unionism in public employment. So I would focus on the union aspect of civil service reform and the Civil Service Reform Act. That title of the act was something that came about because of Executive Order 10988, by President Kennedy, in 1961, which instituted a formal procedure for union recognition and collective bargaining in the Federal Government.

Many States since then have followed suit. And to the extent that they followed the Federal example, or the fact that they had collective bargaining in the Federal Government led them in that direction, I think that the Federal Government is much to blame for a great deal of harm that has been done to the Nation's governmental institutions. It is not my intention to belabor all of the problems that have come up in the last 35 years due to unionism and collective bargaining in public employment, but I would be happy to do that at some other time.

When Kennedy issued the Executive order, it contained what you might call a "right to work" provision, a provision saying that a Federal employee could not be forced to join or support a labor organization. Realizing that this would cause some bad feelings with his friends in organized labor, he sent Arthur Goldberg, who was then his Secretary of Labor, later to be U.S. Supreme Court Justice, to an AFGE convention to explain this to them.

After apologizing for the right to work provision, Goldberg said, "The public interest requires the most economical possible use of Government funds. This means that the influence of employee organizations must never be used to block or impede measures designed to improve the efficiency of the Federal Government, whether it be the introduction of new machinery, the transfer of operations, or their termination."

And one need only look at the rallies that were held recently around the country by the American Federation of Government Employees concerning the proposed cuts that Congress is considering to see just how far off the mark Goldberg was.

There has been a lot of interest, in the last several years, in the National Performance Review and the National Partnership Council. I find it fascinating that the Clinton administration would choose as its instrument of choice in implementing the National Partnership Council an outmoded, industrial-age organization that is completely unsuited to the task and lacking the support of the vast majority of Federal employees.

There is ample information that Federal employees are not supportive of labor organizations. Generally speaking, in units where unions represent Federal employees, only 25 percent or less actually belong to the union. This is certainly something that would never happen in the private sector. You have to ask yourself, does it make sense to involve employees in the process of reinventing Government through an organization which has so little true support among the work force?

At least one of the Federal unions, the National Treasury Employees Union, has adopted the policy of limiting participation in the Partnership Council to union members, which thus deprives all these other Federal employees of their right to participate and deprives the Government of its ability to benefit from whatever input they might have.

Part of the problem with the industrial-age model of unionism is that, even when it was being formulated, it was based on a politically correct but mistaken assumption about the nature of the relationship between employees and employers. As we've moved into the industrial age, this mistaken assumption is not just mistaken but has become dangerous.

The politically correct assumption is that workers need and want collective bargaining and union representation, and that it improves employment relationships. The truth of the matter is that employers would rather deal directly with their employees and that employees would rather deal directly with their employers, without going through a third party.

Enlightened modern management would look at an interest among employees in becoming unionized and wonder what it was doing wrong, because it would be an indication that they were doing something wrong if the employees expressed an interest in unionism.

I might add a little aside that is not in my written remarks. The Office of Personnel Management does an excellent job of keeping track of union representation in the Federal Government but is mystified by the idea of union membership in the Federal Government, even though it would seem to be an easy thing for them to achieve.

Mr. MORAN. Mr. Chairman, could I interrupt for just a moment?

Mr. MICA. If you could allow us to interrupt.

Mr. MORAN. I'm terribly sorry to interrupt your testimony, Mr. Denholm. I'm going to have to leave, though, and I just mentioned to the chairman, I regret having to leave before hearing particularly the final two speakers.

I do thank you, Mr. Chairman, for having this second hearing. We're going to have several more. Mr. Gilmer's testimony was a very extensive analysis of veterans' preference, and I just asked my staff people to make sure they keep that. It's very helpful for the history of veterans' preference.

And Mr. Moyer's succinct summary of all the issues we have to deal with is exceptionally good. It's as good a summary in as succinct a fashion as I have seen. So I appreciate your putting that together. That really is a good guide path for what we need to be doing.

Mr. MICA. What I'm going to do, since Mrs. Morella had an obligation and I have one at 11:30, is let you summarize in just a minute here, sir. I will hear the next two, and we have your written testimony, and I'm going to call the panel back either at the beginning or the end of one of our next hearings—this is a long series—for questions, if you don't mind. So we will have you go forward with your presentation. I will excuse the ranking member.

You go right ahead now and continue. If you could summarize, Mr. Denholm.

Mr. DENHOLM. I'm going to try to bring this all together quickly.

Mr. MICA. Thank you.

Mr. DENHOLM. I think what you're looking at is where you're going in the future, how civil service is going to develop, how the Federal bureaucracy is going to develop. And look at the futurists. Look at people like Toffler, look at people like Drucker, look at people like Naisbitt and say, how do they see organizations developing in the future? What is the role of organizations in society in the future, and what is the role of unions?

You would find, for example, the comments that the umbrella, omnipurpose organization is a thing of the past, and, by the same author, that we are moving toward a union-free society. You find

people saying that the "Big Brother" bureaucracy that we so feared, as we saw bureaucracy developing, isn't capable of handling the present situation, and what we're developing is "ad hocracy."

I would go out with, recently Richard Epstein wrote a book called, "Simple Rules for a Complex World," and I think I will just leave it with that. He says, "Whether the field of conflict is education, transportation, or manufacturing, negotiations under collective bargaining often lead to intense and protracted struggles between management and labor.

"On many occasions, there is extraordinary bitterness and division which frequently lead to recriminations and sometimes violence. This bitterness is not necessarily endemic in the relationship between employer and employee; rather, it is a function of the legal rules that structure the negotiations between the parties. Many problems with collective bargaining arise because the legislation creates monopoly positions on both sides of the market, a state of affairs exactly the opposite of what sound law would strive to achieve.

"The social consequences of this bargaining system have been largely debilitating. A system that allows the employee freedom to deal directly with the employer or to join a voluntary union of his own choosing is far superior to a system in which the state selects the bargaining unit under the usual set of complex and indeterminate criteria which always work against the interests of a political minority."

I made a lot of different proposals about how you might implement such a thing, but I think that sums it up.

[The prepared statement of Mr. Denholm follows:]

Committee on Government Reform and Oversight
Subcommittee on Civil Service
Review of the Civil Service Reform Act of 1978

October 13, 1995

Testimony of David Denholm, President
Public Service Research Council

Mr. Chairman, members of the Sub Committee, my name is David Denholm, I am the president of the Public Service Research Council, a national citizens group concerned with union influence on public policy and in particular with the influence of public sector unions on the size, cost and quality of public services.

I want to thank you for this opportunity to speak with you today about civil service reform and the Civil Service Reform Act of 1978. Because of our interest in public policies concerning unionism in government our concern is focused on Title VII of the Act which provides for union representation in the federal service.

Title VII is a codification of an Executive Order which began as Executive Order 10988 by President John F. Kennedy. This Order provided for union representation in the federal service and, coming as it did in 1961, set the stage for many states to enact statutes of a similar nature.

To the extent that the federal example was responsible for these laws it shares the blame for leading the country down the wrong path on public sector employer-employee relations.

Public sector unionism and collective bargaining have brought tremendous harm to this nation's governmental institutions. It is not my intention to review this sorry history today, even though I would be glad to do so at some other time.

The history of Executive Order 10988 shows that those in the Kennedy Administration who advocated this policy were naive about what unionism and union representation would mean for government.

Kennedy's Executive Order had a "right to work" provision in it. It provided that,

> Employees of the Federal Government shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization <u>or to refrain from any such activity</u>. (Emphasis added.)

Kennedy knew that a "Right to Work" provision in the Executive Order would not sit well with the unions and he dispatched his Labor Secretary, and later U.S. Supreme Court Justice, Arthur Goldberg, to explain this to a convention of the American Federation of Government Employees, AFL-CIO, the largest federal sector union.

Goldberg told the union convention:

> I know you will agree with me that the union shop and closed shop are inappropriate to the Federal government. And because of this, there is a larger responsibility for enlightenment on the part of the government union.

In the same speech Goldberg told the unions,

> The public interest requires the most economical possible use of government funds. This means that the influence of employee organizations must never be used to block or impede measures designed to improve the efficiency of the Federal government, whether it be the introduction of new machinery, the transfer of operations, or their termination.

You need only look at the recent rallies staged by AFGE all across the country to protest budget cuts being considered by Congress to see just how far off the mark Goldberg was.

There has been a great deal of activity in the last year concerning the concept of National Performance Review's efforts to "Reinvent" government and an important part of that is the National Partnership Councils, through which federal employees are to be part of this reinventing process.

This is a classic example of the fallacy of the union model of industrial relations when applied to government. From the very beginning the reinventers relied on the federal unions for employee representation.

The Clinton Administration's "instrument of choice" for the reinventing process is an archaic, outmoded, industrial age model of organization completely unsuited to the task and lacking the support of the vast majority of employees.

There is ample information that the federal employee unions do not represent federal employees, even where they have been granted monopoly bargaining privileges.

The American Federation of Government Employees (AFGE), AFL-CIO claims to represent about 700,000 federal workers but according to the figures it submitted to the AFL-CIO convention in 1993 it had less than 150,000 members. In other words, in bargaining units with AFGE representation the average number of employees who are union members is about 21.5 percent. While no hard figures are available a normal statistical spread of such figures would indicate that AFGE has representation rights in units where their membership is far less than 21.5 percent. I'm confident there are some where it is as low as 10 percent, but let's be generous and suppose that the lowest is no less than 15 percent.

Does it make sense to involve employees in the process of reinventing government through an organization which has so little true support among the work force?

At least one federal union, the National Treasury Employees Union, has adopted the policy of excluding non members from participation in these Partnership Councils, thus denying participation to the majority of federal workers it "represents" and depriving the government from their contributions.

Part of the problem with the industrial age model of union representation is that even when it was being formulated it relied on what was at the time politically correct but mistaken assumptions about the nature of the relationship between employees and employers.

As American has moved into the post industrial age these assumptions are not just mistaken they are dangerous.

One of the ironies of the fact that our national labor policy has not been kept up to date because of union insistence on the outmoded adversarial, exclusive model of union representation is that in the private sector it has become illegal for employers and employees to cooperate.

Congress is now dealing with this problem through the TEAM legislation. This legislation recognizes that the concerns of employees are quite divers and that the unionism -- one size fits all -- model isn't appropriate.

The politically correct but unnatural assumption is best stated in the preamble to the National Labor Relations Act and in almost all of the compulsory public sector collective bargaining bills enacted by the states in the last thirty-five years -- that workers need and want collective representation and that it improves employment relationships.

The truth of the matter is that most employers would rather deal directly with their employees and most employees would rather deal directly with their employer without going through a third party.

This is demonstable from the facts. In the private sector of the economy, where, even though the heavy thumb of government is on the scales on the side of the unions through the National Labor Relations Act, union representation is about 10 percent of the work force.

Several opinion polls in recent years have shown that the majority of workers do not want to be represented by a union. One survey indicated that workers were more concerned about what their union might do to them than their employer.

Enlightened, modern management should regard employee interest in being represented by a union as a sign of failure and should respond to it by asking what it is doing wrong.

Rather than dwell on what is wrong with the idea of union representation in federal employment or why public policies encouraging it are misguided, I would like to try to direct your attention to what is happening now and what will probably continue to happen in the future. This is really the question which ought to be addressed in your quest for improving the civil service in the age of "reinvented" government.

Peter F. Drucker, in his 1994 best seller Post-Capitalist Society, suggests that the role of the organization in the future will be to destabilize and to be responsible. He says that the organization

must focus on its core tasks and not allow the interests of the community to sway it from these tasks. These are not things he relishes so much as things he sees as necessary.

In a rapidly changing society, any organization that does not constantly change will become outmoded. If an organization does not change as rapidly as it can, it will be overtaken by some other organization which has changed. In the post capitalist society, as Drucker sees it, individuals will be the building blocks but not have a function without an organizational structure. Failure of the individual members of the organization to be responsible for their tasks will doom the organization.

For government and particularly for the federal government, this is going to be an incredible task because to a very great extent government is a reflection of the community.

Their is quite a bit of debate about what the core tasks of the federal government ought to be. That is the business of Congress not the federal bureaucracy. Once that decision is made, it is the job of the bureaucracy to carry out these tasks. If it does not perform its tasks and it is not responsible for them, it will become outmoded and replaced by some other organizational structure which will do these things.

As long ago as 1970 is his book Future Shock, Alvin Toffer predicted the demise of bureaucracy and a new form of organizational structure. Speaking of the projected and greatly feared faceless, totalitarian bureaucracy of the future Toffler said:

> The kinds of organizations these critics project unthinkingly in to the future are precisely those least likely to dominate tomorrow. For we are witnessing not the triumph, but the breakdown of bureaucracy. We are, in fact, witnessing the arrival of a new organizational system that will increasingly challenge and ultimately supplant bureaucracy. This is the organization of the future. I call it "Ad-hocracy."

My purpose here is to suggest that you consider alternative approaches to organizing the bureaucracy. If you restrict our thinking to organizational forms based on the present model, you may very well be defeating our purpose.

The secret to success in the post industrial age seems to be drawing on the best possible source of information, or for that matter any other component of production, when it is needed where it is needed. This can be seen in the industrial world with the use of consultants who are experts on specific topics rather than with regular full time employees. It can also be seen in the desire of major manufacturing firms to "out source" or contract out for parts and components.

Drucker makes what I think is a very cogent observation about the future role and structure of organizations.

> The structure of the post-capitalist society will therefore be different from either the earlier capitalist or the socialist society. There, organizations tried to encompass the maximum of activities. Organizations of the post-capitalist society, by contrast, will concentrate on their core tasks. For the rest, they will work with other organizations in a bewildering variety of alliances and partnerships. Both capitalist and socialist societies were, to use a scientific metaphor, "crystalline" in their structure. Post-capitalist society is more likely to be a liquid.

There are characteristics of bureaucracy, whether it is a government bureaucracy, a corporate bureaucracy or a union bureaucracy, which are obstacles to making needed changes. These changes are much easier made by a person or group of people whose only purpose is to make the change and then move on. The problem of bureaucratic resistance to change is compounded in the area of public employment because it is confronted by government managerial bureaucracy, government employee bureaucracy and by the bureaucracy of government employee unions themselves.

If the alternative to the present system is just another bureaucracy, it is not going to solve the problem. We will end up trading one set of problems for another.

The federal government consists of conflicting interests of many different organizations within it. There is, first of all, the elected members of Congress and the Executive branch, but there are also appointed and career officials of the Departments and Executive Agencies which have interests of their own apart from the interests of the elected officials and then, of course, there is the federal work force and the unions and other organizations representing the interests of different segments of the federal employment.

There are opportunities for change in most of these organizations. elected officials serve for specific terms and may come and go from office. The job tenure of most administrators who are political appointees relatively short. Employees are another matter. They have civil service protections and salary schedules which reward longevity above all else. Of particular interest in this regard are the unions because they are very active in defending their interests and the most resistant to change. And, then you have the bureaucracy of the unions themselves which must look after the unions interests even when they are in conflict with the interests of the employees they represent.

Part of the problem with unions is a conceptual one, in that the union insists on being all things to all people. Because of conflicts in these roles, the union cannot do everything as well as it might be done, if it were being done by organizations or individuals who had just that specific task.

For example, many scholars have noted that because unions are to one degree or another internally democratic institutions, they must strive in contract negotiations to put the most emphasis on the

interests of the majority of union members. This frequently works at odds with the public interest and with the best interests of one or more minorities of union members. In the case of federal unions, since such a small percent of the employees are actually union members, union leadership that is responsive to the concerns of a majority of union members may not represent the interest of the majority of workers at all.

If unions were not granted monopolies in negotiations, if they were not the exclusive representative of all the employees in the bargaining unit, employees would be free to be represented by an organization which best reflected their interests or to represent themselves.

The typical bureaucratic mind would object that you can't negotiate with every single employee or even several groups of employees. This overlooks the obvious. The government already does negotiate with each employee. All the union contract does is limit the ability of the government to be flexible in response to the needs of the employees. The union does not recruit, negotiate with and hire employees for the government. Each employee works under a union contract but has an individual employment contract with the government.

In the old fashion, industrial age, model of unionism and collective bargaining, it was assumed, falsely I think, that the individual unorganized worker was powerless in the face of the power of accumulated capital. That model is simply no longer relevant.

The key to power is information. Knowledge workers, and most government workers are certainly knowledge workers, are incredibly powerful as individuals. They carry around the tools of their trade in their heads. All the employer does is provide the organizational structure.

One of the ways, and perhaps even the best way, to reinvent the civil service is to give government employees choices.

The present system of unionism and collective bargaining severely limits government employees' choices by imposing the representation of an organization supported by a majority of employees, no matter how briefly, on everyone. Removing the union's monopoly on representation would introduce opportunities for choices that could still be contained within the overall structure of the employer-employee relationship.

But, your central question must remain what sort of organizational structure is appropriate to the federal civil service. I suggest to you that the unionism and collective bargaining model is not appropriate and that Title VII of the Civil Service Reform Act of 1978 ought to be repealed.

This should not be viewed as something that is in any way punative for federal workers of taking away their rights. It expands their rights and enhanses their status.

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Richard A. Epstein, in his new book Simple Rules for A Complex World, which is apparently causing a stir in certain certain intelectual circles, has several observations which are germane to this point.

> Whether the field of conflict is education, transportation, or manufacturing, negotiations under collective bargaining often lead to intense and protracted struggles between management and labor. On many occasions there is extraordinary bitterness and division, which frequently lead to recriminations and sometimes to violence. This bitterness is not necessarily endemic to the relationship between employer and employee; rather, it is a function of the legal rules that structure the negotiations between the two parties. Many problems with collective bargaining arise because legislation creates monopoly positions on both sides of the market, a state of affairs exactly the opposite of what a sound law should strive to achieve.
>
> The social consequences of this bargaining system have been largely debilitating.
>
> A system that allows the employee freedom to deal directly with an employer or to join a voluntary union of his own choosing is far superior to a system in which the state selects the "bargaining unit' under the usual set of complex and indeterminate criteria, which always work against the interests of a political minority.

In his 1982 book, Megatrends: Ten New Directions Transforming Our Lives, John Naisbitt identified several directions which fit into a pattern hopeful to those who are pursuing greater freedom and diversity. Here are a five of those ten new directions.

Industrial Society → Information Society

Centralization → Decentralization

Institutional Help → Self Help

Hierarchies → Networking

Either/Or → Multiple Option

In the chapter on Centralization → Decentralization, Naisbitt observes,

> What is happening in America is that the general purpose or umbrella instrumentalities are folding everywhere.
>
> The meat cutters and the retail clerks merged in 1979, becoming one of the largest labor unions in the United States. This growth is like the sunset. The sun gets largest just before it goes under. Remember the brontosaurus? The brontosaurus got so huge just before its demise that it had to stay in water to remain upright. There were thirty-five mergers of labor unions between 1971 and

1981. In late 1980, the machinists and the auto workers announced merger talks that would make them the largest, most powerful union in the United States. If it comes off, it will appear that big labor is getting its act back together again. The reality will be the sunset effect.

America is moving toward an almost union-free society.

If you should decide not to go for complete repeal of Title VII, there are several half way measures you might want to consider.

First, would be to relieve the unions of the burden of representing those who are not members. This would allow unions to focus on representing their members but government would not be in the position of negotiating with the union. It would regard the union as a legitimate organization representing the interests of its members, just like the myriad of other special interest organizations within federal employment.

I would also like to suggest that, just as in the "reinventing" government process where they are telling federal employees to "just do it" when it comes to dealing with problems the public has with a federal agency, you ought to consider giving managers more latitude in dealing with employment problems so that they can "just do it" and federal workers would not feel that they needed a union to represent them.

If you do not consider eliminating exclusive representation to be a viable option, you might want to consider how the union obtains exclusive representative status.

As I have already mentioned many federal unions have representation status in bargaining units where they have very few members. Under the present law a union which is certified as an exclusive representative remains so until its status is challenged.

From the evidence of the lack of participation in federal unions, it is doubtful that, in the absence of an existing organization by which they were already represented, most federal employees would have opted for representation.

It might be a good idea, whether a union was an exclusive representative or not, to require periodic recertification of the union. This would force a periodic reexamination of the role of representatives and encourage competition among organizations which wish to represent one or more segments of the federal work force.

Also, if you decide that collective bargaining is still the appropriate model you might want to take cognisance of the fact that the union contract becomes public policy and that there are many interest groups in society with legitimate concerns about the collectively bargained agreement. For example, Social Security recipients have legitimate concerns about the contract for Social Security workers. If we are going to have collective bargaining, you ought to consider who ought to be sitting at the bargaining table.

Adding others in the community, with legitimate concerns about the outcome of collective bargaining, to the bargaining process would introduce a healthy amount of diversity to the process.

I realize that many objections can be raised about the idea of moving away from an orderly stable employer-employee relationship as characterized by monopoly union collective bargaining. In every instance where the status quo is threatened its defenders have their good reasons and their real reasons.

All too often, defenders of the status quo oppose changes because they aren't perfect. Please don't allow the perfect become the enemy of the good.

I'm sure that both the unions and administrators will raise objections to eliminating collective bargaining or breaking union monopoly in for their own reasons. They will say it is unmanageable, it costs too much, it is unfair, etc.

It is often suggested that those who gravitate toward public employment are not risk takers, that they are more interested in security than opportunities to make gains which entail the risk of taking losses. If this is true of many in the federal civil service there must be a place for them and it may be that union representation is the best way to address their concerns.

At the same time, allowing a union to be the exclusive representative of employee concerns makes it very likely that those who are risk takers and high achievers, will stay away from federal employment to its detriment.

The question we must ask is whether it would be good for government, good for the civil service and good for the people it serves. If the answer is "yes", or even, "maybe," I think it deserves a try. The present system certainly has enough flaws.

****

Mr. MICA. We thank you, Mr. Denholm, for your testimony, and I am going to turn to Mr. Gilmer now.

Mr. Gilmer, you are recognized.

Mr. GILMER. Mr. Chairman, members of the subcommittee, on behalf of the American GI Forum; the American Legion; American Veterans of World War II, Korea, and Vietnam; the Noncommissioned Officers Association; Paralyzed Veterans of America; Veterans of Foreign Wars; Vietnam Veterans of America; and the Disabled American Veterans and our auxiliaries, I wish to express our genuine appreciation for the invitation to testify regarding the views of our combined membership, exceeding 7.6 million members.

This statement represents a consensus view regarding the Civil Service Reform Act of 1978, which we were asked to testify on. While no organization can speak for any other, we have found our separate organizational positions to be so much in agreement on this issue that a consensus view exists. It is an honor, a privilege, and awesome responsibility to attempt to represent a consensus view of these important organizations.

We urge the Congress to maintain veterans' preference principles and ensure that the system can provide meaningful monitoring and oversight for uniform implementation of the law. We wish to acknowledge OPM's frequent meetings with veterans service organizations and the many briefings by this administration regarding their draft civil service reform proposals. We appreciate their general support of veterans' preference.

Mr. Chairman, the Carter administration was the first administration to lead an assault on veterans' preference. They justified their efforts by claiming veterans' preference denied women and minorities the opportunity to compete for Federal jobs. The General Accounting Office jumped on the administration bandwagon. The Carter administration-proposed Civil Service Reform Act of 1978 was stripped of the most damaging provisions revising veterans' preference. However, the seeds had been sown which supported a Federal personnel culture opposing veterans' preference.

In part, the Carter administration proposals appeared to be driven by the views of organizations such as the National Organization for Women, who adopted the following resolution: "The National Organization for Women opposes any State, Federal, or municipal employment law or program giving special preference to veterans." In 1971, when this resolution was passed, we had nearly a half-million men and women in Vietnam. There were 10,317 American casualties, of which 1,381 were deaths.

The women who passed this resolution were not subject to the all-male draft, but virtually every casualty in Vietnam was. The purpose of this resolution would also deny veterans' preference to all the women who served and were casualties.

However, a July 1980 report on a Louis Harris survey of public attitudes toward Vietnam War veterans found the public at odds with the administration and reported that 70 percent of the public favored veterans' preference. And I quote from the study, "They found more support among blacks, and men and women equally supportive." We believe the public still supports veterans' preference in spite of the rhetoric.

By 1992, the dire predictions of the GAO and the Carter administration had not been realized, and the GAO found, and I quote from their report, "It appears that the impact of veterans on the Federal civil service has been minimal." In fact, a 1993 Merit Systems Protection Board study indicated minorities are overrepresented, except for Hispanics, who are underrepresented, and women were hired at similar rates to their frequency in the civilian labor force.

Mr. Chairman, we offer the following concerns and recommendations. We are concerned that the reduction of OPM staff, decentralization of personnel functions, and contracting for previously provided OPM services will reduce the development of adequate veterans' preference policy oversight and monitoring. We urge the Congress to require OPM to maintain passover and medical unsuitability decisionmaking at the OPM level.

We encourage the Congress to reduce the number of noncompetitive and excepted appointing authorities which we think undermines the veterans' preference in competitive hiring. We encourage that veterans' preference in reduction-in-force be strengthened, making it clear that for veterans' preference eligibles, an assignment to a reduced grade, although they continued to be paid and maintained at their old grade level, constitutes a RIF from which they would derive veterans' preference protections.

Veterans should have the right to appeal veterans' preference RIF violations to the Merit Systems Protection Board. We believe that all Federal agencies should be subject to these requirements. We see no need to exempt any Federal entity from these obligations.

We have noted administration-proposed civil service reform includes unlimited personnel research programs and demonstration projects. We believe this authority is much too broad and would seriously impact the need for uniformity in the application of personnel rules to Federal employees. We believe that final adoption of personnel practices should include the oversight of the Congress, with adoption into law where necessary.

The administration has proposed the creation of an appointing authority which would allow term appointments for up to 5 years. After a period of time, the employees hired under this authority could be noncompetitively converted to permanent employees. This undoes veterans' preference in appointment to career positions.

We recommend amendments to current law to provide veterans a complaint process which, in its initial stages, would be informal but would allow for appeals ultimately to the Federal courts. This legal language would incorporate remedies which would provide the veteran all benefits of employment as though the original error had not been committed.

We urge this subcommittee to amend current law, consistent with court rulings, to provide for affirmative action to be taken among the top equally qualified candidates and requiring that disabled veterans be selected for promotion.

We urge the adoption of legislative language which will require the maintenance of veterans' preference monitoring and oversight as well as passover and medical unsuitability responsibilities to assigned personnel in the Office of Personnel Management.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Gilmer follows:]

STATEMENT OF
LENNOX E. GILMER
ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE
OF THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES
OCTOBER 13, 1995

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the American G.I. Forum; the American Legion; American Veterans of World War II, Korea, and Vietnam; Non-commissioned Officers Association; Paralyzed Veterans of America; Veterans of Foreign Wars; Vietnam Veterans of American; and the Disabled American Veterans and our Auxiliaries, I wish to express our genuine appreciation for the invitation to testify regarding the views of our combined membership exceeding 7.6 million members. This statement represents a consensus view regarding the Civil Service Reform Act of 1978. While no one organization can speak for any other, we have found our separate organizational positions to be so much in agreement on this issue that a consensus view exists.

Mr. Chairman, the reason our organizations can develop a consensus is the strong commitment we all hold to the principle of veterans' preference in federal civil service. We believe this principle must be a paramount consideration in these deliberations.

VETERANS' PREFERENCE IN CONTEXT

Historically, veterans' preference has been inherent to the concept that those who defended the nation would share in its prosperity. The idea was simple, a matter of equity for those who defended our homes, colonies, states, nation, and, ultimately, way of life. Simply put, without those who risk their lives in our defense, our great nation would not exist. The Plymouth Colony reflected this sentiment in a 1636 statute stipulating "that any man 'sent forth as a souldier' who returned to the colony maimed would thereafter be 'maintained competently' for the rest of his life at the expense of the public treasury." (Federal Research Division of the Library of Congress, Veterans' Benefits and Judicial Review, Historical Antecedents and the Development of the American System (Washington, D.C.: GPO, March 1992), 21.)

As the nation moved from a collection of colonies to a Republic, the pool of citizens from which the citizen-soldier

was drawn was the relatively small number of young, healthy men who subsequently offered special skills to a young nation.

> From the beginning of the government, Army officers had been appointed to such positions as collectors of customs, Naval officers and surveyors, Internal Revenue Officers, and Commissioner of Loans, but the rank and file carried no preference with them. As the revolutionary patriots grew old, their places were taken by officers serving in the war of 1812. This policy, was, however, not written in statute. (Leonard D. White, The Jeffersonians)

While the practice of providing veterans' preference was established in civil service "since early colonial times," and later augmented by executive orders, no federal statutory provision existed until immediately following the Civil War.

> The rapid disbanding of the Union Army threw so many veterans into the labor market that those with disabilities found great difficulty in securing employment. The Act of March 3, 1865 (13 Stat. 571) was designed to meet this situation. (Ilona Nemesnyik, Veterans' Preference in the Federal Civil Service (Washington, D.C.: Congressional Research Service, Library of Congress, December 6, 1974), CRS-3)

In 1919, following WWI, veterans' preference was extended to non-disabled veterans and widows. veterans' preference, virtually as we know it today, was enacted into law in 1944 (The Veterans' Preference Act of 1944) just prior to the end of WWII.

> The 1944 Veterans' Preference Act was based upon recognition of the fact that millions of young men have been called upon to give up their usual occupations, often at a great economic sacrifice, had been put through vigorous (sic rigorous) training, with many of them being exposed to personal danger and hardships. It was felt that the readjustment to civilian life would be difficult for many; that those who remained at home had acquired a tremendous headstart financially over the servicemen and that, therefore, some assistance should be given to the veterans readjusting and regaining lost ground. Veterans' preference in the Civil Service is only one phase of the total program. The Federal Government as the largest single employer in the country undertook to provide employment opportunities for as many veterans as possible.

When the Veterans' Preference Act of 1944

was debated, Congressman Starnes of Alabama, in urging adoption of the bill, commented in part as follows (Evelyn H. Tager, Veterans' Preference in the Federal Civil Service (Washington, D.C.: Library of Commerce, February 10, 1983), CRS-12):

> ...The biggest problem in the post-war is providing jobs for able-bodied American citizens who have served in the Armed Forces -- jobs by which they can support themselves and their families, jobs which will permit them to retain their self-respect and feel that the country for which they have offered their all has not failed them.
>
> When this war is over and our boys come home, they should not be forced to tramp the streets looking for jobs nor to live on charity. There should be a job ready and waiting in private enterprise or with the Government, Federal, State and local, for every American fighting man when he comes home.... (Congressional Record, Vol. 90, pt. 3, April 17, 1944: 3502)

Joint Committee Print No. 1 (October 7, 1993) of the House and Senate Committees on Veterans Affairs (pages IX - X) indicates that 40.6 million men and women have participated in America's wars resulting in over a million deaths in service. Additionally, there are uncounted numbers who were disabled as a result of service.

Five point veterans' preference has been closely associated with periods of war concomitant with military conscription. A federal civil service commission pamphlet entitled "History of Veterans' Preference in Federal Employment: 1865 - 1955" points out that the Veterans' Preference Act of 1944 "...was originally given to those non-disabled veterans who served on active duty in the Armed Forces in wartime or in peace time campaigns or expeditions for which campaign badges or service medals have been authorized." Thus, Korean War veterans did not receive veterans' preference until the passage of Public Law 536 in the 82nd Congress. The passage of the Act was justified by the use of the military draft which continued until 1976.

Veterans' preference became politically controversial during the 1970's. As public opposition to the Vietnam War increased, politically, the stigma of the war spilled over to those who served in the Armed Forces.

In 1971, at their fourth annual convention, the National Organization for Women passed the following resolution:

> The National Organization for Women oppose(s) any state, federal, or municipal employment law

program giving special preference to veterans.

In that year, in Vietnam, there were 10,317 American casualties of which 1,381 were deaths.

The Carter Administration proposed the Civil Service Reform Act of 1978, which would have decimated veterans' preference if it had been adopted as proposed. A September 25, 1978, Federal Times article quoted the Special Assistant to President Carter promoting a Senate provision that "...essentially negates veterans' preference and opens government jobs to more women and minorities...." The Administration rhetoric promoted the notion that veterans' preference conflicted with Affirmative Action.

A September 29, 1977, Government Accounting Office (GAO) report entitled "Conflicting Congressional Policies: Veterans' Preference and Apportionment vs. Equal Employment Opportunity" added fuel to the Presidential flame by charging that their findings "...strongly indicates that veterans' preference is a formidable barrier to employment of qualified women who do appear on many registers." (Page 15.) In essence, virtually every problem regarding women's Federal civil service appointment was attributable to veterans' preference. Not surprising to veterans' service organizations, a March 1992, GAO report entitled "Federal Hiring: Does Veterans' Preference Need Updating?" (page 26) found the dire consequences of veterans' preference predicted in the 1977 GAO Veterans' Preference Study had not occurred.

> ...It appears that the impact of veterans' preference on the applicants has been minimal. The situation differs from what we found in 1977 when we found that veterans' preference severely limited job opportunities for non-veterans.

The GAO 1992 veterans' reference study justified its change in findings by indicating, "In our opinion, a number of factors contributed to this change over the years, including the aging of the veteran population and the lower number of veterans entering the workforce." This of course, was what was predicted by veterans' service organization testimony opposing the Carter Administration proposals in 1977.

In 1993, a Merit System Protection Board study warned against over-reaction to anticipated "Work Force 2000" projections that the civilian workforce demographics would dramatically change. The report indicates:

> A majority of the agencies we queried expressed a general acceptance of the (Work Force 2000) demographic predictions...but did not describe the situations in their own workforces that serve as compelling evidence that major changes have begun to -- or are about to -- occur.

> Still, after their publication and wide dissemination, the predictions of demographic change did gain acceptance as the conventional wisdom in many agencies. This has prompted some concern about the government's support of programs that respond to projections that may never materialize.
> U.S. Merit Systems Protection Board, Evolving Work force Demographics: Federal Agency Action and Reaction, (Washington, D.C.: GPO, 1993), 37.) (Emphasis added.)

In further contradiction to the 1977 Carter Administration and GAO predictions, the Office of Personnel Management (OPM) indicated that for Fiscal Year 1993, women's labor force participation in the federal government had increased to 42.4 percent which compared to 45.6 percent in the civilian labor force. While African Americans made up 10.5 percent of the civilian labor force, they make up 16.8 percent of the federal workforce. These gains were made while veterans' preference, as we know it, was still intact. However, Hispanics are under-represented when their federal workforce participation rate of 5.6 percent is compared to their 9.0 civilian labor force participation rate. (United States OPM, Annual Report to Congress on the Federal Equal Opportunity Recruitment Program, October 1, 1992 - September 30, 1993, (Washington, D.C.: OPM, January 1994), 4). The previously cited 1993 MSPB study (page 22) also found that the overall representation of minorities in the Federal Workforce exceeded that of the U.S. civilian workforce; and "Hispanic men and women are the only minority group who remain under-represented in the Federal workforce." Thus, the Carter administration's efforts to scapegoat veterans' preference were beat back without the predicted dire consequences to non-veterans.

However, even GAO testimony, in contradiction to its general thesis, indicated that veterans' preference was an assistance to minorities in obtaining federal employment. Deputy Director Clifford I. Gould of the General Accounting Office testified before the Subcommittee on Civil Service, Committee on Post Office of the Civil Service on October 4 and 5 of 1977, indicating:

> In eight out of the 44 registers we examined, the potential for minority job candidates to be certified increased when the veterans' preference was excluded. On 15 registers there was a decrease. Twenty-one registered (sic) showed no change in minority representation when preference was excluded. In 32 of the registers, the change involved only one individual. (Emphasis added.)

In essence, his testimony showed that in 82 percent of the cases, veterans' preference either improved or had no affect on a minority's chance of being certified on the register and if it

was removed, nearly doubled the chance, that a minority would not be certified off of the register. Clearly, veterans' preference enhanced a minority candidate's chance of being selected.

OPM data shows for Fiscal Year 1977, veterans made up 28 percent of the federal hires and 48 percent of the federal workforce. By 1994, veterans made up 18 percent of the federal hires, and 20.7 percent of the federal workforce. Veterans make up approximately 14 percent of the civilian labor force.

At least in part, veteran demographics explain why veterans' participation in the federal workforce dropped by over half. For example, in 1977, significant numbers of the federal workforce were WWII veterans, who are now average age 73 years. Korean War and Vietnam War veterans are average 64 and 48 years old respectively. Thus, because five point veterans' preference is limited to those who served before October 15, 1976, or received a campaign badge or expeditionary medal, the pool of five point eligibles is rapidly diminishing.

The Veterans' Administration projects that from the year 1990 to 2005, the veterans' population will decline by approximately 25 percent. It should also be noted that the military is being downsized and, without another major conflict, the veterans' preference eligible population will continue to decline in number for many years. These realities are reflected in OPM data in the following table.

PERCENTAGE OF EMPLOYEES WITH VETERANS' PREFERENCE IN EACH AGE GROUP

	WITH PREFERENCE		
AGE	NUMBER	PERCENT OF TOTAL	TOTAL NUMBER
Less Than 30	5,164	4	130,013
30 - 39	45,101	10.1	445,822
40 - 49	233,627	35.19	665,920
50 - 59	158,890	41.02	385,197
60 And Up	46,108	52	88,672
TOTAL	**488,890**	**28.5**	**1,715,351**

Thus, it should be no surprise that veterans' preference eligibles make up four percent of the federal workforce less than 30 years old but about half of the federal workforce 60 years and older.

VETERANS' PREFERENCE IN RIF

Downsizing of the federal workforce has generated a whole new set of charges. Now the thesis is that veterans' preference in reduction-in-force (RIF) will undo the results of years of Affirmative Action for women and minorities. In essence, the argument is veterans are white males in senior positions in the federal workforce. Thus, any protection afforded these individuals will necessarily have an overwhelming impact on women and minorities who are more recent entrants to the federal workforce.

These largely anecdotal, unsubstantiated claims have been used to justify federal agency efforts to avoid RIF procedures dictated by title 5, United States Code. In addition, federal agencies, such as United States Postal Service (USPS), evoke Vice President Gore's National Performance Review reinvention rhetoric to justify their agencies' creative RIF processes designed to avoid veterans' preference requirements. For example, in March 18, 1993, testimony regarding the USPS 1992 reorganization before the Senate Governmental Affairs Subcommittee, Postmaster General Marvin Runyon indicated that, under his leadership, USPS was "...on the leading edge of reinventing government, already doing many of the things that the Administration, the Congress and this Committee want to do for the Federal government as a whole."

A March 30, 1993 memorandum from Mary S. Elcano, Vice President, General Counsel, USPS, laid out a strategy for "Why Postal Service decided not to run a RIF." The purpose of the memo was to develop a strategy for the agency to defend its failure to provide veterans' preference in RIF by calling the Agency actions a reorganization. In part, her memorandum states:

> It has also been found that women and minorities comprise a large portion of the non-veteran group and RIF procedures can affect those employees in a way that seriously impairs the affirmative action accomplishments of an organization.

An August 11, 1993, Washington Post article by Bill McAllister indicated "No less a figure than Vice President Gore has praised Post Master General Marvin T. Runyon for shrinking the Postal Services Management."

To the consternation of the USPS, the Merit System Protection Board ruled that the much touted USPS reorganization was a RIF and that veterans had been denied their veterans' preference rights. The USPS continued to argue that it was simply a reorganization and exhausted its appeal rights. For the USPS to obtain a reconsideration before the Merit System Protection Board or appeal its case to the Federal District Court, the law required OPM to intervene in its behalf. The OPM did just that.

At the same time, the OPM circulated draft rules which would have, after the fact, adopted the USPS procedures which the MSPB had just decided violated the law. Ultimately, the White House interceded with the Justice Department to block the OPM appeal on behalf of the USPS.

The Government Accounting Office (GAO) has also resorted to creative data analysis to argue that RIF procedures, including veterans' preference would decimate its affirmative action efforts and therefore should be granted the authority to write its own RIF personnel rules. A March 27, 1995 Washington Post article by Mike Causey indicates that:

> Comptroller General Charles A. Bowsher said the agency would lose two-thirds of its women and half of its minority evaluators, undoing a decade of efforts to diversify and professionalize its workforce. Many of the workers Bowsher wants to retain lack the protection of longevity and have no military service to give them veterans' preference.

When the Associate National Employment Director for the Disabled American Veterans contacted the Assistant Comptroller General for Operations Joan Dodaro, she explained that the GAO projected reduction in force figures had been provided to the Washington Post for "dramatic effect" and did not reflect RIF impact on the whole agency. The Causey article went on to indicate "under current rules, short-service non-veterans -- many of them women and minorities -- are most likely to be fired."

I am attaching copies of OPM data which tracks the effects of RIF on twenty-five federal entities Appendix No. 1. This data shows that for the twenty-five agencies monitored by OPM, minorities and females suffered RIF less frequently than their percentage in the workforce in eleven agencies. Disabled employees fared better in six agencies, and, veterans did better in only seventeen agencies. Veterans were disproportionately RIFed in eight of the twenty-five agencies.

On February 1, 1994, the GAO testified before the Subcommittee on Civil Service and Subcommittee on Compensation and Employee Benefits, Committee on Post Office and Civil Service of the House of Representatives on the EEO implications of RIF. Not once did the testimony indicate the effects of the RIF on veterans. The agency selections were based on large female and minority population numbers. This selection criteria ensured the data would show a veterans' preference impact, particularly on women. "We selected the location that had the largest percentage of women and minorities before the RIF to maximize our chances of having sufficient data for statistical analysis." The GAO ignored important affirmative action considerations by not reporting whether or

not the proportion of women and minorities in the federal workforce at the sites studied were the same, more or less than the frequency of minority and women's participation in the civilian labor-force. The GAO conclusions were based on hypothetical RIFs. Thus, their conclusions are not borne out by the real world experience reflected in the previously cited OPM data.

However, even with these potential shortcomings in their testimony, the GAO did acknowledge that while minorities were disproportionately separated from the federal workforce at three locations reviewed, women were only separated disproportionately at two locations. The author then justified the disproportionate impact on minorities by indicating "In other cases, the disproportionate separations occurred because minorities occupied a large proportion of the positions abolished." (Emphasis added.) Thus, the disproportionate separation of minorities is rationalized by the study design, ignores the bias regarding women, and makes no mention of the effects of RIF on veterans.

THE DEMOGRAPHICS OF VETERANS' PREFERENCE ELIGIBLES

Central to the justification of veterans' preference in federal civil service is a recognition of who serves and the subsequent impact on their lives. Because of the crush of time, we are providing data that was developed for prior statements, but the implications of the information are just as relevant today.

According to the Bureau of Labor Statistics (BLS), as of September 1989, male veterans made up less than fourteen percent of the national labor forces. Non-veteran males and females made up approximately forty-two percent and forty-five percent, respectively.

A significant number of the 17.1 million male veterans in the labor force have characteristics that reduce their ability to compete in the labor market: six percent (1,034,0000) disabled, seven percent (1,189,000) over age 65, nine percent (1,482,000) black, three percent (584,000) Hispanic, and seventy-two percent (12,333,000) subject to the draft during war time.

As of December 1989, there were over one million female veterans in the civilian non-institutional population of whom 595,000 were in the labor force. Almost forty-seven percent (509,000) are over fifty years of age. (BLS unpublished data, December 1989, Veterans tables, matrix: b100, page .41).

Since 1973, when the law was changed eliminating the draft, the demographics of the armed services have changed significantly. For example, before 1973, the minority

participation rate in the armed services was virtually the same as their percentage of the U.S. population. By 1990, a lack of opportunity in the civilian labor force and the promise of opportunity in an all-volunteer military encouraged minorities of both sexes to enlist and reenlist in the military at disproportionately high rates. The result? A military whose minority participation rate is more than double their percentage of the U.S. population.

MILITARY DEMOGRAPHICS	1972	1990
White	83.6%	70.4%
Black	11.1%	20.8%
Hispanic	3.6%	4.6%
Other/Unknown	1.7%	4.2%
Women	1.9%	11.0%

("Military Personnel, Composition of the Active Armed Forces By Race or National Origin Identification and By Gender," GAO/INS IAD -- 91-134 FS, February, 1991)

June 1990 data from the Department of Defense (DoD) shows that minorities are disproportionately assigned to combat duties at a high 29 percent rate. These occupations generally receive the least training and the greatest number of battle and training casualties.

An October 1989 Congressional Budget Office (CBO) study, Social Representation in the U.S. Military (Table 1), indicated that in accession year 1987, blacks made up 27.8 percent of the female recruits and 18.5 percent of the male recruits. This study also computed indicators of the family incomes of accessions by comparing the addresses of the new recruits to family income data available by zip code area and found: "About 55 percent of male active-duty recruits in 1987 came from areas with family-income levels placing them in the bottom half of the [income] distribution across all these zip-code areas."

A combination of draft exemptions, programs like "Project 100,000" (to be described later), DoD marketing strategies, the threat of judicial action for draft evasion, public relations programs touting the value of military training, and limited opportunities in the civilian economy have encouraged a disproportionate number of enlistments and reenlistments of the socio-economically disadvantaged.

For example, during the Vietnam era, the draft deferment system was a major factor in (1) increased student enrollment in college (student deferments) by those who could afford to attend an institution of higher learning; (2) an extremely low representation of minorities in the National Guard and Reserves

(deferments from active duty); and (3) a military force in Vietnam that was approximately race-proportional but disproportionate in battle casualties suffered by minorities.

THE DRAFT AND SOCIAL-CULTURAL IMPACT ON GENDER REPRESENTATION IN THE MILITARY

One of the most frequent justifications for reducing or eliminating veterans' preference is based on the often over-stated and assumed impact of veterans' preference on women. However, rarely do these justifications incorporate the effect of the draft on the gender makeup of the military.

The impact of the military draft on the gender makeup of the veteran population cannot be overstated. On the one hand, the sex discriminatory draft mandated males would serve. On the other hand, few women chose to serve. Women, who had a choice as to whether or not to serve, found the prospect of military services undesirable as did most men, were under considerable social and cultural pressure not to serve and were not subject to the draft, so few served.

The military draft was first implemented during the Civil War and reimplemented during conflicts ending in 1976. The draft was necessary because the government could not depend on enough volunteers, even when the nation was at greatest risk. During the Civil War, for example, the Union could not obtain enough volunteers to continue the war. Accordingly, without a draft, the United States, as we know it, would not exist.

Efforts to reduce the political fallout from the draft during the Vietnam era led to programs like "Project 100,000", which modified draft standards to conscript young males who were otherwise not draft-eligible because of low IQ levels and educational attainment. The impact was felt predominately by the disadvantaged -- and disproportionately by minorities -- who had the least political influence. The "100,000" refers to the numbers of conscripts in training at one time who met the revised draft standards.

A study by the human resources research organization, Effects of Military Experience in the Post-Service Lives of Low-Aptitude Recruits: Project 100,000 and the A.S.V.A.B. Misnorming, December 1989, indicated the following for Project 100,000 conscripts:

* 56 percent served in Vietnam (Page 162) (compared to 34.8 percent for all veterans, Department of Veterans Affairs, "1987, Survey of Veterans")

* "...A higher proportion of Project 100,000 veterans were unemployed as compared to non-veterans with similar characteristics." (Page 163) (Emphasis added.)

* "Three income measures were examined (hourly pay, total household income, and yearly earnings), and in each case, the non-veterans were found to be making significantly more than their veteran counterparts." (Page 163) (Emphasis added.)

* "Significant differences were found in regard to education and training, with those who never served in the military somewhat better educated and more likely to have participated in a training program of some kind." (Page 163)

The impact of the draft was also described by a National Journal article, "Defense Report: Draftees Shoulder Burden of Fighting and Dying in Vietnam," (August 15, 1970). That article states, "Army draftees were killed in Vietnam last year at nearly double the rate of non-draftee enlisted men." The article continues:

> ...a draftee's chances of going to Vietnam have fluctuated between 50 and 80 percent. (Currently, draft calls are running at a rate of 10,000 men a month, and draftee replacements are being flown to Vietnam at a rate of 8,000 men a month.) (Emphasis added.)

Service in the military during the Vietnam conflict led to 109,000 dead and many are still missing or unaccounted for in Southeast Asia.

As late as 1967 -- when a two percent cap limiting women's participation in the armed services was removed -- women made up one percent of the armed forces. It was not until 1973 -- six years after the two percent cap was removed and the United States ground troops were removed from Vietnam -- that women reached a two percent level of participation in the armed forces.

A Brookings Institute study, Women in the Military, published in 1977, pointed out that:

> During the early 1950s, an abortive attempt was made to recruit some 100,000 women to meet the personnel demands imposed by the Korean war. But general lack of interest and the war's unpopularity doomed the effort to early failure.

The Brookings Institute also cited a 1972 Army commissioned survey of young civilian women which found that "...only 17 percent regarded such a career with favor."

This gender-based attitude prevails today. The Wall Street Journal, reported on December 14, 1990:

> A surprisingly high 38 percent of those ged 18-26 say they would be unwilling to serve if drafted. The reason: although 71 percent of all voters would favor drafting women as well as men, a majority of young women -- 57 percent -- say they wouldn't be willing to serve. By contrast, 64 percent of young men would be willing.

One of the factors commonly cited which affects the decision not to draft women is existing legislation and policy that prohibits women's assignment to military combat roles. The cited Brookings Institute study referenced a survey of military personnel that found:

> ...a majority of both men and women seem to favor [permitting women to serve in the combat roles]...in principle, but there is less support among men. Moreover, many of the women who endorse a combat role for women do not appear to want such a role for themselves. (Emphasis added.)

However, the invasion of Panama and the Persian Gulf War highlight the changing roles of women in the military and their increasing likelihood of being assigned duties on the front lines.

In 1978, women and the draft became a national issue. President Carter asked Congress for appropriations to draft women, should the draft be reinstated. Testimony was received both for and against the proposal by women's groups. Congress refused to fund Carter's proposal.

Historically, the drafting of men has been accepted but as wars became unpopular, men and women are less likely to enlist. Consequently, the nation has resorted to an all-male draft. Even today, with a successful volunteer military, men must still register for the stand-by draft in the event the draft is reinstated.

Men who refuse to register for the draft or serve when drafted potentially place their country at risk and are subject to criminal prosecution which may result in large fines and imprisonment. Women, of course, are not subject to such laws or punishment.

COURT ACTIONS REGARDING THE ALL MALE DRAFT AND VETERANS' PREFERENCE

During the Vietnam war era, the concerns of U.S. citizens, Congress, courts and the government for individual civil rights reached unparalleled heights. Not only did it become illegal to discriminate against individuals on the basis of sex, race, handicap and age, but it was also recognized that prior

discrimination had severely reduced the opportunities, and subsequently the station in life of minorities, women, and handicapped individuals. The concept of affirmative action, then, grew out of the idea that once classes of individuals (minorities, females, and handicapped) were adversely affected by discriminatory societal norms and government actions, there was an obligation to take affirmative steps to overcome the resulting loss of opportunity.

The arguments in support of veterans' preference are strikingly similar, especially when the impact of the draft, and socio-economic status from which the military draws its conscripts and volunteers are examined.

Additional arguments for veterans' preference was the veteran's obligation to accept the loss of numerous constitutionally protected freedoms, the extraordinary hardships -- until the volunteer force -- of impoverishingly low wages and the hazard of being sent into life-threatening circumstances. **The government, by its overt acts, created a unique class of citizens -- veterans -- who exist only as a result of special service to the government.** These burdens resulting from military service, especially when coupled with the draft or threat of draft, create a tremendous obligation on society and the government to take steps to overcome the socio-economic impact of military service.

Others who choose not to serve argue that because veterans voluntarily enlisted after 1976, and chose the burden of military service, they should suffer the consequences. This argument denies the threats to our country, trivializes the hardships and willingness of volunteers to potentially be placed in harm's way, arrogantly seeks to deny society's obligation to those who served, and ignores the socio-economic strata from which most recruits are drawn.

During the Vietnam era, men filed court actions opposing the male-only draft. They claimed it violated their Fifth Amendment rights to equal protection under the law. The Supreme Court disagreed, "...the fact that individual rights are infringed in a draft has already been found to be constitutional." The court continued by indicating, "induction can be justified as necessary to the compelling government interest in defending the nation." (Goldberg v. Rostker, civ. A No. 71-1480) (E.D. PA July 18, 1980). Thus, the rights of individual males were balanced against the security interests of the nation in ways not required of females.

Ironically, then, veterans' preference in employment was contested by some women's groups at least as early as September, 1971, when the National Organization for Women (NOW) passed a resolution opposing any veteran employment preference. That same year, there were 10,317 casualties in Vietnam, **each of the casualties had been ordered there by the government.**

The Supreme Court has looked at the discriminatory impact of veterans' employment preference on females and males who did not serve in the military. In the Supreme Court decision regarding the case of Personnel Administration of Massachusetts, et. al. v. Feeney (No. 78-233) decided June 5, 1979, the Court ruled that Massachusetts did not violate the Equal Protection clause of the Fourteenth Amendment by providing absolute veteran's preference in filling state civil service jobs -- a much higher standard of veterans' preference than provided in Federal civil service appointments.

The Court recognized the limited access to military by women and attributed the subsequent predominately male veteran population to the male-only draft. Even so, the Court found in favor of the state of Massachusetts, upholding its veterans' preference laws.

In part, the Court recognized the rights of states to pass laws that may have unequal results, provided it does not have a discriminatory purpose. (Washington v. Davis, 426 U.S. 229 and Village of Arlington Heights v. Metropolitan Housing Development Corporation., 429 U.S. 252)

The Supreme Court held that,

> When a statute gender-neutral on its face is challenged on the ground that its effects upon women are disproportionately adverse, a two-fold inquiry is thus appropriate. The first question is whether the statutory classification is indeed neutral in the sense it is not gender-based. If a classification itself, covert or overt, is not based on gender, the second question is whether the adverse effect reflects invidious gender-based discrimination.

The Supreme Court ruled that,

> Veteran status is not uniquely male. Although few women may benefit from the preference, the non-veterans class is not substantially all female. To the contrary, significant numbers of non-veterans are men, and all non-veterans -- male as well as female -- are placed at a disadvantage.

The Supreme Court concluded that the veterans' preference law in Massachusetts made a distinction, "...between veterans and non-veterans, not between men and women." And "...that benefit (veterans' preference) has been extended to women under a very broad statutory definition of the term."

SOCIO-ECONOMIC IMPACT OF MILITARY SERVICE

Those who oppose veterans' preference often trivialize the difficulty of transitioning from military to civilian careers and overstate the transferability of military training to civilian careers. The Congress intended that benefits such as veterans' preference would help ameliorate the economically stigmatizing effects of military service by providing a hiring edge that would advance veterans to the positions in life they would have enjoyed were it not for their time in the military, and provided that hiring edge, veterans' preference, for certain veterans, without a time limit.

The unemployment rates of those who served have commonly exceeded the unemployment rates of their non-veteran counterparts for over ten years following separation. In 1970, 1,043,000 were released from active duty at an average age of 23 years. When they reached the 30-35 age group, their unemployment rate finally dropped to comparable unemployment rates of similarly aged non-veterans.

However, during the recession including 1991, fifteen years after the Vietnam conflict, BLS employment data ("The Employment Situation: February 1991") showed that the unemployment rate for Vietnam era veterans in the age group 35-39 exceeded their non-veteran counterparts by 4.7 percent (10.7 percent vs. 6.0 percent). During each recession following the Vietnam conflict, the lower labor market penetration of the newer veteran has been reflected in a disproportionately higher unemployment rate than non-veterans of the same age group.

A BLS article in Monthly Labor Review, "Employment Status of Vietnam Era Veterans" published April 1990, reported on a 1987 survey. That article indicated that 14 years after ground troops were removed from Vietnam in 1973, "...those who actually served in the Southeast Asian theater, and especially those with service-connected disabilities continue to experience greater employment-related difficulties than their peers." The data also revealed disproportionately high unemployment rates for female veterans.

This report also indicated that for disabled veterans with service-connected disabilities rated by the Department of Veterans Affairs (VA), fewer than three quarters rated between 30-50 percent were in the labor force. "...among the most severely disabled (rating of 60 percent or greater), only one-third were in the labor force." (Page 24). This compares to a 92 percent labor force participation rate of veterans in the non-institutional civilian population.

A popular myth is that the training veterans received in the military gives them an advantage in the civilian labor market. A June 1969 study, Labor Market Activity of Veterans:

Some Aspects of Military Spillover, conducted by Paul A. Weinstein, Director for the University of Maryland, Department of Economics, concluded:

> ...15.9 percent of Army veterans use their military training while 28 percent of the Navy veterans did. Not only was there a relatively low rate of utilization of the skills, but we found that the market did not work effectively in aiding those veterans who were interested in using their service experience. For veterans who did look and find jobs related to their military experience, we inquired about the benefits received and whether, in fact, these were attributable to the military experience. We found half the Army veterans received no benefit at all as a result of the military experience. (Emphasis added.) (Page 142-143)

A VA study, Readjustment Profile for Recently Separated Vietnam Veterans, (June, 1973) indicated:

> Only about 49.3 percent (of the veterans polled) received some academic or technical training in the armed forces. Of these veterans, only 29.6 percent (about 15 percent of the total) indicated that their training was helpful in obtaining a job when they returned to civilian life. (Emphasis added.)

A November 1986 DoD study of the all-volunteer Armed Forces, (The Economic Return to Military Service; Daymont, Thomas N. and Andrisani, Paul J.) points to veterans earnings that dropped significantly below their civilian counterparts upon leaving the military. This study also refers to disproportionately higher rates of unemployment for recently discharged veterans. It concluded, however, that the unemployment rate for veterans discharged in the 1980s would reach comparable levels for the non-veteran peers in 2-4 years. As previously indicated, BLS data suggests ten years as a more reasonable expectation with continuing employment problems because of marginal labor market attachment for years to come (higher job turnover, longer periods of unemployment, lower paying jobs).

An unexplained anomaly pointed out by the study was that, "...on the average, young Army veterans earned between $1,700 and $3,500 less than veterans from the other armed services at the same point in their life cycle." Marine veterans earned even less, on the average, than the Army veterans. "...the basic pattern of these [service] branch effects on civilian earnings may persist for several years into their careers."

A more recent publication, Military Occupational and Training Data (MOTD), Vol. 2 (Department of Defense; Defense Manpower Data Center; 1988) indicates that about 30

percent of the enlisted and 25 percent of the officer military occupations could not be assigned corresponding civilian Dictionary of Occupational Titles (DOT) Codes. (The DOT code system assigns a numerical reference to virtually all civilian job titles.)

The MOTD indicated, "First, there was the obvious situation of infantrymen, tank crew members, and other purely combat specialties for which no civilian counterpart would be expected." The MOTD fails to note that military personnel will be assigned and serve in disproportionate numbers in the military occupations for which there is no civilian counterpart. The report does not refer to the many men and women who may be trained in a transferable occupation to later be assigned to work in an occupation which has no transferability. Thus, when they entered the civilian labor force, they will have no experience in the occupation for which they have been trained.

For those who wish to justify reducing or eliminating veterans' preference in federal civil service based on merit considerations, claiming that veterans' preference violates merit principles, we refer to the previously cited February 10, 1983 Congressional Research Service Report entitled Veterans' Preference in the Federal Civil Service, (CRS-12) which indicates:

> In 1976 testimony before Congress...Mr. Arch Ramsay, Director of the Bureau for Recruitment and Examining for the Office of Personnel Management stated that, '...the condition of our labor market is such that, with the possible exception of compensably disabled veterans, only the very best qualified, whether veteran or non-veteran, have any real hope of being appointed. In other words, veterans' preference has not meant that the government must appoint a minimally qualified veteran over a well-qualified non-veteran.'

RECOMMENDATIONS AND CONCERNS

While the details of a veterans' preference procedure may change, we urge the Congress to maintain veterans' preference principles and ensure that the system can provide meaningful monitoring and oversight for uniform implementation of the law.

We also wish to acknowledge OPM's frequent meetings with veterans' service organizations and the many briefings by this administration regarding their draft civil service reform proposals.

We are concerned that the reduction of OPM staff, decentralization of personnel functions, and contracting for previously provided OPM services, will reduce the development of

adequate veterans' preference policy oversight and monitoring. For example, we have been informed that the OPM Career Entry Group unit will be virtually done away with. Housed within that unit are personnel who decide whether or not federal agencies may pass over veterans in hiring and whether or not an agency has inappropriately found a veteran rated at 30 percent medically unsuitable for a position.

Historically, OPM has stringently applied veterans' preference laws, disallowing the vast majority of passover of veterans and finding in favor of the veteran in the case of medical unsuitability. In these cases, the agencies have already made a decision that they do not want to hire the veteran. If OPM gives up its authority in this area, the agency will make its own decision. Why should the agency reverse itself? We believe the agency will find its reasons for not hiring the veteran fully justified.

We urge the Congress to require OPM to maintain passover and medical unsuitability decision making at the OPM level.

We believe that one of the greatest detractors from veterans' preference is the tremendous number of non-competitive and excepted appointing authorities. We believe that as agencies increased control over the maintenance of registers, utilization of more subjective ranking tools, and appointing authorities which do not require rating and ranking of candidates, veterans' preference has suffered. Special hiring authorities, such as that agreed to in the settlement of the Luevano lawsuit, have been created which do not require veterans' preference in appointment. We encourage this Congress to reduce the number of non-competitive and accepted appointing authorities.

RIF is probably one of the most demoralizing personnel actions to affect an agency's workforce. Even those who continue in employment are adversely affected emotionally. As was previously cited in this testimony, federal agencies have attempted to creatively avoid veterans' preference in reduction. Most notably, the USPS in 1992 conducted what it referred to as a reorganization. Ultimately, the Merit System Protection Board (MSPB) ruled that the reorganization was a RIF and that the USPS had violated veterans' preference eligibles' rights. The USPS exhausted its legal remedies when it appealed to the MSPB Board for a final decision. Because the USPS disagreed with that adverse decision as well, it appealed to OPM, which under the law, would have to request reconsideration at the Board and failing in that effort, appeal the decision to the federal court. OPM interceded on behalf of the USPS.

Finally, the President, at the request of veterans' service organizations and VA officials, prevailed on the Justice Department to drop the appeal filed in Federal District Court.

However, in the meantime, OPM was circulating draft rules, which if they had been adopted, would have incorporated the disputed illegal practices of the USPS in RIF rules. In effect, this would have authorized the USPS to do what it had just been ordered by MSPB not to do. Veterans' service organizations were successful in opposing these rule changes inside OPM.

It is interesting to note that the U.S. Court of Appeals District of Columbia Circuit decided on June 29, 1983 that a USPS "Reorganization" in 1975 had been found similarly in violation of RIF procedures, but did not require the agency to reverse its actions because there was no loss of pay. Benjamin Franklin American Legion Post No. 66, et. al. v. United States Postal Service, 732 F.2 945 (DC, 1983). Thus, the USPS did not learn from its first mistake, or some might argue, did learn from its first mistake and assumed it could get away with it again.

The Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236) at Section 611 authorizes the State Department to write its own RIF rules. "AFSA News" flier dated April 7, 1995 outlines State Department proposed rules to implement their new RIF personnel policies.

> As outlined in 94 S.T.A.T.E. 263920, the Department's proposed regulations first provide for review of those members in a given competition group (i.e., a group defined by class and skill code, whose members are competing against each other for retention) of employees who are untenured or serving on L.C.E.s. These employees will be rank-ordered according to merit. Next, the remaining employees in the competition group are ranked according to merit, and the resulting order of merit list is divided into three parts: bottom 25 percent, middle 50 percent, and top 25 percent. Employees will then be riffed according to reverse order of merit in the following sequence: non-military preference employees in the group of untenured members or those serving on LCEs, military preference employees in the group of untenured employees or those serving on LCEs, non-military preference employees in the bottom 25 percent military preference employees in the bottom 25 percent, non-military preference employees in the middle 50 percent, military preference employees in the middle 50 percent, non-military preference employees in the top 25 percent, military preference employees in the top 25 percent. Within each military preference subgroup, veterans with a compensable service-connected disability of 30 percent or more will be riffed only after all other military preference employees in the subgroup.

Thus, the State Department undoes veterans' preference as accorded all other Executive Branch employees who are covered by Title 5 U.S.C. Unlike the RIF provisions covering Title 5 personnel, the State Department RIF rules RIF veteran career employees before non-veteran career employees rated in a higher merit group.

The U.S. Geological Survey (USGS) may have found an interesting method of reducing RIF preference by creating numerous one-person competitive levels. If an agency abuses the assignment of personnel to competitive levels, it impacts veterans' rights to bump in or retreat to positions in their competitive level. We believe that federal agencies sometimes adopt this technique to protect certain employees from bumping by veterans' preference eligibles.

We are very concerned about the creativity of federal agencies as they attempt to avoid the effects of veterans' preference in RIF. We encourage that this area of the law be strengthened, making it clear that for veterans' preference eligibles, an assignment to a reduced grade, although they continue to be paid and maintained at their old grade level, constitutes a RIF from which they would derive veterans' preference RIF protections. Veterans should have the right to appeal veterans' preference RIF violations to the MSPB. We believe that all federal agencies should be subject to these requirements. We see no need to exempt any federal entity from these obligations.

We have noted that Administration proposed civil service reform includes unlimited personnel research programs and demonstration projects. We are concerned that the adoption of what is described as the Administration proposal would allow an agency as large as DoD to declare its whole personnel system a research or demonstration project which ultimately OPM could approve, all without approval of the Congress. We believe this authority is much too broad and would seriously impact the need for uniformity in the application of personnel rules to federal employees. We agree that there should be a mechanism for the federal government to conduct personnel research and through demonstration projects, however, we think there should be a limit in the size of the project and that OPM not have the right to waive veterans' preference principles. We believe that final adoption of personnel practices should include the oversight of the Congress with adoption into law where necessary.

The Administration has proposed the creation of an appointing authority which would allow term appointments for up to five years. After a period of time, employees hired under this authority could be non-competitively converted to permanent employees. Although the Administration proposal provides for the initial hiring to incorporate veterans' preference, the Administration language does not limit the final appointment to

the job in which the person was temporarily hired. Thus, the appearance is that the Administration, while providing veterans' preference in the initial term appointment, might convert such person to any career position without regard to veteran status. This undoes veterans' preference in appointment to career positions. At the minimum, such authority should require that a person hired under this authority only be converted into a career appointment in that position.

We frequently receive calls from veterans alleging that their veterans' preference rights have been violated by federal agencies. At this time, they have no administrative recourse which will ensure a prompt, in-depth investigation or response to their concerns. Additionally, even when the agency admits they created an error, denying the veterans their preferential rights, the remedies are generally benign.

For example, a veteran might be improperly passed over by a federal agency in initial appointment. If the agency's errors are discovered, the agency simply offers the veteran a priority placement the next time they fill such a position. Thus, the veteran is denied employment illegally and may or may not ever be placed in a federal job. We recommend amendments to current law providing veterans a complaint process which, in its initial stages, would be informal but would allow for appeals ultimately to the federal courts. This legal language should incorporate remedies which would provide the veteran all benefits of employment as though the original error had not been committed. Thus, they should receive a job with seniority pay and all of the benefits as though they had been properly hired initially.

Title 38 U.S.C. Section 4214 requires federal agencies to write a disabled veteran's affirmative action plan for compensably disabled veterans. OPM has implemented their obligation under this law by simply certifying agency plans that meet the regulatory requirements. OPM rules do not require oversight, monitoring or a process ensuring affirmative action is applied in hiring or promotion. Thus, most of the agency plans are so benign as to have no effect.

For disabled veterans' affirmative action to be treated seriously, we believe the law must require a process which will define the intent of Congress. We urge this Subcommittee to amend current law consistent with court rulings to provide for affirmative action to be taken among the top equally qualified candidates and requiring that disabled veterans be selected for promotion. In this scenario, if a compensably disabled veteran is competing for a merit promotion, and the disabled veteran is rated as qualified as the most qualified candidate, then the disabled veteran must be selected for the position.

We believe that efforts beginning with the Carter Administration to modify veterans' preference has created a

culture which is resistant to veterans' preferences as a concept in federal civil service. We believe that without centralized enforcement and oversight ensuring uniform application of veterans' preference, the various separate agencies are likely to undermine any veterans' preference law passed by the Congress. If there is not a centralized monitoring and oversight responsibility maintained in an agency, such as OPM, we believe that uniform application of veterans' preference will be lost. The Administration plans to streamline and downsize federal agencies, including the Office of Personnel Management, along with fiscal restraint imposed by this Congress, will result in the loss of a central adjudication of passover and medical unsuitability veterans protections. We urge the adoption of legislative language which will require the maintenance of veterans' preference monitoring and oversight as well as passover and medical unsuitability responsibilities to assigned personnel in OPM.

This concludes our statement, Mr. Chairman. I have advised the organizations whose views are expressed in this statement that the Committee will allow them to submit additional testimony if they so desire. I would be happy to respond to any questions you may have.

Percentage Employment of Minority, Female, and Handicapped Compared to Percentages RIF'ed in the Same Three Populations during Fiscal Year 1993 (Subelements with, at least, 100 RIF's)

Agency	Total Employment							RIF Information						
	Total	Minor-ity	%	Female	%	Handi-capped	%	Total	Minor. ity	%	Female	%	Handi-capped	%
Air Training Command	9713	2933	30.2	4163	42.8	155	1.6	348	58	16.6	188	54.0	7	2.0
Air Combat Command	8907	1561	17.5	3701	41.5	162	1.8	468	98	20.9	261	55.7	13	2.8
Air Mobility Command	4409	1098	24.8	1715	38.8	92	2.1	107	39	36.4	37	34.5	2	1.9
Forest Service	17822	2598	14.5	6945	38.9	214	1.2	108	16	14.8	35	32.4	2	1.9
Army Forces Command	31463	8037	25.5	10874	34.5	280	0.9	424	180	42.4	208	49.0	10	2.4
Army Health Serv. Command	7926	3896	49.1	4662	58.8	91	1.1	102	44	43.1	68	66.6	2	2.0
Army Training & Doctrine Command	21377	5768	26.9	8809	41.2	246	1.2	197	79	40.1	75	38.0	2	1.0
Army Depot Systems Command	17877	4695	26.2	3839	21.4	295	1.7	306	49	16.0	107	34.9	3	1.0
Census Bureau	6863	1736	25.2	4536	66.0	111	1.6	70	19	27.1	51	72.8	0	0.0
Commissary Command	6592	3284	49.8	3415	51.8	91	1.4	228	112	49.1	107	46.9	10	4.4
INS	19365	7966	41.1	6957	35.9	113	0.6	128	49	38.2	79	61.7	2	1.6
Bureau of Indian Affairs	12987	11267	86.7	6123	47.1	22	0.2	202	166	82.1	140	69.3	1	0.5
Navy Sea Systems Command	63756	14277	22.3	13990	21.9	701	1.1	237	41	17.2	47	19.8	5	2.1
Total	229057	69116	30.1	79729	34.8	2573	1.1	2925	950	32.4	1403	47.9	59	2.0

Percentage Employment of Personnel with Veterans Preference Compared to Percentages RIF'ed with Veterans Preference during Fiscal Year 1993 (Subelements with, at least, 100 RIF's)

Agency	Total Employment			RIF Information		
	Total	Veterans Preference	%	Total	Veterans Preference	%
Air Training Command	9713	4745	48.8	348	159	45.7
Air Combat Command	8907	4855	54.5	468	186	39.7
Air Mobility Command	4409	2522	57.2	107	62	57.9
Forest Service	17822	3469	19.5	108	30	27.8
Army Forces Command	31483	16595	52.7	424	127	30.0
Army Health Serv. Command	7926	2879	36.3	102	16	15.7
Army Training & Doctrine Command	21377	11012	51.5	197	100	50.8
Army Depot Systems Command	17877	10863	60.8	306	142	46.4
Census Bureau	6863	644	9.4	70	8	11.4
Commissary Command	6592	1278	19.4	228	81	35.5
INS	19365	5457	28.2	128	32	25.0
Bureau of Indian Affairs	12987	2416	18.6	202	23	11.4
Navy Sea Systems Command	63756	24419	38.3	237	82	34.6
Total	229057	91155	39.8	2925	1048	35.8

Percentage Employment of Minority, Female, and Handicapped Compared to Percentages RIF'ed in the Same Three Populations during Fiscal Year 1994 (Subelements with, at least, 100 RIF's)

Agency	Total Employment							RIF Information						
	Total	Minor-ity	%	Female	%	Handi-capped	%	Total	Minor. ity	%	Female	%	Handi-capped	%
Air Combat Command	15263	2877	18.8	6507	42.6	2275	14.9	125	7	5.6	36	28.8	30	24.0
Air Mobility Command	10443	2556	24.4	4526	43.3	1512	14.5	114	35	30.7	54	47.3	21	18.4
Air Force Materiel Command	80993	20847	25.7	26290	32.4	9050	11.2	535	255	47.6	163	30.4	62	11.6
Forest Service	44003	6566	14.9	17032	38.7	3231	7.3	154	21	13.6	36	23.3	21	13.6
Army Forces Command	32666	8032	24.5	11231	34.3	2964	9.1	326	168	51.5	108	33.1	34	10.4
Army Health Serv. Command	25131	9892	39.3	16515	65.7	2072	8.2	151	67	44.3	94	62.2	16	10.6
Army Depot Systems Command	19119	4351	22.7	3773	19.7	1821	9.5	334	96	28.7	89	26.6	51	15.3
Patent & Trademark Office	5085	2589	50.9	2437	47.9	198	3.9	123	52	42.2	47	38.2	7	5.7
Defense Logistics Agency	57606	18109	31.4	23466	40.7	5632	9.8	670	521	77.7	544	81.1	33	4.9
Federal Deposit Insurance Corp.	20278	4334	21.3	10695	52.7	1068	5.3	859	217	25.2	589	68.5	40	4.7
Indian Affairs	13673	11812	86.3	6466	47.2	331	2.4	196	148	75.5	117	59.6	5	2.6
Office of Personnel Management	6274	1977	31.5	3876	61.7	365	5.8	493	171	34.6	308	62.4	30	6.1
Total	330534	93942	28.4	132614	40.1	30519	9.2	4080	1758	43.0	2185	53.5	350	8.6

Percentage Employment of Personnel with Veterans Preference Compared to Percentages RIF'ed with Veterans Preference during Fiscal Year 1994 (Subelements with, at least, 100 RIF's)

Agency	Total Employment			RIF Information		
	Total	Veterans Preference	%	Total	Veterans Preference	%
Air Combat Command	15263	7322	48.0	125	70	56.0
Air Mobility Command	10443	4897	46.9	114	53	46.5
Air Force Materiel Command	80993	32316	39.9	535	55	10.3
Forest Service	44003	7999	18.2	154	51	33.1
Army Forces Command	32686	16557	50.7	326	147	45.1
Army Health Serv. Command	25131	7436	29.6	151	45	29.8
Army Depot Systems Command	19119	10881	56.9	334	140	41.9
Patent & Trademark Office	5085	354	7.0	123	30	24.4
Defense Logistics Agency	57606	22943	39.8	670	56	8.4
Federal Deposit Insurance Corp.	20278	2663	13.2	859	80	9.3
Indian Affairs	13673	2433	17.8	196	25	12.8
Office of Personnel Management	6274	1075	17.1	493	41	8.3
Total	330534	116896	35.4	4080	793	19.4

Mr. MICA. We thank you, and now we will turn to Mr. Moyer.

Mr. MOYER. Thank you, Mr. Chairman.

It's a pleasure and an honor to appear before you this morning. The Federal Managers Association thanks you for holding this important series of hearings and for inviting us to present our views on reform of the Nation's civil service.

We agree with the views expressed by other witnesses that today's rapidly changing workplace demands more flexible personnel rules to better allow managers and supervisors to more readily hire, reward, and fire the personnel necessary to carry out their agency's mission. Greater emphasis needs to be placed on outcomes rather than on process. Civil service reform is a critical element, but not an end in itself, in making Government smaller, more efficient, and more responsive to the needs of its customers.

The administration and OPM have made a good start at reform through initiatives within the prerogative of the executive branch toward civil service reform. With the help of Congress, more can be done. I would like to briefly highlight five areas in our prepared statement.

The first deals with the role of OPM. Throughout the course of civil service reform, care should be taken not to diminish the merit system's strengths. Central to that strength is the oversight role that OPM has played and must continue to play in promoting and enforcing agency adherence to merit principles. OPM moderates agency actions in the personnel arena and provides a positive image to the public of the Federal Government as a single employer with one cohesive personnel system.

As agency resources decline, particularly in personnel shops, there will be a greater need than ever for OPM to provide guidance and assistance to agencies and serve as a repository of expertise in human resource management. Elimination or excessive downsizing of OPM will lead to management chaos and confusion, as well as greatly increased costs as Federal agencies create a host of different personnel systems.

The increasing call for agency flexibility and decentralization demands all the more that we retain an agency to provide final determinations on personnel policy issues that transcend narrow organizational lines. This fosters consistency and fairness throughout the Government and provides a central point of accountability to the Congress and the public.

The second point, Mr. Chairman, deals with the importance of training. Investing in our Government's most valuable resource, its employees, by providing more training, is critical. Greater managerial discretion requires informed judgment. That, in turn, relies upon training and experience. For first-level supervisors, in particular, training is critical to success, especially when they have been selected more on the basis of technical competence than on management skill. We encourage the committee to keep in mind the integral role that training will play toward the success of civil service reform.

Third, the area of performance and accountability is certainly pivotal to the attention of this subcommittee and its work. Responsive systems for the conduct of performance management are essential to the strength and vitality of an effective civil service. Per-

formance management systems must aim to integrate employee performance goals with those of their agency, give employee feedback to continually improve performance, maintain accountability for an acceptable performance, and reward employees for distinguished performance.

Additional improvements, though, in performance management systems are warranted. As downsizing proceeds, increased supervisory ratios and broader spans of control make it difficult for supervisors to devote the fullest attention to communication, performance feedback, and documentation of poor performance, as a regular part of supervisory responsibilities. We need to find new ways to reduce administrative burden, encourage supervisors to deal head-on with performance problems, and establish greater accountability for performance.

Managers and supervisors find the current process for dealing with poor performers to be unduly difficult, confusing, and time-consuming. According to the General Accounting Office, the average supervisor spends 5 hours per week working with each poor performer under their supervision. This commitment usually lasts for months.

Time and delay problems are compounded further through the grievance, MSPB, EEOC, and court appeal procedures. The availability of affirmative defenses, even if frivolous, add to the problem. The pressure and inclination of top management to settle appeals further undermines manager resolve.

These concerns and reservations about the adequacy of the current framework are proven by a recent report of the Merit Systems Protection Board on dealing with poor performers. We agree with much of the data gathered in the report.

Fourth, on Federal work force restructuring, as the Government proceeds to downsize, Mr. Chairman, there is a special need to provide agencies with the tools to be able to reach their budget and work force goals. Responsible management of employee attrition during this unprecedented period of downsizing is essential to maintaining an effective and productive work force.

We need to do more to avoid reductions in force to the greatest degree possible. Many of our members within the association, particularly at defense industrial facilities, have had the unfortunate experience of running and participating in RIF's. Not only are RIF's expensive, they destroy work force morale and productivity. Therefore, we have included in our testimony a list of tools and incentives we ask the committee to consider adding to those already available to agencies to more effectively restructure their work force.

Finally, in terms of cost savings, we would like to particularly draw to your attention a reform that we believe is warranted in the Federal Employees Compensation Act, the Government's system for worker compensation. FMA is concerned about the effect that rising FECA program costs are having on agency budgets and the effectiveness of their work force.

Since FECA benefits are paid out of salary and expense accounts, high FECA costs mean less money available to hire workers and compensate current employees. FECA needs to be reformed in a manner that preserves the rights of employees injured in the work-

place, but changes some of the rules that currently make the program vulnerable to abuse.

This concludes our prepared remarks. I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Moyer follows:]

FMA
Federal Managers Association

STATEMENT
OF
BRUCE L. MOYER
EXECUTIVE DIRECTOR
FEDERAL MANAGERS ASSOCIATION

BEFORE THE
HOUSE GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON
CIVIL SERVICE

ON

CIVIL SERVICE REFORM - THE CASE FOR CHANGE

OCTOBER 13, 1995

1641 Prince Street • Alexandria VA 22314-2818 • (703) 683-8700 • FAX (703) 683-8707

INTRODUCTION

Mr. Chairman and members of the Subcommittee:

My name is Bruce Moyer and I am the Executive Director of the Federal Managers Association (FMA). On behalf of the 200,000 managers and supervisors in the Federal Government whose interests are represented by FMA, I would like to thank you for holding this important hearing and for inviting us to present our views to the Civil Service Subcommittee on the need to reform the laws governing Civil Service human resource management.

Let me also preface our remarks by noting that many of our thoughts are shared by the Coalition for Effective Change, a federation of 29 management and professional organizations, which has devoted a significant amount of attention to reinvention and civil service reform.

In executing their Congressionaly mandated responsibilities for insuring daily front-line delivery of goods and services to the American public, Federal managers and supervisors are faced with many challenges. One of the most significant challenges for managers is the dizzying maze of Federal personnel rules and regulations. Contrary to popular opinion, Federal workers are not nameless, faceless bureaucrats who simply make work in order to justify their existence. Vice President Gore is on target when he characterizes Federal employees as being good workers trapped in a bad system. The Vice President is to be commended for his leadership in launching and overseeing the National Performance Review. Public management professor Donald F. Kettl rightly describes the NPR as having, "the potential, together with the New Deal and the Hoover Commissions, to be one of the three most important administrative initiatives of the twentieth century."

As tax-paying American citizens first and civil servants second, Federal managers and supervisors want their government to work. We hope our insights and recommendations today prove useful in informing and guiding the Subcommittee's discussion of civil service reform.

WHY DO CIVIL SERVICE LAWS NEED TO BE CHANGED?

FMA agrees with Office of Personnel Management Director James B. King's assessment of current civil service rules. In the National Performance Review's September 1994 report, *Reinventing Human Resource Management*, King observed,

> *"Most of the personnel laws we use today were written for a troubled civil service of 1883. We must cut the cord to regulations that were right for their time a century ago, but which hog-tie managers today. In their place, we need systems and mentalities that, while still based in merit and fairness, will let managers manage today and into the future."*

The current need for civil service reform is compelling for a number of reasons. As Director King has noted, today's rapidly changing workplace demands more flexible personnel rules that will allow managers to hire, promote and fire the personnel necessary to carry out their agency's mission. Greater

emphasis needs to be placed on outcomes rather than process. Civil service reform is also a critical element in making government smaller, more efficient and more responsive to the needs of its customers.

In the February 1995 issue of the *Atlantic Monthly*, management guru Peter F. Drucker warned that the NPR and the Congress are in danger of repeating the restructuring mistakes of large private-sector companies such as IBM, Sears, and GM. According to Drucker, in the last 15 years these companies were guilty of "amputation before diagnosis." That is, they laid off large numbers of employees in hopes of a turnaround in productivity and quality. When the first round of layoffs did not produce results, the companies resorted to a second round of large-scale layoffs which again did not produce the desired outcomes.

In order to not repeat the experiences of IBM, Sears, and GM, to avoid a hollow government, and to survive in a rapidly changing work environment, front-line workers must be empowered to achieve results. OPM has begun administratively to empower managers and to devolve decision-making authority closer to where the rubber meets the road. With the help of Congress, more could be done.

CIVIL SERVICE STRENGTHS AND WEAKNESSES

In seeking to correct the weaknesses of Federal personnel laws and procedures, care should be taken not to diminish the system's strengths. The system's major strengths are merit-based selection and advancement in employment, equality and opportunity for all citizens, fair and equitable treatment of individuals, and open scrutiny of the official actions of public employees. OPM plays the central role in promoting and enforcing agency adherence to these merit principles. OPM is a small agency with a large impact. It moderates agency actions in the personnel arena, and it provides a positive image to the public of the Federal Government as a single employer with one cohesive personnel system. OPM has provided guidance and assistance to agencies in all areas of personnel management, and has served as a repository of expertise for all aspects of human resource management.

As the government-wide oversight agency in personnel matters, OPM has been able to provide final determinations on personnel issues that transcend narrow organizational lines. This fosters consistency and fairness throughout the Government, and provides a central point of accountability to the Congress and the public. Further it saves the Government money by reducing challenges by disaffected employees, and provides the public with confidence that someone is vigilant in investigating agency excesses.

OPM can and should be allowed to continue to provide effective oversight of agency personnel programs and issue policy guidance and definitive interpretation of Federal civil service regulations. This agency, exercising government-wide personnel authority, should remain the arbiter among agencies in personnel matters. Elimination or excessive downsizing of OPM will lead to management chaos and confusion as well as greatly increased costs as Federal agencies create a host of different personnel systems. Efforts to reform civil service personnel laws should recognize the invaluable contributions OPM makes toward effective government human resource management and maintain a central role for this agency.

A number of issues deserve serious consideration for incorporation in the effective management of human resources. First, investing in our government's most valuable resource, its employees, by providing more

training is critical. According to Professor Kettl's 1994 report appraising the NPR, the Australian civil service credits its training, especially for its middle managers, as the key to the success of their reform efforts. The Australian civil service spends five percent of its personnel budget on training. In comparison, the U.S. only spends 1.3%.

Greater managerial discretion requires informed judgment. That in turn, relies upon training and experience. For first-level supervisors, in particular, training is critical to success, especially when they have been selected more on the basis of technical competence than on interpersonal skills. FMA urges Congress to address this weakness by expanding training opportunities for managers through programs such as the Federal Executive Institute and the Management Development Centers. These institutions educate managers and executives in a broad range of management competencies, in addition to government service in the context of American values. FEI and the MDCs are cost-effective in providing training at a price far below any of their competitors in academia or the private sector.

An important component of empowering employees to operate effectively in the horizontally-structured, fast-paced, information-intensive, workplace of the 21st century must be to equip Federal workers and train them in the use of state-of-the-art computer equipment. The Federal government, including the Congress, provide a wealth of information on the world-wide-web and over other internet protocols. However, relatively few workers have the training or the equipment to take advantage of this emerging technology. The NPR's Net Results task force has done an outstanding job of improving government knowledge sharing, cross-agency communication, and information distribution. Congress should support these efforts.

Within the framework of adherence to merit principles, agencies and front-line workers need to be empowered through reform of civil service personnel rules. Managers will not be able to do more with less if they are still hampered by personnel rules that make it difficult or impossible to hire, reward performance, retain highly skilled and experienced workers, discipline or fire poor performers, manage workforce attrition, communicate with top management, and reduce abuse of workman's compensation. The following are FMA's recommendations for legislation to help address these issues:

CIVIL SERVICE REFORM RECOMMENDATIONS

CHANGING THE FEDERAL HIRING SYSTEM

Federal managers are frustrated by a hiring system that does not involve their participation in initial recruitment and evaluation of candidates, takes too long, restricts competition, and is too complex. They are at a distinct disadvantage in comparison to their private-sector counterparts who can make immediate offers of employment to qualified candidates. Today's labor market and workplace demand a more flexible and responsive hiring system.

FMA is in general agreement with the proposed changes in the hiring system contained in the Administration's draft civil service reform legislation. FMA is, however, concerned about the proposed 5-year duration of non-permanent appointments. We believe that three years should be sufficient for most time-limited needs. Overall, these proposals are a step in the right direction toward decentralizing

and streamlining the Federal hiring system while retaining a critical support and oversight role for OPM to insure adherence to merit principles.

As government downsizes, career transition assistance will become increasingly important. FMA commends President Clinton for directing OPM on September 12 to establish policies requiring agencies to hire well-qualified displaced Federal employees from their own agency and other government agencies before hiring external candidates. This effort may ultimately require some changes in current law, and we encourage Congress to be responsive to this need.

PERFORMANCE MANAGEMENT

Responsive systems for the conduct of performance management are essential to the strength and vitality of an effective civil service. Performance management systems must aim to integrate employee performance goals with those of their agency, give employee feedback to continually improve performance, maintain accountability for unacceptable performance, and reward employees for distinguished performance.

OPM's issuance in August of new performance management regulations was a positive step toward providing greater performance management flexibility to agencies and eliminating some of the burdensome requirements. OPM did an effective job in balancing the need for agency versatility in responding to the demands of their mission and culture, while assuring governmentwide maintenance of merit system principles.

At the same time, additional improvements in performance management systems are warranted. As downsizing proceeds, increased supervisory ratios and broader spans of control make it difficult for supervisors to devote the fullest attention to communication, performance feedback and documentation of poor performance as a regular part of their supervisory responsibilities. We need to find new ways to reduce administrative burdens, encourage supervisors to deal head-on with performance problems, and establish greater accountability for performance.

Managers and supervisors find the current process for dealing with poor performers to be unduly difficult and time-consuming. According to the GAO, the average supervisor spends five hours per week working with each poor performer under their supervision. This commitment usually lasts for months. Time and delay problems are compounded further through grievance and MSPB appeal procedures covering performance-based personnel actions. The availability of affirmative defenses, even if frivolous, add to the problem. The pressure and inclination to settle appeals further undermines manager resolve. We encourage Congress and the Administration to devote renewed attention to these problems as an important part of civil service reform.

DISPUTE RESOLUTION

Federal employment disputes generally take too long and cost too much to resolve and, in some cases, are not resolved in a manner that promotes the efficiency of government service. This situation is

frustrating to conscientious managers and employees throughout the Federal government. The partnership process may help reduce the number of costly disputes. More could be done. There are currently multiple dispute resolution forums (e.g., Federal Labor Relations Authority, Merit Systems Protection Board, Equal Employment Opportunity Commission, and the Office of Special Counsel) available for a wide range of employment disputes that are not resolved within individual agencies. These specialized and sometimes overlapping forums present a confusing array of processes and procedures. FMA supports streamlining the employee complaint process in a manner that protects the rights of all employees to create a single forum for dispute resolution.

PARTNERSHIP

The Administration has sought to empower front-line workers by joining with Federal employee unions in "partnership" efforts at the national and agency level. On October 1, 1993, President Clinton issued Executive Order 12871 establishing the National Partnership Council. Partnership is an important initiative to create greater employee involvement, higher accountability, and a more productive, high-performance organization.

One of the current obstacles to effective intra-management workplace communication is an advisory opinion issued by the Department of Justice last year asserting that Federal employees may have violated 18 U.S.C. §205 and could be subject to criminal prosecution when they have expressed the views of an employee organization where there is a potential for the organization and the agency to have different positions on a particular matter focused on the interests of a discrete and identifiable class. Legislation introduced Representative Frank Wolf (R-VA), H.R. 782, the Federal Employee Representation Improvement Act of 1995, would correct this Department of Justice interpretation to restoring effective communication in the Federal workplace. H.R. 782 is scheduled for floor in the House later this month. We urge your Mr. Chairman and the Subcommittee to support passage of this important legislation.

COMPENSATION

> *During this period of downsizing the federal bureaucracy by 272,000 employees over the next 5 years, the remaining workforce must be highly trained and motivated in order to meet the needs of all taxpayers in an efficient manner. . . I am committed to ensuring that as the bureaucracy further downsizes, a more productive workforce remains and is fully compensated.*
>
> **Sen. William V. Roth 03/31/95**

Making government smaller and more efficient requires a better educated, more highly skilled workforce. Recruiting and retaining such a workforce demands a competitive compensation and benefits package on the part of the Federal Government. Over the last decade and a half, Federal civil servants have contributed more than $200 billion toward reducing the Federal deficit through cuts in their pay and benefits. Congressional efforts to reform civil service personnel laws need to address the central issue of insuring that enough funding for government salaries is provided to ensure that they are comparable to pay for similar work in the private sector.

FMA is opposed to current efforts pursuant to H.Con.Res. 67, the 1996 budget resolution, to cut funding for pay adjustments in half, reduce lifetime retirement benefits for those retiring after 1996, reduce the government's share of employee health care premiums, increase employee contributions to the civil service retirement trust fund, and delay cost-of-living-adjustments to Federal retirees. The 27.5% gap between Federal and non-Federal salaries should be closed by fully funding the Federal Employees Pay Comparability Act of 1990 (P.L. 101-509). One way to do this is for Congress to pass H.R. 1409, introduced by Delegate Eleanor Holmes Norton (D-DC) to reduce the $108 billion the government spends annually on contracting out for services in order to fully fund FEPCA.

In addition to providing adequate funding for pay adjustments Congress should support efforts to reform the General Schedule pay and classification system. FMA is supportive of the goals of the NPR's draft human resource management legislation to reform the classification system. We support efforts to simplify the current classification system and provide agencies greater flexibility in how they classify and pay their employees. This includes broad-banding, which has been successfully tested for more than a decade at China Lake Naval Warfare Center in California. While the China Lake experience may have limited applicability to other areas of the government, FMA supports granting greater authority to agencies to conduct similar broad-banding experiments.

FMA has a chapter at China Lake whose members are happy with their broad-banding arrangement. FMA Chapter 28 President, Nancy McCrary who is a manager at China Lake is representative of the views of her colleagues in her support for broad-banding. She says that the broad-banding pay demonstration project, which was made permanent last year, "is a great system and it works. I've been happy with it for 15 years both from an employee standpoint and from a supervisory standpoint." The classification and pay system at China Lake gives managers flexibility to reward performance by granting anywhere from no pay increase beyond comparability adjustments to a 6% increase in pay for exceptionally outstanding employees. In addition, managers at China Lake are required to sit down with their employees three times a year to conduct a performance review session. This gives employees an opportunity to receive input on how they can improve their performance toward the goal of receiving a higher pay increase.

As the Subcommittee considers reforming personnel laws governing Federal employee compensation, FMA makes the following recommendations for improving agencies' ability to better recruit and retain a highly qualified and effective workforce:

- Allow agencies at the end of the fiscal year to use up to 50% of unobligated administrative funds to pay employee bonuses and return the other remaining funds back to the Treasury.
- Reject proposals to diminish Federal health and retirement benefits promised to current workers and retirees.
- Create an equitable compensatory structure recognizing the extra duties and responsibilities of managers.
- Eliminate unnecessary workforce anxiety over furloughs due to political budget battles, pass H.R. 2184 introduced by Congressman James P. Moran (D-VA).
- Eliminate disincentives for promotion to management positions with the Federal Aviation Administration by passing H.R. 1777 introduced by Congressman Jim Oberstar (D-MN).

RESTRUCTURING THE FEDERAL WORKFORCE

Responsible management of employee attrition during this unprecedented period of downsizing is essential to maintaining an effective and productive workforce. Reductions-in-force should be avoided if at all possible. Not only are they expensive (OPM estimates each RIF costs $36,300), RIFs destroy workers' morale and productivity. More aggressive and wide spread use of transition assistance for displaced workers needs to be considered by Congress as it debates increasing the number of civil service positions to be eliminated. FMA makes the following recommendations for improving agencies' ability to manage workforce attrition.

- Waive the 2 percent penalty on a retiree's annuity for every year less than age 55.
- Extend Voluntary Separation Incentive Program authority to non-DoD agencies through FY '99.
- Allow agencies to pay up to $10,000 in retraining costs to encourage non-Federal employers to hire displaced Federal workers.
- Allow employees to use accrued sick leave toward satisfying civil service retirement requirements.
- Pay separating employees for unused sick leave.
- Approve an "Open Season" for CSRS employees to transfer to FERS.
- Extend health care coverage for separated employees to 180 days and require agencies to pay employee share of health premium.
- Allow employees to volunteer for a RIF.
- Allow RIFed employees to receive their severance pay in a lump-sum.
- Require Federal contractors to give preference to involuntarily separated Federal employees.
- Extend the authority to waive the five year coverage requirement to continue FEHBP coverage to all employees.

FEDERAL EMPLOYEES COMPENSATION ACT

Mr. Chairman, one last area of personnel law that FMA would like to draw to your attention as being in need of reform is the Federal Employees Compensation Act. FMA is concerned about the effect that rising FECA program costs are having on agency budgets. The compensation problems facing FMA Zone 6 President Alfred W. Hutchinson are typical of those confronting many FMA members. Al is a career manager with 28 years of government service who is currently the Chief of the Scheduling/Inventory Control Branch of the Aircraft Division at Tinker Air Force Base in Oklahoma. According to Al, current FECA rules, "do not require a significant level of proof of the employee's disability and it is too easy to get a doctor's certificate." When a Tinker employee visits one of the private medical facilities near the base, the first questions the nurse will ask them, before they see the doctor, is if they need a certificate for compensation and how many days do they need off. The doctors will typically then sign the certificate for the employee. Al estimates that 9 out of 10 area doctors operate in this manner.

Since FECA benefits are paid out of Tinker's salary and expense account, as they are at all Federal agencies, high FECA costs mean less money is available to hire new workers and compensate current employees. FECA needs to be reformed in a manner that preserves the rights of employees injured in the

workplace but changes some of the rules that currently make the program vulnerable to abuse. For instance, due to current rules providing a wage replacement rate of 75% for tax-free FECA benefits, workers at Tinker can make $10 to $50 more per pay period on compensation than if they had come in to work. FMA makes the following recommendations for reforming the government's workman's compensation program.

- The right to resume employment following recovery from a FECA-covered absence should be extended from one year to three years.
- A FECA retirement program should be established.
- The maximum rate of FECA benefits should be reduced from 75% to $66^2/_3$%.
- Agencies should be allowed to choose which doctors will evaluate FECA claimants.
- The three-day waiting period before benefits are paid should be reinstated.
- Payments should be the same for all employees suffering identical anatomical losses. Payments should not be made for pre-existing conditions.
- Increases in FECA benefits should be based on the pay adjustments received by active Federal workers.

CONCLUSION

Mr. Chairman, I again want to thank you for holding these important hearings to examine the strengths and weaknesses of Federal personnel laws and to solicit recommendations for reform. FMA looks forward to working with you and the Subcommittee to improve human resource management in the civil service. This concludes my prepared remarks, I would be happy to answer any questions you may have.

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Mr. MICA. I want to take this opportunity to thank all three of you for your testimony.

Mr. Denholm, you have offered a number of points that I think deserve further elaboration.

Mr. Moyer, your comments are interesting about some of the Federal Employees Compensation Act, and you also came up with some very interesting observations and proposals for restructuring our work force in light of RIF's and some of the other actions that you have been involved in.

Mr. Gilmer, we particularly appreciate the consolidation of your comments with other veterans groups and the extensive report that you have compiled for the benefit of the subcommittee. I looked through it, and some of the other Members looked through it.

As you can see, with the lack of votes today and also several obligations of our Members—Mr. Moran, our ranking member, is, I believe, on a live program he had committed to—what we want to do to be totally fair, is have you submit your complete comments for the record, along with the little dialog that you have provided us with so far, and we are going to call the panel back.

With your agreement, we will call you back to continue this and ask you to be available for questions at one of our future hearings. We do not want to neglect three very important witnesses and their valuable testimony. We will defer any questions to that time.

There being no further business before the House Civil Service Subcommittee, I declare the meeting adjourned.

Thank you.

[Whereupon, at 11:40 a.m., the subcommittee adjourned.]

CIVIL SERVICE REFORM I: NPR AND THE CASE FOR REFORM

WEDNESDAY, OCTOBER 25, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Bass, Clinger, Moran, and Holden.

Staff present: George Nesterczuk, staff director; Ned Lynch, professional staff member; and Caroline Fiel, clerk.

Mr. MICA. I'd like to call this meeting of the House Civil Service Subcommittee to order. This is the continuation of a hearing that we held last week on civil service reform, the National Performance Review and the case for reform. The hearing last time was interrupted while our final panel was testifying on October 13, and we have asked them to return today so the subcommittee could complete its questions.

Mr. David Denholm, president of the Public Service Research Foundation, was unable to return for this discussion because of a conflict in his schedule. He'll be submitting an additional statement for the record, and we'll be submitting some questions to him.

But this morning we are pleased that we have an opportunity to question and hear once again from Bruce Moyer, executive director of the Federal Managers Association; Len Gilmer, associate national legislative director, the Disabled American Veterans. We invite both of you to come up and we are going to give you an opportunity, if you wouldn't mind, to summarize your remarks from the last time and then we'll get into some questions.

I'd remind the witnesses that you were sworn in at the previous hearing and are under oath as you continue here with us today.

So first, Len Gilmer, we'll start with you. You had some excellent data that you relayed to the subcommittee. If you wouldn't mind, could you summarize briefly? Then we'll get back to Mr. Moyer. Welcome.

STATEMENTS OF LENNOX E. GILMER, ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; AND BRUCE MOYER, EXECUTIVE DIRECTOR, FEDERAL MANAGERS ASSOCIATION

Mr. GILMER. Mr. Chairman, I appreciate this opportunity once again to appear before you. We did provide a 5-minute oral statement before, I'll summarize that. I would point out that this is a consensus statement of eight separate veterans' service organizations that have a membership of about 7.6 million members. It is an honor, a privilege, and also a responsibility to attempt to represent the consensus view of these important organizations.

I think if I were to put it in the most brief of terms, veterans' preference has been under attack for a long time. The Carter administration led the charge back in the late 1970's. The General Accounting Office added fuel to the flame on a number of occasions. We have pointed out where we felt their studies were flawed, were often biased and certainly didn't look at the big picture of why the Government has an interest in providing preferential employment to veterans.

A part of the focus of our testimony was the very problems that result from serving in the military, and who is likely to be charged with that responsibility, either voluntarily or through the military draft.

One of the things that has often been ignored in this whole discussion is that veterans' preference, except for disabled veterans, is limited to periods in which military draft has been in place. Only men have ever been drafted in this country; they bear the burden of having to meet that kind of requirement. And when you look at the men and the women who served in Vietnam, each of the men who died there or who were damaged as casualties were ordered there by the Government. That's an awesome responsibility.

The point is often lost that the numbers of women are increasing in the military service. While many people argue against veterans' preference because of the alleged impact on women who do not serve, they forget about the women who did serve, and we think that is most unfortunate.

We argue for veterans' preference, obviously. We believe that there must be a central place where veterans' preference can be administered, particularly as we are looking at decentralization of Federal personnel processes. We believe that at this time, since the Carter administration, there has been something of a culture developed in the Federal personnel system, which generally resists veterans' preference and its applications. We think that without central oversight veterans' preference will generally be lost even with good strong laws.

Thank you, Mr. Mica.

Mr. MICA. I thank you and will turn now to Mr. Moyer to testify.

Mr. MOYER. I thank you, Mr. Chairman and Mr. Clinger. It's a pleasure to return. We thank you very much for the gracious opportunity that you've extended. It has been infrequent in our experience in the past, when upon the hour and the press of the clock, to have the additional opportunity to come back for a dialog that is so important to the conscious and considerable consideration of the underlying questions dealing with civil service reform.

We certainly commend you for this important effort to review the Nation's civil service laws and the great challenge before this committee in achieving reform that is sensible, that deals with the major problems underlying the current personnel framework, that deals with its rigidity and its complexity and the need to make agencies more conscious of outcomes and results, rather than process, the need to encourage and instill in managers that same attention to results, to give them the flexibility to be able to hire and fire and reward more expediently, and overall—and this really deals as much with the public's consciousness as it does within the work force—the recognition of employees as an asset, not simply as a cost factor on a balance sheet.

When I previously had the opportunity to summarize our statement, I devoted attention to five points, and I'll simply identify those this morning again. They dealt with the importance of assuring that the Office of Personnel Management serves as the central organization within the personnel structure of the Federal Government—for it to continue to play a role that assures effective oversight and the provision of expertise to agencies struggling with decentralization and added flexibility. There certainly needs to be a very careful balance that's struck between decentralization and accountability, and OPM is positioned, we believe, in a situation that requires it to continue to play that very attentive role in assuring that balance.

Second, the importance of training, the fact that as we look at the success of a nation like Australia, in its civil service reform effort, the degree to which it, as well as in the private sector, training has been a very, very important element of and regard for it as an investment in the work force.

Australia has devoted 5 percent of its salary expense dollars to training. We are currently, within our civil service, devoting about 1.3 percent. And if we are expecting a leaner and a meaner work force to be able to be more capable and competent, as knowledgeable workers, it requires particular effort to be devoted toward and priority to be devoted toward training.

The third issue deals with performance and accountability, an issue that you certainly are going to be devoting attention to tomorrow in dealing with poor performers. I devoted some attention in my prior remarks to that and will be glad to continue that discussion this morning.

Fourth, the need, we believe, within civil service reform at this time, as the Government continues to devote attention to downsizing, to provide additional tools to all agencies to encourage the most effective restructuring of the work force that provides a compassionate and sensible array of tools to agencies to encourage attrition, to avoid reductions in force, to assist in career transition assistance to displaced employees to be able to move effectively into the private sector and to encourage private sector employers to take advantage of that skill and expertise that is available as it comes on the labor market. Similarly as vacancies, although they may be few, open up within the Federal Government, there is a need to certainly continue the momentum that was initiated last month in the President's memorandum to agencies to give higher priority to displaced employees, if they are well qualified for posi-

tions that are opening up within the Government, to take advantage of that investment and that expertise that resides within employees who otherwise would be out on the street.

Then, finally, a cost-savings proposal that we think and are very pleased to note that the subcommittee has already taken interest in pursuing, and that is reform of the Federal Employees Compensation Act, the workmen's compensation laws affecting the Federal work force. We think that there is considerable potential there for cost savings in how that program is administered.

It is interesting to note that in 1980, total FECA payments governmentwide were $785 million for 51,000 beneficiaries. Fourteen years later, in fiscal year 1994, FECA benefits cost the Government more than $1,800,000,000 for 52,430 recipients. In other words, only a slight increase in the number of recipients and yet an outlay on the Government's part of more than double the amount during that period of time.

So we would be interested in discussing those points and others with you, Mr. Chairman.

Mr. MICA. I thank both of you.

Mr. Chairman, before you leave, I wanted to give you an opportunity to ask questions, if you wish. We have Mr. Gilmer, the representative of eight veterans groups on the matter of preference, and Mr. Moyer, who represents our Federal managers.

You will play an important role in any reform that comes out of this committee. I yield to you.

Mr. CLINGER. Thank you very much, Mr. Chairman.

I was not here when the two gentlemen were here before, so I wanted to get at least a feel for your testimony and for your interest. I commend you, Mr. Chairman, for undertaking this very significant oversight and also moving toward reform of a system that I think desperately needs it, and I think the contribution that you gentlemen are making is very helpful to us.

Perhaps some of these questions have been asked before, but to you, Mr. Gilmer—I was wondering how you feel regarding the administration's performance in carrying out the intent and purpose of the veterans' preference laws? Are they complying with them, in your view, effectively?

Mr. GILMER. Well, Mr. Clinger, I think there has been an interesting shift of gears by this administration. When we look at what was originally proposed by the National Performance Review activities out of the Vice President's office, there was some significant things that would have had a negative impact on veterans and, in fact, the Office of Personnel Management supported the Postal Service in their reorganization, which was later ruled to be a RIF where veterans were denied their reduction in force protections. OPM had to carry their complaints forward and did so.

Of course, those offices are arms of this administration. I would have to say, though, that the kind of general support for veterans' preference has turned around. They have shifted gears dramatically from what were very bad starts. We have found that their language is very supportive. We still are concerned about some of the technical recommendations and we refer to them in our testimony.

For example, they would provide a process whereby temporary employees could be converted to career employees without consideration for veterans' preference, at least in our opinion that's what their proposal would do.

Statistics suggest that there are serious problems in administration of veterans' preference. The fact is that veterans are disproportionately hired by about three Federal agencies—the Veterans' Administration and then several branches in the Department of Defense; then, after that, veterans' hires drop dramatically in other Federal agencies.

For example, if you were to look at the U.S. Department of Labor, their veterans figures look pretty good until you take out the Veterans Employment and Training Service, then they drop dramatically to very few veteran hires. But I am not satisfied that this administration, per se, is driving all of that; I think in some cases we are talking about a culture that has been developed which suggests that if you provide veterans any kind of special consideration, you will hurt women and minorities, and I'm afraid that the focus of attention then has shifted gears so dramatically that whenever you talk about veterans, people want to put it in that context.

We think that that is an erroneous discussion, in part because if you look at the numbers of minorities who are veterans, they are disproportionately in the military and in the veteran populations. Women continue to increase as a proportion of the veteran population, and we think that those women who served deserve those special considerations.

Mr. CLINGER. Thank you.

Mr. Moyer, there's been a great deal of talk about contracting out of various services and functions whereby the Federal Government presently provides the sort of flexibility that everybody seems to agree we need to be moving toward—what sort of criterion should we look to to determine what functions can be contracted out and what should not be contracted out?

Mr. MOYER. We believe that the current methodology underlying an analysis of what is inherently governmental ought to continue to remain an important consideration, that there are certain functions within the Government that deal with public safety, that deal with confidentiality, that deal with national defense, that truly ought to remain within the operation of the Government performed by Federal employees and not contracted out. There may well be other commercial activities, though, that ought to be considered.

A large significant number of our members at facilities and installations throughout a variety of departments and agencies who have encountered contracting out, or outsourcing, have found that ultimately it has ended up costing the Government more than had it not been pursued. The cost savings that were projected initially never came to bear fruit. Time after time, the General Accounting Office has validated that result.

Now, why has that come about? Through a variety of reasons, including mismanagement of the contracts themselves by Government personnel. But even that has been due to the fact that we have not properly applied sufficient resources, including training, to those personnel that yet remained to have the responsibility for managing that contract. Too often cost overruns have been allowed

by the Government; too often a monopoly has been developed in the area where there is no other competitor to really be able to keep a level playing field of competition out there—a variety of reasons that have really caused considerable doubt on our part that the rush to privatize Government will truly yield a more effective and a more cost-effective Government.

Mr. CLINGER. Thank you, Mr. Moyer.

Mr. Chairman, thank you very much.

Mr. MICA. Thank you, Mr. Chairman. And we appreciate your comments.

I yield to the gentleman from Pennsylvania now.

Mr. HOLDEN. Thank you, Mr. Chairman. I apologize for being late to you and to the panel. I am sorry I had a prior commitment. I don't know if you would like me to proceed with questions now, or I didn't know if you had any.

Mr. MICA. Proceed.

Mr. HOLDEN. Thank you, Mr. Chairman. I had a chance to briefly review the testimony and the chance to be briefed on your testimony. I have a few questions I'd like to ask.

Mr. Moyer, you indicated in your statement that excessive downsizing of OPM will lead to management chaos, as well as increased costs, as Federal agencies create a host of different personnel systems. What aspect of the situation will lead to increased costs and why?

Mr. MOYER. Well, to the extent that agencies take on responsibilities that previously had been performed by OPM in a uniform way, you are going to find duplication of effort there and economies of scale previously that will not be available. I'm speaking of classification expertise, also with regard to pay and staffing areas, a number of functions that OPM currently provides that—including, in fact, training expertise that will not be available to agencies any longer, that they will either have to go out to the market and secure or try to provide in house and oftentimes do it in a very cost-ineffective way.

Mr. HOLDEN. A follow-up to that, you recommended that Congress support expanded training opportunities for managers such as the program of the Federal Executive Institute and the management development centers. What courses do these institutions offer that you believe are essential to the developmental needs of the frontline supervisors?

Mr. MOYER. In terms of the specific curriculum, I ask if we can get back to you with regard to identification of specific courses.

Mr. HOLDEN. Sure.

Mr. MOYER. But overall, the curriculum there is certainly very much different than that that would be available at even some of the most distinguished graduate schools in public administration within this country because it is focused on the Federal culture and the demands and challenges facing Federal managers. That particular sensitivity and that particular focus is something that is extremely valuable in the professional development of our management cadre.

Mr. HOLDEN. It is my understanding that you feel the 5-year nonpermanent appointment the administration has included in its

draft reform bill is too long. And why is a 3-year period you recommend more appropriate?

Mr. MOYER. Well, we believe that the 5-year period is really not well justified, that a 3-year period certainly provides a sufficient probationary period to judge the caliber and the competency of an employee, that work force levels should they be shifting during that time period are sufficient enough to be satisfied by a—or sense enough to be satisfied by a 3-year period, and certainly experiences in the past have continued details of employees without proper benefits by their being on a temporary basis. Certainly the example of the employee working for the Department of the Interior who died of heat stroke several—I guess two summers ago. There you had somebody who was on a temporary basis continued for, I think, 9 years without benefits. It is a tragic example of that kind of extended period that we think should not go beyond a 3-year period of time.

Mr. HOLDEN. Thank you, Mr. Moyer.

Mr. Gilmer, you stated that there is currently no administrative process available through its veterans to obtain a prompt investigation of their complaints. Specifically, what formal or informal process would you recommend?

Mr. GILMER. Well, our recommendation in the testimony is fairly broad because we haven't explored the details far enough. Some of the discussion has included being able to file an appeal which ultimately might be decided at the Court of Veterans Appeals here in Washington.

Additionally, the process we would like to have would allow the veteran to get informal answers fairly close to their home. They shouldn't have to travel, and they ought to be able to get answers that wouldn't require them to get an attorney or go to any tremendous expense. So the process should start off very informally.

At this point, there have been some discussions about where the administrative process would best reside and what the structure of that complaint process would be, but I don't think there has been any real formal decision about how that could look.

Mr. HOLDEN. You recommend allowing veterans to appeal veterans' preference RIF violations to the MSPB. What avenues are currently available to protest such violations and what greater benefit would be obtained by going through the MSPB?

Mr. GILMER. Well, at this point, we have that right. We point out that some Federal agencies would like to have that right removed. For example, the Postmaster General, when he reorganized the Postal Service, claimed that they did not have to provide veterans' reduction-in-force rights, even though they were reducing the grades of these personnel. Only because veterans had the right to go to the MSPB was the Postal Service stopped. Other Postal Service employees who were not veterans and did not have that right could not get any remedy, and the Postal Service was allowed to do whatever it wished with regard to those employees in that so-called reorganization. Veterans, then, were able to force that issue because they had MSPB rights. What we are concerned about there is that we think that there are agencies that would like to have that right removed, and if it is lost, then we think that agencies

like the Postal Service will do what they would like regardless of the law.

Mr. HOLDEN. One more question, Mr. Gilmer. You object to the elimination of the size limits on demonstration projects and the waiver of veterans' preference rules in connection with them. If, however, veterans' preference were to be protected in the demonstration projects, why would you still oppose dropping the size limit?

Mr. GILMER. Well, what concerned us as we read the administration proposals is, these demonstration projects could include virtually the whole personnel system of the Department of Defense, which is, of course, one of the largest Federal employers. We didn't see any kind of limit whatever.

We also saw in the proposal, if we were reading it correctly and were assessing it correctly, the agency could go through OPM, get the approval to put this project in place; then could go back—if the project proved to be satisfactory to OPM and the Department of Defense—then DOD could create its own personnel system and OPM could approve it all without changes in law. We felt that blanket authority was too great.

Now, in terms of the veterans' preference waiver, the 1978 Civil Service Reform Act provided for a waiver of law in demonstration projects and it didn't restrict veterans' preference principles from being waived. So we're recommending that, one, we don't oppose demonstration projects generally. Although we don't think that blanket authority ought to exist. And, we think that the 1978 Civil Service Reform Act should be amended to require veterans' preference principles be maintained in those projects.

Mr. HOLDEN. Thank you, gentlemen.

Mr. MICA. I thank the gentleman.

Mr. Bass, our vice chairman, did you have any questions?

Mr. BASS. Thank you very much, Mr. Chairman. I have just one brief question.

I wish to apologize first for being late and having been unable to hear you deliver, I'm sure, your eloquent statement. I had a chance to review it very briefly and I was intrigued about the abuse of the Federal Employees Compensation Act that you alluded to or pointed out in your testimony. You cited, I believe, an isolated case. Is that an isolated case or are there other examples of this that you could bring to our attention?

Mr. MOYER. We do not believe that it is an isolated case, Mr. Bass. We believe that the problem is widespread. The degree to which we have within the Federal Managers Association an appreciable number of employees who serve as managers and supervisors throughout the industrial side of Government, particularly within the Department of Defense where the unfortunate frequency of injuries is more evident, gives rise to our belief that that anecdote that we had included in our testimony has been, through conversation with numbers of other members, repeated as to the cost overruns or the costs associated with administration of FECA. And when you simply look at the bottom line of the costs of the program to the Government, there are certainly a number of shortcomings with its administration and the laws governing it.

But, at the same time, greater attention needs to be devoted to assuring that the workplace is safer, a more proactive approach that ensures that we don't run into injuries, but when those injuries occur, that we be more vigilant in assuring that the system is not abused with regard to payments.

Mr. BASS. I guess the answer to this question may be self-evident, but do you think that these abuses affect the ability of managers to manage their work force?

Mr. MOYER. Absolutely. Certainly the absence of a worker who was qualified and competent to carry out that job, particularly when operating under FTE constraints and the amount of, you know, of employees that you can have working within a particular work force, you certainly deal with that additional constraint that's created by that vacancy of the injured employee.

Mr. BASS. I'll ask you one quick concluding question. I am looking for the reference in your testimony here, but I believe that you recommend increases in benefits for Federal employees. Do you have any ideas or recommendations for funding sources for these increased benefits? It's on page 7 of your testimony.

Mr. MOYER. Yes. In the overall sense of funding sources, certainly there has been legislation that has been proposed by Delegate Norton identifying the considerable cost associated with contracting out, about $108 billion, and as compared to only $80 billion that we are spending for the Federal payroll currently. There are certainly cost savings that could come about by a much closer attention and scrutiny to that contracting-out cost.

The Government is doing a very poor job in monitoring the efficiency and the effectiveness of contracting out. Certainly we believe Delegate Norton's legislation would put us in a much better posture to identify cost savings and use those to satisfy whatever additional costs arise, as you've identified, with an increase in benefits.

Mr. BASS. Thank you very much, Mr. Chairman.

Mr. MICA. I thank the gentleman and welcome our ranking member, Mr. Moran, and ask if he has any questions at this time.

Mr. MORAN. Thank you, Mr. Chairman. Let me ask Mr. Moyer, if we were to do some demonstration projects throughout the Federal Government, we might do some that would give maximum discretion to management; others might give maximum protection to employees and so on, but we'd see which approaches seem to be most effective.

If you had the opportunity to draw up one demonstration project, describe what it would be—in other words, the ideal scenario for, from the perspective of the Federal Managers Association.

Mr. MOYER. That's a wonderful question. I am not sure I can provide a wonderful answer to you for you at such short request. But I would suggest that a demonstration project provide latitude to deal with some of the most pressing problems that have been identified during the course of the last several days of hearings associated with civil service reform.

All demonstration projects should provide greater flexibility in the area of classification. By "flexibility," I mean simplification as well, to remove the tremendous maze of rules and arcane factors that deal with classification and provide in a much more simplified way the opportunity for employees to be paid for knowledge and at

the same time for that kind of effort to have cost restraints to assure that if we move to something like pay banding that there are limitations to assure that it's budget neutral.

Second, the demonstration project should provide a more simplified approach toward performance appraisal and yet at the same time assure that there is intensive effort for frequent, informal feedback by supervisors with their employees.

One of the considerable problems that we deal with in dealing with poor performers is the fact that too often there has been too little attention to frequent communication between the supervisor and the employee but going both ways. As William Raspberry noted in his column the other day in the paper, we are not a Nation of listeners; although that column was devoted to race relations, but it extends equally to the workplace.

Third, there needs to be greater attention in a demonstration project paid to pay flexibility, not only classification but also to provide an easier way for hiring and staffing and pay to work its way and to remove a lot of the rules that have been generated over the course of the years.

And then fourth, greater attention to results that are measurable by that particular function or component covered by the demonstration project and to take those outcomes and those results and to translate them, a very difficult thing to do, but to take those down the line, through the internal components down to each employee.

And finally, to provide for a more participative work culture. If that particular work force is unionized, certainly to continue to provide for partnership and a sense of participation there at all levels, not only the rank and file but also supervisors and managers to be included on whatever kind of a partnership council exists, to provide the greatest sense of ownership by all employees over those outcomes.

Those, very quickly off the top of my head, would be the principal elements that we would recommend be included in a review and testing of a demonstration project.

Mr. MORAN. Those are the principal elements that the administration wants to include in its civil service reform package. Those I would be inclined to agree with.

I do agree as well with your suggestion that nonpermanent appointments be no more than 3 years; but another aspect that I would like to include in a civil service reform package would deal with the bumping procedure under RIFs. Do you think we should eliminate the bumping?

Mr. MOYER. No, we don't. We believe that bumping had a reason for originating and that is that it deals with the difficult situation that someone, through no fault of their own, finds themselves in a reduction in force. It permits the retention by the Government of that experience and that knowledge that that worker has accrued over the course of time and to provide in terms of "save pay" a safety net for that employee for a very limited period, a 2-year period, that permits them to seek other work, either within or without the Government. So that we think that the underlying spirit and purpose of the bump and retreat rules is well served.

At the same time, we do have concerns about the application of competitive levels and competitive areas in the administration in

reductions in force. In RIF's most recently at the Office of Personnel Management and the Geological Survey, competitive areas were drawn very, very narrowly, almost too—in some cases, one person—that restricted the application of the spirit of the bump-and-retreat rules and caused at least a perception that the RIF was being manipulated in an arbitrary fashion.

Mr. MORAN. We are going to lose a lot of managers in the Federal Government, a lot of them particularly in the Washington metropolitan area. We've talked about the attempt by the administration to provide training, transitional assistance. Would we not be best served if we accommodated people's attempts to gain some additional knowledge, skills, education at the institutions that already exist, whether it be a community college or one of the universities in the area—accommodated them in such a fashion that perhaps if they had a class schedule that began at 5, whatever, their hours might be flexible as long as they put in the number of hours they are required to put in during the week; that we might even help subsidize the cost of those courses so that they would have a—both a continuing personal educational plan and a career objective that would prepare them for leaving the Federal service? Is much being done in that way?

Mr. MOYER. There has not been a lot that has been done in that area. That's a terrific idea, Mr. Moran.

The greatest amount of attention thus far in provision of career transitional assistance has occurred within the Department of Defense because of its downsizing efforts over the course of the last 6 to 7 years. But we have found very little conscious planning and effort proceeding in the nondefense agencies until very, very recently.

An idea similar to the one that you proposed would involve the extension of authority by an employee to use buyout money, to be able to use those funds in a tax-free way for college or continuing education courses or even to startup a new business. Both of those options would possess a contribution back into the Nation's economy and permit that displaced employee to continue to provide a positive contribution to the Nation.

Mr. MORAN. I think that makes a lot of sense. It would be essentially along the lines of a flexible IRA that we are now talking about using to purchase a home or medical costs. But this would be for career transitional assistance if they were to use it for training, education or some objective that would be consistent and integrated with a career transition plan. I think that does make a lot of sense, and I plan to pursue that.

Mr. MOYER. The 1995 defense authorization legislation provides the authority of the Defense Department to provide $10,000 to a private-sector employer who has picked up a displaced Defense Department employee for the purposes of retraining. That kind of initiative certainly should be extended to nondefense agencies.

Mr. MORAN. How much—do you know how much was appropriated for that $10,000 per person; is it open-ended or——

Mr. MOYER. I am sorry, we don't know the answer.

Mr. MORAN. It is a creative idea. Well, thank you very much, Mr. Moyer and Mr. Gilmer. Thank you as well for your comprehensive testimony; it covered the whole issue of veterans' preferences.

Mr. GILMER. Thank you.

Mr. MORAN. So I thank both witnesses, and I thank the chairman for concluding this hearing that got interrupted the last time we tried to do it. Thank you, Mr. Chairman.

Mr. MICA. I thank you, Mr. Moran. I've been so generous here to the other Members, I haven't had a chance to ask any questions. Since we had the Chair of the full committee and then other active participation today, I think it's turned into a good exchange.

And let me first say, Mr. Gilmer, I've seen a great deal of testimony submitted to Congress and recommendations. I just want to commend you and the other eight organizations that you represent who prepared this. This is a great history. Your testimony is a great history and a very good, concise report on your recommendations; and if you can get that many veterans' organizations to agree and prepare a statement like this, I can tell you, I can use you on this committee to help bring us together.

But a couple of the questions that I had relating to your testimony—and I read through it again—are dealing with the RIF rules. How would you suggest specifically that RIF rules be organized and directed so that veterans get a fair shake in any RIF? Do you have any specific recommendations or factors that should be considered as we develop new guidelines for RIFs and veterans' preference being taken into consideration?

Mr. GILMER. Well, in view of my role as a concensus representative, our organizations haven't looked at recommendations for change, and in general, to the best of my knowledge, our organizations continue to support the RIF rules as we currently understand them. The difficulty has come through what we believe are creative agency actions to modify the intent and purpose for veterans preference in RIF.

I think one of the most damaging things that happens to a person in their employment is whenever, all of a sudden, it no longer exists. They have planned their lives around it. They have—their children, their college—all of the things that may happen to them in their future are related to their employment and the income they expect to have.

They also typically have a very high level of commitment and identification with the jobs and the work that they do. It provides them a great deal of fulfillment and satisfaction. When that's gone, it damages and hurts people. Even the people that are left behind, who survive the RIF, will be hurt; not only will they have an increased workload, they will miss their coworkers and they must reorganize and reidentify who they are and what's left.

We—for that reason, we are extremely concerned, as RIF rules are applied, that people understand the process. That agencies not be able to manipulate these processes so the employees are left guessing. People ought to know what's going to happen to them.

We would point to the Postal Service reorganization. Their employees were up in the air for years and may still not be completely settled after that agency did what it did to its employees. They violated virtually every RIF element, even when veterans were able to go to the Merit Systems Protection Board to reverse the effects on them, and that hasn't completely been accomplished.

For other employees who were not protected, the Postal Service made it clear they would not extend any protections to them—would not consider them in what had been done. They were going to have to live with it. And I think the most damaging thing was, employees felt they were treated unfairly. They had no idea what was going to happen to them next.

There was a sense of inequity that resulted from it. I think that is the key element. People ought to know and the rules ought to be clear enough so people can anticipate the impact on their lives.

Mr. MICA. Thank you. And as we get to developing specific language, I look forward to working with you.

I notice that you recommended we urge adoption of legislative language which will require maintenance of veterans' preference monitoring and oversight as well as passover and medical unsuitability responsibilities to be assigned to personnel in OPM; and this deals again with the role of OPM in monitoring this veterans' preference.

Did you have any specific language or specific requirements that you think are essential that OPM retain?

Mr. GILMER. Well, Mr. Chairman, the feedback we're getting is that, as OPM downsizes and streamlines, those responsibilities which they have had virtually since that responsibility has been created in the Veterans' Preference Act of 1944, those positions are being eliminated or are being considered for elimination. At this point, if OPM, which is the central agency, doesn't maintain that obligation, we assume that they may make an effort to decentralize it to the separate Federal agencies.

OPM, in the past, has treated these responsibilities, we believe, with a great deal of concern. Typically, they have been very conservative in their rulings favoring veterans. We don't think that an agency is going to overrule itself so frequently. We think that they will find their arguments sufficient justification to continue what they've already decided to do. So we think that unless these decisions are maintained at a central point, that will be lost. We think that that should be a legal requirement, the law should force it to be housed at a higher level outside the agency deciding official.

Mr. MICA. Thank you for your comments, Mr. Gilmer.

Mr. Moyer, you have also prepared a good, concise statement with some of your recommendations from the Federal Managers Association. A couple of things I might have some heartburn with: One at the top of the list is: waive the 2-percent penalty on a retiree's annuity for every year less than age 55.

Now, that sounds good and I think Mr. Bass asked you about how you're going to fund some of these goodies. That appears to be headed in the wrong fiscal direction and would have tremendous impact, particularly on our retirement funds and programs.

What's your justification for that?

Mr. MOYER. Our justification for that lies in the very widespread belief by a significant part of the work force that the 2-percent penalty is the greatest barrier to attrition, and that if it were even alleviated, if not removed, that it would cause a considerable number of employees to leave Government who are near to the retirement age but are not yet satisfying its requirements.

We've suggested that removal of the penalty in such a way that certainly efforts that would get approximately that would still be, we think, desirable. In other words, an amelioration to a 1-percent level, or so many years within the age of 55 without suffering the penalty, or to permit an employee to use buyout funds to offset the amount of the penalty.

The bottom line, Mr. Chairman, is that greater focus upon the barrier that is established by that 2 percent penalty, we believe, would provide a significant contribution to a proactive attrition policy that avoids reductions in force.

Mr. MICA. Thank you.

One of the other major questions we're going to have to address is that any civil service reform we undertake in a sticky area is going to be labor-management partnerships and relationships, and I'm wondering how we can strike a balance so that we include labor and employee participation in the process and yet allow management to have a real say in managing and administering the sometimes huge undertakings of the Federal Government.

How do you propose we strike that balance?

Mr. MOYER. Well, we appreciate your desire to move in that direction and to strike that balance. We believe that the experimental effort ongoing through the Executive order with regard to partnership is a good start, but that it should not be codified at this point in time. Too insufficient a body of experience resides to immediately establish in law the framework established by the Executive order.

We would tend to prefer, Mr. Chairman, that additional time be provided to experiment, either in stand-alone initiatives or within the context of demonstration projects, some of these underlying concepts embodied within the Executive Order 12871, and to refrain at this point in time in the context of civil service reform from expanding the scope of bargaining.

Mr. MICA. One of the other problem areas—and we will get into this with our hearings tomorrow and as we continue this series—deals with poor performers, and one of our concerns is with this seemingly endless appeals process. What do either of you think about a one-stop appeal allowing Federal employees to seek redress of grievances through other methods available through the courts or whatever—but a one-stop Federal process where you know what the decision is, you get your shot at it and you're history, so to speak?

Mr. Moyer first, and I'll also ask you, Mr. Gilmer.

Mr. MOYER. We agree that the multiplicity-of-forums problem is an appreciable one, that there is good reason to streamline the process to provide a much more expeditious process that provides, guarantees due process, but without multiple bites of the apple.

The crafting of the Civil Service Reform Act was achieved, particularly when it came to mixed cases, in the 11th hour of that legislation, and it was more a political compromise than a demonstration of rational public administration. We have paid the price ever since that time.

I think we ought to recognize at the same time, though, that the multiplicity-of-forums and dispute-resolution problem is but one aspect of the greater problem before us in dealing with performance

and that we will not cure all of the ills by only dealing with a streamlined dispute resolution process.

Mr. MICA. Mr. Gilmer.

Mr. GILMER. Mr. Mica, our organizations represent not only the average, everyday worker, but the managers and supervisors as well; and I suspect that our—that the Disabled American Veterans' experience in this area is not dissimilar to the other organizational experiences, which is, we find that not only do managers blanch under some of these processes but that a lot of the average workers do, too.

They don't know necessarily where to go. They often feel they have to obtain legal counsel early in the process. These things sometimes drag out for years, and they are not sure that they are going to get good answers. I think managers feel virtually the same way.

I'm not prepared to make recommendations as to what could be done about that, but I think there is an expression of need to look at what can be done so that people feel better about the processes they are using.

Mr. MICA. We appreciate your comments on that. Really, you're sort of the kickoff for tomorrow's hearing, which will be held in this same room at 9 a.m., on performance and accountability. This has been one of my major themes and concerns that we examine as we look at civil service reform.

Mr. Moran, did you have any additional questions?

Mr. MORAN. No. I think that's sufficient.

Mr. MICA. Mr. Bass.

Mr. BASS. No questions, Mr. Chairman.

Mr. MICA. We thank you all for giving us this second opportunity to hear from you and also question you. We appreciate your comments. We look forward to working with you as we move through this important task in civil service reform, and if there's no other business before the subcommittee, we'll stand adjourned.

[Whereupon, at 11:23 a.m., the subcommittee was adjourned.]

[Note.—The following reports: "Performance Report, Natural Resources and Environment Policy and Program Area, 1981–1988," "A National Program for Soil and Water Conservation: The 1988–97 Update," and, "A Recommended Renewable Resources Program: 1985–2030, 1985 Update," can be found in subcommittee files.]

[Additional information submitted for the hearing record follows:]

November 8, 1995

WILLIAM A. NISKANEN
Chairman

John L. Mica
Chairman
Civil Service Subcommittee
House of Representatives
Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Representative Mica:

I am honored to respond to the questions raised by your letter of 3 November:

1. Both federal agencies and private firms should be allowed to compete for most services financed by the federal government. To be most effective, this competition must be in both directions. More services should be opened to bid by private firms. And federal agencies should be encouraged to demonstrate that they can be a more efficient supplier than private firms now operating under federal contract.

2. and 3. As I testified on 13 October, discretion and accountability must be paired. There is no need for Congress to initiate an increase in discretion; current law permits substantial flexibility, at least on a test basis. If an administration (of either party) asks Congress for legislation to increase managerial discretion, Congress should then demand some new process or criteria to increase accountability as the price of authorizing increased discretion.

The Civil Service Reform Act of 1978 has not worked as well as expected, in part because Congress reneged on the deal. The SES was promised the opportunity for a substantial bonus in exchange for giving up job security, but Congress later put a cap on the sum of an individual's salary plus bonus.

The most promising accountability process is the new contract system in New Zealand. I strongly urge your committee to initiate a study and later hearings on the experience with this system.

4. and 5. I do not know how the Justice Department plans to administer this policy. The approach is most likely to be similar to that established by the Civil Rights Act of 1991: A complainant would have to prove only that workplace discipline has a "disparate impact" on a group of which the complainant is a member, at

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which time the burden shifts to the supervisor to prove that the action is consistent with good management. Such a policy does not directly require quotas in either private firms or the government, but quotas are a likely result of managers trying to avoid a public defense of every personnel decision.

6. A policy of "aggressive nondiscrimination" (my term) involves the following steps:

- Opening the applicant pool,
- Evaluating all applicants by the same standards,
- Making sure the standards are those most consistent with job performance.

This has been the effective policy by which the military and professional sports have both improved performance and nearly eliminated racial discrimination. The personnel policies affecting women in the military, unfortunately, are not consistent with the second step. And some of the most offensive new personnel policies are not consistent with the first step. Personnel policies that reflect either discrimination or preferences based on other than expected job performance are not consistent with a merit system.

7. I would have no reservation about basing the cost of living adjustment on the CPI minus the best estimate of the bias of that index (a bias, according to the Boskin report, that is probably about one percent a year.)

8. The most important response to the $1.6 trillion of liability for federal pension programs is to make sure this liability does not increase relative to the size of the economy. For new employees, this should probably involve some combination of the following actions:

- Shift to a defined contribution pension.
- Increase the period of service for full benefits.
- Defer any payment of benefits to age 65.
- Tighten the standards for disability retirement.

My best wishes as you deliberate on legislation to reform the federal civil service.

Sincerely,

William A. Niskanen

WAN:ptf

SYRACUSE UNIVERSITY

MAXWELL SCHOOL OF CITIZENSHIP AND PUBLIC AFFAIRS
CENTER FOR ADVANCED PUBLIC MANAGEMENT

November 27, 1995

Rep. John Mica, Chairman
Civil Service Subcommittee
B-371C Rayburn House Office Building
Washington, DC 20515-6143

Dear Congressman Mica:

I want to thank you for inviting me to testify on the subject of civil service reform before your Civil Service Subcommittee several weeks ago. You are to be commended for holding hearings on what many consider an arcane and uninteresting topic. As a general matter, civil service law may not be very stimulating -- it is certainly not a "headline grabber" outside of the Washington area -- but reforming our present system may be the key to preparing the Federal government for the challenges of 21st Century.

To that end, I have attached detailed responses to the several follow-up questions you have posed regarding my testimony. In each such response, I have included specific legislative recommendations. In most cases, these recommendations do not involve extensive changes to existing law; rather, they are intended to serve as short-term catalysts for long-term, systemic change. In other words, they are designed to set in motion a process that I believe will eventually lead to the sort of results-based civil service system we need. Please note that the opinions expressed in the attached responses are my own; they do not represent the position of Syracuse University or the Department of Defense.

Again, I appreciate the chance to contribute to your efforts to date in this important area and would welcome the opportunity to work with you and your Subcommittee in the future.

Sincerely,

Ronald P. Sanders
Director

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U.S. House of Representatives
Committee on Government Reform and Oversight
Civil Service Subcommittee

Additional Questions

Questions 1 and 3: How would the transition from a rules-based to a results-based civil service system be managed? What kind of transition period would be required? Where would the Federal government start?

Response: The Federal government has employed a rules-based civil service system for over one hundred years, and it will take time to change this "culture of compliance" across the whole of government. Organizational change experts estimate that it normally takes five to seven years for this process to play out organization by organization, but the framework for that process already exists in the Government Performance and Results Act (GPRA). By amending the Act to expressly link human resource management (HRM) flexibility with bottom line performance, that framework can be employed to accelerate the transition to a more results-oriented civil service system.

a. Offer Organizational Freedom as the Incentive. Bureaucracies cannot be ordered to become more results-oriented; their leaders and members must want to be, and this requires an incentive. Perhaps the most powerful is the promise of greater organizational freedom, especially in managing the organization's human resources. The linkage is straightforward: those organizations that demonstrate that they are ready, willing, and able to manage by results -- as evidenced by an adequate GPRA strategic plan that includes outcome-based performance measures and accompanying performance measurement and management systems -- are given relief from the personnel rules which may otherwise constrain them in that regard (those that are not ready maintain the rule-based *status quo*). In theory, greater HRM flexibility will contribute to better performance and provide an edge in competing for resources and workload, within an agency and/or with the private sector. And as an incentive -- something an agency must earn, rather than something that it merely acquires -- it can serve as the catalyst for the kind of massive organizational change required to truly transform government.

b. Employ a "Leader-Follower" Implementation Strategy. That catalyst can be maximized via in a two-phased "leader-follower" transition strategy, beginning with GPRA pilot projects. These pilots were specifically designed to pioneer performance-based government, and the Act expressly provides them with some human resource management flexibility, primarily with respect to compensation. In this regard, GPRA should be amended to provide even more discretion to pilot sites -- for example, authority to design organization-specific job classification and paybanding schemes, examining and appointment mechanisms, performance appraisal systems, and even reduction-in-force procedures -- thus offering even greater incentive (to them and to others) to move rapidly to a more bottom line orientation. As GPRA becomes generally applicable across government, a different incentive structure needs to be established for "follower" organizations. In this second phase, greater HRM discretion would be conditioned upon performance: those organizations that consistently meet or exceed their GPRA performance measures would be "licensed" to develop their own HRM system.

c. Incentivize Collective Bargaining. This transition strategy can also deal effectively with the question of collective bargaining by making results-based HRM flexibilities a "permissive" subject of bargaining; that is, negotiable at an agency's -- and a union's -- discretion. There is precedent for such an arrangement. This is precisely the way that collective bargaining obligations have been resolved in CSRA personnel demonstration projects involving unionized employees, such as PACER Share at McClellan AFB. It works because it offers both sides an incentive to reach agreement on HRM flexibilities. Presumably, both would want the competitive edge (and greater security) that such flexibilities would provide their organization. For its part, the agency would have to weigh its desire for those flexibilities against the need to involve its union in crafting them; at the same time, the union would have to balance its desire for greater involvement (and a better performing organization) against its traditional antipathy towards more management discretion. However, if either party's demands become excessive in that regard, the other party could simply withdraw, and both sides would revert to the *status quo*. Clearly, this approach works best where labor and management have a constructive relationship, and it gives other organizations an incentive to follow suit -- yet another dimension of the "leader-follower" strategy described above.

d. Establish a Management Framework for Transition. This transition strategy must be managed; no matter how effective or powerful the incentives, it won't just happen (nor will it happen exactly as predicted). To the extent that GPRA serves as a vehicle for the transition, OMB should generally be responsible for the execution of an overall transition strategy: as a matter of course, it is in a position to judge whether an agency's performance measures are being met, and thus whether that agency warrants an initial (or continued) grant of HRM flexibility. Congress and OPM would have a substantive civil service policy role as well; together, they would establish the broad statutory framework for Federal human resource management -- the guiding principles, core values, and where appropriate, the detailed rules -- that would bound an agency in the exercise of its HRM authority. Moreover, along with OMB, they would determine whether an agency has conformed to that framework, and hence whether its HRM flexibility is renewed or revoked.

e. Use Competition to Sustain the Strategy. The basic premise of this transition strategy is simple: it assumes that organizations will want greater freedom to manage their human resources, and that that desire will drive them to develop and achieve bottom-line performance measures (and supporting HRM policies and systems) as the *quid pro quo* for that freedom. However, incentives and measures may not be enough to roust some Federal agencies from the comfort of rules and compliance. In this regard, competition -- for funding, workload, jobs, even continued existence -- must become part of this new culture as well, with OMB and the Congress rewarding those Federal organizations that perform best with additional resources, responsibility, or discretion. And this competition should be encouraged between government and private enterprise as well, with Congress giving Federal organizations engaged in such competition (for example, those being considered for privatization) the same human resource management flexibilities as GPRA pilots, this to "level the playing field" for them.

Civil Service Subcommittee Questions (continued)

Question 2: *What safeguards for employees would you incorporate into such a system? For example, arbitration instead of an appeals system?*

Response: Our current civil service system provides a number of safeguards, both substantive and procedural, against management abuse: prohibited personnel practices, anti-discrimination rules, adverse action criteria (such as the "efficiency of the service" standard), and various due process requirements. I believe that these safeguards are both necessary and sufficient, and as a general matter, I would not propose to disturb them (however, see Question 5 below, as they apply to poor performers).

However, the complaint, appeal, and grievance systems established to interpret and enforce those protections have become so legalistic, protracted, and complex that their customers (employees and managers) no longer understand them -- and as a consequence, they no longer serve as an adequate enforcement mechanism. Today, each of these types of dispute has its own adjudicatory agency (and specialized staff), its own resolution procedure, its own body of case law, and even its own constituency. However, a set of common legal principles ground these separate areas of employment law, and they could be administered by a single generalist appellate body -- after all, that is precisely what the Federal courts do when one of these cases is appealed to them.

These separate systems need to be -- and can be -- consolidated, drastically simplified. and privatized to the extent possible. The Congress considered similar action this year, with the House ordering the consolidation of MSPB and the Federal Labor Relations Authority. I recommend a three-tiered "one stop" system, with (1) informal arbitration employed at the initial "trial" stage (at least for organized employees), (2) a single appellate body to decide administrative appeals and adjudicate cases of non-union employees, and (3) judicial review by the Federal Circuit.

a. "Privatize" Dispute Resolution for Organized Employees. For unionized employees in the private sector, arbitration has proved to be a timely, user-friendly, and effective dispute resolution system -- in effect, an informal "small claims court" for employment disputes -- and it should serve as the foundation for a one-stop complaint and appeal system for organized Federal employees as well. Those Federal employees already have access to arbitration under the provisions of 5 USC chapter 71, but as one of several alternative dispute resolution forums that include the Merit Systems Protection Board (MSPB) and the Equal Employment Opportunity Commission (EEOC). Its effectiveness -- and that of the rest of the system -- is diluted as a result.

1. Use Arbitration. In this regard, arbitration should be the exclusive means of redress for Federal bargaining unit employees at the initial "trial" or hearing stage. As a practical matter, this would privatize dispute resolution for the majority of Federal workers (an arbitrator is nothing more than a private contractor engaged by labor and management to resolve a dispute), without giving up any of the protections they presently enjoy. And because arbitration costs, while relatively nominal, are born by the parties to the dispute, there are built-in incentives to resolve the matter informally.

2. Allow User Fees. However, because the union side of these disputes has a legal duty to represent non-union members of a bargaining unit in arbitration (its so-called "duty of fair representation"), I would authorize them to charge a reasonable "user's fee" -- not to exceed the cost of union dues for one year -- to a non-dues paying member of a bargaining unit whose case goes to arbitration. Note that this one-time fee is not a form of compulsory union membership and could be recoverable by the non-member employee as part of a favorable arbitration award.

b. Establish a Single Appellate Agency. First-tier arbitration awards could be appealed (under limited conditions) to an administrative appeals agency, the second tier of this dispute resolution system. That agency would be responsible for adjudicating all types of Federal employment disputes -- labor relations cases such as unfair labor practices and negotiability disputes, adverse and performance-based actions against employees, discrimination complaints filed by workers against an agency. This would provide for greater efficiency (and staff savings). It would also insure some government-wide uniformity in the interpretation and application of statutory employee rights and safeguards. This agency would also serve as the initial hearing stage for appeals and formal complaints filed by non-bargaining unit employees and managers. They would be required to pay an initial filing fee (just as bargaining unit members must bear some of the cost of arbitration), but that fee would be recoverable as part of a favorable ruling.

c. Limit Judicial Review. Administrative decisions by the appellate agency should be subject to judicial review, but only under limited circumstances, and only to the Federal Circuit Court of Appeals. This is consistent with a simplified, "one stop" approach. Moreover, that circuit has developed an expertise in Federal employment law and could thus decide cases more quickly; it would also lend greater predictability to Federal employment disputes and preclude the forum shopping that occurs under today's system. Note here that I strongly endorse the proposal made by Mr. John Sturdivant, President of the American Federation of Government Employees, concerning limited judicial review of individual performance-based action appeals; such a limitation would complement (and further simplify) the enforcement mechanism described above.

Civil Service Subcommittee Questions (continued)

Question 4: How would your modifications of the civil service system incorporate veterans' preference?

Response: Like merit, veterans preference is one of our civil service system's core values, and a results-based approach can still accommodate procedural rules which operationalize that value -- however, as noted in my testimony, this would be the exception (rather than the "rule") in such a system. Thus, existing veterans preference rules need not be changed at all, if the Congress concludes that those rules must be retained in their present form. Moreover, such rules would still be subject to oversight by OPM, as well as enforcement through the administrative appeal system described above; in this regard, the need for government-wide uniformity in the interpretation and application of these rules may require their adjudication *ab initio* by the appellate agency, bypassing arbitration for cases involving bargaining unit employees in favor of direct appeal to an administrative body that can insure consistent enforcement.

Alternatively, it is possible to take a results-based approach to veterans' preference; that is, to operationalize this value without resort to complex rules and procedures. Under this alternative, preference would be treated as a bottom-line outcome measure. Agencies would simply be required to give such preference (in hiring, reduction-in-force, etc.), but they would be left to determine the means to achieve that end.

a. For example, the much simplified approach perfected by the Department of Agriculture, which gives absolute preference to veterans when they are competitively placed in a best-qualified category, has worked well despite the initial misgivings of veterans groups, and there are almost limitless variations of this theme that could meet the goal of veterans' preference without resort to complex, "one size fits all" rules. Agencies should be given discretion to experiment with those variations, subject to public notice and consultation with veterans groups, as well as continuous oversight by OPM and the Congress.

b. However, such oversight and evaluation should be based on results, not compliance: for example, by comparing the number of preference-eligible applicants for a particular position with the number actually hired by an agency. Agencies that did not meet the goal (or the measure) would risk losing their "license" and revert back to a strict rule-based approach. Under this scheme, agency-specific veterans' preference rules could still be enforced through the administrative appeal system described above, using the same direct-submission procedure available to managers and non-bargaining unit employees.

Civil Service Subcommittee Questions (continued)

Questions 5 and 6: What modifications are needed to methods of identifying poor performers? If for example, we move to "group rating systems" or "team approaches" [to performance management], would it be more difficult to identify poor performers?

Response: It is not difficult to identify poor performers, under individual or group appraisal systems -- their supervisors invariably know who they are. The hard part is dealing with them. Here again, the well-intentioned changes made by the 1978 Reform Act have resulted in yet another set of rules and procedural requirements, and a superstructure of complex case law, that inhibit and impede such action. Procedural safeguards once designed to protect against politically-motivated abuses have become so arcane and excessive that they raise a supervisor's "tolerance threshold" to the point of apathy. The whole process needs to be simplified so that those who must use it -- managers and employees -- can understand it. I recommend the following:

a. Combine Conduct and Performance-Based Adverse Actions. While civil service law makes a distinction between conduct- and performance-based adverse actions, that distinction becomes problematic on the shop (or office) floor. Line managers will attest to the difficulty in separating conduct and performance problems, and as a consequence, they dislike separate procedures for the two types of action: for example, are an employee's poor work habits a symptom of conduct or performance problems? Does a supervisor need to wait until those poor work habits result in a late or poor quality assignment before taking performance-based action? In this regard, the Congress should establish a single, simple procedure for both performance and conduct-based actions: notice, reply, decision, and appeal.

b. Eliminate Statutory Standards of Evidence. In theory, the 1978 Reform Act lowered the evidentiary burden of proof -- from "preponderance" to "substantial" -- in performance-based actions, this to make such actions easier. However, these distinctions just make the whole process more mysterious, and they are lost on managers and employees. Employees should know that if they perform poorly, they will suffer the consequences, and managers should not have to worry about legal nuances in doing so. If arbitration is to be the adjudicatory mechanism (see Question 2 above), employ the same "just and sufficient cause" standard that the private sector lives by.

c. Expand the Range of Options Available to Supervisors. In the private sector, disciplinary action is taken for both conduct and performance reasons, and civil service should be no different. This would expand the range of options available to managers in dealing with both performance (to include written warning and suspensions) and conduct (demotion), particularly when they are "mixed" in the same factual circumstances. I would also permit supervisors to reduce the pay of a poor performer, temporarily or permanently, subject to the same due process and appeal provisions. By providing supervisors with a range of actions, their tolerance threshold for poor performance (broadly defined) is lowered considerably; they can deal quickly with an employee as soon as his or her work deteriorates -- and without having to wait to "make a Federal case out of it" by imposing a PIP.

d. Make the Improvement Period Optional. The law now requires a performance improvement period (PIP) in every performance-based action. This acts as a deterrent to dealing quickly with a poor performer. Make the PIP optional, perhaps only as a precursor to removal or demotion, or as a substitute (at the manager's discretion) for a progressive series of disciplinary actions. In this regard, an optional PIP is especially useful in group-based performance management systems, as a way of singling out an individual suspected of poor performance. However, the PIP should be one of several actions available to a manager, rather than a condition precedent to such action.

Civil Service Subcommittee Questions (continued)

Questions 7, 8, and 9: Would a more results-oriented organization respond differently to changes in political power? What provisions should an agency make for incorporating [new] political leadership? Would this [results-oriented] approach tend to increase the power of the President to control Executive Branch agencies -- perhaps at the expense of congressional authority?

Response: A performance-based approach to government should not affect the balance of power between Executive and Legislative Branches (or for that matter, between an Administration and the career civil service), although it will undoubtedly employ different metrics to gauge that balance. Indeed, if anything, such an approach should result in a Federal bureaucracy that is much more responsive to a new Administration and the Congress, especially when it comes to establishing the outcomes and performance measures that mobilize and motivate that bureaucracy.

a. Organizations Respond to Results. Today, when a new Administration takes power, it is left with its predecessor's budget and program priorities, and it may take a year or two before it can set the "ship of state" on a new course with a its own agenda. In the meantime, it is often "business as usual" for the civil service. In part, this is because budget is an input measure, with a built-in implementation lag as a result of the budget process itself. A performance-based approach such as envisioned by GPRA would allow an Administration to begin almost immediately to set its course in a planned, disciplined way. In this regard, a new Administration's appointees would be able to review, reorder, and revise an agency's performance measures, and a results-based human resource management system would insure a career staff that responds more quickly to those changes.

b. But Within a Statutory Framework. However, as a practical matter, most of the changes brought about by a new Administration take place at the programmatic margin for most agencies -- a new appointee may revise or reorder an agency's operational priorities, and an agency's career staff should be responsive to those changes. But at the end of the day, the law is still the law, and absent action by the Congress, the statutory mission of a particular agency cannot be radically changed. Thus, while an Administration's focus on performance measures and outcomes can make the bureaucracy more responsive, enabling statutes act as an outer limit in its exercise of that prerogative, thus preserving the delicate balance between legislative control and administrative discretion. Note here that this becomes somewhat more problematic with "pure" policy organizations, where performance measures become much more subjective (and political). But this may be precisely where a new Administration should have greater leeway to bend and shape the permanent bureaucracy.

c. Subject to Results-Based Oversight. While a results-based system would not necessarily change the balance of power between Congress and the Executive Branch, it would clearly require a different form of congressional oversight, one that focuses on outcome and output measures, rather than just fiscal inputs and process measures. In this regard, Congress could participate in the establishment and evaluation of agency mission statements, strategic and operating plans, and most importantly, performance measures and priorities, serving like a board

of directors would in a private corporation. And it could perform these functions as part of its normal authorization/appropriation process. Thus, a results-based system would not necessarily increase the power of the Executive branch at Congress' expense. There is nothing to prevent Congress from exercising the same oversight that it does now, but with an emphasis on the bottom line. Indeed, that oversight may be even more meaningful and effective -- and hence, more powerful.

SENIOR EXECUTIVES ASSOCIATION

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November 17, 1995

The Honorable John L. Mica
Chairman
Civil Service Subcommittee
Committee on Government Reform
and Oversight
Room 2157
Rayburn House Office Building
Washington, D.C. 20515-6143

Re: Responses to Supplementary Questions from October 13, 1995 Subcommittee Hearing on Civil Service Reform

Dear Mr. Chairman:

We appreciate the opportunity to respond to the Subcommittee's questions. Our responses correspond to the questions, and are numbered the same as the questions.

1. *You testified that poor-performing employees tend to protect themselves by filing numerous (and occasionally false) allegations against their supervisors.*
What evidence do you have to support this charge?
Have any of the agencies developed reports of such abuses of their processes?
If yes, please supply information for our records.

The evidence we have to support the charge that employees protect themselves by filing numerous and occasionally false allegations against their supervisors is the informal survey we did of our members and their responses of October, 1995. Therein, in response to the question: "Do you believe the complaint systems are abused in order to intimidate a manager or agency management from taking action against poor performers?," 91% of the respondents answered: "Yes." In addition, 92% of those responding to this question indicated that it was a "common" occurrence.

Further, in the GAO report issued in October 1990 on performance management dealing with the issue "How well is the government dealing with poor performers?" one of the primary reasons that supervisors identified for not wanting to go through the appeal and arbitration process is that "the

grievance/appeal/arbitration process often assumes the supervisor to be 'guilty' and the problem employee 'innocent.'" (See p. 37 of Report).

In addition, 16% of the supervisors surveyed by the Merit Systems Protection Board perceived a lack of adequate management support for taking performance actions. Much of this lack of support is because upper-level management does not wish to deal with the results of the plethora of attacks that are directed at the supervisors and upper-level managers when action is attempted. We note with some dismay, however, that no direct question concerning employees' counter-attacks against supervisors was asked by the MSPB in its report. Based on our experience and those of our membership, we believe this was a major omission.

We do not know of any agencies which have developed reports of such abuses of their processes. However, at annual Federal Dispute Resolution conferences, we have heard from panels of agency heads from the various adjudicatory agencies (including MSPB, FLRA, OPM, and EEOC) that they recognize that "frequent filers" are a problem. In fact, the term "frequent filer" was coined at such a conference by one of the agency heads.

2. *What are your recommendations for measures to guard against filing of false or malicious charges?*

Some of our recommendations are contained in our testimony at the Subcommittee's subsequent October 26, 1995 hearing. We recommended that a system be established which would allow agencies to summarily dismiss frivolous complaints. We think that a joint labor-management committee should be established which would review complaints initially and throw out, for example, those that are not supported by some evidence beyond a prima facie showing. In addition, we propose that agencies be authorized and encouraged to initiate disciplinary actions against employees who file false, malicious or frivolous complaints. At present, the system treats all complaints equally, operating on the theory that when one sees a haystack (i.e., many complaints from one individual), if one digs deep enough there might be a needle in that haystack. We do not believe that theory and practice in the federal employee's appeals process should be that the more you file, the more chance you have of one of your complaints being taken seriously, thus "hitting the lottery."

3. *Do you have any data indicating the numbers of SES employees who have been removed for poor performance since the corps was established in 1979?*

We do not have data indicating the number of SES employees who

may have been removed for poor performance in the last 16 years. If such data exist, we believe that OPM would be its repository. However, we must point out that there is no effective independent appeal system for SES employees who are removed for poor performance. The only way they can appeal outside the agency is to file an appeal with the MSPB seeking an advisory decision by an Administrative Law Judge. Such findings are routinely ignored, and, therefore, it is not worth the effort or cost to appeal. Consequently, performance removals are seldom, if ever, appealed.

Since most SES employees have sufficient years of service to qualify for discontinued service retirement, this is often an option they choose if their supervisor tells them that they are going to receive an unsatisfactory performance rating. The agencies routinely assist the employees in their early or optional retirement. Therefore, even if statistics exist, they would not accurately reflect the number of SES employees who have actually left government or the Senior Executives Service because of unsatisfactory performance.

4. *What actual risks are SES employees exposed to that differ in any significant manner from subordinate, non-SES employees?*

SES employees are exposed to a number of risks not applicable to lower level employees.

First, they do not have appeal rights for unsatisfactory performance removals, and thus can be summarily removed without review from outside their agency. We know such removals occur, whether they are included in available statistics or not.

Second, they are held to a different standard in conduct cases by the Merit Systems Protection Board, and routinely receive harsher penalties for minor transgressions than lower-level employees from their agencies. These penalties are routinely sustained by the MSPB. Numerous MSPB cases state that SES employees can be held to a higher standard than lower-level employees for any misconduct, no matter how minor.

Third, SES employees can and are involuntarily reassigned at a much higher rate than other employees. Often these reassignments are between geographic areas and impose substantial hardships. While statistics are probably not available to support this, when such reassignments are punitive, most SESers voluntarily retire rather than accept reassignment, or they work out agreements with their agencies to fall back to a GS-15 position. This is a separate issue from the question of mobility in the SES because the mobility program should be voluntary, and these are generally involuntary actions which are punitive in nature.

Fourth, when new political appointees and superiors arrive in an agency, they routinely reassign SES employees to positions which have no substance in order to get them out of positions to which the political superior wishes to assign someone else. Prior to the establishment of the SES, there were five grade levels of positions covered by what is now the SES (i.e., GS-16, 17, and 18 positions and Executive Levels 5 and 4). The range of duties, responsibilities and authorities of those positions obviously varied greatly from the GS-16 to the Executive Level 4. SESers can now be involuntarily moved from a senior level position at the highest range of the SES to one at the lowest range of the SES with no ability to challenge the move. This is not an action to which any other Executive Branch employee is subjected.

Fifth, SES employees are subject to having their pay rate reduced one level each year for poor performance or relatively minor misconduct. The statute allows the agencies to effect such reductions without any cause upon 15 days notice, but OPM regulations require that such reductions be based on poor performance, misconduct, or failure to be recertified. However, it does not have to be unsatisfactory performance, nor does it have to be misconduct which would justify an adverse action. While not frequently used, it has been used on occasion by agencies.

Sixth, in RIF situations SES employees have neither the protection of veterans preference nor the protection of longevity of service. Their standing in a RIF must be primarily based upon performance. No other employees in the Executive Branch are subjected to the same standard.

Seventh, SES employees in many instances work directly for political supervisors, which, on average, turn over every 18 months in the Executive Branch. They are constantly exposed to the necessity of convincing the new supervisor that they are proficient in their duties and are supportive of the philosophy of the new political supervisor, whether or not that individual is experienced in the area of his/her appointment. This requirement places substantial stress on SES employees in such positions.

Eighth, the pay of SES employees is routinely frozen along with that of political appointees and members of Congress, and SES employees are often denied pay increases that other Executive Branch employees receive. In addition, in order to "set an example" (as can be seen in the FY 96 and FY 97 budgets), Administrations routinely do not submit as part of their budget pay increases for SES employees. Locality pay for SES employees is totally at the discretion of the President, in contrast to other Executive Branch employees, and can be granted or denied at the President's discretion.

Ninth, most SES employees are responsible for the work of large work units of employees. For example, the Deputy Commissioner of IRS is responsible for the work of over 125,000 employees, while a Regional Commissioner in IRS may well be responsible for the performance of 15,000 employees. Most other Executive Branch employees are merely responsible for their own work, or that of a small unit. So, although the rewards for accomplishments by those employees managed can be substantial for SES employees, the risk of mistakes by those employees is often placed upon the head of the SES employee in charge. Recent examples include SES employees in the Bureau of Alcohol, Tobacco and Firearms and in the Department of Justice who are under investigation or were removed because of actions of their subordinates. The principle that "someone's head must fall" is a risk that many SES employees run, in contrast to other Executive Branch employees.

Tenth, SES employees are subject to a recertification process every three years wherein their performance is judged against a standard of excellence exceeding satisfactory job performance. If that standard is not met, they are subject to removal, downgrade in pay and rank, or a conditional period to make good. No other federal employees are subject to such a system.

While upon reflection other risks could be identified, the above are a representative sample of the risks SES employees run not incurred by other Executive Branch employees.

5. *How would you differentiate the proposed Oversight Board from the Executive Resources Boards that currently operate in large agencies?*

The Executive Resources Boards (ERB) established in each agency are required by statute to perform just two functions - to conduct the merit staffing process for career appointments in the SES and to engage in overall planning and management of executive development programs for SES incumbents, candidates and managers. While agency heads may delegate additional functions and authorities, they are not required to do so, and few have delegated the full range of possible functions related to the executive corps, including position management, staffing management, compensation management, performance management, and personnel program evaluation. Indeed, many, if not most, Executive Resources Boards have failed miserably in carrying out the statutorily mandated functions.

They are generally chaired by the Deputy Secretary or deputy agency head who rarely has the time or interest to devote to the purposes of the ERB: Boards rarely, if ever, meet; the assignments

and reassignments are those which are initiated by the political leadership, often without regard to the career development of the individual SES employee; little, if any, career development or training activities take place; and few, if any, assignments are made in order to advance career development of employees. The decisions are rubber-stamped by the career and non-career employees on the Executive Resources Board who sign-off on paper actions which are circulated to them. While this may serve the purposes of the political leadership and agency, it does not meet the intent of the law, which is to establish and implement career development programs for managers and executives so that a highly qualified cadre of career SES employees is available to ensure the efficient and effective operations of government.

By contrast, the Oversight Board would have full responsibility for active oversight of agency management of the corps and for both current and future development of the corps as a government wide resource. OPM oversight of agency SES systems, in particular, has been virtually invisible with few problems identified, must less corrected.

Management of the corps has a government-wide resource is especially important and, similarly, has been woefully neglected in a manner unheard of in private industry. Such a Board role would encompass collecting executive personnel data on a timely basis to identify future needs, encouraging succession planning, developing appropriate frameworks for advancement in rank, and promoting continuing professional development, including inter-agency mobility. The latter, in particular, cannot be accomplished effectively by individual agencies acting alone.

As such, the Oversight Board would not supplant agency ERBs. SEA also proposes, however, the creation of the post of SES Director General in each major agency to ensure that 1) the ERBs actually operate as envisioned by statute and regulation, 2) the Performance Review Boards function properly (e.g., evaluations are timely and accurate, and non-performing executives are removed), 3) executives have and fulfill career development plans, and 4) a truly effective candidate development program is in place and current executives receive continuing professional education. Since there would be some overlap of functions with the ERBs, we recommend that the Director General chair the ERB.

6. *Wouldn't such a Board interfere with the management rights of agency heads that you identified as important when you testified against codification of the partnership councils?*

We do not believe so. Under our proposal, the agency head would continue to have the final decision-making authority, but

would not have to be involved in or oversee the establishment and implementation of career development programs. They would receive recommendations from the Oversight Board, but obviously would not be required to implament them. The Oversight Board however would provide for an overall government-wide strategy on career development, and could substantially improve mobility assignments between the agencies of outstanding executives.

Further, we do not believe that the SES Director General position in each agency would interfere with the management rights of agency heads since that position would report to the head of the agency or his or her designee.

7. *Wouldn't the creation of separate review boards for political and career executives exacerbate tensions within an agency?*

We believe it would lessen the tensions between career and political executives. Currently, political executives are not eligible for bonuses. There also is no requirement that political executives receive performance appraisals, and in many agencies, they do not. Career executives do receive performance appraisals and compete for bonuses from the career bonus pool. When career executives receive bonuses and their supervisory non-career executives do not, there can develop a substantial amount of animosity and jealousy between the two. This has caused difficulties in several agencies.

In addition, many political executives seek to use their influence to secure their own career appointment to positions for which career employees are better qualified. While this is understandable closer to the end of each Presidential term, it is a matter of grave concern to career executives and managers who are not given the opportunity to compete for those positions.

The establishment of a Political Executive Service would allow each agency to establish a bonus pool for those in it, and unilaterally make determinations for bonuses for the incumbents. The Career Executive Service by contrast would have its own bonus pool in which they would compete against other career executives. Obviously, the competition for career reserve SES positions would be confined to the career executive service, while both the political and career executives could compete for general SES positions, but should do so on the basis of merit system principles.

8. *For the record, how many noncareer executives are included in your membership?*

We do not know, since we do not keep records which identify whether a member is a career or noncareer member of the SES. Although we know that some noncareer executives belong to the SEA, we do not know how many.

9. *There is now a 10 percent government-wide ceiling on noncareer senior executives. Is this excessively restrictive for agencies' leadership?*

We do not believe the 10% government-wide ceiling is excessively restrictive at all. In fact, an individual agency can fill up to 25% of all SES positions with noncareer executives. In some agencies such as the Small Business Administration, there is no limitation at all. Many agencies have a high proportion of career reserve positions, such as the law enforcement and tax collecting agencies. This allows the other agencies to freely use the 25% limitation, rather than 10% In addition, many agencies carry an excess number of SES authorized positions, even though they have no intent of filling them, so that they can fill more noncareer positions and still stay within their percentage limitations, which are based on authorized, and not filled, positions.

10. *Rather than establish a "Headhunter Group" operating through a revolving fund at OPM, what are your views on authorizing agencies to contract for executive recruitment services to assist in personnel searches, if they thought such expenditures necessary?*

We would have no problem with agencies contracting for executive recruitment services to assist in personnel searches, provided they were directed to search both within and outside of government. We would suggest that OPM establish a national contract for such services, which would be a requirements contract. Then the agencies could specify and pay for the services that they wish to utilize and would know that the executive recruitment firm was one which had been found technically qualified by OPM before the contract was awarded. In addition, the firm could develop some expertise on the government personnel and executive system so that on each occasion, the firm would not have to "reinvent the wheel." If a primary objective were to foster greater inter-agency mobility for the SES, and, consequently, better career development and professional revitalization for those already in the corps, specific resources would need to be devoted to facilitate

identification of able government candidates.

11. *Is there any evidence of a shortage of applicants when SES vacancies are advertised?*

The applicant shortages that we know of are primarily anecdotal and often involve highly technical positions in medicine, research, engineering, etc. However, the question should not be whether there are enough applicants, but whether there are enough qualified applicants who are at the level from which the agency would like to select. The answer to this question is often a resounding, "No." Whether anyone wishes to acknowledge it or not, the independent studies of the Hay Group have established that government executive salaries lag substantially behind the salaries of their private sector counterparts, and the incentives for "producing" within the government are substantially lower than in the private sector. Obviously, then, there would result a dearth of high quality applicants from the private sector who are anxiously seeking career SES positions.

The pay system for the Executive Branch is in a terrible condition. The lower-graded employees are constantly rewarded with higher percentage raises than those in the higher-level positions. Pay is skewed to the lower-level employees, and managers and executives suffer because of that fact. No one is willing address this issue and establish pay increases for higher-level managers and executives at a rate higher than that of lower-graded employees. For the most part, it is because numbers drive politics, and there are more lower-graded employees than there are higher-graded ones.

In the past, this has resulted in pay increases for higher-level employees in "fits and starts," with no rationality and much criticism, because the increases finally given are large, "make-up" percentages -- but many years apart. If the government is truly to become an employer which adopts "best practices," which is flexible and innovative and which can serve the taxpayers' needs, then this method of compensation is going to have to change. We urge the Subcommittee to consider reality rather than politics and to make an effort to move towards rational pay for all federal employees, not just for those in grade 12 and below.

Thank you for the opportunity to respond to your questions. We hope that these answers are helpful to this Subcommittee.

Sincerely,

Carol A. Bonosaro
President

G. Jerry Shaw
General Counsel

Civil Service

11-24-95

Honorable John L. Mica
Chairman, Civil Service Subcommittee
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Mr. Mica:

This is in reply to your letter of November 3, 1995 concerning questions arising out of my testimony on October 13, 1995. My answers and comments are keyed to the numbered questions in your letter.

1. FAA's primary need for waivers was in the time in grade restrictions on promotions. As you know, employees must ordinarily serve a year in grade before they can be promoted to a higher grade level. After the strike, we had many controllers who learned rapidly and, so far as the development of their skills and knowledges were concerned, were ready for promotion to higher graded responsibilities. We also needed their services at higher graded positions. We asked for and received permission to promote them before they had completed their year in grade. That was by far the most important type of waiver we needed.

2. I suggest that agencies be given the authority to promote before normal time in grade requirements are met when there is an urgent need as determined by the agency.

3. To my knowledge, there were no waivers received that created undue difficulties at a later time. One can argue that controllers who were promoted rapidly reached the top of the journeyman ladder too swiftly, and then had to contemplate being stuck at that level for many years. To me that argument is far outweighed by the need to have adquate numbers of qualified controllers so that the air traffic control system could operate safely and efficiently. Further, there are many opportunities for journeyman controllers to advance to staff or supervisory positions so the "dead end" aspects of this situation were not really too bad.

4. The waivers most needed by FAA are two:

(1) the ability to recruit and select well qualified candidates rapidly, when the best candidates are available and interested. Rankings of candidates should be by category, rather than specific numbers like 92.3. Veteran preference should apply but the "rule of three" should be abandoned. It is not possible to rank candidates with 1, 2, 3 precision.

(2) FAA needs the ability to raise normal pay levels for both shortage category positions such as technical engineering

positions and for jobs in geographic locations where additional inducements are needed in order to attract and retain qualified staff.

5. I believe exemptions from Title 5 are needed in order to carry out the suggestions listed in # 4 above.

6. The only additional provisions needed to enforce my suggestions on dealing with unions that conduct or encourage strikes, slowdowns or sickouts, is an authority for the President to decertify immediately any union he finds to have engaged in such improper activity. The President should be required to publish the basis for his determinations.

Unions should remain subject to civil suit, as PATCO was when it conducted a strike. You may recall that civil penalties were assessed against the union by Federal courts.

7. I do not believe that enactment would have any serious impact on normal day to day union-management relationships. So long as a union does not engage in illegal and improper activities, it would have nothing to fear from the revised law.

I doubt that FAA employee unions would support legislation that imposed the threat of additional and rapid sanctions against them, should they call for or encourage a job action. Since strikes are illegal now, they would have a tough time justifying opposition to a penalty they would not incur unless they broke the law. They might want to propose procedural restrictions on the President. I would not object to such restrictions so long as they did not stop the President from acting quickly when there is a clear cut violation of law.

From the management side, I would want to define "strike" to include sickouts, slowdowns, and other actions which have as their intent interference with the normal conduct of Government business.

I thank you again for the opportunity to present my views for consideration. I would also like to thank your staff for their courtesy. Everyone I talked to was helpful. Ned Lynch was especially good at explaining the purposes of the hearing and giving me information about the context in which the Subcommittee is working.

Sincerely,

Charles E. Weithoner
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AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

AFGE

John N. Sturdivant
National President

Bobby L. Harnage
National Secretary-Treasurer

Kitty A. Peddicord
Director, Women's/Fair Practices Department

November 24, 1995

The Honorable John Mica
Chairman, Subcommittee on Civil Service
House Committee on Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Mica:

You have asked for AFGE's response to additional questions raised in connection with the Subcommittee's October 13 hearing on civil service reform. The following constitutes our reply to the questions presented in your letter of November 3:

Question 1
Would you recommend any changes in regulations or laws governing Reductions in Force (RIFs)?

The Administration and Congress have agreed to reduce significantly the size of the federal government workforce over the next several years. Agencies have been given employment targets to reach over a 5-year period. While many agencies have been able to hit these targets though attrition, many others have been forced to resort to layoffs. The number of agencies that will eliminate jobs through layoffs will undoubtedly grow, since the normal attrition rate simply cannot produce the number of job reductions that are called for. This will focus greater attention on the government's procedures for reducing its workforce in an orderly and humane manner. As AFGE is expecting more widespread use of reductions-in-force (RIFs), we have examined the law and regulation in this area to see whether changes are needed to protect the interests of the employees we represent.

RIFs are controlled less by law than by government-wide regulation. 5 USC § 3502 directs the Office of Personnel Management to prescribe regulations for the release of competing employees in a reduction in force which give due effect to (1) tenure of employment, (2) military preference, (3) length of service, and (4) efficiency or performance ratings. These regulations then go on to define which types of positions will compete and how the competition takes place. The law and regulations provide a framework for layoffs that is basically fair, although it is not always fairly administered. However, there is one area that causes us considerable concern.

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The use of performance ratings introduces a subjective factor that unfairly skews retention standing. OPM has chosen to "give due effect to performance ratings" by providing additional service credit based on the employee's three most recent ratings. Employees get 12 years additional credit for ratings of Level 3 (Fully Successful), 16 years for Level 4 (Exceeds Fully Successful), and 20 years for Level 5 (Outstanding). We fully agree that any employees whose rating of record is "unacceptable" should not compete in a reduction in force and should be released prior to competition. However, the progressively more generous service credit granted to employees at rating levels 3, 4, and 5 presumes a level of reliability and validity in the appraisal system that simply does not exist. The National Performance Review, in calling for major changes in performance management, found that the current system for rating federal employee performance "result[s] in ratings that are perceived as inaccurate and based on factors other than performance."

We know that an agency must take organizational needs into account when deciding how much to reduce staff and where. Retaining those employees whose skills and abilities best allow the agency to achieve its mission with a smaller workforce makes good business sense. Nevertheless, we do not believe that performance ratings accurately reflect an employee's value to the organization. As long as the law requires that performance ratings be considered for retention standing, this problem will continue. We recommend further study of this requirement with an eye toward replacing it with a retention factor that addresses the needs of the agency without resorting to subjective and unreliable performance ratings.

The National Performance Review identified the excessive number of supervisory positions as another factor that makes the Federal service less efficient. The numerous layers of supervision stifle innovation and creativity and are a drag on organizational performance. The NPR urged that supervisory and managerial positions be eliminated, echoing a long-standing position of AFGE.

In order to accomplish this goal effectively, RIF law and regulations must be changed so that managers and supervisors whose positions are eliminated do not displace rank and file workers. In the private sector, competition for jobs during a reduction-in-force almost never crosses supervisor-nonsupervisor lines. When GM downsized its managerial ranks, you did not see managers taking their old jobs back on the assembly lines. The

change we seek will achieve a legitimate workforce restructuring goal while cutting the size of government in a way that is both fair and credible to rank and file employees.

Question 2
How have the Partnership Councils contributed to the development and implementation of workforce reduction strategies at federal agencies? Could you cite some examples?

In answering this question, we must say right up front that simply slashing away at the government workforce is a poor strategy for improving government performance. Arbitrary workforce reductions without the necessary changes in the way government is operated and managed will lead inevitably to a hollow government, where a smaller, demoralized workforce attempts to do even more work with fewer resources. In this regard, we believe that labor and management working together in partnership is the preferred vehicle for reducing costs and creating a more effective government better able to serve the needs of the American taxpayer.

Where workforce reduction is necessary, however, whether because of external mandates or internal business realities, partnership councils can help an agency maintain its ability to serve its customers and accomplish its mission. Through partnership, agencies are better able to:

- **Make informed decisions.**

Union involvement brings a wealth of frontline knowledge to the process. We have found that managers often have only the vaguest understanding of the real work being done on an agency's frontlines, and no greater understanding of what it would mean to eliminate that work. Frontline workers are often better able than managers to identify jobs or tasks that add no value to the accomplishment of the agency's mission because they deal more directly with the actual work. They bring invaluable experience and insights to the process of deciding which tasks must be done, which should be modified, and which may be eliminated. Partnership helps agencies avoid what the National Academy of Public Administration calls "amputation before diagnosis." [1]

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[1] Effective Downsizing: A Compendium of Lessons Learned for Government Organizations, National Academy of Public Administration, August 1995, page 3.

The Union's presence on the Partnership Council insures that important information about the actual work, including information that management may not want to hear, is brought out and considered. Managers are often uncomfortable bringing up bad news or contradicting their superiors. The Union, as an equal partner, helps to keep discussions about downsizing from becoming rubber stamping sessions in which top management never hears difficult truths or honest appraisals of its ideas. Without the balance that partnership brings, downsizing decisions are likely to be ill-conceived, overestimating the capacity of the workforce and damaging the ability of the agency to serve the public.

- **Mitigate negative impacts.**

Partnership Councils help to ensure that workplace decisions are as fair as possible, not based on favoritism or misunderstandings about what tasks are key to the agency's mission. A partnership between labor and management is better able to communicate with the workforce than can management alone. The Union helps to shape communication to meet the needs of employees and ensure that the message gets to those who need it. The Union's presence also increases two-way communication, providing management with the workers' concerns and ideas, and helping to curtail rumors before they do damage.

A Union priority is helping workers remain employed and able to support their families. The Union brings this priority to the partnership and helps develop procedures for providing counseling, skills upgrade training, job search assistance, and other related services. Partnerships also work with public and private resources to set up referrals, help workers obtain benefits, and get through the transition to a new job with minimal adverse impact on themselves, their homes and their families. Displaced worker assistance programs jointly developed through partnership demonstrate a commitment to the interests of employees and work to maintain the morale and productivity of the remaining workforce.

In addition, the earliest possible placement of displaced employees into new jobs also lessens the potential drain on government resources through programs that assist the unemployed. Furthermore, government revenue levels are maintained when workers remain employed taxpayers.

Downsizing profoundly affects the employees who remain after the reduction as well. Where downsizing decisions are made with little or no planning, workloads may become overwhelming.

Partnership Councils play a key role in giving employees a voice, providing them with information, ensuring that workloads are rational, and keeping the agency on track in meeting its customers' needs. An organization that downsizes, but remains otherwise unchanged, is doomed to failure. Partnership Councils jointly work to design and implement the changes needed for the organization to succeed and the workers to feel valued and committed.

- **Develop procedures that minimize litigation.**

When labor and management jointly develop downsizing procedures, they can greatly reduce the number of complaints or appeals that follow implementation. The Union helps management avoid setting up procedures that violate employees' rights or promote inequities. The Union also helps to make procedures more understandable to workers and bring the concerns and interests of the frontline to management's attention. Two heads are better than one -- the partners can help each other avoid confusing or unproductive procedures by coming up with alternatives that make more sense for employees and the agency.

After the procedures are developed, the Partnership Councils play an important role in communicating to the workplace. Because they were jointly designed, the procedures are more likely to be acceptable and understandable to the greatest number of employees. Partnership Councils are better able to answer questions about the procedures than management alone because the Council members represent and understand the interests and concerns of both managers and frontline workers.

When procedures are developed jointly, union representatives are put in a better position to recognize employee complaints that have no merit and explain to workers why things were handled as they were. This can help reduce the likelihood of costly and time-consuming litigation and employee appeals. This is true for both potential procedural errors in releasing an employee and problems that may develop in the remaining workforce.

- **Examples of Partnership Council input into workforce reduction strategies.**

  - The VA Medical Center in Knoxville, Iowa and AFGE Local 1226 jointly developed their downsizing policy and criteria.

  - The GSA Mid-Atlantic Region and AFGE Local 2041 Partnership Council established a Rumor Control

Committee to prevent rumors of closures and downsizing from spreading and hurting productivity.

- AFGE Local 2302 and the U.S. Army Armor Center and Ft. Knox worked together to find positions for 300 employees affected by a RIF. The partnership is currently working on future downsizing needs and the facility's Total Quality Management program. Through partnership, the organization was able to reduce its workforce requirements and move to a more streamlined operation more efficiently than would have been the case if RIFs were used. In addition, all displaced workers were able with re-training to be placed in new positions.

- The Partnership Council consisting of AFGE Local 1617 and the San Antonio Air Logistics Center Air Force Materiel Command trained two union representatives on RIF procedures and placed them in the Personnel Office area during a 1994 RIF. This helped the facility communicate with employees about the RIF. Ongoing labor-management teams are dealing with closure, realignment and privatization issues.

- The VA Palo Alto Health Care System and AFGE Local 2110 Partnership Council and agency department heads jointly developed a new organizational structure that resulted in the elimination of more than 200 positions for a projected cost avoidance of more than $10 million.

- The reorganization plan of the VA Medical Center in Portland, OR called for the elimination of an entire function with 209 employees. The Partnership Council, with AFGE Locals 2157 and 2583, was asked to help when anxiety plunged the facility into turmoil. The Council worked with teams of employees and supervisors to design a system with patient care as its focus, that eliminated redundant operations and jobs, designed new jobs and improved customer service.

- The Defense Contract Management Area Office in San Francisco and the DCMDW Council of AFGE Locals are working together in the areas of budget resources, a surplus placement plan and retirement incentives.

These are just a few examples of labor and management working together in partnership to mitigate the destructive potential of workforce reduction. More important, partnership is

an exciting opportunity for labor and management to bring about positive change in their agencies to better meet the needs of the American public.

Question 3
What processes would you recommend for identifying federal programs that have not worked, that are obsolete, that might have completed their mission, or reached some other end point that might ease consolidations?

Although "bottom line" budget considerations have to be recognized, federal programs also have to provide value to the public and taxpayer--regardless of what the program costs to operate. Put another way, although reduced costs can be an indication that a program is being more efficient, such reductions may also indicate that the program is merely doing less with less. Since in today's environment of shrinking dollars most agencies will have fewer resources, the size of a program's budget loses value as an indicator of the program's worth.

In identifying whether a program is worth continuing, the process that can be most useful is an appropriate evaluation using *results-oriented management* (ROM). This approach is already in place as a part of the Government Performance and Results Act of 1993. Before GPRA, programs were assessed, if at all, by indirect and tenuous methods: whether budget levels were honored, whether the allotted number of positions was filled, and whether idiosyncratic reports from constituents were favorable. But when the GPRA is fully implemented, for the first time in history there should be valid and reliable data that describe program outputs and program outcomes. That is, there should be hard data that show what a program produced and how well it met the needs of its target customers. GPRA anticipates your question because its passage was intended to allow Congress to make decisions about continued viability of programs according to what a program actually delivers--its results.

GPRA's legislative intent illustrates my point about making decisions about continued usefulness only when there are hard data to evaluate. GPRA sought to:

- Improve public confidence in Federal agency performance by holding agencies accountable for achieving program results.

- Initiate program performance reform with a series of pilot projects in setting program goals, measuring program performance against those goals, and reporting on progress.

- Improve Federal program effectiveness and public accountability by promoting a focus on results, service quality, and customer satisfaction.
- Improve congressional decisionmaking by clarifying and stating performance expectations "up front."
- Improve the internal management of the Federal government.

Unlike other attempts to achieve accountability, GPRA is a framework by which programs and agencies can demonstrate results through systematic methodology. The law requires agencies to develop strategic plans that, among other things, relate specific goals and program activities to the specific mission that Congress assigns to every program. It further requires agencies to develop performance plans that include objective, quantifiable, and measurable statements of the specific mission-related goals.

GPRA requires agencies to respond to customer expectations, which are part of the accountability metric. And, most of all, the law requires agencies to report to Congress annually on how well they met their performance plans--so that Congress will have as much information as possible with which to hold agencies accountable, and thereby to deem them worthy of continuation, consolidation, or other action.

In meeting the test of GPRA, agencies have to rely on information from employees on the front lines of the work force. In this respect, labor-management partnership has been and remains the foundation for successful reinvention of government. The notion that the only people in an organization who can think are those at the top of the hierarchy no longer answers the call for better service and program performance. The process of identifying an agency's strengths and weaknesses and what its human resource base is able to provide in terms of innovation and results demands that labor and management work closely together.

GPRA has timelines that call for moving into these processes by FY 1997. The data that we gather from GPRA over the next several years ought to be more than enough to answer your question. I say "ought" because, of course, that requires holding the feet of each agency to the fire and requiring that they live up to their new accountability requirements by *operationally defining* accountability, results-oriented management, and program performance as their new corporate

philosophy. Agencies may regress to being their own worst enemies -- to seeing GPRA as another sterile exercise that will go away.

The best suggestion I can give you is to find out which agencies are moving forward to incorporate GPRA principles, and to make public the identities of those that are not. It's far better to make agencies and programs accountable today for gearing up for GPRA than to deprive the American public of a worthwhile program if, in several years it becomes apparent that compliance with GPRA has been less than whole-hearted where it counts: with the movers and shakers at the top and in the middle management levels of every agency and program.

Question 4
What changes in current operations, law, or regulations would be required to gain your support for more flexibility in these areas?

Question 5
Are you prepared to suggest any approaches to privatization -- for example employee stock ownership plans -- that might be effective vehicles for partnerships?

Questions 4 and 5 are closely related. They both address AFGE's role in the policy debate surrounding privatization. Therefore, these questions are answered in a single response.

At this time we are unprepared to endorse specific changes to privatization policies, laws, and regulations. We are also unprepared to suggest vehicles which would facilitate privatization. However, we are prepared to act as willing partners in resolving the issues surrounding privatization.

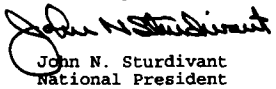
In an effort to engage effectively in this debate, we have recently undergone a comprehensive review of our policy and response to privatization. During this review, it became clear that privatization is simply another phrase for contracting-out and that AFGE must oppose privatization -- especially when it is done without due consideration of the consequences of the decision's impact on the taxpayer, the quality of service provided, or the welfare of the federal workers who provide that service. The soundness of the cost, benefit and efficiency assumptions underlying privatization is debatable; the motivations of its proponents are suspect; and the process from which a decision to privatize is reached is rarely unbiased.

However, when the only other alternative to privatization is certain job loss, we must ensure through our active participation that the rules and procedures governing the decision or competitive process are impartial and fair; that decisions are based on sound analysis; and that public employees are treated as equals and fully consulted participants in decisions that impact their work.

In instances in which the government decides to privatize, the decision should not be irrevocable. If it fails to realize promised cost savings or efficiencies, or results in mismanagement, the government should revisit its decision to privatize through recompetition which permits consideration of an in-house bid, or by making an outright decision to return the function back in-house.

We appreciate the opportunity to address these important issues in greater detail. We look forward to working with you and the Subcommittee in the months ahead.

Sincerely,



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Statement of

The American Psychiatric Association

on:

Medical Savings Accounts and Health Care Issues

submitted to the:

Subcommittee on Civil Service

Committee on Government Reform and Oversight

House of Representatives

December 13, 1995

The American Psychiatric Association (APA), a medical specialty society representing more than 40,000 psychiatric physicians nationwide, is pleased to present this statement for the "Medical Savings Accounts in the Federal Employee Health Benefits Program" hearing.

I. APA's Position on Health Insurance Reform Legislation

The APA's efforts with respect to health care legislation are guided by 12 principles approved by the APA Assembly of District Branches and the Board of Trustees (See Attachment A). For purposes of today's testimony, three of those principles form the core of our views at today's hearing:

1) Non-Discriminatory Coverage of Treatment for Mental Illness

APA's overarching objective is to seek the elimination of any and all arbitrary limits on scope, coverage, duration, or patient cost-sharing of treatment for mental illness, including substance abuse. We believe there is no rationale or justification for imposing any such limits based on the patient's diagnosis. Psychiatric patients -- like all other patients requiring medical treatment -- should have access to the full array of services available for their treatment throughout the full continuum of care, including inpatient, outpatient, partial hospitalization, and home and community-based services, as the patient's medical and clinical needs require. These services should be included as a uniform health benefit in <u>any</u> health care reform proposal, subject only to the same scope and duration, cost containment, and reviews/protocols as are applied to non-psychiatric medical illness.

2) The Right to Seek Treatment from the Physician of Choice

Under <u>any</u> health care plan, patients should be guaranteed the right to seek treatment from their physician (or other health provider) of choice. There are numerous reasons patients need the ability to see a provider outside of their regular insurance plan. For psychiatric patients, for example, confidentiality is often a leading reason prompting patients to seek treatment outside any approved network of providers, since they wish to ensure that no record -- including no claims form -- is registered when treatment is initiated.

APA believes that there are two simple and effective means available to the Congress to ensure that patient freedom of choice is protected. First, patients should be given at least the option of electing a point-of-service feature at time of enrollment in their health plan. A reasonably designed point-of-service feature -- without deliberately penurious cost sharing by the health plan -- would allow health plans to encourage their enrollees to stay within the designated provider network, but give patients the freedom to seek care when needed or desired outside the network. Second, "private contracting" for medical services would allow patients the freedom

to seek treatment with any provider -- at no cost to the health plan -- while maintaining absolute confidentiality of medical history and patient data.

3) **Protection Against Abusive Managed Care Tactics**

The patients of psychiatrists, perhaps more than any other medical patients, are subjected to unwarranted and unreasonable managed care practices designed simply to frustrate -- through inappropriate intrusions, requirements and administrative burdens -- the efforts of these patients to seek and receive medically necessary care. Health insurance reform legislation should include a variety of patient and provider protections against egregious and abusive utilization review and patient care management tactics used by some managed care companies.

Some of the most abusive managed care tactics psychiatrists have confronted include: gate keeping and financial incentives used to clamp down on access, claims denials with no appeal, failure to make utilization review criteria and treatment protocols/ screens publicly available, inappropriate specialists/patient ratios, utilizing "economic credentialling" -- lowest utilization and lowest use of high tech or costly procedures -- as a criteria for provider participation in networks, "gag rules" which prohibit advising patients of any limitations on providing treatment, and arbitrarily decertifying providers from networks when those providers advocate for additional coverage authorization for their patients. In order to guard against these practices, APA recommends that any health insurance reform legislation include meaningful patient and provider protection standards such as those articulated in our attached model managed care and utilization review legislation (Attachment B).

II. Medical Savings Accounts Legislation

While Medical Savings Accounts (MSA)s are not in and of themselves an answer to all of the problems confronting health care planners and policy makers, we believe that they are an important health care option which -- if properly designed -- will provide consumers with greater choice, quality, flexibility and affordability in health care. Incorporating MSAs into the Federal Employee Health Benefits Program (FEHBP) would allow Federal employees and their dependents to manage their health care in a cost-effective manner and would relieve them from paying administrative and profit charges to a third party.

For example, MSAs would bring market forces to bear by encouraging patients to "shop" carefully for the health care plan which best meets their anticipated health needs. Patients would now be financially responsible for managing their own health care dollars, not simply passing health costs on to a third party payor.

We believe that this would result in a reduction in unnecessary care and potentially significant cost savings as Federal employees spend their own discretionary -- not third party -- health care dollars.

MSAs offer great potential in addressing each of APA's stated objectives in health insurance market reforms.

First, to the extent that an individual health plan inappropriately imposes -- because of stigma rooted in fear and ignorance -- arbitrary limits on the scope, duration and coverage of treatment for mental illness, or on the cost sharing required of a patient, MSAs will allow individuals to offset such discriminatory coverage out of tax-preferenced savings. While we reiterate that we believe there is no justification for such limits, MSAs would at least provide a bridge between current coverage limits and the eventual achievement of non-discriminatory coverage of treatment for mental illness. "Prudent purchasers" of health insurance could also be assured of a lifeline against unexpected costs in the event of a sudden onset of severely disabling psychiatric illness.

Second, MSAs dovetail effectively with APA's recommendation of support for point-of-service and "private contracting" for health care services. Both options emphasize consumer freedom-of-choice and individual consumer responsibility. Use of a MSA to cover the additional out-of-pocket costs to consumers maximizes market freedom without financially punishing patients for exercising their rights to select their health provider of choice.

Third, MSAs would provide a critical safety valve to offset the excesses of abusive utilization review and subsequent patient care denials by behavioral health care companies or other managed care operations which are too-often interested in cutting outlays at the expense of medically necessary patient care. Patients would have a lifeline to needed care with their preferred provider, even if they are denied treatment by their managed care companies. MSAs would also allow patients to receive treatment pending resolution of appeals of claims denials without having to choose in the interim between their physician and their next meal, for example.

III. General Design of MSAs

APA believes that an FEHBP MSA plan should be required to meet several key Federal standards. These include:

1) Definition

For purposes of tax deductibility, MSAs should conform with the current Internal Revenue Code definition of "medical expense", a clear-cut definition of "medical care". As we understand Internal Revenue Code, it defines medical care as

those amounts paid for, among other key factors, the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body, as well as prescription drugs and biologicals. We urge that this broad definition be retained with respect to MSAs.

2) Reimbursement Standards

MSA plans should be required to reimburse providers at a standard rate. We suggest a payment floor set at the average local FEHBP provider usual, customary and reasonable payment rate as a viable standard. If the FEHBP MSA includes no payment standard, there is a serious risk that the catastrophic coverage component will set rates arbitrarily and deliberately low, through some self serving inappropriate fallacious standard, thus effectively denying patients access to quality medical care. We note that a reasonable reimbursement requirement is in conformity with current Majority thinking as evidenced by a similar requirement in the conference agreement on Medicare reconciliation.

3) Tax Treatment of MSA Contributions

FEHBP beneficiaries selecting the MSA option should be entitled to make contributions to the MSA using pre-tax dollars. This is simply in conformity with current tax treatment of "employee health spending accounts" in the private sector. Federal employees and their qualified dependents should be accorded the same right to make their contributions with pre-tax dollars. Further, we urge the Congress to specify that Federal employees may contribute pre-tax dollars to the MSA up to the current Internal Revenue Code limit on "employee health spending/savings accounts", <u>not</u> just to the level of the average employee share of the typical FEHB plan. This provides a meaningful incentive to Federal employees at all income levels to select the MSA option.

4) Allowable Expenses

As noted, we believe that the definition of "medical care" for purposes of MSA distributions be conformed to current applicable Internal Revenue Code definitions. Further, <u>all</u> out-of-pocket expenses incurred prior to the triggering of the catastrophic plan should be reimbursable from the MSA, including medical expenses beyond whatever the specified coverage limits are in the average or typical FEHB plan. For example, if the typical FEHB plan limits coverage of outpatient psychiatric services to 20 visits, the limit should <u>not</u> apply to reimbursable expenses from the MSA. If this provision is not included, individuals selecting the MSA option precisely to ensure that they will have specific out-of-pocket expenses covered may suddenly find that they have the limit they sought to escape reimposed through the back door.

5) Risk Pooling & Reinsurance Requirements

APA believes that there may be some initial risk of adverse selection if Federal employees perceive MSAs as a means of guaranteeing coverage of health care services that are, in the traditional FEHB program, subject to limits on scope and duration, or differential patient cost sharing. To guard against threats to solvency, APA believes that the Congress should impose reasonable reinsurance requirements on MSAs, and should also facilitate risk pooling between various MSA plans in order to minimize the risk of insolvency.

6) Coverage Requirements for Catastrophic Plans

APA recommends that Congress require MSA catastrophic plans to cover all medical conditions. Absent a meaningful coverage requirement, APA is concerned that MSA/catastrophic plans may "cherry pick" by deliberately excluding specific illnesses or conditions.

IV. Conclusion

There are a wide range of options for coverage of treatment of mental illness in the current FEHBP system and APA believes that MSAs properly designed, subject to the recommendations we have made in this testimony, offer an important adjunct benefit. While MSAs would not in and of themselves end discrimination by diagnosis in coverage of psychiatric patients within the FEHB program, they would help reduce the financial burden our patients must routinely address.

While APA continues to urge the Congress to end all health insurance discrimination against our patients, APA believes in the near-term, MSAs could be a significant step in the right direction.

Attachment A

THE AMERICAN PSYCHIATRIC ASSOCIATION

RECOMMENDS THE PURSUIT OF THE FOLLOWING PRINCIPLES AS PART OF NATIONAL HEALTH CARE REFORM

The American Psychiatric Association views national reform of the health care system as an opportunity to correct historic inequities in access to health care, particularly for the mentally ill. Transition to the new system must accommodate the needs of identified vulnerable populations, especially the third of the 37 million uninsured under the age of 18, the working poor, the mentally ill homeless, and minorities. The reform must provide quality of care, medically necessary, appropriate, and cost-effective treatment of mental disorders, and prevent harm to patients.

The following principles shall apply to national health care reform:

1) We shall first advocate for nondiscriminatory coverage of all medical disorders including mental illness (which includes substance abuse) for any medically necessary treatment under health care reform legislation. Uniform benefits in all fifty states for the treatment of mental illness should assure universal coverage and should be equal to other medical illnesses with respect to dollar limits (annual and lifetime), deductibles, coinsurance, and stop-loss provisions. Rather than arbitrary limits on hospital days or outpatient visits, professional standards should govern the intensity and duration of treatment.

2) We recommend *consideration* of the development of a prioritization process for all medical services, including mental health services, based on common criteria for outcome and usefulness to patients.

3) We shall relentlessly pursue, at state or federal levels, non-discriminatory catastrophic coverage for patients with severe mental illnesses, irrespective of the basic defined benefit.

4) As the professional organization responsible for the *Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R)*, we urge adoption of a definition of severity that is based not only on diagnosis, but also on other criteria, including duration, danger to life (self or others), *pain*, interference with functioning, and interference with emotional and mental development in children and adolescents. The definition should be applicable, on a case by case basis, to severe cases of both Axis I (including substance abuse) and Axis II mental disorders in children, adolescents, and adults, including the elderly.

5) Utilization management should be no more stringent for mental illness than for other medical illnesses and should incorporate safeguards against clinically unrealistic, inefficient, abusive or unethical review practices. A mechanism for impartial appeal of decisions is essential. Utilization management procedures must protect the physician-patient relationship to avoid harm to the patient. The quality of care should be carefully monitored in all payment systems, in a timely fashion.

6) Provision must be made for cost-effective preventive services.

APA Principles of Health Care Reform - page 2

7) Provision must be made for appropriate continuing care for severe mental illness.

8) We advocate access to individualized treatment in the most clinically appropriate and cost-effective environment Funding, therefore, should be available for treatment in the full continuum of scientifically-based psychiatric treatment modalities.

9) The APA is able to support budget targets which include fair and equitable reimbursement for the diagnosis and treatment of mental illness. We oppose the incorporation of undefined "global budget targets" as part of health care reform.

10) Insurance coverage must be uninterrupted. Pre-existing illness must not be a barrier to enrollment in health insurance coverage. Premiums shall be community-rated without reference to previous history of illness.

11) We affirm the historic principles underlying patient care: The preservation of confidentiality, the privacy and security of sensitive personal information and the freedom of patients to select their own physicians in organized systems of care.

12) Patients shall be allowed to contract for care at their own expense outside the system.

9/12/93

Attachment B

American Psychiatric Association

1400 K Street, N.W., Washington, D.C. 20005 • Telephone: (202) 682-6000

DISCUSSION DRAFT
"THE PATIENT PROTECTION IN UTILIZATION REVIEW AND MANAGED CARE ACT"

APA STATEMENT: The attached proposed bill, "The Patient Protection in Utilization Review and Managed Care Act," is a staff-developed discussion draft. In response to the growing concern among patients and health care providers about the problems associated with what is typically unregulated utilization review and managed care, this draft bill was developed in an effort to initiate physician member participation in the legislative process and respond to these problems. This draft bill does not represent policy or proposed policy of this organization. As an amalgam of ideas for addressing deficiencies in the utilization review process, it is a draft document for discussion and debate.

SUMMARY: All non-hospital affiliated entities performing utilization review or managed care are to be regulated through a certification/registration process under the state Secretary of Health and the Commissioner of Insurance.

KEY PROVISIONS

- Requirement that private review agents provide patients and providers with its utilization review or managed care plan, including review criteria, standards and procedures.
- No determination adverse to patient or provider vis-a-vis necessity or justification for any hospital, medical or other health care service may be made without prior evaluation and concurrence by a physician.
- Any determination resulting in denial of reimbursement or pre-certification must include evaluation, findings and concurrence of physician trained in the relevant specialty.
- Prohibition of incentive or contingent fee arrangement based on the reduction of health services.
- Requirement of nondiscriminatory utilization review of treatment of medical/physical and mental illnesses.
- Private review entities must have policies and procedures to ensure compliance with state and federal confidentiality laws, protecting medical records.
- Aggrieved patient or provider given the right to file a complaint alleging a reviewer's failure to comply with requirements of law and/or regulations. Judicial appeal available.

American Psychiatric Association

1400 K Street, N.W., Washington, D.C. 20005 • Telephone: (202) 682-6000

DISCUSSION DRAFT

STATE OF _____

LEGISLATIVE ASSEMBLY

BILL NO. _____

AN ACT TO PROVIDE FOR THE PROTECTION OF PATIENTS' HEALTH CARE MADE AVAILABLE THROUGH PRIVATE UTILIZATION REVIEW AGENTS AND MANAGED CARE SYSTEMS BY A CERTIFICATION PROCESS AND PUBLIC DISCLOSURE OF CERTAIN INFORMATION ABOUT THEIR ACTIVITIES.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF _____ :

Section 1. Short title.

This Act may be cited as "The Patient Protection in Utilization Review and Managed Care Act," hereinafter "the Act."

Section 2. Purposes.

The Legislative Assembly hereby finds and declares that the purposes of this Act are to:

(A) Promote the delivery of quality health care in a cost effective manner;

(B) Foster greater coordination between health care providers, third-party payors and others who conduct utilization review and managed care activities;

(C) Protect patients, employers and health care providers by ensuring that private review agents are qualified to perform utilization review and managed care activities and to make informed decisions on the appropriateness of medical care.

(D) Protect patients' health care interests through public access to the criteria and standards used in utilization review and managed care activities;

(E) Ensure the confidentiality of patients' medical records in the utilization review and managed care activities in accordance with applicable state and local laws; and

(F) Provide for nondiscriminatory utilization review of treatments for all illnesses, without regard to whether an illness is classified as medical/physical or mental.

Section 3. Definitions.

For purposes of this Act:

(A) "Certificate" means a certificate of registration granted by the Secretary to a private review agent.

(B) "Commissioner" means the Commissioner of Insurance.

(C) "Health care provider" means any person, corporation, facility or institution licensed by this state to provide health care services, including but not limited to a physician, hospital or other health care facility, dentist, nurse, optometrist, podiatrist, physical therapist or psychologist, and officer, employee or agent of such provider acting in the course and scope of employment or agency related to health care services;

(D) "Health care services" means acts of diagnosis, treatment, medical evaluation or advice or such other acts as may be permissible under the health care licensing statutes of this state;

(E) "Physician" means a person licensed to practice medicine in all of its branches;

(F) "Private Review Agent" means a nonhospital-affiliated person or entity performing utilization review or managed care that is either affiliated with, under contract with, or acting on behalf of:

(1) A business entity in this state; or

(2) A third party that provides or administers hospital, medical or other health care benefits to citizens of this state, including a health insurer, nonprofit health service plan, health insurance service organization, health maintenance organization or preferred provider organization authorized to offer health insurance policies or contracts in this state;

(G) "Secretary" means the Secretary of Health.

(H) "Utilization review" or "managed care" means a system for reviewing the appropriate and efficient allocation of hospital, medical or other health care services given or proposed to be given to a patient or group of patients for the purpose of recommending or determining whether such services should be reimbursed, covered or provided by an insurer, plan or other entity or person;

(I) "Utilization Review Plan" means a description of the criteria, standards and procedures governing utilization review or managed care activities performed by a private review agent.

Section 4. Certification of Private Review Agents.

(A) A private review agent who approves or denies payment, or who recommends approval or denial of payment for hospital or medical services, or whose review results in approval or denial of payment for hospital or medical services on a case by case basis, may not conduct utilization review or managed care in this state unless the Secretary has granted the private review agent a certificate;

(B) The Secretary shall issue a certificate to an applicant who has met all the requirements of this Act and all applicable regulations of the Secretary;

(C) The Secretary may delegate the authority to issue a certificate to the Commissioner for any health insurer, nonprofit health service plan or health maintenance organization or other third party regulated by the insurance laws of this state that meets the requirements of this Act and all applicable regulations of the Secretary;

(D) A certificate issued under this Act is not transferable;

(E) The Secretary shall adopt regulations to implement the provisions of this Act. No later than one year after the effective date of this Act the Secretary shall adopt regulations establishing:

(1) The requirement that the private review agent provide patients and providers with its utilization review or managed care plan including the specific review criteria and standards, procedures and methods to be used in evaluating proposed or delivered hospital, medical or other health care services;

(2) The requirement that no determination adverse to a patient or to any affected health care provider shall be made on any question relating to the necessity or justification for any form of hospital, medical or other health care services without prior evaluation and concurrence in the adverse determination by a physician;

(3) The requirement that any determination regarding hospital, medical or other health care services rendered or to be rendered to a patient which may result in a denial of third-party reimbursement or a denial of pre-certification for that service shall include the evaluation,

findings, and concurrence of a physician trained and experienced in the relevant specialty or subspecialty to make a final determination that care rendered or to be rendered was, is, or may be medically inappropriate;

(4) The circumstances, if any, under which utilization review may be delegated to a hospital utilization review program;

(5) The provisions by which patients, physicians or hospitals may seek prompt reconsideration by or appeal to an independent panel of physicians of adverse decisions by the private review agent;

(6) The type, qualifications and number of personnel required to perform utilization review or managed care;

(7) The requirement that no determination that care rendered or to be rendered is medically inappropriate shall be made until an appropriately qualified review or managed care physician has spoken to the patient's attending physician concerning such medical care;

(8) The requirement that any determination that care rendered or to be rendered is medically inappropriate shall include the written evaluation and findings of the reviewing or managed care physician;

(9) The requirement that a representative of the private review agent is reasonably accessible to patients, patient's family, and providers at least five days a week during normal business hours and that payment may not be denied for treatment rendered during a period when the review agent is not available;

(10) The policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;

(11) The requirement that no private review agent be permitted to enter a hospital to interview a patient unless approved in advance by the patient's attending physician and that the attending physician or a designee be entitled to attend the interview; and

(12) The prohibition of a contract provision between the private review agent and a business entity or third-party payor in which payment to the private review agent includes an incentive or contingent fee arrangement based on the reduction of health care services, reduction of length of stay, reduction of treatment, or treatment setting selected.

(13) The requirement that there be nondiscriminatory utilization review of treatment for all illnesses. without regard to whether an illness is classified as medical/physical or mental.

Section 5. Application for Certification.

(A) An applicant for a certificate shall:

(1) Submit an application to the Secretary; and

(2) Pay to the Secretary the application fee established by the Secretary through regulation.

(B) The application shall:

(1) Be on a form and accompanied by any supporting documentation that the Secretary requires; and

(2) Be signed and verified by the applicant.

(C) The application fees required under subsection (A)(2) of this section or section 6 of this Act shall be sufficient to pay for the administrative costs of the certificate program and any other costs associated with carrying our the provisions of this Act.

(D) As part of the application, the private review agent shall submit information required by the Secretary, including but not limited to:

(1) A utilization review or managed care plan that includes specific review or managed care standards, criteria and procedures to be used in evaluating delivered or proposed hospital, medical or other health care services, and the citations to the scientific literature relied upon in establishing such standards, criteria and procedures.

(2) The policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;

(3) A copy of the materials designed to inform applicable patients and providers of the requirements of the utilization review or managed care plan; and

(4) A list of the third-party payors and business entities for which the private review agent is performing utilization review or managed care in this state and a brief description of the services it is providing for each client, and a statement regarding whether the payment system for such services contains an incentive or contingent fee arrangement.

Section 6. Renewal of Certification.

(A) A certificate expires on the second anniversary of its effective date unless the certificate is renewed for a two-year term as provided in this section.

(B) Before the certification expires, a certification may be renewed for an additional two-year term if the applicant;

(1) Otherwise is entitled to the certificate;

(2) Pays to the Secretary the renewal fee set by the secretary through regulation; and

(3) Submits to the Secretary:

a. A renewal application on the form that the Secretary requires, including a list of all complaints made to the private review agency by patients or providers and a description of how such complaints were resolved; and

b. Satisfactory evidence of compliance with any requirements under this Act for certificate renewal.

(C) If the requirements of this section are met, the Secretary shall renew a certificate.

(D) The Secretary may delegate to the Commissioner the authority to renew a certificate to any health insurer, nonprofit health service plan, health maintenance organization or other third party regulated under the insurance laws of this state that meets the requirements of the Act and all applicable regulations of the Secretary.

Section 7. Denial/Revocation Of Certification.

(A) The Secretary shall deny a certificate to any private review agent whose application fails to:

(1) Provide information required by the Act and regulations adopted pursuant to the Act;

(2) Provide satisfactory assurance of the ability to comply with the Act and regulations adopted pursuant to the Act; or

(3) Demonstrate the availability of a sufficient number of qualified health professionals supported and supervised by appropriate physicians to carry out the utilization review activities.

(B) The Secretary may revoke a certificate if the holder does not comply with performance assurances under this section, violates any provision of this Act, or violates any regulation adopted pursuant to the Act.

(C) The following procedural requirements shall govern the denial or revocation of a certificate:

(1) Before denying or revoking a certificate under this section, the Secretary shall provide the applicant or certificate holder with reasonable time to supply additional information demonstrating compliance with the requirements of this Act and the opportunity to request a hearing.

(2) If an applicant or certificate holder requests a hearing, the Secretary shall send a hearing notice by certified mail, return receipt requested, at least 30 days before the hearing.

(3) The Secretary shall hold the hearing in accordance with the procedures set forth under [relevant state law].

(D) Any aggrieved patient or provider may file a complaint with the Secretary alleging that a private review agent is not in compliance with this Act or the regulations issued thereunder and requesting that the Secretary revoke the certificate of such private review agent or require that such agent comply with the Act and/or regulations. The Secretary's decision with respect to such complaint shall be subject to judicial review upon appeal by the patient, provider or

private review agent. If the Secretary fails to render a decision upon a complaint brought by a patient or provider within ninety (90) days, the patient or provider shall have the right to bring a judicial action to compel the Secretary to revoke the certificate of the private review agent or to require the private review agent to comply with the Act and/or regulations.

(E) Nothing in this section shall be deemed to deprive a patient or provider of any other cause of action available under state law.

Section 8. Waiver of Certification.

The Secretary may waive the requirements of this Act for a private review agent that operates solely under contract with the federal government for utilization review of patients eligible for hospital services under Title XVIII of the Social Security Act, Title XIX of the Social Security Act and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

Section 9. Reporting Requirements.

The Secretary shall establish reporting requirements to:

(A) Evaluate the effectiveness of private review agents; and

(B) Determine if the utilization review or managed care programs are in compliance with the provisions of this Act and applicable regulations.

Section 10. Confidentiality.

A private review agent may not disclose or publish individual medical records or any other confidential medical information obtained in the performance of utilization review or managed care activities.

Section 11. Penalty for Violation.

A person who violates any provision of this Act or any regulation adopted under this Act or who submits any false information in an application required by this Act is guilty of a misdemeanor and on conviction is subject to a penalty not exceeding $5,000 [or penalty under relevant state law for submission of false information]. Each day a violation is continued after the first conviction is a separate offense.

Section 12. Appeal by Aggrieved Party.

(A) Any person aggrieved by a final decision of the Secretary in a contested case under this Act may take a direct judicial appeal.

(B) The appeal shall be made as provided for the judicial review of final decisions under [relevant state law].

Section 13. Annual Report.

The Secretary shall issue an annual report to the Governor and the legislature concerning the conduct of utilization review and managed care in the state. Such report shall include: a description of utilization and managed care programs and the services they provide; the type of criteria and standards used to perform utilization and managed care review; the feasibility of adopting uniform criteria and standards for one or more aspects of utilization and managed care review; an analysis of complaints filed against private review agents by patients or providers; and, an evaluation of the impact of utilization review and managed care programs on patient access to care.

Section 14. Effective Date.

This Act shall take effect January 1, 19___.

10/10/95

Comments of James E. Colvard to the House Committee on Government Reform and Oversight's Subcommittee on Civil Service:

Members of the Subcommittee:

I am pleased to have this opportunity to share my views on Civil Service Reform with you. In your letter inviting me to testify you ask that I share my perspective on federal personnel laws and procedures and recommend any reforms of current law that I deem advisable. While I regret that I can not be at the hearing to present my views directly I appreciate the opportunity to submit them for the record. My perspective is that of a person who was a career civil servant for approximately thirty years and who managed within that system for roughly twenty five years. I had the good fortune to end my federal career as the Deputy Director of OPM where I worked for the very able Constance Horner. Thus I have seen federal civil service laws as one to whom they were applied, one who was applying them and one who was overseeing their application. It will not surprise you to learn that I have formed some very strong opinions on the subject of federal civil service laws and regulations.

Let me summarize my views: today's civil service laws and regulations fail to give the line manager 1. sufficient discretion to act in managing their workforce 2. sufficient flexibility to most effectively utilize their workforce 3. timely decisions in both the distributive justice and corrective justice aspects of the system and 4. make it difficult to hold line managers accountable for their actions.

In terms of discretion and flexibility, one of the biggest problems is the current classification system. The system was designed in 1923 and modified in the 1950's and it reflects the thinking of Scientific Management prevalent at the turn of the century. It served the country well when it was designed and indeed set a standard for the nation. It was designed to overcome the excesses of arbitrary decisions under the spoils system by making the system so impersonal that the exercise of discretion became extremely difficult. It achieved its objective. With the accretion of regulations over the intervening years the system transcended its original purpose and became an unaccountable administrative tyrant. The single act that would do most to improve the responsiveness and effectiveness of the civil service system would be to allow agencies to apply the pay banding system like the one already proven by years of application at two Navy laboratories. The current system allows the manager to be precisely wrong, the band system allows him or her to be roughly right. While the system does not establish overall pay level for civil servants, that is the purview of the Congress, it allows flexibility in adjusting individual pay within the Congressionally set boundaries. It also makes the pay setting process the responsibility of the line manager directly. With its reduced number of occupational groups and levels of work it gives the line manager greater discretion and flexibility in utilizing their workforce. This can be particularly useful during downsizings. The current classification system represents barriers to good management, the pay banding system establishes

bounds within which managers may act. This replacement of barriers with responsible boundaries would make a major improvement in the line manager's ability to do his or her job. It is unconscionable to have available a proven better way to do federal personnel classification and not allow the agencies to use it. When I was the Deputy at OPM I was struck by the irony of the fact that the GAO applied the pay banding system to their agency but would not recommend that other federal agencies be allowed to apply it. There is much more I could say about the pay banding system, but there is not time here to say it. There is detailed information available on the system from work that has been done at the National Academy of Public Administration by Frank Cipolla and others working with an extensive number of federal agencies. Those interested in the subject I commend the NAPA work to you.

The use of Full Time Equivalents (FTE) is another major impediment to effective workforce management. This focus on body count puts a premium on numbers of federal employees when the focus should be on overall cost of providing a needed and authorized public service. In managing a federal laboratory with a large number of highly educated and capable scientists I found it tempting to use my scarce billets-the Navy term for FTE-to hire more Phd's rather than the secretaries I really needed to support the scientists I already had. This focus on numbers rather than the efficiency of work execution also supports the classification process which tends to grade positions higher the greater the number of people working for you. With a pay banding system and management controls based on payroll the manager has reason to pay much more attention to the productivity of his or her employees and the proper mix of their workforce.

Another critical area in which the line manager has no discretion relates to optional retirement. Currently, when a federal employee reaches certain combinations of age and service he or she may exercise their option and retire. The most common combination is age 55 with 30 years of service. To be fully effective this option should work both ways. Today, the line manager can not call an employee who is eligible for optional retirement and exercise that option. Indeed, if they call the employee in and even suggest retirement the manager may be charged with age discrimination. There were many instances in my career where it would have been very much to the advantage of the organization for me as a manager to exercise the option and retire an individual. There were also many instances when it was highly desirable that an individual who had reached the optional retirement age stay on in the organization because they continued to be highly productive.Such an option in the hands of management would dramatically improve his or her ability to effectively and fairly deal with downsizings by retaining the proper mix of employees rather than using the current rules and flushing the youngest and most currently educated out of the system. The charge against such an approach will be age discrimination, but the fact that many people who have reached optional retirement age will be asked to stay on the job will make this a specious argument. It will also have a salutary effect in that individuals who are asked to stay on past optional retirement age will know that management truly wants them because they have the option to let them go. Further, it will cause employees to pay more attention to their currency of education and productivity in the later stages of their career-which is good for both the individual or the organization.

In terms of timeliness, there are several areas that could be discussed, but I will mention only two. Under the current system, position classification can take an mordinate length of time to complete. This would be remedied under the pay banding system where position descriptions can be written in a few hours by line managers because they are describing the level of work in common sense language rather than crafting it in administrative code designed to meet some abstract standard. However, the most debilitating impact of lack of timeliness is in the area of processing grievances. The problem is that there are too many levels of appeal which makes the process much too long. Neither party is well served by such a slow to act system. The law should be changed to allow one level of appeal above the person against whom the complaint is lodged with rights to civil court being the next course of action.

If the system is decentralized and line managers are given discretion and flexibility-and decentralization does not guarantee discretion and flexibility-then it is critical that line managers be held accountable for exercising this discretion. Authority and accountability come best within a system that lay people can understand which comes from system simplification, such as pay banding. Under the current system, decisions require the advice or specially trained people who become defacto the decision makers. Thus the process becomes diffuse and administrative and one can not hold an administrative directive or process accountable, hence the unaccountable tyranny of adminstrative systems. If the system is modified and simplified to the point that individuals- who can be held accountable- have power then they must be held accountable. A simplified system makes it possible to know who made a decision, but it will not automatically hold them accountable. Accountability comes from the top down starting with the Office Of Personnel Management (OPM) and flowing down through the chain-of-command of the federal agencies. Historically, the civilian side of government has done less well in holding individuals accountable than has the military. The military also does much better in giving their people authority. Perhaps we can learn from them in both these areas.

I appreciate the opportunity to provide this input to your deliberations. My vocation is public service, primarily the federal civil service. I fared well in the system and was treated exceptionally well by it. I feel I could have performed even better if the system had supported me rather than often requiring me to spend valuable time figuring out ways to legally get around it. Current laws reflect distrust of federal employees. Efficiency in any organization, public or private, comes from having discretion to act at all levels in the organization. That discretion can only be granted if employees are trusted and our civil service laws need to be changed to show such trust.

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November 14, 1995

The Honorable John L. Mica
Chairman, Civil Service Subcommittee
Committee on Government Reform and Oversight
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear John:

I appreciated the opportunity to provide you the benefit of my experience at the October 13 hearing on civil service reform, and am pleased to respond to the further questions you posed in your letter of November 3.

Question 1. *Your testimony described "work rules and peer pressure that prohibit employees from working extra hours" as tying the hands of people who want to accomplish more. Can you elaborate on this?*

My immediate experience had involved working for Congress. For ten years I and my peers routinely put in 12 to 16 hour days, with much weekend and holiday work. When I went to the Dept. of Agriculture I found that it was very difficult to find people after 4:30 PM. Very senior people were often available until 5:00 or 5:30 PM, and would stay until 6:00 PM for a conference if asked in advance. But on balance there is a culture of clock watching from top to bottom that makes a noticeable impression on people not used to such attitudes. I recall that a number of civil servants who seemed to want to accomplish more than is possible in an 8-hour day seemed as frustrated as I about a clock watching attitude. Yet, if they operated in a way in which they insisted upon timely performance from their peers and associates, or just created a lot of activity which required others to put in extra time to support their efforts, it is my recollection that they subjected themselves to whining, whispering, complaining and generally being regarded as trouble makers.

It is my recollection that to protect themselves from both the success of the vigorous and the whining, surliness and filing of official complaints by clock watchers, the senior bureaucrats have written work rules that discourage vigorous performance by civil servants. Of course, there are many exceptions, and some individuals work and perform without reference to the clock, but this is truly exceptional.

My counsel is that you catalogue and assess Agency work rules. Also, you might review internal complaints made by individuals about alleged violation of work rules by others to determine patterns of behavior that might be useful in further analysis. You should consider careful attention to the agreements arrived at in resolution of such disputes. It is my suspicion that you will detect patterns in which the professional clock watchers harass people who expect more earnest efforts.

Question 2. *Isn't the practice in the private sector to allow greater flexibility in work schedules?*

Flexible work schedules are a great idea -- as long as they are used for the benefit of the organization. Often they make good sense in optimizing the efficiency of employees by accommodating personal schedules -- when it is demonstrated not to create inefficiency and reduced productivity. However, bureaucracies in government or business try to run the organization for the benefit of themselves. Leaders and managers must make sure that all management tools are tied to improvements in productivity. It is my impression that the problem with civil service flexibility work rules is that they become a virtual entitlement which must be offered to most and denied to few.

Questions 3 & 4. *You describe the flexible work week as an obstacle that limits the effective business week to a Tuesday-Thursday period. How large a problem is this? Are entire agencies working under such flexible schedules? Is the scheduling of flex-time so rigid that it deprives managers of essential personnel?*

My experience in the flexible work week (working 9 days out of every 10) was limited to SES and other top-level executives. My recollection is that both my Agencies at USDA (Forest Service and Soil Conservation Service) offered this option to such executives. I recall countless situations in which it took weeks to have meetings to come to closure on policy issues because this key person or that key person was not available -- either because they were away on their comp day off or were on travel during the Tuesday - Thursday period. In my experience in Congress and the private sector senior executives don't get comp time, because it is extraordinarily inefficient when major decision makers can't be found. I regarded the situation as one of the most maddening aspects of my work with the bureaucracy at USDA.

It is my considered guess that if the de facto or de jure <u>entitlement</u> to flex time were removed, if it was approved only as an exception to meet the special requirements of an unusual personal situation, that the federal work force could be reduced by 10%.

Question 5. *How do private businesses accommodate "flex time" or other schedule changes? Is there any reason government could not manage its "flex time" better under current law?*

In my experience, private businesses (of less than 25 people who do not come under federal regulations that otherwise may control their operations) are eager to use flex time on an as-needed basis. Of course, fairness and evenhandedness in such matters is essential for employee morale and productivity. Most small businesses would terminate an employee who abused or tried to force management to provide flex time as an entitlement. As a practical matter this "fail-safe" is not available to managers of government employees. It seems to me that it could certainly be better managed than it was during my time at USDA, but it also seems that the law and/or regulations in force would need to be changed to reduce the entitlement nature of this important management tool.

Question 6. *Would you recommend repeal of authority to establish flexible rules?*

No. Flex time can be a valuable management tool. I do recommend that Congress carefully review flex time work rules to assure they do not operate as entitlements.

Question 7. *You recommended adopting "streamlined, practical, and effective means whereby civil servants ... who do not meet rigorous standards for performance may be terminated. Do you find any particular parts of the appeals process more of an impediment to effective operations than others?*

I am not competent to provide much counsel here. My recollection is that senior executives lived in constant apprehension about employees filing complaints and appeals of virtually any and every personnel action that did not suit them. If people aren't happy in their employment, they should resign, or be terminated, just like they would in private business.

By the same token, managers who engage in inappropriate behavior should be held personally liable for damages. When serious abuse of employees occurs, why should the taxpayers bear the burden. It is my impression that federal managers often award large sums to settle complaint cases, turning the whole process into something of a cottage industry for retired federal personnel officers. If managers knew that truly inappropriate behavior on their part would have personal consequences (personal payment of settlements, demotion, termination, etc.) it would improve their attention to detail and their competence.

Question 8. *What parts of the current system would you eliminate?*

The idea of a whole system of Administrative Law Judges (who insist upon being called "Judge" like they were really part of the regular judicial branch) seems pathetic and ludicrous. I am not really competent to address this subject, but strongly recommend a thorough review of the entire system of appeals with an eye toward reducing opportunities for appeal on frivolous and technical complaints. The authority of Agencies to negotiate settlements is very unsatisfactory in my experience. Reforming civil service laws to eliminate the practice of a virtual entitlement to perpetual federal employment would solve much of the problem. People unhappy in the workplace would either resign or be terminated for the good of the organization. Then the highly stylized system of appeals would simply pass away, with appeals being limited to truly serious instances of inappropriate behavior by management.

Question 9. *Are there parts of the appeals process you would retain?*

I am not competent to advise. Of course, every organization needs practical and evenhanded systems where individuals may seek redress short of resignation or termination. Ultimately, this is a management question. If the manager does not maintain effective morale, he or she will fail in a wide range of areas. Providing guidance to managers as to how to provide an effective appeals/redress process is important to them and to the employees they are charged to manage.

Authority for top management to remove sub-managers who are promoted to manage others as a function of time in grade rather than their managerial skills can cause serious employee problems. But to create an elaborate system of appeals to provide redress begs the question as to why the current perpetual entailment to employment causes them to be put in such positions in the first place.

Question 10. *Some people contend that the process associated with Senate confirmation already involves too many officials, and that greater accountability could be achieve by confirming fewer appointees and holding Secretaries and Undersecretaries more accountable for their performance. Couldn't Congress exercise more oversight if the Senate, at minimum, were devoting less time to confirmation of relatively minor officials?*

The key is effective accountability for individual performance. Yes, Senate confirmation can be limited to Secretaries, Deputy, Under- and Assistant Secretaries. But each confirmed official should have the resources and opportunity to appoint (hire) a team of managers and specialists to help him or her in assuring that Agencies accomplish Department goals and objectives. In my experience, human resources available to the sub-

cabinet were not sufficient to enable them to exercise effective management of Agency policies and personnel procedures.

I do not believe it is a good idea for Congress to become involved in day to day management of Departments and Agencies. The Congressional role is most effective when it exercises its authority to establish broad policy direction through authorizations and appropriations. Congress should operate as a board of directors on policy matters, being careful not to become a sort of supernumerary CEO.

However, it is very important for Congress to constantly challenge the assumptions and rationale for particular policies, and to insist upon establishment of measurable performance goals, with regular oversight to assess progress. I would agree that proforma confirmation procedures do not accomplish as much as would a conscientious program of performance based oversight activities.

I suggest that every Department and sub-cabinet official confirmed by the Senate be required by Congress to provide bi-annual performance reports on the activities of his Secretariat to Congress. Enclosed here are three examples:

1. Office of the Assistant Secretary, Performance Report: Natural Resources and Environment Policy and Program Area, 1981-1988, USDA, Washington, D.C., January 1989.
2. Office of the Assistant Secretary, A National Program for Soil and Water Conservation: the 1988-97 Update, USDA, Washington, D.C., January 1989.
3. U.S. Forest Service, A Recommended Renewable Resources Program: 1985-2030, 1985 Update, USDA, Washington, D.C., July 1986.

I supervised the preparation of these reports for my Secretariat in 1986 through 1989, because I wanted to communicate to my Agencies that I am dedicated to the principles of individual and Agency accountability for specific, measurable performance. I submit these reports for your consideration as useful models. These are not puff-pieces, not publicity documents. They are serious working papers that identify our stated goals and objectives with a frank evaluation of our successes and disappointments. If Congressional committees would insist on such strategic planning and evaluation reports from Agencies under their respective jurisdictions on a bi-annual basis, it would do much to focus the attention of political appointees and civil servants of accountability for specific, measurable performance -- and away from the process orientation of any bureaucracy, public or private.

I should point out, as identified in these reports, that some of the major shortcomings in effective focus on measurable outputs and increased productivity and efficiency were the result of Congressional direction. An example is the situation in which Congress forced us to use a land acquisition procedure and strategy that resulted in costs of some $900 per

acre, compared to the $50 per acre cost the Forest Service could have used to meet policy goals of reducing National Forest inholdings. So, Congress, too will be challenged by such reports and assessments.

Question 11. *Wouldn't the elimination of confirmation procedures for lower-level officials actually make them more accountable to their immediate supervisors?*

In my experience, no. Senate confirmation provides authority and conveys with it a sense that subordinates are accountable to that person in his or her own authority provided by Congress, not just through another person. Senate confirmation should not be indiscriminate. It should be a big deal. Of course, the Cabinet Secretaries and the President can and should always retain the power to appoint and remove sub-cabinet people. Congress should be most keen to hold the President and Secretaries accountable for the performance of the Departments.

Question 12. *Could problems arise from involving too many political officials in the appointment of civil service personnel? And, how would you guard against "politicization" of the career service?*

Yes, problems can arise this way. But other problems exist because political officials (i.e., non-civil service executive branch employees) cannot exercise effective direction over bureaucracies.

The best way to guard against politicization of the career service is to provide in law stringent restrictions on partisan political activity by civil servants and even stronger penalties for coercion of civil servants to engage in partisan political activity.

Question 13. *What difference would it have made in managing either of the agencies you discussed if you had authority to hire additional political appointees?*

I would have had more opportunities to conduct internal oversight of policy and management issues. Bureaucracies are self-promoting by definition, always seeking to expand their mission and resources under their control. I had little choice but to take much of what was presented to me at face value because I didn't have resources to challenge or evaluate enough of the information provided to me.

Question 14. *What specific functions would you have these political appointees perform that could not be performed by career civil servants?*

Agency performance oversight, agency personnel and organizational initiatives, and controversial policy initiatives.

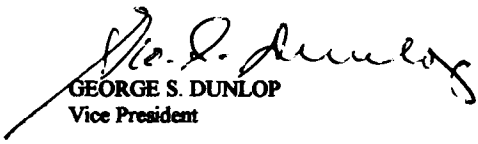
It is not reasonable to expect career civil servants assigned to the office of the Assistant Secretary to engage in oversight or policy activities in which key people in the Agencies may believe is not in the best interest of the Agency. It would destroy their careers.

I had great confidence in the technical and professional competence of the SES officials with whom I dealt, and I believe they were conscientious in wanting to accomplish good things -- but above all they were Organization Men (few women then). Because I liked and cared for most of these people, I was always extremely reluctant to jeopardize individuals' careers by asking them to undertake activities which their peers and those to whom they were subordinate might not approve. A half-dozen top notch policy analysists and support staff independent of the Agencies but accountable to me or the Secretary would have resulted in more effective policies and greater implementation of management for performance.

I trust you will find these observations drawn from my experience helpful to you and the Committee.

With kindest personal regards.

Sincerely,



GEORGE S. DUNLOP
Vice President

Enclosures